DO29889

CITY OF LINCOLN NEBRASKA
MAYOR LEIRION GAYLOR BAIRD

DIRECTORIAL ORDER

NO. 29889

Smart # 23040031
4/06/2023-Police/mrs

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Mayor of the City of Lincoln, Nebraska:

Pursuant to the delegation of authority under Administrative Regulation No. 26, I hereby approve on behalf of the City of Lincoln, the attached order between Lincoln Police Department (LPD) and Prepared. This order is for software and services to view images and video communications from community members who call 911 for assistance. The cost of this agreement shall not exceed $49,800.

The City Clerk is directed to forward one copy of this Directorial Order with back up to Michele Selvage at the Police Department

Approved as to Form & Legality:

City Attorney

Approved:

Chief of Police 4/6/23

Finance

FILED

APR 18 2023

CITY CLERK'S OFFICE

E:\LPDMRS'S DOCUMENTS\DO FOR AGREEMENT _FIND A FORCE.DOC

Invictus Apps, Inc. • 10 E 38th St., Floor 9, New York City, NY 10016 • www.preparedapp.com

SALES REPRESENTATIVE (Invictus Use Only): :	Mike Muskovin
SALES REPRESENTATIVE EMAIL (Invictus Use Only):	muskovin@prepared911.com
ORDER FORM SENT (Invictus Use Only):	Mar 20, 2023
OFFER EXPIRATION DATE	March 31, 2023

Subscription Order for the

Prepared Emergency Communications Service

This is an order for a subscription to the Prepared Emergency Communications Service by the client identified below (the "**Client**") made to Invictus Apps, Inc. ("**Invictus**"), a Delaware corporation having an office at 10 E 38th St., Floor 9, New York City, NY 10016.

Name of Client:	Lincoln - Lancaster 9-1-1
Client Address:	575 South 10th St Lincoln, Nebraska 68508
Client Phone Number:	402.441.7251
Client E-Mail:	LPD1143@cjis.lincoln.ne.gov
Client Contact:	Teresa Ewins

[Continued on Next Page]

The Prepared™ Emergency Communications Service is a proprietary security and communications service of Invictus pursuant to which Invictus provides to Client's emergency response dispatchers and emergency responders the capability to view image and video communications and transmissions and location information from citizen callers regarding a pending emergency through Invictus' use of the proprietary Invictus technology solution, including proprietary web applications, and other software, graphical user interfaces and other content, threat-management protocols and other workflows and processes.

Type of Subscription:	Prepared Live Enhanced
Effective Date:	Date that Client signs the Subscription Order for the Prepared Live Emergency Communications Service.
Subscription Plan:	Prepared Live Enhanced
Paid Features (If Applicable):	OnScene;Real Time Text;Text Language Translation;Inbound Non-Emergency Text
Maximum Number of Dispatchers	80
Maximum Number of Emergency Responder:	150 MDTs, 20 Individual Users
Initial Subscription Period:	12 Consecutive Months from the Effective Date
Launch Date:	The first Business Day following the end of the Implementation Period
Total Subscription Fees for Initial Subscription Period:	$49,800 (price fixed for three additional optional years of service; year two $49,800, year three $49,800, and year four $49,800)
Payment Terms:	Payment for Service is due on the start date of each Subscription Period and each Renewal Period and shall be paid in full within 20 days of due date (Net20).

The following terms and conditions are incorporated by reference herein: (1) the Standard Terms and Conditions for the Prepared™ Emergency Communications Service (the "Standard Terms"), attached hereto as Appendix A, as agreed, together with all Schedules attached to and/or referenced anywhere below, and (2) any Special Terms if applicable, attached hereto as Appendix B.

This document constitutes the "Order" for purposes of the Standard Terms and any Special Terms. Client wishes to subscribe to and use the Prepared™ Emergency Communications Service as set forth on this Order below and subject to the terms and conditions provided in the Standard Terms. This Order is subject to Invictus' approval.

Capitalized terms used in this Order and not otherwise defined will have the meanings ascribed to them in the Standard Terms or the other Appendices.

This Order, together with the Standard Terms and these other Appendices hereto and the Schedules attached to and/or referenced in any of the foregoing, contain the entire agreement and understanding of the parties with respect to the subject matter hereof (the "Agreement") and shall supersede and merge all prior and contemporaneous communications,

agreements, understandings, undertakings and obligations with respect to the subject matter hereof, whether oral or written, unless the parties have entered into a separate definitive written agreement with respect to the subject matter hereof which has been signed by the authorized representative(s) of each party. No modification of the Agreement, including this Order or any Appendix hereto, shall be binding on either Party unless it is in writing and signed by both Parties. No quote, order other than this Order, or similar document shall modify the terms of the Agreement even if accepted by the receiving party. Notwithstanding the foregoing, the Agreement does not supersede any Non-Disclosure Agreement or Confidentiality Agreement, if any, entered into by the parties, which shall continue to be in full force and effect.

By signing and returning this Order, the undersigned Client accepts and agrees to the terms and conditions of this Order and the additional terms and conditions set forth in each of the Appendices to this Order and the Schedules to this Order to the Appendices, if any, each as specified below which shall be incorporated herein by reference:

a. Appendix A – Standard Terms and Conditions for the Prepared™ Emergency Communications Service
b. Appendix B – Special Terms

Each of Client and Invictus Apps, Inc., intending to be legally bound, hereby confirms its agreement to the terms and conditions of this Order and the Agreement and have caused this Agreement to be executed by their duly authorized officers as of the Effective Date set forth above.

I, the undersigned, warrant that I am authorized to sign this Order on behalf of Client.

CLIENT: Lincoln Police Dept

By: _____

Name, Title: Teresa Lewis, Chief of Police

Date: 3/31/23

INVICTUS APPS, INC.

By: _____

Name, Title: Mike Muskovin, Head of Sales

Date: March 31, 2023

Appendix A – Standard Terms and Conditions for the Prepared™ Emergency Communications Service

Standard Terms and Conditions for the Prepared™ Emergency Communications Service

These standard terms and conditions as set forth in this document (the "**Standard Terms**") shall apply to and govern any Order placed by a Client (as identified in such Order) for a subscription to the Prepared™ Emergency Communications Service from Invictus Apps, Inc., a Delaware corporation, ("**Invictus**"), to which these Standard Terms are attached or in which they are specifically referenced and which is signed by both Invictus and the Client. Placing the Order with Invictus constitutes Client's agreement to the Standard Terms set forth herein, as such Standard Terms may have been updated through the date of such Order.

Any different or additional terms in any purchase order (that is not an Order), proposal, offer, or other writing from Client to Invictus shall be deemed a material alteration of these Standard Terms and are hereby expressly objected to and rejected and shall be of no force or effect. Invictus' failure to object to any such terms and conditions from Client will neither be construed as Invictus' acceptance of such terms and conditions nor a waiver of these Standard Terms or the terms and conditions set forth in the Order. Commencement of performance shall not be construed as acceptance of any of Client's terms and conditions which are different from or in addition to those contained in these Standard Terms or the terms and conditions set forth in the Order. Course of performance or usage of trade shall not be applied to modify these Standard Terms or the terms and conditions of any Order. Invictus' offer to provide the Service is expressly conditioned upon Client's acceptance of these Standard Terms.

In consideration of the mutual promises and covenants contained in the Agreement and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Certain Definitions. In addition to the capitalized terms defined above and elsewhere in this Agreement, the following capitalized terms as used in this Agreement shall have the meaning set forth below:

"**Access Credentials**" shall mean any username, identification number, password, license or security key, token, PIN or other code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access the Prepared Platform.

"**Agreement**" shall mean the written agreement entered into by Client and Invictus and comprised of (i) the Order issued by Client and accepted by Invictus in writing and (ii) these Standard Terms and (iii) the Exhibits and other Appendices to the Order, each as attached to and/or specifically referenced in the Order, and (iv) all other documents incorporated in the Order or in these Standard Terms by reference.

"**API**" shall mean a software or application programming interface made available by Invictus or a Third Party Application authorized by Invictus in connection with the Service, including the associated technical and administrative specifications, standards, requirements, procedures and communication protocols provided by Invictus, to allow a computer server to interface with another computer or server or to process a data file in an automated fashion. All APIs provided or made available by Invictus are part of the Prepared Platform.

"**Business Day**" shall mean any day that is not a Saturday or Sunday or a Federal holiday in the United States of America.

"**Caller**" shall mean a citizen caller who reports an emergency or threat to a Telecommunicator of Client by calling 911.

"**Caller Data**" shall mean the data, including text, video, audio, image, and location data, regardless of form or media, that are submitted or transmitted by a Caller or Caller's Mobile Device to Invictus from such Caller's Mobile Device during the Term of this Agreement.

"**Caller Platform Extension**" shall mean the proprietary web-based software application of Invictus, including its functionalities, features, services, data, design, graphics, images, text, graphical user interfaces, and all other content, which Invictus makes available to Callers for use in connection with the Service.

"**Client Data**" shall mean (1) the data and related information that are submitted by Client to Invictus or the Prepared Platform, for creating and managing User accounts and providing access to Authorized Users and other Users of the Service, including to authorize or validate access to or use of the Prepared Platform and to establish the level of privileges and use rights associated with the Prepared Platform or the Service, (2) the information and data about a Caller submitted by an Authorized User of Client to Invictus or the Prepared Platform, including without limitation any mobile phone number and other contact information of a Caller, and (3) any communications sent by Client's Authorized Users to a Caller via the Prepared Platform, including the Call-Taker Console, and/or the Caller Platform Extension. "**Client Systems**" shall mean the information technology infrastructure and networks of Client, whether operated directly by Client or through the use of Third Party services or resources. "**Cloud Server**" shall mean a server or multiple connected servers, owned, controlled, operated or maintained by a Third Party, such as Amazon Web Services, Microsoft Azure or Google Cloud Platform, which is part of the Prepared Platform, and which host software, data or technology proprietary to Invictus or licensed by Invictus or any Client Data.

"**Defective Client Data**" shall mean any file submitted by Client that is defective, corrupt, unreadable or incomplete or any data or file(s) or that do(es) not comply with the specifications or requirements provided by Invictus for Client Data or that contains incorrect data or information with respect to any User, including information regarding a User's level of privileges or use rights that is inconsistent with the Subscription Tier ordered by Client.

"**Emergency Responder**" shall mean a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a fire company, emergency medical technician, emergency nurse, ambulance operator, or provider of civil defense services.

"**End User License**" shall mean the terms and conditions of the end user license agreement that each User of the Service enters into with Invictus and which, together with this Agreement,

shall govern the use by such User of the Service and the Prepared Platform.

"Force Majeure Event" shall mean any act of God, fire, flood, explosion, war, strikes, or other concerted work stoppages of labor, inability to obtain raw material, equipment or transportation breakage or failure of equipment or apparatus, or loss of any necessary utility or interruption of power or communications sources or connections, failures in or affecting the performance, use, or availability of the Internet or associated intranets, any failure affecting the performance, use or availability or data transmission via cellular or wireless means, any Harmful Code released by a Third Party, any denial of service attacks, the terrorist, illegal, malicious, wanton, or capricious acts of a Third Party, changes or modifications in international, national, or industry standards or protocols, or the existence of or governmental action or court order or changes in laws prohibiting or imposing criminal penalties or civil liability for performance hereunder.

"Harmful Code" shall mean software or other technology, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede, any computer, software, database, system or network.

"Hours of Coverage" shall mean the period of time between 8:00 a.m. and 6:00 p.m. (East Coast Time) Monday – Friday, except for any Federal holiday.

"Intellectual Property Rights" shall mean any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any utility and design patent, copyright, trademark, trade secret, database right, database protection or other intellectual property rights, and all similar or equivalent rights or forms of protection, including without limitation under any license, and all associated rights of priority in any part of the world.

"Launch Date" shall mean the first Business Day following the end of the period of implementation of the Service pursuant to **Section 2.1** hereof.

"Initial Subscription Period" shall mean (i) a period of twelve (12) consecutive months from the Launch Date or (ii) such longer period set forth in the Order.

"Invictus Marks" shall mean the trademarks and trade names and logos of Invictus, including the Prepared word mark and the Prepared logo as set forth on the top of this Agreement. **"Mobile Device"** shall mean (i) a smartphone made by Apple, Inc. and running the iOS operating system made available by Apple Inc. or (ii) a smartphone made available by another hardware manufacturer that runs the Android operating system made available by Google Inc.

"Order" shall mean (i) such written order issued and delivered by Client to Invictus for the Prepared™ Emergency Communications Service as specified in such order, which order has been executed by Client and accepted and approved by Invictus in writing, or (ii) such other written agreement entered into between Client and Invictus relating to the Prepared™ Emergency Communications Service and executed by Client and Invictus, provided that such agreement expressly states that it serves as or includes such Order for purposes of these Standard Terms and that these Standard Terms shall be incorporated into such agreement by reference.

"Person" shall mean an individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, stock company, trust, unincorporated association, government agency, or other similar entity or organization.

"Prepared Platform" shall mean the software, cloud-based information technology platform, including the Call-Taker Console, servers operated by Invictus and Cloud Servers, and computer code, software, technologies, processes, methods, algorithms, and data and content, including protocols, processes, workflows, and workflow engines (e.g., steps, logic, and functionality for implementation of out-of-the-box and custom business processes), rules engines and integration code, proprietary to Invictus or Third Party Applications licensed from Third Parties, that are used by Invictus in performing the Service. **"Prepared Platform"** shall also include any Prepared Platform Extensions.

"Prepared Platform Extension" shall mean a web-based or Mobile Device-installed software application of Invictus, including its functionalities, features, services, data, design, graphics, images, text, graphical user interfaces, and all other content, that Invictus makes available to Users of Client that are Emergency Responders of Client for use with the Service if the Client has subscribed to the applicable Paid Subscription Tier.

"Permitted Uses" shall be limited to the following uses of the Service: requesting, initiating, and managing the transmission of Caller Data from a Caller to the Prepared Platform regarding a pending emergency or emergency in progress that are transmitted by such Caller via a Caller Platform Extension and stored on the Prepared Platform for viewing of such Caller Data by Client's Authorized Users on a web-based or computer-installed graphical user interface and software dashboard made available to Telecommunicators and, if Client has subscribed to the applicable Paid Subscription Tier, to Authorized Users that are Emergency Responders, as part of the Prepared Platform (**"Call-Taker Console"**), and transmitting and managing communications with a Caller from and to such CallTaker Console, and, if applicable, from and to Prepared Platform Extensions that Invictus makes available to Authorized Users of Client that are Emergency Responders of Client if the Client has subscribed to the applicable Paid Subscription Tier, as part of the Prepared Platform.

"Telecommunicator" shall mean a call taker or dispatcher in an emergency dispatch office, such as a public-safety answering point (PSAP), operated by or on behalf of Client which may communicate with a citizen caller or may send Emergency Responders to respond to an impending threat to public safety, provided that the term "Telecommunicator" shall not include any Emergency Responder.

"Service" shall mean Invictus' proprietary Prepared™ Emergency Communications Service that Invictus generally makes available to Client which allows Authorized Users of Client to initiate a request to a Caller, delivered to the Caller's Mobile

Device, for the transmission of Caller Data from such Caller via such Caller's Mobile Device to the Prepared Platform for viewing on the Call-Taker Console by Client's Authorized Users of such Caller Data received from such Caller, and, if the Client has subscribed to the applicable Paid Subscription Tier, on a Prepared Platform Extension that Invictus makes available as part of the Prepared Platform to Authorized Users of Client that are Emergency Responders of Client, and stored on the Prepared Platform regarding a pending emergency or emergency in progress that are transmitted by such Caller via a Caller Platform Extension, including to view a live stream of such threat or emergency from a Caller, in each case through use of a Caller Platform Extension via the Mobile Device of such Caller, on the Call-Taker Console, and, if the Client has subscribed to the applicable Paid Subscription Tier, on such Prepared Platform Extension, as part of the Prepared Platform.

"Subscription Tier" shall mean the applicable subscription plan to which Client has subscribed as set forth in the Order, and which limits the categories of Users that may access and use the Service and the Prepared Platform. The applicable subscription plans available from Invictus are a "Base Subscription Tier" and "Paid Subscription Tiers."

"Third Party" shall mean a Person not a party to this Agreement.

"Third Party Application" shall mean any third-party software product, including any online application and offline software product, that is used by or as part of the Prepared Platform or any Caller Platform Extension.

"Upgrade" shall mean one or more materially new or different features or functionalities of the Service compared to a prior version of the Service in effect as of the Effective Date (as specified in the Order), including any new or additional content or software as part of any Caller Platform Extension.

2. Scope.

2.1. Implementation. Promptly following the Effective Date, Invictus shall use commercially reasonable efforts to implement the Service for use by Client's Authorized Users. Client shall provide reasonable cooperation and assistance in connection with such implementation. During this implementation period, Client shall make the Client Data available to Invictus, including by using the API provided by Invictus. Any delay by Client in providing data, documentation, information, access or resources as reasonably required by Invictus to implement the Service will give Invictus the right to extend such implementation period up to a period that is equivalent to the period of delay caused by Client.

2.2. Service. Subject to and conditioned on Client's and its Authorized Users' compliance with the terms and conditions of this Agreement and the End User License, commencing on the Launch Date, Invictus will use commercially reasonable efforts to make available to Client's Authorized Users the Service solely for the Permitted Uses during the Initial Subscription Period (as that period is set forth in the Order) and any Renewal Term.

2.3. Certain Limitations.

(a) Invictus shall have no obligation to provide the Service with respect to any Defective Client Data.

(b) Invictus shall have no obligation to provide the Service if (i) a User no longer qualifies as an Authorized User pursuant to **Section 3** hereof or has not accepted the applicable End User License; (ii) an Authorized User fails to initiate a request to a Caller for the transmission of Caller Data from such Caller to the Prepared Platform for viewing of such Caller Data by Client's Authorized Users received from such Caller; (iii) a Caller fails to respond to, or fails to take action in response to, a request from an Authorized User to transmit Caller Data or fails to use the Caller Platform Extension or fails to transmit Caller Data from such Caller's Mobile Device using the Caller Platform Extension; (iv) a Caller fails to operate the Caller Platform Extension in accordance with instructions provided by Invictus or displayed by the Caller Platform Extension or fails to accept the terms, conditions, or policies of Invictus with respect to the use of Caller Platform Extension and the transmission of Caller Data; (v) an Authorized User fails to operate the Call-Taker Console or, if applicable, a Prepared Platform Extension as part of the Prepared Platform in accordance with instructions provided by Invictus or displayed by the Call-Taker Console or, if applicable, the Prepared Platform Extension, or in accordance with the training provided by Invictus to such Authorized User; (vi) an Authorized User has not been trained in the use of the Service or the use of the Call-Taker Console or the Prepared Platform; (vii) an Authorized User has not installed the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier; or (viii) Client has not complied with the Technical Requirements or has failed to update the Client Systems with any critical software updates as required under the Technical Requirements.

2.4. Access; Upgrades.

(a) Client's Authorized Users may only access the Service through the Call-Taker Console, or the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier, as part of the Prepared Platform made available by Invictus from Client Systems through the Internet. Client shall ensure that all such access to and use is limited to Client's Authorized Users. Client shall have responsibility for all such access and use by any Person. Client is responsible for the proper use of all Access Credentials, including verifying its Authorized Users and their access to and use of the use of the Prepared Platform via the Call-Taker Console and the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier.

(b) Client's Authorized Users may only access the Prepared Platform remotely through the Internet, either through the Call-

Taker Console made available by Invictus as part of the Prepared Platform or, with Invictus' prior written consent, by connecting the Prepared Platform to Client Systems using an API made available by Invictus, or through the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier, and only for the Permitted Uses. Client shall ensure that all such access to and use is limited to Client's Authorized Users and through use of Client Systems. Client shall have responsibility for all such access and use by any Person, including by or through the Client Systems.

(c) Client's Authorized Users may only access the applicable Prepared Platform Extension as made available by Invictus as part of the Prepared Platform if the Client has subscribed to the applicable Paid Subscription Tier.

(d) Client is responsible for the proper use of all Access Credentials, including verifying its Authorized Users and their access to and use of the Prepared Platform as provided in **Section 2.4(b)** above.

(e) Client and its Authorized Users shall have no right to any Upgrades to the Service.

2.5. Service Initiation. Client acknowledges and agrees that Client's Authorized Users will need to input a Caller's mobile phone number to initiate a request to a Caller for the transmission of Caller Data from such Caller to the Prepared Platform for viewing of such Caller Data by Client's Authorized Users on the Call-Taker Console (and the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier) as part of the Service. Client acknowledges and agrees that a Caller may not, at all or in a timely manner, transmit Caller Data to the Prepared Platform despite having received notification on their Mobile Device from the Prepared Platform of a request initiated by an Authorized User of Client to transmit Caller Data.

2.6. Service Availability.

(a) Subject to the terms and conditions of this Agreement, Invictus will . use commercially reasonable efforts to make and keep the Service available to Client on a twenty-four (24) hour per day basis during the Initial Subscription Period and any Renewal Term, provided that Client acknowledges and agrees that the Service may become unavailable as a result of any of the following exceptions (each, an "**Exception**"): (i) access to or use of the Service, or any use of Access Credentials, that does not strictly comply with this Agreement; (ii) any failure or unavailability of its Authorized User's Internet connectivity; (iii) a Force Majeure Event; (iv) any failure, interruption, outage or other problem with any Caller Platform Extension, the Prepared Platform or any component of any of the foregoing that was not developed by Invictus but that is used, directly or indirectly, by Invictus in performing the Service, including any Cloud Server, and any unscheduled maintenance of any of the foregoing as a result of such failure, interruption, outage or other problem; (v) any Scheduled Downtime (as defined below); or (vi) any disabling, suspension or termination of the Service pursuant to **Section 2.11** below.

(b) To the extent practicable, all planned unavailability of the Service, such as for maintenance or repair or updates of the Service or any part or component of any Invictus technology will be scheduled outside of regular hours of operations of Client, such as, e.g., in the late evening or during the night or on days that are not Business Days, ("**Scheduled Downtime**").

(c) Invictus shall not be liable to Client for any unavailability of the Service resulting from any of the Exceptions described in this **Section 2.6**.

(d) In the event the Service is not available to Client and such unavailability is not due to any of the Exceptions, Client's sole remedy for such unavailability shall be for Invictus to use commercially reasonable efforts to correct such unavailability of the Service.

2.7. Technical Support.

(a) Invictus will, as part of the Service and at no additional charge to Client, provide Client with the following technical support services to Client and its Authorized Users in connection with the Service: Invictus will respond to Client's and its Authorized Users' technical support questions about the Service and the Prepared Platform and its operation via email and via telephone, provided that email shall be the preferred means of providing technical support, within the scope of its standard technical support services during the Hours of Coverage. Invictus shall have no obligation to provide any other technical support services to Client.

(b) Client will provide, and will ensure that its Authorized Users' provide Invictus with, the relevant information and documentation in its or their respective possession or under its or their respective control requested by Invictus to which Client's or its Authorized Users' technical support questions pertain.

2.8. Training. Invictus will, at its election and as requested by Client, provide such training on site or

remotely via video conference or via recorded instructions. Client shall ensure that all such Authorized Users will have participated in such training. Invictus will, at its election and as requested by Client, provide such training from time-to-time for new Authorized Users. Invictus shall have the right to require Client to pay Invictus' standard fees and reimburse its travel expenses for all training that Client may request, including during any Renewal Term.

Client will make available, at no charge to Invictus, facilities for any on-site training sessions or provide its Authorized Users access to computer and camera equipment and Internet connections and remote conferencing software to ensure that its Authorized Users can participate in such training by Invictus.

2.9. Changes. Invictus reserves the right, in its sole discretion, to make any changes or alterations to the Service, the Caller Platform Extensions and the Prepared Platform, that it deems necessary or useful to (i) maintain or enhance the quality or delivery of the Service to Client; (ii) comply with applicable law; or (iii) avoid or preempt any claims of infringement of a Third Party's Intellectual Property Rights.

2.10. Monitoring. Invictus may internally monitor and track Client's, each Authorized User's and any other User's access to and use of the Service and the Prepared Platform, including through the collection and analysis of usage data, such as the IP addresses of Users and through electronic tracking technology and all other lawful means. Invictus may also internally monitor and track each Caller's and any other user's access to and use of the Caller Platform Extension, including through the collection and analysis of usage data, such as the IP addresses of Callers and other users and through electronic tracking technology and all other lawful means

2.11. Suspension of the Service.

(a) Invictus may at any time suspend or block or otherwise deny Client's or any Authorized User's or any other User's or Person's access to or use of the Service, any Prepared Platform Extensions, or the Caller Platform Extensions, or Caller Data, without incurring any resulting liability, if: (i) Invictus believes in good faith that such a suspension is necessary to maintain the security or integrity of any Caller Platform Extension, Mobile Device of a Caller, or the Prepared Platform, including any applicable Prepared Platform Extension, or to prevent misuse of any of the foregoing by any Person, including Client or any Authorized User or other User; (ii) Client or Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Service or the Prepared Platform beyond the scope of the rights granted under this Agreement or the applicable End User License; (iii) Client or any Authorized User is, has been or is likely to be involved in any fraudulent or unlawful activities relating to the Service, the Caller Platform Extensions or the Prepared Platform; (iv) Invictus receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Invictus to do so; (v) Client has failed to pay any fee(s) to Invictus when due hereunder; (vi) Invictus reasonable believes that its continued performance of its obligations under this Agreement, including the performance by Invictus of the Service, becomes substantially more difficult or expensive, or impossible (without violating, or without incurring criminal penalties or civil liability under, the laws or regulations) under applicable laws or regulations or due to a substantive change in applicable laws or regulations after the Effective Date or infringes another Person's Intellectual Property Rights; or (vii) this Agreement expires or is terminated. This **Section 2.11** does not limit any of Invictus' other rights or remedies, whether at law, in equity or under this Agreement.

(b) Invictus shall not be liable for any failure to provide access to or use of the Service or any Prepared Platform Extension or any Caller Platform Extension or Caller Data during such suspension. Invictus will reinstate access to or operation of the Service once the basis for such suspension has dissipated in Invictus' judgment, provided this Agreement has not already been terminated or expired.

2.12. Notice of Unauthorized Access. Client shall notify Invictus promptly if Client becomes aware of any unauthorized access to or use of any Caller Data, any Mobile Device of a Caller, or Caller Platform Extensions or the Prepared Platform, including any Prepared Platform Extension, by any Person.

2.13. Use of Subcontractors. Invictus may subcontract with any subcontractor for performance of the Service or any component or task thereof, provided that Invictus shall remain responsible for the performance of its obligations under this Agreement.

3. Users.

3.1. Authorized Users.

(a) Access to and use of the Service and the Prepared Platform and Caller Data shall be limited to the following adult employees of Client while they are in the employment of Client and not on administrative leave or suspension (each such individual, an "**User**"). If Client has subscribed to the Base Subscription Tier, Users shall be limited to (i) Users who are employed by Client only as

Telecommunicators and (ii) Users who are employed as Emergency Responders by Client but only while they act as and perform only the services of a Telecommunicator from and in an emergency dispatch office, such as a public-safety answering point (PSAP), operated by or on behalf of Client which may communicate with a citizen caller or may send other Emergency Responders to respond to an impending threat to public safety, provided that Client shall ensure that the number of its Users employed as Telecommunicators (and Users who are employed as Emergency Responders by Client but only while they act as and perform only the services of a Telecommunicator from and in an emergency dispatch office) does not, at any time, exceed such maximum number of Telecommunicators as set forth in such Order.

(b) If Client has subscribed to a Paid Subscription Tier, access to and use of the Service and the Prepared Platform and Caller Data shall be limited to the following Users, all of whom who shall be employed by Client: The maximum number of Users employed by Client as Telecommunicators as set forth in the Order and the maximum number of Users employed by Client as Emergency Responders as set forth in the Order, and Client shall ensure that the number of its Users shall not, at any time, exceed such maximum number of Telecommunicators and Emergency Responders as set forth in such Order. If Client has subscribed to the applicable Paid Subscription Tier, Client's Authorized Users that are Emergency Responders may also access the Caller Data remotely through Prepared Platform Extensions, provided that Client shall ensure that the number of such Users that are Emergency Responders shall not, at any time, exceed such maximum number of Emergency Responders as set forth in such Order.

(c) Client shall elect to authorize which such Users under clause (a) or (b) above shall have access to and use of the Service and the Prepared Platform, including if applicable any Prepared Platform Extensions, (each User so authorized, an "**Authorized User**"), provided that Client shall ensure that such Authorized Users shall not exceed the applicable maximum number of such Users as set forth in such Order.

3.2. Emergency Responders. Client acknowledges and agrees that pursuant to **Section 3.1(a)**, if Client has subscribed to the Base Subscription Tier, Users shall not include Emergency Responders (except to the extent they perform services as Telecommunicators as further provided in **Section 3.1(a)**).

3.3. Termination of Authorized User Status. All access to and use of the Service and the Prepared Platform and Caller Data by an Authorized User shall automatically cease, and any such individual shall no longer be deemed an Authorized User, if such individual is no longer a User or Client has notified Invictus that such individual is no longer an Authorized User, including by delivering updated Client Data to Invictus. Invictus will make the Service available only for use by the maximum number of Authorized Users as set forth in the Order. Client may reduce the number of such Authorized Users by giving written notice to Client. Any such reduction shall not entitle Client to any refund or recovery of any subscription fees or other fees paid by Client.

4. Feedback. Invictus may request Feedback from Client or Authorized Users regarding the Service during the Term. Upon such reasonable request by Invictus, Client will, and will cause its Authorized Users to, use good faith efforts to provide Feedback regarding the Service or the Caller Platform Extensions, based upon the uses and user experience of Client and such Authorized Users.

5. Fees and Charges.

5.1. Implementation Fee. Client shall pay to Invictus the Implementation Fee, if any, in the amount set forth in the Order (the "**Implementation Fee**"). For clarity, if Client has subscribed to the Base Subscription Tier, no Implementation Fee shall be due and payable by Client.

5.2. Subscription Fees. Client shall pay to Invictus (i) the subscription fee, if any, in the amount as set forth in the Order for each consecutive twelve-month period during the Initial Subscription Period and (ii) the subscription fee as set forth in the Order for each Renewal Term thereafter which may be increased as provided in **Section 5.5** below. For clarity, if Client has subscribed to the Base Subscription Tier, no subscription fee shall be due and payable by Client.

5.3. Paid Subscription Tier. If Client elects to subscribe to a Paid Subscription Tier, including by executing a new Order for such Paid Subscription Tier, Client shall pay (i) the subscription fee, if any, in the amount as set forth in the Order for such Paid Subscription Tier for each consecutive twelve month period during the Initial Subscription Period and the subscription fee as set forth on such Order for each Renewal Term thereafter which may be increased as provided in **Section 5.5** below or (ii) the subscription fee at the then applicable list prices of Invictus for such Paid Subscription Tier under Invictus' then applicable pricing policy for each consecutive twelve month period during the Initial Subscription Period and for each Renewal Term thereafter which may be increased as provided in **Section 5.5** below.

5.4. Additional Fees and Services. Any other services, other than the Service, to be performed or provided by Invictus shall require payment by Client to Invictus of the service, subscription and other fees at Invictus' then applicable list prices and subject to

Invictus' then applicable pricing policy except as otherwise expressly agreed to by both Invictus and Client. Without limiting the generality of the foregoing, Client shall pay the additional fees, if any, set forth in the Order for the services to be provided by Invictus as specified in the Order and any applicable Appendix.

5.5. Due Dates. Client shall pay all fees, amounts and taxes or assessments due hereunder to Invictus within twenty (20) calendar days after the date of the corresponding invoice from Invictus delivered to Client. Delivery of any such invoice may be made to Client by mail, courier, delivery service (such as FedEx), e-mail or electronic delivery. Payment by Client shall be made by check made payable to the order of Invictus and sent to Invictus or by bank wire transfer into a bank account specified by Invictus in writing. Invictus may issue an invoice to Client for the Implementation Fee on or after the Effective Date. Invictus may issue an invoice to Client for the subscription fee for the entire Initial Subscription Period on or after the Effective Date. Invictus may issue an invoice to Client for the subscription fee for any Renewal Term on or after the start of such Renewal Term. Invictus may issue an invoice to Client for any additional services on or after the date specified in the Order and any applicable Appendix with respect to such addition services.

5.6. Late Payment. If Client fails to make any payment when due then, in addition to all other remedies that may be available to Invictus:

(i) Client shall reimburse Invictus for all reasonable costs incurred by Invictus in collecting any late payments, including attorneys' fees, court costs and collection agency fees; and

(ii)if such failure continues for twenty (20) days, Invictus may suspend performance of the Service until all past due amounts thereon have been paid, without incurring any obligation or liability to Client or any other Person by reason of such suspension.

5.7. Taxes. All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, use, valueadded, privilege and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority, now in force or enacted in the future, on any amounts payable by Client hereunder, other than any taxes imposed on Invictus' income. Invictus may invoice Client for any such taxes and assessments, which Client shall pay. Invictus will remit any payments from Client for such taxes and assessments made on any such invoice directly to the appropriate taxing authorities. If Client is exempt from the payment of such taxes or other assessments, Client shall provide Invictus with documentary proof of such exemption issued by the appropriate taxing authority. Client is responsible for obtaining and providing to Invictus any such certificate or other documentary proof of such exemption.

5.8. No Set-Offs. All amounts payable to Invictus under this Agreement shall be paid by Client to Invictus in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason. All fees paid by Client are not refundable.

6. License and Restrictions.

6.1. Client Licenses.

(a) Subject to and conditioned on Client's and its Authorized Users' compliance with and performance of all terms and conditions of this Agreement and the End User License, Invictus hereby grants Client the personal, non-exclusive, nontransferable, non-sublicensable license under the Intellectual Property Rights of Invictus to use the Prepared Platform during the Initial Subscription Period and any Renewal Term and only in strict compliance with the Permitted Uses and subject to the restrictions and other limitations set forth in this Agreement and the End User License and only by and through Client's Authorized Users.

(b) Subject to and conditioned on Client's and its Authorized Users' compliance with and performance of all terms and conditions of this Agreement and the End User License, Invictus hereby grants Client the personal, non-exclusive, nontransferable, royalty-free worldwide license under the Intellectual Property Rights of Invictus to use, host, store, view, perform or display (whether to the public or otherwise), copy, reproduce, modify, and create derivative works of the Caller Data transmitted or made available to Client's Authorized Users hereunder during the Term, including without limitation to make such Caller Data available to any third party for purposes of complying with requests for disclosure of Caller Data under the Freedom of Information Act (FOIA) or other similar federal or state laws or regulations or as otherwise required by applicable law, regulation or court order, during the Initial Subscription Period and any Renewal Term and thereafter. The license granted to Client under this **Section 6.1(b)** shall survive the termination or expiration of this Agreement, provided only that notwithstanding any other provision hereof, such license granted to Client pursuant to this **Section 6.1(b)** shall terminate with respect to specific Caller Data if and only to the extent Invictus no longer holds a license to such specific Caller Data and Invictus gives written notice of such license termination. For clarity, any such termination shall not terminate Client's license under this **Section 6.1(b)** with respect to any other Caller Data.

6.2. Reservation of Rights. All rights not expressly granted to Client are reserved by Invictus and its licensors. Nothing in this Agreement grants any right, title or interest in or to any Intellectual Property Rights in or relating to the Caller Platform Extensions and the Prepared Platform or any Caller Data, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Caller Platform Extensions and the Prepared Platform and all Caller Data shall remain with Invictus and its licensors.

6.3. Limitations and Restrictions.

(a) Client shall use, and shall ensure that its Authorized Users use, the Service and the Prepared Platform and any Caller Data only for the Permitted Uses and as authorized in **Section 6.1.**

(b) Client shall not offer for sale, distribute, or sell the Service or the Prepared Platform. Client shall not, and shall not permit any other Person to, modify, or create improvements, derivative works or transformative works of or based upon any Prepared Platform or any part or feature thereof.

(c) Client shall not, and shall not permit any Person, to bypass or breach any security or protection used for the Prepared Platform or the Caller Platform Extension to prevent unauthorized access to Caller Data or software, algorithms, data, information or functionalities or features of the Caller Platform Extension or the Prepared Platform. Client shall not, and shall not permit any other Person to, gain (or attempt to gain) any access to the Prepared Platform or Caller Data, or bypass or breach any security device or protection used for the Caller Platform Extension or the Prepared Platform, in order to access to Caller Data or other data or information or functionalities or features of the Caller Platform Extension or the Prepared Platform, that Client and its Authorized Users shall not have access to through normal access or use of the Service and the Prepared Platform.

(d) Client shall not, and shall not permit any other Person to, decompile any object code of, or reverse engineer, disassemble, decode, discover, reconstruct, adapt, translate or otherwise derive or gain access to any source code of any software that is part of the Caller Platform Extension or the Prepared Platform, the structure, sequence or organization of such source code or any algorithm, method, process, workflow or model that is part of the Caller Platform Extension or the Prepared Platform or used in developing or performing the Service, in whole or in part, or attempt to do any of the foregoing.

(e) Client shall not, and shall not permit any other Person to, access or use the Caller Platform Extension or the Prepared Platform in order to

(1) build any product or service that is similar to the Service or the Caller Platform Extension or the Prepared Platform, including any Prepared Platform Extension, or that uses similar features or functions, content, or graphics as those of or used by or for the Service or the Caller Platform Extension or the Prepared Platform, or in order to copy or imitate any feature or functionality of the Service or Caller Platform Extension or the Prepared Platform, whether or not intended to compete with the Service, or

(2) engage in systematic retrieval of any data or content from the Caller Platform Extension or the Prepared Platform.

(f) Client shall not, and shall not permit any other Person to, (i) input, upload, transmit or otherwise provide to or through the submission of any Client Data or through access to or use of the Prepared Platform any Harmful Code, (ii) access, use, or copy any portion of the Caller Platform Extension or the Prepared Platform through the use of bots, spiders, crawlers, indexing agents, or other automated programs, means, algorithms, software, devices, or mechanisms (collectively, "**Bots**"), (iii) use any Bots or any similar or equivalent manual process to systematically and/or automatically search, scrape, extract, index, or create abstracts of, the Caller Platform Extension or the Prepared Platform, (iv) create any denial of service with respect to the Service, (v) falsify, modify, manipulate, or obscure any data or other content of the Caller Platform Extension or the Prepared Platform, or (vi) discover, or attempt to discover, any usage by any Caller or any other Person of the Caller Platform Extension or any usage by any Person of the Prepared Platform or any service provided by Invictus, including any queries or usage or reports or output or other query results.

(g) Client shall not, and shall not permit any other Person to, remove, delete, alter or obscure any source identification, product

identification, ownership identification, disclaimers, or copyright, trademark, patent or other intellectual property or proprietary rights notices or markings contained in, displayed by, or provided with the Service or the Prepared Platform.

(h) Client shall not, and shall not permit any other Person to, access, observe, or use the Prepared Platform or the Service for purposes of competitive analysis of the availability, performance or functionality of the Service, the Caller Platform Extension, or the Prepared Platform, or for any other benchmarking and shall not disclose or publicize the results of any such analysis or benchmarking.

(i) Client shall not, and shall not permit any other Person to, access or use the Service or the Caller Platform Extension or the Prepared Platform or any Caller Data in any manner or for any purpose that violates any applicable law or regulation.

(j) Client shall not, and shall not permit any other Person to, damage, destroy, disrupt, disable, impair, interfere with or otherwise harm the Caller Platform Extension or the Prepared Platform or any Caller Data.

(k) Client shall not, and shall not permit any other Person to, copy or use the design, including the layout, organization, color scheme, and graphics of the Caller Platform Extension or the Prepared Platform.

(l) Client shall not, and shall not permit any other Person to, access, use, give access to or use of the Caller Platform Extension or the Prepared Platform or any Caller Data in connection with any time-sharing, service bureau, software as a service, cloud service, or data processing service arrangements.

(m) Client shall not, and shall not permit any other Person to, gain (or attempt to gain) any access to the Prepared Platform, or bypass or breach any security device or protection used for the Caller Platform Extension or the Prepared Platform or the Caller Data, in order to gain access to data or information or functionalities or features of the Caller Platform Extension or the Prepared Platform or any Caller Data, that Client and its Authorized Users shall not have access to through normal access or use of the Service from the Call-Taker Console, or the applicable Prepared Platform Extension if the Client has subscribed to the applicable Paid Subscription Tier, as part of the Prepared Platform.

(n) Client shall not, and shall not permit any other Person to, access or use or store any Caller Data except as authorized in this Agreement. Client shall not, and shall ensure that its Users shall not, download, store, or transfer, any Caller Data from the Prepared Platform or any Cloud Servers, except as authorized in this Agreement. If Client has subscribed to the Base Subscription Tier, Client may not transfer or make available or accessible any audiovisual Caller Data to any Emergency Responder via the Prepared Platform. If Client has subscribed to a Paid Subscription Tier, Client may transfer or make available or accessible any audiovisual Caller Data to Emergency Responders that are Authorized Users via the Prepared Platform as further provided in and limited by this Agreement.

6.4. Use of APIs. Client shall use only the APIs provided by Invictus for automated submission of Client Data to the Prepared Platform.

6.5. Limited Client License. Client hereby grants to Invictus and its subcontractors and their respective successors and assigns, a royalty-free, fully-paid, non-exclusive, sublicensable and transferable worldwide right and license to use, reproduce, modify, adapt, and create derivative and transformative works of any Client Data submitted by Client solely for purposes of (i) providing and performing the Service and otherwise performing this Agreement, including storing any such Client Data as provided in this Agreement, and (ii) monitoring compliance of this Agreement by Client and its Authorized Users, and (iii) researching, developing, and improving the Service and the Caller Platform Extension and the Prepared Platform and other products and services of Invictus.

7. Certain Client Obligations and Responsibilities.

7.1. No Export. Client shall not export or authorize or allow the export of the Prepared Platform. Client shall not engage in any transaction that gives reason to suspect that the Prepared Platform will be exported or diverted in violation of any applicable laws (including without limitation based upon such factors as suspect customers, abnormal transaction circumstances, or other "red flag" indicators).

7.2. Technical Requirements. Client and its Authorized Users are responsible for procuring necessary hardware, software, communications facilities and Internet connection, together with the requisite licenses, to satisfy the technical requirements for Client to access and operate the Prepared Platform from the Client Systems (the "**Technical Requirements**").

7.3. Corrective Action and Notice. If Client becomes aware of any actual or threatened activity outside the Permitted Uses or that are prohibited by **Sections 6.3 or 6.4** hereof, Client shall, and shall cause its Authorized Users to, immediately: (i) take all

reasonable and lawful measures within its control that are necessary to stop the activity or threatened activity and to mitigate its effects; and (ii) notify Invictus of any such actual or threatened activity.

7.4. Errors. Client shall use commercially reasonable efforts to promptly notify Invictus of any errors or defects in the Service or the Caller Platform Extension or the Prepared Platform of which Client becomes aware.

8. Data.

8.1. Backups. The Service does not replace the need for Client to maintain regular data backups or redundant data archives of Client Data and Caller Data. Invictus HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, DESTRUCTION, DAMAGE, OR CORRUPTION OF ANY CLIENT DATA OR ANY CALLER DATA.

8.2. Storage and Use of Client Data. Client agrees that Client Data may be uploaded and copied to and stored on the Prepared Platform, including on any Cloud Servers, only in connection with Invictus' performance of the Service. Invictus may, subject to the provisions of **Section 9** below, copy and store the Client Data, or copies thereof, in backup storage systems that are part of the Prepared Technology Platform during the term of this Agreement and for a period of up to ten (10) years following the expiration or termination of this Agreement or such longer period as may be required by applicable law. Invictus shall have no obligation to store Client Data or Caller Data after the expiration or earlier termination of this Agreement. Invictus may use, copy and reproduce the Client Data to process the Client Data in order to provide the Service.

9. Security.

9.1. Security by Invictus. Invictus will take reasonable precautions to protect the security of the Prepared Platform from unauthorized access, use misuse or deactivation by an unauthorized Third Party of the Service and any unauthorized access to or use any Client Data delivered to Invictus, provided that Invictus shall not be responsible for any such unauthorized access, use misuse or deactivation as a result of any action or inaction of any Third Party hosting provider with respect to any Cloud Servers on which any Client Data are stored and that Invictus may disclose any Client Data if compelled by a court. Invictus will take reasonable measures to prevent such access or use of Client Data by the employees and contractors of Invictus except (i) to provide the Service and the technical support hereof, and to prevent or address Service or technical errors or problems, (ii) determine whether any file containing Client Data is or contains Defective Client Data, (iii) as compelled by law or a court, or (iv) as otherwise expressly permitted in this Agreement or by Client in writing. Invictus shall notify Client if Invictus becomes aware of any unauthorized use of or access to the Prepared Platform.

9.2. Security by Client. Client shall maintain reasonable security measures to safeguard the Prepared Platform and Caller Data from unauthorized access or use or misuse or deactivation by any other Person, including by using only secure connections and secure Client Systems and maintaining the confidentiality of Access Credentials and not allowing any other Person, other than Client's Authorized Users, to use any Access Credentials (whether on Client's behalf of otherwise). Client shall notify Invictus promptly upon becoming aware of any unauthorized disclosure, access to, use, or misuse of any Access Credentials. Client shall employ all reasonable physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (i) securely administer the distribution to and use by its Authorized Users of all Access Credentials and (ii) protect against any unauthorized access to or use or misuse of the Prepared Platform or any Caller Data.

9.3. Client Control and Responsibility. Client retains sole responsibility for (i) the Client Systems, (ii) the security and use of Client's and its Authorized Users' Access Credentials, and (iii) all access of the Prepared Platform and Caller Data, directly or indirectly, by or through its Authorized Users' Access Credentials, with or without Client's knowledge or consent. Client shall ensure that its Authorized Users protect their Access Credentials and not make them available to any other Person. 10. Branding and Communications; Marketing.

10.1. Invictus Marks. Client is not granted any right to, and shall not, use, directly or indirectly, in whole or in part, any Invictus Marks, except as may be specifically authorized by Invictus in writing prior to such use. Client shall not, without the prior written consent of Invictus, use or attempt to register any logo, mark or name that is likely to be similar to or confused with any Invictus Mark. All goodwill resulting from the use of the Invictus Marks will inure solely to Invictus.

10.2. Reference Customer. Upon request by Invictus, Client may act as a reference customer of Invictus with respect to the Service, including by responding to reasonable inquiries from prospective customers of Invictus, provided that (i) acting as a reference customer shall not result in any unreasonable disruption to Client's business and operations, and (ii) Client shall not incur any expenses in connection with acting as a reference customer for Invictus. Invictus shall not compensate Client for acting as a reference customer for Invictus.

10.3. Dissemination of Promotional or Educational Information. All informational, educational, instructional, safety, practice, and promotional materials, documents, literature, forms, or instructions to be used, distributed, disseminated or published by Client, whether in written or electronic form and whether to any User or any Third Party, including without limitation any employee or staff of Client, or any Emergency Responders that relate to the Service or the Prepared Platform or the Caller Platform Extension

or Invictus shall be subject to review and written approval by Invictus prior to any such publication, dissemination or distribution, provided that any such use shall in no event extend beyond the Term.

11. Intellectual Property Rights.

11.1. Invictus IP.

(a) Invictus is the distributor of the Service and the licensor of the Prepared Platform and the Caller Platform Extensions. All right, title and interest in and to Caller Platform Extensions and the Prepared Platform and all Caller Data, including all Intellectual Property Rights in any of the foregoing, are and shall remain with Invictus and its licensors, if any, including all applicable rights to: (i) copyrights, including all rights incident to copyright ownership, such as all rights of publication, registration, copying and rights to create derivative works; (ii) utility and design patents and patent applications; and (iii) trade secrets.

(b) Nothing in this Agreement grants, or shall be construed as granting, to Client any ownership rights or Intellectual Property Rights in or to any Caller Platform Extension or the Prepared Platform, or any part thereof, or any Caller Data to Client, whether by assignment, contract or otherwise, including without limitation to any trade secret, or to any invention, copyright, patent application or patent or any other Intellectual Property Right that has been created or developed or that has issued or that may issue or may be created or developed during the Term. Client has no right, license or authorization with respect to any Caller Platform Extension or the Prepared Platform or any Caller Data, except as expressly set forth in **Section 6.1** above, in each case subject to **Sections 6.1, 6.3** and **6.4** and **9.2** above. Access to and use of the Prepared Platform and Caller Data does not in any way grant Client or any User or other Person any Intellectual Property Rights to, or any license or right to use, the Prepared Platform or any Caller Data for any purpose, except for the limited license granted in **Section 6.1** above, in each case subject to **Sections 6.1, 6.3, 6.4** and **9.2** above. All other rights in and to the Prepared Platform and Caller Data, are expressly reserved by Invictus and its licensors.

11.2. Value in Invictus IP. Client acknowledges and agrees that the Caller Platform Extension, including all of its software, features, functionalities, graphics, designs and graphical user interface, and the Prepared Platform are commercially valuable assets of Invictus, the development of which required the investment of substantial time, effort and cost by Invictus. Client further acknowledges and agrees that the Caller Platform Extension, including all of its software, features, functionalities, graphics, designs and graphical user interface, and the Prepared Platform and all Caller Data are protected by the Intellectual Property Rights held by Invictus and its licensors.

12. Confidentiality. Invictus shall maintain the confidentiality of all Client Data provided by Client except as necessary for Invictus to perform the Service or its obligations under this Agreement or except as provided by applicable law or regulation or order of a court or government authority.

13. Term and Termination.

13.1. Term and Launch. This Agreement shall become effective upon the Effective Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, this Agreement will remain in full force and effect until the end of the Initial Subscription Period as set forth in the Order (**"Term"**) and shall expire at the end of the Initial Subscription Period, unless renewed pursuant to the provisions of **Section 13.2** below.

13.2. Renewal. The Term of this Agreement shall renew for successive twelve (12) month periods upon the written agreement of Invictus and Client (each, such 12-month renewal period, a **"Renewal Term"**).

13.3. Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Invictus may terminate this Agreement, effective on written notice to Client, if (i) Client fails to pay any amount, if any, when due under this Agreement and such failure continues more than 15 days after Invictus' delivery of written notice thereof or (ii) Client breaches any of its obligations under **Sections 2.2, 6.3, 6.4, 9.2, or 11,** above.

(b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

(c) Invictus may terminate this Agreement, effective on written notice to Client, if Invictus reasonably believes that any applicable law or regulation, or any ruling, order, decision or action of a governmental agency or court, including as may be amended or enacted or applied during the Term, prohibits or prevents Invictus from providing the Service or from complying with this Agreement, or the provision or performance by Invictus of the Service or any Caller Data becomes significantly more difficult or expensive, or impossible without

violating, or without incurring criminal penalties or civil or administrative liability under, the applicable law or regulation;

(d) If the Order permits Client to terminate the Service early, Client may unilaterally terminate this Agreement by giving written notice to Invictus of such termination, in which case no further payments shall be due to Invictus and this Agreement shall terminate upon expiration of the applicable notice period set forth in the Order.

13.4. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement and in addition to the other provisions of this Agreement applicable to its expiration or termination:

(a) all rights, licenses, consents and authorizations granted by Invictus to Client hereunder will immediately terminate and Invictus will cease providing the Service or making the Caller Data available effective immediately upon such expiration or termination, regardless of the cause of any such termination or expiration;

(b) such expiration or termination for any cause will not release any party hereto from any liability which at the time of expiration or termination has already accrued to the other party or which thereafter may accrue in respect of any act or omission prior to the expiration or termination, nor shall such expiration or termination affect in any way the survival of any right, duty or obligation of either party hereto which is expressly stated elsewhere in this Agreement to survive such expiration or termination; and

(c) such termination or expiration shall not affect any other remedy that a party may have at law or in equity.

13.5. Surviving Terms. The provisions in the following sections hereof and any other right or obligation of the parties in this Agreement that, by the nature of such provision, should survive termination or expiration of this Agreement will survive any expiration or termination of this Agreement, subject to any time limitations, if any, in such provisions: **Sections 1, 6.1(b), 6.3, 6.5, 7.1, 9.1, 9.2, 11, 12, 13.4, 13.5, 15, 16,** and **17** hereof.

14. Representations and Warranties; Disclaimers.

14.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) the execution of this Agreement by its representative(s) has been duly authorized by all necessary corporate or organizational action of such party; and (iii) such party will not deliver or make available Harmful Code to the other party, including as part of any files or data or content delivered to the other party.

14.2. Additional Client Representation, Warranty and Covenant. Client represents and warrants that Client has and will have the necessary rights, permissions, licenses and consents in and relating to the Client Data as provided in this Agreement and to grant the license as set forth in **Section 6.5** above.

14.3. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN **SECTION 14.1** ABOVE, THE SERVICE AND THE CALLER PLATFORM EXTENSION AND THE PREPARED PLATFORM ARE PROVIDED, OPERATED AND MADE AVAILABLE "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND, TO THE FULLEST EXTENT PERMITTED BY LAW, INVICTUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND INVICTUS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND INDUSTRY CERTIFICATIONS, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, INVICTUS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE OR THE CALLER PLATFORM EXTENSION OR THE PREPARED PLATFORM, INCLUDING WITHOUT LIMITATION ANY PREPARED PLATFORM EXTENSIONS, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, OR BE SECURE, ERROR-FREE, ACCURATE, CURRENT, OR COMPLETE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, INVICTUS SHALL HAVE NO OBLIGATION TO CORRECT, AND HEREBY DISCLAIMS ALL LIABILITY WITH RESPECT TO, ANY KNOWN ERRORS OR DEFICIENCIES OR "BUGS" OF THE CALLER PLATFORM EXTENSION AND THE PREPARED PLATFORM, INCLUDING AS MAY BE DISCLOSED TO CLIENT. ALL THIRD PARTY SERVICES, THIRD PARTY APPLICATIONS, INCLUDING AS USED IN PROVIDING THE SERVICE, ARE USED OR PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND. INVICTUS DISCLAIMS ALL LIABILITY FOR ANY HARM OR DAMAGES OR LOSSES CAUSED BY ANY THIRD PARTY SERVICE OR THIRD PARTY APPLICATION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INVICTUS OR ITS REPRESENTATIVES SHALL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF INVICTUS' OBLIGATIONS or LIABILITY UNDER OR WITH RESPECT TO THIS AGREEMENT.

14.4. No Warranties, Representations or Covenants to Others. Invictus' warranties and representations, covenants and obligations under this Agreement are to Client only and not to any other Person. This Agreement shall not create any obligation or liability by Invictus whatsoever to any Person other than to Client. There are no third-party beneficiaries, intended or

otherwise, with respect to this Agreement or any of the obligations of Invictus under or with respect to this Agreement.

15. Limitations of Liability; Additional Disclaimers.

15.1. Limitation of Liability.

(a) NEITHER INVICTUS NOR ANY OF ITS AFFILIATES, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS SHALL HAVE LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, ENHANCED, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR STATUTORY *DAMAGES, OR ANY MULTIPLES OF DIRECT DAMAGES*, UNDER ANY LEGAL THEORY OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, OR WARRANTY, WITH RESPECT TO OBLIGATIONS UNDER THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT OR OTHERWISE.

(b) THE EXCLUSIONS OF A PERSON'S LIABILITY SET FORTH IN THIS **SECTION 15.1** ABOVE APPLY REGARDLESS OF WHETHER SUCH PERSON WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF INVICTUS, ITS AFFILIATES, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STATUTE, OR OTHERWISE, TO CLIENT OR ANY USER OR ANY OTHER PERSON EXCEED THE GREATER OF $1,000 AND THE TOTAL OF THE AMOUNTS PAID TO INVICTUS UNDER THIS AGREEMENT IN THE TWENTY-FOUR MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY OF, OR CLAIMS AGAINST, INVICTUS, ITS AFFILIATES, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS. THE FOREGOING LIMITATIONS APPLY EVEN IF THE CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(d) The parties acknowledge that each of them relied upon the inclusion of the limitations and exclusions set forth in this **Section 15** in consideration of entering into this Agreement.

15.2. Certain Limitations Regarding the Service. Client acknowledges and agrees that Service and the Caller Platform Extension are not intended or designed to, and may not, prevent or stop any impending threat to, or emergency or improve Client's response to any such threat or emergency. Client acknowledges and agrees that the Service and the Caller Platform Extension (i) may not reduce the response time by any Emergency Responders to any impending threat or any emergency or (ii) result in a more effective response to any such impending threat or such emergency or (iii) cause any Emergency Responder to respond to any such impending threat or such emergency. Client shall not replace any existing emergency communications system with the Service. Client acknowledges and agrees that the Service does not replace best practices by Client in communicating or managing an impending or on-going threat or an emergency. Client shall ensure that each Authorized User is properly trained and prepared to respond to an impending threat or any emergency. Invictus shall have no liability if a Caller triggers a notification or report of an impending threat or an emergency through use of a Caller Platform Extension even though there is no such threat or emergency. INVICTUS ASSUMES NO LIABILITY, WARRANTY, OR RESPONSIBILITY WHATSOEVER TO CLIENT, ANY USER OR ANY OTHER PERSON WITH RESPECT TO (i) ANY OF THE FAILURES, UNAVAILABILITY, DEFICIENCIES, INACTIONS OR ACTIONS OF THE SERVICE OR THE PREPARED PLATFORM OR THE CALLER PLATFORM EXTENSION, OR (ii) ANY CONCLUSIONS, INTERPRETATION, DECISIONS OR ACTIONS BASED ON THE USE OF THE SERVICE OR THE CALLER PLATFORM EXTENSION OR ANY CALLER DATA BY CLIENT OR BY ANY OTHER PERSON, INCLUDING IN CONNECTION WITH ANY IMPENDING OR PERCEIVED THREAT OR ANY *EMERGENCY*.

15.3. Implementation. Client acknowledges and agrees that the Service will not be available during the implementation period as provided in **Section 2.1.** INVICTUS SHALL HAVE NO LIABILITY, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STATUTE, OR OTHERWISE TO CLIENT OR ANY USER OR ANY OTHER PERSON WITH RESPECT TO THE UNAVAILABILITY OR FAILURE OF THE SERVICE OR THE CALLER PLATFORM EXTENSIONS OR THE PREPARED PLATFORM DURING SUCH IMPLEMENTATION PERIOD.

15.4. Third Party Applications; Third Party Services. The Service uses the services of Third Parties ("**Third Party Services**"), and the Prepared Platform contains Third Party Applications and utilizes Cloud Servers. Invictus does not control such Third Party Services and Third Party Applications and such Cloud Servers. Invictus shall not be responsible or liable to Client or any Authorized User or other User or any other Person for the failure, non-performances or unavailability, faulty service or errors of any such Third Party Services or Third Party Applications or Cloud Servers. Invictus makes no warranties with respect to any Third Party Services or Third Party Applications or any Cloud Servers, their performance, availability or accuracy.

15.5. Internet Delays; Cloud Server Provider. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC OR CELLULAR COMMUNICATIONS. INVICTUS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE OR LOSS RESULTING FROM SUCH PROBLEMS OR THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET. INVICTUS DISCLAIMS ALL LIABILITY FOR ANY HARM OR DAMAGES OR LOSSES CAUSED BY ANY THIRD PARTY PROVIDER OF ANY CLOUD SERVER.

15.6. No Screening of Data. Client is solely responsible for the accuracy, completeness and truthfulness of any data or information that is submitted or provided to Invictus by its Authorized Users and for ensuring that Client has the necessary rights to submit such Client Data for use by Invictus as provided in this Agreement. Invictus will not, and shall have no obligation to, screen or filter any Caller Data. Client acknowledges and agrees that a Caller may not transmit any Caller Data despite requested to do so and any Caller Data transmitted by Caller may contain inaccurate or false Caller Data and may contain offensive or disturbing Caller Data. Client acknowledges that Invictus has no control over the Caller Data transmitted by a Caller and made available to Client's Authorized Users from the Prepared Platform. INVICTUS DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO ANY AND ALL CALLER DATA.

16. Governing Law; Jurisdiction.

16.1. Law Governing Agreement. This Agreement and its formation, validity, interpretation, construction, performance, termination, and enforcement shall be governed by the internal laws of the State in which the Client is domiciled without giving effect to choice-of-law rules that may direct or permit the application of the laws of another jurisdiction.

16.2. Exclusive Jurisdiction. Each party stipulates and agrees that any dispute or proceeding arising under or related to this Agreement or the transactions or rights and restrictions set forth herein shall be subject to the exclusive jurisdiction of the state courts located in the State in which the Client has its domicile or the U.S. District Court for the District in which the Client has its domicile to the extent such U.S. District Court has independent subject matter jurisdiction without reference to this provision, and the respective court of appeals. Each party submits and consents to the exclusive jurisdiction and proper venue of such courts.

17. Miscellaneous.

17.1. No Authority. No party shall have any authority to assume, incur or create any liability or obligation on behalf of or in the name of the other party or to contract for or bind the other party in any way.

17.2. Independent Contractors. The relationship between the parties is that of independent contractors. Each party shall act as an independent contractor and not as a partner, joint venturer or agent of the other party. This Agreement shall not establish or be construed as establishing an agency, joint venture, or employer/employee relationship between Client and Invictus or that of a partnership.

17.3. Entire Agreement; Modifications. This Agreement, together with the Appendices hereto and the End User License, contains the entire agreement and understanding of the parties with respect to the subject matter hereof and shall supersede and merge all prior and contemporaneous communications, agreements, understandings, undertakings and obligations with respect to the subject matter hereof, whether oral or written, unless the parties have entered into a separate definitive written agreement with respect to the subject matter hereof which has been signed by the authorized representative(s) of each party. No modification of this Agreement, or any Appendix hereto, shall be binding on either party unless it is in writing and signed by both parties. No quote, order, or similar document shall modify the terms of this Agreement even if accepted by the receiving party. In the event of any conflict or inconsistency between the Order and these Standard Terms or any Appendix or Exhibit to the Order to these Standard Terms, the terms and conditions of the Order shall prevail. In the event of any conflict or inconsistency between the Special Terms, if any, attached to the Order and these Standard Terms, the terms and conditions of such Special Terms shall prevail. Notwithstanding the foregoing, the Agreement does not supersede or replace the any confidentiality or non-disclosure agreement between the parties, which shall remain in effect.

17.4. Notice. All notices required to be given under this Agreement shall be in writing and shall be effective when received or, if delivery is not accomplished by reason of some fault of the addressee, when tendered, and shall only be transmitted by (i) personal delivery, (ii) registered or certified mail, return receipt requested and postage prepaid, (iii) courier or delivery service, or (iv) e-mail, by a party to the other party at the other party's address as set forth in the Order, or to such other addresses as a party may from time to time notify the other party of in accordance with this Section, unless otherwise expressly provided in this Agreement.

17.5. Waiver. Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof in a writing executed by such party. No waiver by either party of any breach of, or of compliance with, any term or provision of this Agreement by the other party shall be considered a waiver of any other term or provision or of the same term or provision at another time. No failure or delay of either party to exercise any power or right given that party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom, practice or prior course of dealing of the parties at variance with the terms hereof, shall constitute a waiver of that party's right to demand exact compliance with the terms hereof.

17.6. Assignment. Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, whether voluntarily, involuntarily, or by operation of law, whether in whole

or in part, to any Third Party. Any purported or attempted assignment, delegation or transfer in violation of this **Subsection 17.6** is void. Invictus may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, whether in whole or in part, to any other Person.

17.7. Interpretation. For purposes of this Agreement: (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; and (ii) the word "or" is not exclusive. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing such drafting. Each party hereto acknowledges and agrees that it and/or its counsel reviewed and negotiated the terms and provisions of this Agreement and has contributed to its revision. All captions, titles or section headings of this Agreement are for ease of reference only, shall not affect the interpretation or construction of any provisions of this Agreement, and shall not be deemed part of this Agreement. Any references requiring the consent or approval of a party shall require such consent in writing and signed by an authorized representative of such party. Unless the context otherwise requires, references in this Agreement to a statute means such statute as amended from time to time and includes any regulations promulgated thereunder. The rule of contract construction known as *ejusdem generis* as well as the rule of contract construction known as *contra proferentem* shall not apply to the construction or interpretation of this Agreement.

17.8. Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, shall confer upon any other Person any right, benefit or remedy under or by reason of this Agreement.

17.9. Responsibility for Authorized Users. Client shall be responsible for the compliance by its Authorized Users with the terms and conditions of this Agreement, and a noncompliance by an Authorized User with such terms and conditions will be deemed a breach by Client of this Agreement.

17.10. Successors. This Agreement and the obligations hereunder shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

17.11. Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstances shall be declared void, illegal or unenforceable by a competent court of law, the remainder of this Agreement shall be valid and enforceable to the extent permitted by the governing law set forth under **Section 16.1** above. Such declaration shall not invalidate any other provision hereof, and this Agreement shall continue in full force and effect. The invalid provision shall be replaced by an appropriate provision, which to the extent permitted by such governing law comes closest to the parties' intent of what the parties would have agreed on, had they been aware of the invalidity or unenforceability, in order to meet the spirit and purpose of this Agreement.

17.12. Equitable Relief. Each party agrees that a breach or threatened breach by such party of any of its obligations under this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, constructive trust, and any other relief that may be available from any court, without a requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

17.13. Force Majeure. No default, delay or failure to perform on the part of Invictus shall be considered a breach of this Agreement to the extent due entirely or proximately to a Force Majeure Event.

17.14. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of the original signed copy in hardcopy.

17.15. Changes to Standard Terms. Invictus reserves the right to change these Standard Terms at any time. Any changes made to these Standard Terms will not apply to the Agreement between Invictus and Client for any Order received by Invictus from Client before the changes are made.

[End of Standard Terms and Conditions for the Prepared™ Emergency Communications Service]

Appendix B – Special Terms

[None]

CITY OF
LINCOLN
NEBRASKA

CITY ATTORNEY

[illegible] City, NE [illegible]

March 31, 2023

Mike Muskovin
Invictus Apps. Inc. d/b/a Prepared

VIA EMAIL

Re: Adhesion Letter

Dear Mr. Muskovin,

This letter is in regards to today's contract negotiations between your company and the City of Lincoln ("City") for the purchase of Prepared Live Enhanced annual licenses and related professional services. Today's negotiations included yourself (Head of Sales), Jessica Loos (Emergency Communications Manager), and myself (Police Legal Advisor). While many of my concerns have been addressed, Invictus/Prepared has been unwilling to negotiate the following terms:
Section 5.9, No Set Offs: The City requested that you strike "All fees paid by Client are not refundable." The contract requires all fees to be paid up front. The City ask that this language be replaced with language allowing the fees to be prorated and returned to the Client (City of Lincoln).

Section 14.3, Disclaimers of Warranties: You indicated Invictus/Prepared does not negotiate this section even though this section provides no guarantee that your software will work or remedies to the Client (City).

Section 15, Limitations of Liability, Additional Disclaimers: You indicated Invictus/Prepared does not negotiate this section even though this section generally states that Invictus/Prepared shall not be liable for their product or services, and generally provides no remedies to the Client (City).

I write this letter to point out the limited enforceability for contracts of adhesion, especially with regard to warranties and the limitation of liability provisions as contained in such agreement, and to summarize the factors supporting such a finding in this case.

The City has reviewed availability, relative costs, and efficiency of starting over with other software products, if available, and associated service and maintenance options. The City's Purchasing Department has deemed this a sole source, thus there are no other options for the City. The City has concluded, at this point, Invictus/Prepared services are the only reasonable, cost effective solution available. Since the City, through its requested revisions of the Invictus/Prepared's Standard Terms and Conditions, has unsuccessfully attempted to negotiate eliminating the unfavorable provisions in the Agreement, the two key elements for establishing a contract for adhesion have been met. *Ray Tucker and Sons, Inc. v. GTE Directory Sales Corp.*, 571 N.W.2d 64, 253 Neb. 458 (1997).

Respectfully,

Tonya Peters
Police Legal Advisor