



City of Fairview Heights

CITY COUNCIL MEETING AGENDA
10025 BUNKUM ROAD
FAIRVIEW HEIGHTS, IL 62208
MAY 19, 2020
7:00 P.M.

The City Council meeting will be held remotely and can be accessed via conference call. Please mute your phone during the meeting Phone number: 1-650-215-5226 Passcode: 957 945 038

A. Call to Order

B. Pledge of Allegiance

C. Invocation

D. Roll Call

E. Public Participation

F. Consent Agenda:

City Council Minutes: April 21, 2020

Finance Director's Report

Presentation of bills: \$1,656,459.54

G. Committee Reports

H. Communications from Mayor

I. Communications from Elected Officials

J. UNFINISHED BUSINESS

None.

K. NEW BUSINESS

Proposed Resolution No. 17-'20, a Resolution authorizing the Mayor to enter into an IT Service Agreement with Acumen Consulting for Core Network, server patching and monitoring services.

L. ADJOURNMENT

**CITY OF FAIRVIEW HEIGHTS
CITY COUNCIL MINUTES
APRIL 21, 2020**

The regular meeting of the Fairview Heights City Council was called to order at 7:00 P.M. by Mayor Mark Kupsky and was held remotely due to the COVID19 Pandemic with the Pledge of Allegiance and Invocation by City Clerk Karen J. Kaufhold.

ROLL CALL

Roll call of Aldermen present: Harry Zimmerman, Pat Peck, Anthony LeFlore, Bill Poletti, Frank Menn, Pat Baeske, and Brenda Wagner were present. Aldermen Denise Williams and Joshua Frawley were absent. Mayor Mark Kupsky, City Clerk Karen Kaufhold, and City Attorney Garrett Hoerner were also present.

Alderman Ryan Vickers joined the meeting at 7:03 P.M.

PUBLIC PARTICIPATION

None.

CONSENT AGENDA

Alderman Peck moved to approve the April 7, 2020 City Council Minutes, April 7, 2020 Public Hearing Minutes, Finance Directors Report and the bills and invoices presented for payment in the amount of \$1,811,558.14. Seconded by Alderman Poletti.

Alderman Peck moved to correct the April 7, 2020 City Council Minutes under Consent Agenda by adding "Seconded by Alderman Peck" after Proposed Resolution No. 13-'20. Seconded by Alderman Poletti. Motion carried.

Roll call on the motion as amended showed Aldermen Zimmerman, Peck, LeFlore, Vickers, Poletti, Williams, Menn, Frawley, Baeske, and Wagner voting "Yea." Motion passed on 8 yeas and 2 absent.

COMMITTEE REPORTS

Mayor Kupsky announced the Community Committee meeting has been cancelled.

COMMUNICATIONS FROM THE MAYOR

Mayor Kupsky stated that the City is in the 5th week of working from home and things have been running smoothly; Mayor stated that Governor Pritzker requested flags to be flown at half-staff for those who have lost their lives to COVID; Mayor stated that the number of COVID cases have climbed in St. Clair County;

COMMUNICATIONS FROM ELECTED OFFICIALS

Alderman Peck questioned the Library Director regarding the cuts the Library Board made in the 2020-2021 Proposed Budget.

UNFINISHED BUSINESS

Proposed Ordinance No. 13-'20, an Ordinance establishing a budget for the City of Fairview Heights for the Fiscal Year 2020-2021. Motion by Alderman Poletti. Seconded by Alderman Peck. Proposed Ordinance No. 13-'20 was read for the second time.

Roll call on Proposed Ordinance No. 13-'20 showed Aldermen Zimmerman, Peck, LeFlore, Vickers, Poletti, Williams, Menn, Frawley, Baeske and Wagner voting "Yea." Proposed Ordinance No. 13-'20 passed on 10 yeas and no nays.

Proposed Ordinance No. 13-'20 now becomes **ORDINANCE NO. 1870-2020**.

NEW BUSINESS

None.

Alderman Poletti moved to adjourn. Seconded by Alderman Baeske. Motion carried.

Meeting adjourned at 7:23 P.M.

Respectfully submitted,



KAREN J. KAUFHOLD
CITY CLERK

Memo

To: Mayor & City Council
From: Gina Rader - Director of Finance
CC: City Clerk & Directors
Date: May 14, 2020
Re: Finance Report – May 19 City Council Meeting

Sales Tax Revenues

Attached is the most current revenue deposit received for Sales Tax, this month reflected an increase of 5.8% from this same time period last year. Keep in mind this represents taxes collected from the Illinois Department of Revenue in March so we have not seen the effects of Covid-19 yet.

Bill List

Bill List will be presented at Administration meeting prior to City Council meeting. The bill list is presented in the amount of \$1,656,459.54.

**CITY OF FAIRVIEW HEIGHTS, IL
SALES TAX REPORT
State 1% Municipal Tax Portion**

DISTRIBUTION MONTH	MAY 2013 - APRIL 2014	MAY 2014 - APRIL 2015	MAY 2015 - APRIL 2016	MAY 2016 - APRIL 2017	MAY 2017 - APRIL 2018	MAY 2018 - APRIL 2019	MAY 2019 - APRIL 2020	MAY 2020 - APRIL 2021	% CHANGE	CHANGE IN DOLLARS
MAY	\$ 601,011.50	\$ 584,713.94	\$ 586,147.75	\$ 632,285.33	\$ 571,553.40	\$ 553,114.13	\$ 490,116.91	\$ 518,363.86	5.8%	\$ 28,246.95
JUN	655,667.46	647,401.33	708,268.15	696,077.63	677,065.69	676,704.83	654,604.36			
JUL	574,119.26	578,345.95	563,612.88	576,220.16	599,877.49	555,320.85	572,195.98			
AUG	586,795.92	593,876.18	607,839.70	608,444.47	600,057.37	607,357.54	585,032.16			
SEP	610,055.28	579,381.42	653,462.36	679,234.60	613,965.54	623,578.60	610,349.55			
OCT	554,178.50	550,782.54	573,059.41	572,368.09	476,801.05	540,557.44	562,791.28			
NOV	574,589.49	579,500.49	642,921.78	599,121.43	575,354.24	570,594.16	561,747.98			
DEC	468,313.25	588,998.17	626,164.49	612,305.99	581,474.30	577,677.65	585,185.60			
JAN	589,088.14	580,475.99	627,103.06	570,540.96	564,056.46	560,273.13	581,553.25			
FEB	687,960.48	680,833.91	695,015.32	678,820.57	672,397.54	668,036.72	644,092.22			
MAR	969,659.49	1,028,593.77	1,041,010.81	974,290.59	935,340.51	870,591.30	865,433.15			
APR	458,225.94	528,428.24	519,339.92	488,717.27	528,625.80	457,194.13	482,774.60			
YTD TOTAL	\$ 7,329,664.71	\$ 7,521,331.93	\$ 7,843,945.63	\$ 7,688,427.09	\$ 7,396,569.39	\$ 7,261,000.48	\$ 7,195,877.04			\$ 28,246.95
YTD CHANGE	-6.7%	2.6%	4.3%	-2.0%	-3.8%	-1.8%	-0.9%			
MONTHLY AVG	\$ 610,805.39	\$ 626,777.66	\$ 653,662.14	\$ 640,702.26	\$ 616,380.78	\$ 605,083.37				

PROPOSED RESOLUTION NO. 17-'20

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN IT SERVICE AGREEMENT WITH ACUMEN CONSULTING FOR CORE NETWORK, SERVER PATCHING AND MONITORING SERVICES.

WHEREAS, the City of Fairview Heights is in need of core network, server patching monitoring services and offer additional support in the event of critical outages.

WHEREAS, Acumen Consulting, 1735 Big Bend Boulevard, St. Louis, MO 63117 has submitted a proposal for said services.

WHEREAS, Acumen Consulting has submitted a proposal to provide core network and server patching monitoring services and offer additional support in the event of critical outages pursuant to the IT Service Agreement attached hereto, made a part hereof and marked "EXHIBIT A."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRVIEW HEIGHTS, ILLINOIS:

That the Mayor be and is hereby authorized to enter into an agreement with Acumen Consulting has submitted a proposal to provide core network and server patching monitoring services and offer additional support in the event of critical outages pursuant to the IT Service Agreement attached hereto, made a part hereof and marked "EXHIBIT A."

This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED:

APPROVED:

MARK T. KUPSKY - MAYOR
CITY OF FAIRVIEW HEIGHTS

ATTEST:

KAREN J. KAUFHOLD - CITY CLERK



1735 S Big Bend Boulevard
St. Louis, Missouri 63117
ACUMEN-CORP.COM
314.333.3330

“EXHIBIT A”

IT Service Agreement

This Service Agreement is entered into by and between Acumen Consulting I Corp. DBA Acumen Consulting (“Company”), and City of Fairview Heights (“Client”). This contract is confidential and proprietary between the parties.

Overview

Client has requested professional IT Service to support the City's IT Manager.

Acumen offers a full range of IT services to support your business operations. Our services include: Managed Services, Technology Consulting, Infrastructure Design and Implementation, Hardware Specification & Procurement, Phone Systems, Software Development Services and Cloud Services.

Service Scope for Onsite and Remote Support Services

Acumen will provide dedicated resources on a weekly basis. The scope of service will be directed and prioritized in cooperation with the IT Manager. In addition, we can provide additional resources for advanced engineering and consulting needs.

Acumen will provide services on a time and materials basis per your approval prior to commencing work. If applicable, we will develop a scope of work and estimated cost for project-based work or any additional recommendations in a separate agreement. We will stay in communications with you as work progresses and notify you if we identify any circumstances that impact our estimates or project timelines.

We can provide recommendations, at your request, based on our experience and understanding of your systems to address best practices for your operations, as well as to address the safety and viability of your systems. However, we will only perform the services that you request and authorize at the time of service.

Service Roles

Acumen provides the following service roles to meet your requirements. The list outline below provides a general description of the type of support and services encompassed by each role. We will stay in communication with you as service requests arise to ensure our expectations are aligned with your objectives.

Help Desk Support

Our Help Desk Support team provides end user support and troubleshooting for Client's systems through Remote and Onsite support. Below are some examples of this support:

- Troubleshoot workstations, laptops, mobile devices, printers
- Remediate malware
- Provide support for patches and updates
- Assist with connectivity issues

- Assist with password resets
- Assist with backup restorations
- Setup new users in active directory per company directives
- Setup email accounts per company directives
- Clear out unnecessary temp files to free up disk space
- Install desktop applications per company directives
- Phone system user support
- Service ticket documentation

Advanced Engineering

Acumen offers advanced technology engineering expertise to design your infrastructure and implement the solutions.

- Provide infrastructure design and recommendations
- System and infrastructure updates (Server, Firewall, SAN, etc.)
- Implement and configure network hardware (Switches, Routers, Firewalls, etc.)
- Configure domains, user groups and group policies per company directives
- Setup and configure backup systems
- Setup and configure firewall
- Setup and configure storage systems
- Setup and configure security and VLANs
- Install and update line of business applications
- Setup VPN and terminal services
- Implement server virtualization
- Create network maps
- Security policy review
- Implement and configure phone systems

Service Scope for Remote Managed Services

Our Remote Managed Service offers proactive routine maintenance services for anti-virus, multi-vendor patch management, asset tracking, remote control, and health monitoring. Our network operations center team monitors device health and works with you to keep machines current and safe. This service is available for servers, network devices and workstations as identified by Client.

Anti-Virus

Managed Antivirus is a comprehensive solution for automatically detecting and removing viruses. If a virus is detected on a system, the event is reported to the Acumen Hosting Network Operations Center. Technicians then monitor the affected system closely to ensure that the virus is successfully removed. Any exceptions are noted and Acumen Consulting technicians are available to assist further if desired.

Patches & Updates

Acumen offers a comprehensive patch management suite to manage Operating System patches and updates. We can also provide patches and updates for third-party software. Our service scans your network automatically or on demand and enables us to determine necessary patches and install patches on all machines. Acumen engineers review and evaluate the patches and updates issued and implementation policies, monitor them, and work with you to determine appropriate implementation and reboot policies for your environment.

- 1) Maintain a secure, compliant network
- 2) Upgrade to the latest versions, automatically
- 3) Deploy patches network-wide
- 4) Acumen approves patches by severity and schedules installation of approved patches
- 5) Acumen identifies missed schedule and allows intervention if the device is "off"

Line of Business software applications are beyond the scope of this service. Updates to enterprise applications such as Exchange, SQL, proprietary software, etc. are also beyond the scope of this service. Services for these applications will be performed on a time and materials basis.

Monitoring

The Monitoring system continuously monitors critical conditions on the device. All events are reported to the Acumen Network Operations Center. We develop a remediation approach to meet your needs. Remediation of events is performed on a time and materials basis.

Asset Tracking

This tool collects information on workstation hardware and software. Having this information available helps with tracking warranty status, performing software compliance audits, and is also used for general support purposes.

Remote Support Tool

This tool provides easy to use remote control so engineers can quickly and easily engage in remote troubleshooting as needed.

Reporting

Automated reports are available for customers allowing them to track statistics on system performance, Windows updates status, virus definition updates, and various other information. We provide monthly health reports to ensure that all workstations are healthy and at optimal performance.



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Fees

Onsite and Remote Services

Remote and Onsite Support rates apply to committed support plans, assuming a minimum 8 hours per week of support.

Standard Hours service rates apply between 8:00 AM and 5:00 PM CST Monday through Friday.

After Hours service rates apply between the hours of 5:00 PM and 8:00 AM CST Monday through Friday, weekends and holidays.

Services are provided on time and materials basis. Onsite service calls incur travel. Remote support is billed in 15-minute increments.

Service	Hours	Rate	Monthly	Estimated Annual
Onsite Resource (Committed 8 Hrs Weekly)	35	\$ 85	\$ 2,975	\$ 35,700
Remote Resource (Committed 8 Hrs Weekly)	35	\$ 75	\$ 2,625	\$ 31,500
Advance Engineering		\$ 135		
Standard Rate (Uncommitted Volume)		\$ 110		
After-Hours Emergency		\$ 175		

Server and Network Systems Anti-Virus, Patches, Monitoring and Reporting

Our service is offered in a Per Device Per Month pricing structure. Client agrees to pay the monthly cost calculated based on the total count supported.

Price is for the automated service tool, configuration, oversight, management and monitoring. Labor to remediate issues or handle non-compliant devices is not included, such as updates that require manual handling, or remediation of monitoring alerts. We will discuss with you any circumstances that require special attention and result in additional charges before we perform the services.

Service	Count	Rate	Monthly	Annual
Server Anti-virus, Patches, Monitoring	4	\$ 50	\$ 200	\$ 2,400
Firewall Monitoring, Firmware Updates	1	\$ 25	\$ 25	\$ 300
Switch Monitoring	3	\$ 10	\$ 30	\$ 360

Payment Structure

Acumen will invoice for monitoring services at the beginning of the month and labor services as performed. Payment is due upon receipt of invoice. Credit card payments incur a 3% processing fee.



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Necessary Information

The following information will ensure quality service delivery:

- 1) Administrative user role access to all network resources Acumen is expected to support, especially in cases of emergencies.
- 2) A clear scope of responsibility, as outlined in on-going communication between Client and Acumen.
- 3) A list of names and contact information for persons authorized to request service.
- 4) After-hours facility access as desired by Client.
- 5) To ensure prompt service, Client should promptly notify Acumen of changes to this information.

Acceptance

The undersigned is authorized to enter into this Contract and acknowledges that Client has received, understands, and accepts the provisions of this Service Agreement and the Terms and Conditions.

By accepting the Service Agreement(s) and engaging services, continuing to use the services, placing and continuing to maintain or place information on Company servers and systems, Client is affirming and acknowledging that Client has read the Terms and Conditions and Service Agreement(s) and that Client understands and agrees to be bound by them.

	City of Fairview Heights	Acumen Consulting
Signed	_____	_____
Date	_____	_____
Print Name	_____	_____
Title	_____	_____
Address	_____	1735 S. Big Bend Blvd
City/State/Zip	_____	St. Louis, Missouri 63117

Thank you for choosing Acumen Consulting as your Technology Service provider.

Terms & Conditions

I. Contracting Parties

Client has entered into a contract for services with and only with the entity referenced in the attached Service Agreement, its successors and assigns, ("Company"). The contract is made up of the service agreement, proposal, scope of work, change request, or other such engagement agreements, quotes or estimates accepted, appendices, and exhibits ("Service Agreement"), and these general terms and conditions ("Terms and Conditions") set forth herein (the terms of such Service Agreement and these Terms and Conditions are hereinafter collectively referred to as the "Contract"). By executing the Service Agreement, Client acknowledges that it has read and agreed to these Terms and Conditions, which are incorporated within and are part of the Contract. Client acknowledges that in the event of and only to the extent of any inconsistencies between these Terms and Conditions and the Service Agreement, the provisions of the Service Agreement shall govern.

II. Invoicing and Payment

Company will invoice Client for services as provided in the Service Agreement. Applicable setup fees are non-refundable once setup is completed. Invoices are due and payable upon receipt. Any invoice or part thereof remaining unpaid after thirty (30) days will be assessed a late fee of \$50 and will accrue interest at a rate of one and one-half percent (1 ½ %) per month. Accounts with outstanding balances will be subject to termination of services. Company reserves the right to apply payments in its sole discretion to past due invoices. In the event Client does not have an approved credit account with Company, Company may require payment in the form of a cashier's check or credit card.

A re-activation fee equivalent to one (1) months' service fees will be charged if service is cancelled or suspended due to any reason.

Client shall bear all applicable federal, state, municipal and other governmental taxes (such as sales, use and similar taxes), as well as import or customs duties, license fees and similar charges, however designated or levied on the services rendered or on the sale of equipment or products (or the delivery thereof) or measured by the purchase price paid for the products or services. Exemption certificates must be presented prior to shipment or installation to be honored.

III. Termination and Remedies

Either party may terminate services, for convenience, as provided in the Service Agreement, or if not stated in the Service Agreement may terminate with sixty (60) days written notice delivered in accordance with Section "Notices". Services performed prior to termination shall be payable and due upon receipt of invoice. If either party terminates this Contract for convenience, Company will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Company the actual costs of rendering such assistance.

Within ten (10) days of termination of services, Client agrees to remove and return all Company owned products and software related to the services from Client's devices or otherwise render them permanently unusable, as directed by Company. Client agrees to return or destroy any and all Company documentation, products, and software received related to the services.

Terms & Conditions

This Contract will be deemed terminated for cause if either party fails to cure any material breach of this Contract within thirty (30) days after receiving written notice of such breach; provided however that the period to cure a breach with respect to payment shall be five (5) days. If Client terminates this Contract for cause in accordance with this Section, Company shall refund to Client any prepaid amounts applicable to the period following the month end of the effective date of termination. Other than as may be provided elsewhere in this Contract, such termination shall be Client's sole and exclusive remedy in case of a material breach of this Contract by Company.

Client will grant full access to Company to remove Company equipment and will hold Company completely harmless for taking such action. Company may in its sole discretion delete all Client data, information, files and programs stored on Company's servers or system. Company shall have no obligation to retain copies of Client data or files on Company's system following Client's termination. Company shall have no continuing obligation to deliver or provide products and services upon termination.

Upon Client default without cure, Company may, in its sole discretion and without notice, terminate all services, remove Company owned software and equipment, take possession of all or part of the Company owned software and equipment, and delete Client data, information, files, and programs stored on Company's servers or system. Client agrees to immediately return or destroy any and all documentation, products, and software received related to the services. Client acknowledges that this may leave its computers and other equipment without adequate systems for updates to operating systems, software, and virus scanning programs. Company shall not be held responsible for any damages or consequences resulting from the removal of software, equipment, data, information, files, programs, or termination of services.

Removal of the equipment or deletion of files does not relieve Client of the obligations under this Contract, including payment in full.

In the event Company incurs any cost or expense to enforce or interpret its rights under the terms of this Contract, whether or not Company shall commence legal proceedings, Client agrees to pay all such costs and expenses, including but not limited to all reasonable attorney's fees incurred by Company.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, COMPANY MAKES NO WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR NON-INFRINGEMENT. COMPANY DISCLAIMS, TO THE EXTENT PERMITTED BY LAW, ALL WARRANTIES AND ANY LIABILITY, INCLUDING THOSE BY THIRD PARTY SUPPLIERS INVOLVED IN DELIVERY OF EQUIPMENT SERVICES FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE EQUIPMENT OR THE SERVICES.

IV. Product Sales, Returns, Warranties, and Security Interest

The following terms and conditions apply to original equipment from the manufacturer and third party equipment and software products purchased by Company for and on behalf of Client that are resold to Client and become the property of Client.

Terms & Conditions

Client shall comply with and shall not act to contravene, applicable laws, codes, and regulations, including without limitation those relating to the licensing/control of, or prohibition gains, shipment (including both export and re-export) to designated countries and / or entities.

All warranties and product support are provided by the manufacturer. Company may permit Client to return products claimed to be defective under certain circumstances. Company makes no representations or warranties of any kind with respect to products. COMPANY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY WILL NOT BE LIABLE FOR ANY DAMAGE, LOSS, COST OR EXPENSE FOR BREACH OF WARRANTY. The right to return defective products, as previously described, shall constitute Company's sole liability and Client's exclusive remedy in connection with any claim of any kind relating to quality, condition or performance of any product, whether such claim is based upon principles of contract, warranty, negligence or other tort, breach of any statutory duty, principles of indemnity or contribution, the failure for any limited or exclusive remedy to achieve its essential purpose or otherwise. In the event Company issues a return authorization to Client allowing Client to return equipment or product to Company, Client will deliver goods to Company's address at Client's cost.

Until such time as Client has paid the agreed purchase price, Company hereby retains and Client hereby grants a purchase money security interest in any equipment described in the Service Agreement. In connection therewith, Client agrees to execute all instruments (including financial statements) deemed necessary by Company under applicable law to establish, maintain and continue perfected Company's purchase money security interest in the equipment or otherwise protect its rights in and to said equipment.

V. Ownership of Intellectual Property

Company shall assign to Client the right, title and interest, including, without limitation, Client owned trademarks and copyrights, in and to the Deliverables. The term "Deliverables" includes all work created by Company for hire by Client, and includes data, modules, components, designs, utilities, subsets, objects, program listings, and specifications. Deliverables does not include Company tools, models, methodologies, programs, systems, analysis frameworks, leading practices, trade secrets and proprietary rights including data, modules, components, designs, utilities, subsets, objects, program listings, and specifications, owned or developed by Company prior to, or independently from, its engagement by Client ("Technical Elements") and any third party works and products ("Supplier's Technical Elements") and any modifications or enhancements to Supplier's Technical Elements developed in the course of performing the Services (collectively, "Company Technical Elements"), whether or not embedded in the Deliverables. Company retains exclusive ownership rights to all Company Technical Elements. Accordingly, to the extent that any Company Technical Elements are integrated into any Deliverables, Company grants to Client a perpetual, worldwide, non-exclusive, fully paid-up, limited license to use and modify such Company Technical Elements as integrated into such Deliverables for Client purposes only. Notwithstanding anything to the contrary in this Section, where Company utilizes a third party software vendor to provide Services, Client's rights to any materials developed by such third party shall be subject to the terms of any software license of such third party. Notwithstanding anything to the contrary contained herein, Company retains all rights and license to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired or developed by Company prior to, or in the course of

Terms & Conditions

performing the services for Client, but independently from its engagement hereunder ("Company knowledge, experience and know-how").

VI. Confidentiality

Company and Client both acknowledge that in the course of this Contract, each party may have access to the other's Confidential Information. "Confidential Information," as used in this Contract, means information not generally known to the public, in written, oral or any other form, that a party designates as being confidential or that, under the circumstances surrounding disclosure, should be clear that it is confidential. Confidential Information includes trade secrets, consisting of formulas, patterns, devices, processes, and compilations of information, specifications, records, customer information, vendor and sub-contractor information, and all files, records, documents, drawings, specifications, equipment, and similar items relating to the business of the parties, whether they are prepared by Company or Client or come into either party's possession in any other way, are and shall remain the exclusive property of such party's business and shall not be removed from the premises of such party under any circumstances whatsoever without the prior written consent of such party. The parties shall not misuse, misappropriate, or disclose any of the Confidential Information described herein, directly or indirectly, or use them in any way, either during the term of this Contract or at any time thereafter.

Each party shall take all necessary steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Contract, and in any event each party shall exercise the same prudent practice in preserving this information as it does to preserve its own Confidential Information.

The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Contract pursuant to the order or requirement of a court or other governmental body, provided that the party required to make such disclosure gives prompt notice to the other party to enable it to contest such order or requirement. Furthermore, Company reserves the right to monitor any and all communications through or with our facilities for the purposes of the ECPA requirements.

VII. Non-Solicitation of Employees

Client agrees that neither party will solicit or offer employment to the respective employee(s) or sub-contractor(s) of the other, whether directly or indirectly, during the term of this Agreement or within 1 year of termination of Agreement, or during their employment or within 1 year of termination of their employment, except with the prior written approval in each case.

VIII. Indemnification and Limitation of Liability

Client agrees to indemnify and hold Company harmless from any costs, demands, claims, damages, losses, and costs of defense including reasonable attorney's fees (collectively, "Losses") incurred by Company as a result of any breach by Client of any covenant, warranty, or representation made by Client hereunder, including the representations and warranties herein.

Client agrees to indemnify and hold Company harmless for all claims made or threatened, damages, penalties, loss, and costs of defense including Company's attorney's fees incurred in

Terms & Conditions

defense of any such claim arising out of the content of Client's data. Such indemnification shall extend to all claims including claims made by any party that such data or files infringe upon any protected technology, trade secret, or protected right of use, and shall further extend to all claims brought against Company by any third party containing any allegation that Client data was illegally obtained by Client, illegal due to its content, or in any way tortuously or illegally infringes upon the rights of any person.

Client is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of its information management systems, including but not limited to, obtaining any consent and/or acknowledgement from your employees and service providers (if applicable). Client agrees to indemnify and hold Company harmless from any Losses incurred by Company as the result of Client's breach of these responsibilities. Client acknowledges and agrees that Company's responsibilities and liability do not extend to the internal management of Client's information policies and that Company is merely a data-processor and does not control and is not responsible for the management, administration, or security of Client's content or policies.

Client agrees to adhere to system policies as published or provided by Company including restrictions on services available with each account type, restrictions on certain features, and all other policies designed to protect and enhance the quality and reliability of service provided by Company. Client agrees to abide by any and all future Company policy decisions.

Company will not be liable to Client or any other person or entity for any damages (punitive, incidental, special, exemplary, indirect or consequential) arising from the use or inability to use the services provided by Company to Client, or arising from or related to the engagement of Company, whether based in contract, tort (including negligence), intended conduct or otherwise even if Company has been advised of the possibility of such potential damages, including without limitation: expenses; lost profits, savings, income, goodwill, revenue or prospective compensation; or expenditures, investments, leases or any type of commitment made in connection with the business of Client accepting this Contract or in reliance on the existence of this Contract in any action. In no case is Company liable for any damage claims made by the Client or customers of the Client engaging Company. Additionally, under no conditions will Company's total amount out-of-pocket liability arising under this Contract exceed an aggregate amount equal to the fees paid by Client to Company during the month of the causation of the damages.

IX. Governing Law

The terms of the Contract shall be governed by the laws of the State of Missouri. Any action at law or in equity to enforce or interpret the Contract shall be brought in the Circuit Court for the County of St. Louis, State of Missouri.

X. Notices

All notices required to be sent under this Contract must be in writing and shall be delivered in person or shall be sent to the names and addresses of the parties as referenced in the Service Agreement. Notices shall be deemed to have been given upon (i) the date actually delivered in person, (ii) the date transmitted via email or fax with confirmation of receipt thereof (iii) the day after the date sent by overnight courier or (iv) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.