Milsoft Utility Solutions Contract
for IVR-Hosted Subscription

This SUBSCRIPTION CONTRACT for the use and/or services of certain Milsoft Software (hereinafter referred to as "Contract") is entered into by and between **CITY OF GEORGETOWN, TX** (hereinafter referred to as "Customer") and **Milsoft Utility Solutions, Inc.**, a Texas corporation (hereinafter referred to as "Milsoft"), and is effective on the date signed by the latter of Customer and Milsoft (the "Effective Date").

Whereas, Customer has the desire and capacity to procure the authorized use and/or hosted services of the Milsoft proprietary software known **Milsoft® IVR Hosted System replacing Customer's on-site IVR *via* 5-year Subscription, invoiced monthly** (the "System"), more particularly identified in Section 1 below; *and*

Whereas, Milsoft has the desire and capability to furnish and support the System for Customer as quoted and in accordance with the terms and conditions of this Contract;

Now, therefore, in consideration of the premises, the Subscription Price and the respective covenants contained herein, the Customer and Milsoft (the "parties") hereby agree as follows:

1.   SYSTEM. The System (or "System Components") shall consist of the on-site use and/or hosted services of the named Milsoft products and features (the "Software") as described in Milsoft Quote **#49107,** constituting "Schedule A" for purposes of this Contract and incorporated herein by reference as if fully set forth.

2.   SUBSCRIPTION PRICE; TERMS OF PAYMENT. The itemized and/or aggregate pricing for the System Components, basic installation, training if included, and pertinent software license (collectively the base "Subscription Price") is set forth in Schedule A, together with the terms of payment.

3.   STATEMENT OF WORK. If and to the extent deemed necessary by either party, the parties shall in good faith mutually develop and agree upon a Statement of Work ("SOW") to describe and set forth with particularity the essential scope of work, technical specifics, period of performance, schedules/milestones, acceptance criteria, change orders and other requirements unique to the project. Should the parties be unable to agree upon the SOW within 30 calendar days after entering into this Contract, either party may elect to terminate this Contract by giving written notice to the other, without necessity of default, whereupon the termination shall be effective in one week (7 calendar days after notice) if no agreement as to the SOW be reached.

4.   DELIVERY, INSTALLATION AND TURNOVER. For the Subscription Price and in accordance with the SOW (if applicable), Milsoft shall deliver the System Components and/or provide the hosted services to the Customer per Schedule A and, subject to Customer's preparatory compliance as described in Section 7, shall install the System on site, or by remote electronic delivery, or shall initiate hosted services as appropriate. The Turnover Date shall be the date, after completion of installation and testing, upon which Milsoft turns over the System to Customer for fully operational use.

5.   TRAINING. Milsoft shall provide basic System administration and user training to Customer's designated employees, if and as may be described in more detail in the Statement of Work or Schedule A.

6.   SUPPORT SERVICES. During the Customer's subscription under this Contract, Milsoft shall provide the hosted Software as a Service to Customer, together with technical and user support, Software fixes/patches, and upgrades to future Software editions of any and all Software installed on Customer's site. If subscription payment is not received when due, Milsoft may withhold services until paid. In the event Customer withholds or discontinues its subscription payment without termination of this Contract, in order to again be eligible to receive support Customer may be required to upgrade and/or agree to pay an increased Subscription Price based upon the extent of maintenance missed and appropriate to the circumstances.

For purposes of this Contract, support of the Software means:
*   support related to System applications;
*   delivery of Software fixes/patches;
*   delivery of upgrades to the latest Software versions made available by Milsoft.

Hours of support availability will be 24 hours/day, 7 days/week, year-round for outage management and Milsoft communications systems; and no less than 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excepting normal business holidays

observed by Milsoft, for all other, non-critical support issues. With prior notice and as reasonably requested, Customer shall allow online access to the System and sufficient access to Customer's premises as needed for Milsoft to provide its support services.

The services to be provided under the Support Program do not cover damages or claims due to Customer's misuse, Customer's negligence, Customer-caused accidents, thefts, loss of data due to Hardware failure, lack of daily backups, abuse, electrical outages, fire, flood, wind, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than Milsoft-approved technicians. Repairs necessitated by any one or more of the above-excepted causes may be performed by Milsoft upon request, provided the Customer agrees to pay for such extra work at Milsoft's current hourly rates. Such work would not represent or imply any additional warranty or representation regarding the System, the System Components, or the functionality of the System.

7.   CUSTOMER'S OBLIGATIONS, PREP AND SPECS; INTEGRATION WITH THIRD-PARTY SOFTWARE.

   7.1   Customer assumes responsibility for care and risk of loss of the System Components upon delivery to its location. Customer is responsible for meeting the data requirements, purchasing and providing any other hardware and/or third-party software, and preparing its location for installation consistent with the specifications, requirements and recommendations per SOW, Schedule A, RFP/Response or applicable terms and conditions, at its expense. Any Customer data required for installation shall be timely delivered to Milsoft pursuant to its instructions. Customer shall also secure any permits, licenses or other governmental approvals for its installation site as may be required by applicable law or regulation, at its expense. Once a Milsoft technician is on-site as reasonably scheduled, if the installation is delayed due to failure of the Customer to have met the preparatory requirements, there may be a one-time charge of $500.

   7.2   Milsoft products are generally amenable to integration with a variety of products from third-party vendors known by Milsoft to be certifiably interoperable (including but not limited to many MultiSpeak® integrations, when applicable), subject to verification, and with a range of other third-party products that may require more extensive customization. The development or provision by Milsoft of any and all interface between its products and third-party software (whether deemed necessary at the time of Milsoft product installation or as needed in the future due to change of circumstances) can only be undertaken pursuant to specific evaluation and may, at the discretion of Milsoft, require reasonable adjustment of time and/or cost.

Every interface to be developed and provided for integration with third-party products must be testable by Milsoft with consent and cooperation of the third-party vendor (whose consent and cooperation shall be provided by Customer, as Customer's responsibility) and will be specific only to the version or iteration of the third-party product in use at the time of the interface development. Customer shall be responsible for alerting Milsoft to future additions, updates or new versions of all third-party product and for providing renewed consent and cooperation of each third party for testing, as any such changes could render the Milsoft interface less functional unless addressed. In such event, Milsoft offers no warranty for the previously provided interface, and assumes no responsibility to develop or provide additional interface without further agreement and compensation, if at all. **No other representation, warranty or promise regarding interfaces or integration between Milsoft products and third-party software is expressed or implied.**

   7.3   TEST AND DEVELOPMENT ENVIRONMENT. For additional fees, subject to negotiation, Milsoft will allow and provide of additional instances or "environments" of the Software for testing, system development, and disaster recovery as long as those instances are not used for actual City business and mirror the core functionality of the Production environment.

8.   SOFTWARE LICENSE. Upon successful installation and as of the Turnover Date, Milsoft grants to Customer, and Customer accepts, a non-exclusive and non-transferable license to use the Software furnished hereunder (including modifications and enhancements furnished under the terms of this Contract, and modifications and enhancements furnished under the terms of the Support Program described in Section 6) strictly upon the terms and conditions contained herein. Title to and ownership of all Software shall remain with Milsoft. Customer shall have no right to sell, sublicense, publish, disclose, display, assign, duplicate, alter, lease, or otherwise make available the Software to any third party. Customer shall take appropriate action with its employees, agents, contractors, consultants and other representatives or end users to ensure compliance with these terms and conditions. Customer may make copies of the Software only for backup purposes and/or archival purposes, and any such copy must contain the same copyright notice and proprietary markings that the original Software contains. Customer acknowledges the Software represent a very large-scale investment in the development of an intangible asset by Milsoft and must be strictly protected hereunder. In the event of a breach under the provisions of this Software license by Customer, upon written notice which may be given at the election of Milsoft, Customer shall forfeit all rights as licensee under this Contract and shall immediately return the Software to Milsoft along with all documentation and source media associated therewith. Customer assumes full liability to Milsoft for any damages (excluding consequential damages) resulting directly from any compromise of any rights owned by Milsoft and not expressly conferred under this Contract, if such damages are the result of the gross negligence or willful act or omission of Customer (including any employee, agent, contractor, consultant or

2

other representative of Customer). CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE IN EXECUTABLE LINE CODE FORM REMAINS A CONFIDENTIAL TRADE SECRET AND CUSTOMER AGREES NOT TO ATTEMPT TO REVERSE-ENGINEER, TRANSLATE, DECIPHER, DECOMPILE, MODIFY OR DISASSEMBLE THE SOFTWARE, NOR INCORPORATE THE SOFTWARE IN WHOLE OR IN PART INTO ANY OTHER SOFTWARE OR PRODUCT OR DEVELOP DERIVATIVE WORKS THEREFROM OR ALLOW ANY OTHER THIRD PARTY TO DO SO, WITHOUT THE EXPRESS WRITTEN CONSENT OF MILSOFT. Customer shall have NO rights as licensee in or to any off-site, hosted software, the applicable functionality of which is being provided hereunder by Milsoft *via* Software as a Service only.

9.   CONFIDENTIALITY.

9.1   During performance of this Contract or in the contemplation thereof, and subject to and in conformity with Section 8, employees, agents and authorized contractors or consultants of each party to this Contract may have access to private or confidential information owned by the other party, including, but not limited to, the Software, and information concerning costs, charges, operating procedures and methods of doing business, which may be owned or controlled by the other party. With respect to any such information so accessed or acquired, each party agrees as follows: (a) all such information shall be and shall remain the exclusive property of the party which owns the information; (b) each party shall limit access to such information of the other party to their respective employees, agents and authorized contractors or consultants who have a need to know consistent with the receiving party's authorized use of such information; (c) the receiving party shall keep, and have its employees, agents and authorized contractors or consultants having access keep, all such information confidential; (d) the receiving party shall not copy, publish or disclose to others, or permit its employees, agents and authorized contractors, consultants or anyone else to copy, publish or disclose to others, any such information without the owning party's prior written consent; (e) the receiving party shall return such information to the owning party at its request; and (f) the receiving party shall use such information only for the purpose of performing its obligations hereunder.

9.2   Each party shall secure and protect the other party's confidential information in a manner consistent with the protection it provides to its own confidential information, but in any case using no less than reasonable degree of care. Each party's duties of confidentiality as regards the confidential information shall survive any cancellation, expiration or termination of this Contract. Notwithstanding the foregoing, receiving party may disclose Confidential Information as required by applicable law (*e.g.* the Texas Public Information Act) or by proper legal or governmental authority; in such event, receiving party shall give the owning party prompt notice of any such legal or governmental demand and reasonably cooperate with such owner in any effort to seek a protective order or otherwise to contest such required disclosure, at owner's expense.

9.3   Each party at all times shall maintain appropriate internal policies and procedures reasonably sufficient to satisfy its obligations under this Section 9. Should either party or its employees, agents and authorized contractors or consultants use, disclose or attempt to use or disclose any such information in a manner contrary to this Contract, the owning party shall have the right to seek injunctive relief against such breach or threatened breach (without posting a bond or other security), in addition to any other remedies that may be available at law or in equity.

9.4   Data on Termination. Upon termination or non-renewal of this Contract, Milsoft will provide Customer with return of any Customer data being hosted on Milsoft's hosted environment. Customer data shall be provided in a flat file spreadsheet format, accompanied by a data dictionary describing each field/data element, or such other format as may be mutually agreed. Such data will be provided no later than sixty (60) days prior to the date of expiration or termination, when possible (following at least 10 days advance notice by Customer), and again seven (7) days after date of expiration or termination.

9.5   Intellectual Property. All Customer-specific information, data, publications and media created exclusively for and paid for by Customer or as a result of the Services identified in this Contract is Customer's property unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Contract.

10.   PRODUCT CHANGES. Milsoft reserves the right to make modifications and distribute enhancements to existing Software. In addition, upon notice to Customer of no less than one hundred eighty (180) days, Milsoft reserves the right to discontinue offering the Support Program associated with the System in place, and may require that specified upgrades to the System Components be made as a condition for continued Customer participation in the Support Program.

11.   LIMITED WARRANTIES.

11.1   *Software*. **Upon delivery and continuing through the first thirty (30) calendar days following the Turnover Date, Milsoft warrants exclusively that the Software shall substantially conform to, and perform in substantial accordance with, all applicable Software specifications. Milsoft represents and warrants generally that it owns the Software or that it has the right to license Customer's use of the Software in accordance with the provisions of this Contract. In event of breach or failure, Customer's exclusive remedies shall be, at the option and expense of Milsoft, either (i) to have Milsoft promptly correct any discrepancy in performance that materially impairs the appropriate functionality of the Software; or (ii) to have Milsoft refund**

or waive the subscription payment for the most recent and then-current billing period for the licensed use of the Software, provided that Customer must allow Milsoft to de-install the Software within 30 days of Customer's timely notification to Milsoft of the discrepancy. **ALL CLAIMS AND REMEDIES ARE LIMITED TO THOSE EXPRESSLY PROVIDED IN THIS CONTRACT.**

11.2 *Support Services*. **With respect to services provided, Milsoft warrants exclusively that such services shall be performed in a good and workmanlike fashion. In event of breach or failure, Customer's exclusive remedies shall be, at the option and expense of Milsoft, either (i) to have Milsoft promptly correct such services, or (ii) to have Milsoft refund or waive the subscription payment for the most recent and current billing periods.**

12. **DISCLAIMER OF OTHER WARRANTIES. THERE ARE <u>NO</u> OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

13. **GENERAL LIMITATION OF LIABILITY.** THE LIABILITY OF MILSOFT, ITS LICENSORS AND ITS AFFILIATES, IF ANY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY MILSOFT, REGARDLESS OF THE LEGAL THEORY OR THE DELIVERY OR NON-DELIVERY OR ALLEGED FAILURE OF ANY PRODUCTS OR SERVICES, SHALL NOT BE GREATER THAN THE FEES ACTUALLY PAID BY CUSTOMER TO MILSOFT HEREUNDER IN CONNECTION WITH THE PRODUCTS OR SERVICES AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH SUCH CLAIM ACCRUED. EXCEPT IN THE CASE OF GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES WILL MILSOFT, ITS LICENSORS OR ANY AFFILIATE BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF THE LOSS OF PRESENT OR PROSPECTIVE PROFITS, EXPENDITURES, INVESTMENTS, COMMITMENTS, BUSINESS REPUTATION OR GOODWILL, FOR LOSS OF DATA, COST OF SUBSTITUTE SOFTWARE, COST OF CAPITAL, AND THE CLAIMS OF ANY THIRD PARTY, OR FOR ANY OTHER REASON WHATSOEVER, REGARDLESS OF WHETHER SUCH CLAIM HAS ITS BASIS IN ANY THEORY OF CONTRACT, EQUITY, TORT (INCLUDING ORDINARY NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

13.1. **INDEMNIFICATION.** Notwithstanding any other provision of this Contract, and to the fullest extent permitted by law, Milsoft shall indemnify, hold harmless, and defend Customer and its agents, employees, officers and successors, from and against any claims, causes of action, damages, losses and expenses, including but not limited to all expenses of litigation, court costs, and attorney's fees, provided that such claim, cause of action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death to any person, including employees or agents of Milsoft, or to injury to or destruction of property including loss of use resulting there from, proximately caused by Milsoft's performance of this contract, or by anyone for whose acts Milsoft may be liable. Such indemnity shall not apply to the extent such claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the willful acts, omissions, or negligence of the Customer, another other party indemnified hereunder, or any third party for whom Milsoft is not responsible.

Milsoft shall assume the defense of Customer pursuant to the provisions of the paragraph above within ten (10) business days of receipt of written notice. Any legal cost or expense, including attorney's fees, incurred by Customer for enforcement of its rights under the paragraph above between the time by which Milsoft should have assumed Customer defense and the time when Milsoft assumes Customer's defense shall be reimbursed by Milsoft.

13.2 **RELEASE.** Notwithstanding any other provision of this Contract, Milsoft releases, relinquishes and discharges Customer, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either party or other third parties) and any loss or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with the work it performed under this Agreement, through no contributory fault of those released. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by Milsoft's insurance, but shall *not* apply to any such claims to the extent covered by applicable insurance carried by Customer or others, whether released or not.

14. **PAYMENTS.**

14.1. **Payment of Funds.** Timely payment by Customer to Milsoft at its principal place of business of all sums due hereunder is a material element of this Contract. Unless otherwise specified in Schedule <u>A</u> or by a subsequent agreement of the parties in writing, payments shall be due upon billing and paid within thirty (30) days of a correct invoice, and subscription payments shall be due and payable on or before the first day of each subscription period. All payments are subject, however, to the Texas Prompt Payment

Act, Texas Government Code, Subtitle F, Chapter 2251, which shall apply and control to the extent Customer is a covered entity. Milsoft may charge interest on all unpaid sums at the lesser of the rate of 1.5% per month or the maximum contract rate allowed by law. Milsoft has no desire to exceed the maximum amount of interest that may be contracted for, charged or received under applicable law, and any interest paid in excess of said maximum amount shall be credited toward any past due payment or refunded to Customer. Late charges shall not apply to payments pending or withheld by the Customer in the event: (a) there is a bona fide dispute between the Customer and Milsoft concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the Customer from making a timely payment with Federal funds; or (c) the invoice is not mailed or delivered to the Customer in accordance with the Contract.

14.2.   Pricing. Milsoft will provide line-item pricing for the System Components if and as reasonably divisible. Customer will pay Milsoft only after the successful completion of milestones and installation of the System as set forth in the SOW, if applicable. All prices for Milsoft's Software and Services hereunder are firm for the term of the Contract.

14.3.   Appropriation of Funds. Customer's obligation to make payments are subject to Customer's appropriation of funds that are lawfully available to be applied for such purpose. If Customer fails to make such an appropriation prior to Customer's fiscal period for the payments scheduled in such a fiscal period, this Contract shall terminate at the end of the last fiscal period immediately preceding the fiscal period for which funds have not been appropriated. Customer shall deliver notice of such termination at least forty-five (45) days prior to such termination, but failure to give such notice shall not prevent the termination of this Contract.

15.   TAXES. Unless specified as such, the prices set forth herein do not include any sales, use, excise, ad valorem, property or other taxes applicable to the sale, use, license or delivery of the System Components and any related services supplied hereunder. As a municipality, Customer is understood to be exempt from payment of state and local sales and use taxes on labor and materials.

16.   FORCE MAJEURE. Neither party shall be deemed in default of any provision of this Contract, or responsible for failures in performance, resulting from any cause beyond its reasonable control, which include, without limitation, acts of God, civil or military authority, civil disturbances, strikes, riots, insurrection, war, fires, or other catastrophes. In the event of any failure or delay resulting from such causes, an equitable adjustment of schedule and any other appropriate terms and conditions shall be agreed upon by the parties.

17.   NON-WAIVER. No waiver of any breach or default shall constitute waiver of subsequent breach or default. No failure or delay to exercise any right, power, or privilege under this Contract shall operate as a waiver of such right, power, or privilege; nor shall any single or partial exercise of any right, power, or privilege preclude further exercise of such right, power, or privilege.

18.   TERM and TERMINATION. The initial term of Subscription(s) hereunder shall be for the duration of 5 years as stated in Schedule A and may continue in renewal or extension thereof in the time and manner stated therein; in the absence of further written agreement or notice of cancellation or termination, agreement to extend on a month-to-month basis may be inferred so long as Customer continues to pay and Milsoft continues to accept monthly subscription payments. If at any time either party fails to perform a material obligation and does not remedy such failure within thirty (30) days following notice from the non-defaulting party, the non-defaulting party may elect to terminate this Contract immediately by giving notice of termination to the party in default. Termination for default shall in no way prejudice the rights or remedies available to the non-defaulting party as a result of the default nor relieve Customer of its obligation to pay Milsoft for all compliant product provided and services actually rendered up to the date of termination. Additionally, the City shall have the right to terminate this Agreement for convenience, without necessity of cause, any time upon seventy-five (75) calendar days' prior written notice. The City shall pay Milsoft, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.

19.   DISPUTE RESOLUTION. The parties will attempt in good faith to promptly resolve any dispute arising out of this Contract without resorting to litigation. Before any suit for damages may proceed, the parties shall submit to non-binding mediation by an impartial mediator, at a mutually convenient location, with each party bearing its own attorney's fees and expenses. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction. Nothing contained herein, however, shall preclude the parties from first seeking temporary injunctive or other equitable relief in preservation of its rights.

20.   GOVERNING LAW; CHOICE OF FORUM. The validity, performance and construction of this Contract shall be governed by the laws of the State of Texas (without giving effect to principles of conflicts of law). The parties agree that the Uniform Computer Information Transaction Act and the UN Convention on International Sale of Goods do not apply. Any legal claim or action must be filed in Williamson County, Texas.

21.   SUCCESSORS AND ASSIGNS. This Contract shall inure to the benefit of and be binding upon successors and assigns of the parties; however, neither party may assign without the consent of the other, and such consent shall not be unreasonably withheld. Any attempt to assign without prior written consent shall be void and have no effect. Should Milsoft divest itself of all or partial

ownership of the Software or System, all terms of this agreement will remain in full effect including the Customer's right to use the Software and System under the pricing terms included in this Contract.

22.   **CONSTRUCTION AND CAPTIONS; PARTIAL INVALIDITY.** Captions are for convenience only and shall not be construed to expand or limit any provision hereunder. Should any provision of this Contract be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract.

23.   **CONTROLLING TERMS, ORDER OF PRECEDENCE.** Any terms or conditions appearing on the face or reverse side of any purchase order, preliminary quote, acknowledgment or confirmation that are different from or in addition to those required hereunder shall not be binding upon the parties, even if signed and returned, unless both parties expressly agree in writing to be bound by such. In event of any conflict or inconsistency between the main body of this Contract and the provisions of any schedule or other attachment, the provisions of this Contract shall prevail, except as to the job-specific details of Schedule <u>A</u> or SOW.

24.   **DISASTER RECOVERY.** Milsoft has developed and implemented a commercially reasonable business continuity/disaster recovery plan ("Disaster Plan") and will continue to maintain such Disaster Plan for the term of this Contract. As part of Milsoft's Disaster Plan, Milsoft has fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Software and Hosting Services in the event of a component or system failure or any other unplanned interruption of the Software or Hosting Services whether caused by a disaster or otherwise. In the event any Customer data has been lost or damaged due to an act or omission of Milsoft or its subcontractors or due to a defect in Software, Milsoft will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which Customer data may be lost, measured in relation to a disaster that Milsoft could not reasonably control or predict. The Force Majeure provisions herein shall not limit Milsoft's obligations under this section, meaning that, a Force Majeure event does not relieve Milsoft of its obligation to implement its Disaster Plan to the extent it is able to do so in light of the Force Majeure event. Milsoft will test the Disaster Plan on an annual basis. If Customer requests a client-specific disaster recovery test, Milsoft will work with Customer to schedule and execute such a test on a mutually agreeable schedule.

25.   **BACK-UP AND RECOVERY.** Milsoft will execute database backups to a backup server in a secure offsite location, no less than nightly. The Software shall be configured to perform incremental backups at least once per day, such that the database can be restored to the last committed transaction and/or point in time of the last incremental backup, which will have occurred up to twenty-four hours earlier, in the event of a system failure. There will be no additional software costs to process at another site in the event of a disaster that shuts down the primary location where the software is hosted or for testing at the disaster recovery site.

26.   **SECURE DATA TRANSMISSION.** Milsoft will provide secure data transmission paths from each of Customer's workstations to Milsoft's servers; all data transmission between Milsoft's hosted environment and Customer's environment shall be encrypted. Milsoft guarantees that all Customer data that Milsoft hosts will be located within the United States at all times.

27.   **SERVICE LEVEL AGREEMENT**.   All IVR Services hereunder will maintain a minimum uptime of 99%. The time of duration for any outages or downtime occurring during business hours of Monday through Friday, 8:00 a.m. to 6:00 p.m. will be reimbursed to Customer in the form of credits toward the monthly or annual fees. The amount of the credit should include the following:

> Monthly fee/160 (working hours/month) x Hours of downtime,
> > *or*
> Annual fee/1920 (working hours/year) x Hours of downtime.

Should Milsoft fail to meet minimum uptime requirements in three months of any calendar year, Customer may terminate this Contract for convenience. Milsoft will notify Customer of the duration and nature of any routine scheduled outages at least three (3) days prior to the outage, which shall not count against the minimum uptime requirements.

28.   **EFFECT OF REGULATION.** Should any local, state, or national regulatory authority having jurisdiction over Customer enter a valid and enforceable order upon Customer that has the effect of changing or superseding any term or condition of this Contract, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Contract shall remain in effect, unless the effect of the order is to deprive Customer of a material part of its Agreement with Milsoft. In the event this order results in depriving Customer of material parts or raising its costs beyond that defined in this Contract, Customer shall have the right to rescind all or part of this Contract (if such a rescission is practical) or to end the Contract term upon ten (10) days written prior notice. Should the Contract be terminated under such circumstances, Customer shall be absolved of all penalties and financial assessments related to cancellation of the Contract. Customer shall not be charged by Milsoft for such compliance beyond the cost of the pre-existing fees. Customer shall also not be charged by Milsoft for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the pre-existing fees.

29. NON-COLLUSION. Milsoft hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of Customer, or other person or entity concerning the obtaining of this Contract. In addition, Milsoft agrees that a duly authorized Milsoft representative will sign a non-collusion affidavit, in a form acceptable to Customer that Milsoft has not received from Customer any incentive or special payments, or considerations not related to the provision of the Software and Services described in this Contract. Further, Milsoft shall not employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of Customer or any member of his/her immediate family.

30. EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION POLICY. As a condition of providing goods and services, Milsoft shall adhere to all federal, state and local laws, ordinances, rules and regulations, and policies prohibiting discrimination in regard to persons to be served and employees and applicants for employment including, but not limited to, the following:
     a. The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
     b. The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
     c. Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended, and rules adopted thereunder.
     d. The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USCA § 12101 et seq.), as amended, and regulations promulgated thereunder.

Milsoft shall, as a condition of providing Software and Services, as required by law and/or the City's Equal Opportunity Employment/Nondiscrimination Policy, not discriminate against persons to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

Where there has been a conclusive finding that Milsoft has violated federal, state, or local equal opportunity statutes, ordinances, rules/regulations, or policies, Milsoft shall be barred from providing goods and services to Customer for three (3) years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless a specific exemption is granted by Customer's governing body.

Any violation of federal, state, or local equal opportunity statutes, ordinances, rules/regulations, or policies during the course of time during which Milsoft is providing Software or Services to Customer shall be regarded as a material breach of the Contract, and Customer may terminate effective as of the date of delivery of written notification to the Milsoft.

Any employee of Milsoft providing goods and services to Customer under his Contract, or any employee of a subcontractor of Milsoft providing goods and services to Customer under this Contract, or any bona fide organization representing such employees may file a written complaint with the governing body or its designated agent, if any, challenging the compliance by Milsoft with the terms of this policy, the governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated. Any Milsoft employee found to have retaliated in violation of a federal or state law against an employee for filing a claim of violation of federal, state, or local equal opportunity statutes, ordinances, rules/regulations, or policies shall be ineligible to provide any goods or services to the City for a period of three (3) years from the date of such finding.

31. RIGHT TO AUDIT. Milsoft agrees that the representatives of Customer shall have access to, and the rights to audit, examine, or reproduce, any and all Milsoft records related to the applicable ethical and legal obligations enumerated above in the preceding two sections of this Contract. Milsoft shall retain all such records for a period of four (4) years after final payment on this Contract or until all audit and litigation matters that Customer has brought to the attention of the Milsoft are resolved, whichever is longer.

32. INSURANCE. Milsoft will maintain insurance in compliance with Exhibit 1 to this Contract.

33. NOTICE. All notices given under this Contract must be in writing and shall be deemed duly received only upon (a) personal hand delivery; or (b) if by certified mail (with return receipt requested) or overnight courier, at 9:00 a.m.the second business day after posting or at the time recorded by the delivery service; or (c) confirmation of electronic transmission via facsimile or email; using the addresses or numbers shown below or any other address or numbers as either party may designate by ten days prior written notice given in accordance with this provision.

If to Customer:	*If to Milsoft:*
City of Georgetown	**Milsoft Utility Solutions, Inc.**
Attn: City Manager	*Attn:* Adam Turner, CEO of Business Operations
P.O. Box 409	P.O. Box 5726
Georgetown, Texas 78627	Abilene, Texas 79608
	Facsimile: (325) 690-0338
With a copy to:	Email: adam.turner@milsoft.com
City of Georgetown	
ATTN: City Attorney	

P.O. Box 409
Georgetown, Texas 78627

This section does not apply to the service of any proceedings or other documents in any legal action.

34. **INDEPENDENT CONTRACTOR**. The parties agree that Milsoft is an independent contractor. Customer will not control the manner or means of Milsoft's performance, but shall be entitled to any exclusive, Customer-specific, nonproprietary work product as detailed in this Contract. Customer will not be responsible for paying employment taxes or other similar levies that may be required by the U.S. Internal Revenue Service or other state or federal agencies. This Contract does not create a joint venture or partnership.

35. **THIRD-PARTY BENEFICIARIES.** Nothing in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either Customer or Milsoft.

36. **ADVERTISEMENT.** Milsoft shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of Customer without specific written authorization in advance. Milsoft shall not install any signs or other displays within or outside of the City's premises.

37. **SEVERABILITY.** This Contract is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Contract if it can be given effect without the invalid parts.

38. **ENTIRE AGREEMENT; AMENDMENTS; SIGNATURES.** The SOW (if any) and all referenced schedules and addenda are integral parts of this Contract as if written verbatim herein. Collectively, this Contract sets forth all authorized and material representations, constitutes the parties' entire agreement and understandings with respect to the subject matter. No addendum, amendment or modification shall be effective unless in writing and duly executed by authorized representatives of both parties. Signatures may be made and/or delivered by electronic means, and any true, correct and complete copy of this fully signed instrument shall be as enforceable as the original.

IN WITNESS WHEREOF, the parties have signed by their duly authorized representatives as of the dates entered below.

CITY OF GEORGETOWN, Texas   **MILSOFT UTILITY SOLUTIONS, INC.**

By:_____   **By:**_____
   (Signature)   Adam Turner, CEO of Business Operations

   _____
   (Name & Title, typed or printed)

Date:_____   **Date:**_____

EXHIBIT 1
GEORGETOWN INSURANCE REQUIREMENTS

I. Milsoft agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:
   - A.   Commercial General Liability
   - B.   Business Automobile Liability
   - C.   Workers' Compensation
   - D.   Professional Liability

II. For each of these policies, Milsoft's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Successful Proposer's insurance and shall not contribute to it. No term or provision of the indemnification provided by Milsoft to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's representative at the time of execution of this Contract and approved by the City before work commences.

III. General Requirements Applicable to All Policies.
   - A. Only licensed insurance carriers authorized to do business in the State of Texas shall be accepted.
   - B. Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.
   - C. "Claims made" policies are not accepted, except for Professional Liability insurance.
   - D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Georgetown.
   - E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
     1. The insurance company is licensed and authorized to do business in the State of Texas.
     2. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO.
     3. All endorsements and coverages are included according to the requirements of this Agreement.
     4. The form of notice of cancellation, termination, or change in coverage provisions is specified in this exhibit.
   - F. The City of Georgetown, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.

IV. Commercial General Liability requirements:
   - A. Coverage shall be written by a carrier rated "A: VIII" or better in accordance with the current A. M. Best Key Rating Guide.
   - B. Minimum Combined Single Limit of $1,000,000 per occurrence per project for bodily injury and property damage with a $2,000,000 annual aggregate limit.
   - C. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
   - D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
   - E. The coverage shall not exclude: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground coverage.
   - F. The City shall be listed as Additional Insured, and the policy shall be endorsed to waive rights of subrogation, to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

V. Workers' Compensation Insurance Requirements:
   - A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Successful Proposer, the Consultant, all employees of any and all subconsultants, and all other persons providing services on the Project must be covered by a workers compensation insurance policy,   either directly through their employer's policy (the Successful Proposer's, or subconsultant's policy) or through an executed coverage agreement on an approved DWC form. Accordingly, if a subconsultant does not have his or her own policy and a coverage agreement is used, Successful Proposers and subconsultants must use that portion of the form

whereby the hiring Successful Proposer agrees to provide coverage to the employees of the subconsultant. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Successful Proposer may not be used.

B. The workers compensation insurance shall include the following terms:
1. Employer's Liability limits of $1,000,000 for each accident is required.
2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VI. Professional Liability Requirements:
A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
B. Minimum of $1,000,000 per occurrence and $2,000,000 aggregate, with a maximum deductible of $100,000.00. Financial statements shall be furnished to the City upon request.
C. For "claims made" policies, the availability of a 24-month extended reporting period is necessary. The retroactive date shall be shown on the certificate of liability insurance.