RESOLUTION NO. 2018-060

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A NOTIFICATION SERVICES SUBSCRIPTION AGREEMENT WITH ONSOLVE INTERMEDIATE HOLDING COMPANY D/B/A ONSOLVE, LLC; PROVIDING FOR TELECOMMUNICATIONS, TEXT, EMAIL AND OTHER SOCIAL MEDIA COMMUNICATIONS TO TOWN RESIDENTS AND BUSINESSES AT A COST OF $3,800 PER YEAR FOR A ONE (1) YEAR TERM WITH THE OPTION OF EXTENDING UP TO FOUR ADDITIONAL ONE-YEAR TERMS; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 19, 2013, the Town entered into an agreement with Rapid Notify to provide emergency notification services to the Town of Southwest Ranches ("Town") for a one (1) year term with the option to extend for four (4) additional one-year terms; and

WHEREAS, on June 19, 2018, the agreement with Rapid Notify expired; and

WHEREAS, on April 2018, the Town, in compliance with the Town's procurement procedures, received four (4) quotes for notification subscription services to include emergency and non-emergency telecommunications, text, email and other social media communications for the Town; and

WHEREAS, on May 24, 2018, the Town reviewed three (3) responsive quotes and ranked OnSolve, LLC as the most responsive and responsible respondent; and

WHEREAS, the Town Council believes it is in the best interest of the Town to enter into an agreement with OnSolve Intermediate Holding Company D/B/A OnSolve, LLC as the Town's preferred notification subscription services provider for a (1) one-year term which may be renewed for up to four (4), one (1) year renewal options at the discretion of the Town Administrator.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The above-referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves the Agreement with OnSolve Intermediate Holding Company D/B/A OnSolve, LLC as specifically delineated in Exhibit "A", attached hereto and incorporated herein by reference.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the agreement in substantially the same form as that attached hereto as Exhibit "A"; and authorizes the Town Administrator to approve the four (4) one-year extensions at his discretion and to effectuate the intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 26th day of July, 2018, on a motion by C/m Breitkreuz and seconded by C/m Jablonski.

McKay	___	Ayes	___
Fisikelli	___	Nays	___
Breitkreuz	___	Absent	___
Jablonski	___		
Schroeder	___		

Doug McKay, Mayor

ATTEST:

Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff, Esq., Town Attorney

115010585.1

NOTIFICATION SERVICES SUBSCRIPTION AGREEMENT

THIS NOTIFICATION SERVICES SUBSCRIPTION AGREEMENT which includes this Services Order with Schedule 1 and Exhibits A and B (collectively, the "Exhibits"), attached hereto (collectively, the "Agreement") is made as of ***the last date signed below on the Exhibits*** (the "Effective Date"). This Agreement sets forth the terms and conditions under which Provider (as defined below) will provide and Customer (as defined below) will receive access to the Notification Services (defined in Exhibit A).

SERVICES ORDER

Provider Information: ("Provider")	**Provider Name:** **Entity Type:** **State of Incorporation:** **Provider Address:**	**ONSOLVE, LLC** **Limited Liability Company** **Delaware** **780 W. Granada Boulevard** **Ormond Beach, FL 32174**
Customer Information: ("Customer")	**Customer Name:** **Entity Type:** **State:**	Town of Southwest Ranches Government Municipality Florida
Customer Business Contact:	**Contact/Title:** **Customer Address:** **Phone:** **Email:**	Sandy Luongo/General Services Manager 13400 Griffin Road Southwest Ranches, FL 33330 (954) 343-7476 sluongo@southwestranches.org
Customer Primary Contact:	**Contact/Title:** **Phone:** **Email:**	☒ Check if contact is the same as the business contact _____ _____ _____
EU or Swiss Personal Data (defined in Exhibit A)?	**Will Customer transmit any EU or Swiss Personal Data to or through the Notification Services? Check one:** ☐ **Yes** ☒ **No** **If yes, Customer must execute and comply with the Data Processing Addendum which will become part of this Agreement.**	

Payment Terms: Payment shall be in advance, within thirty (30) days from receipt of invoice, excluding any Fees billed in arrears. Unless otherwise specified on a Customer purchase order or below, Provider will send invoices to the Customer Business Contact address above:

Customer Invoice Name:	Town of Southwest Ranches
Attention:	Sandra Luongo
Address:	13400 Griffin Rd.
City, State, Zip:	Southwest Ranches, FL 33330
Phone:	(954) 434-0008
Email:	sluongo@swranches.org

Preferred method of receiving invoices: ☐ Email ☒ US Mail

SUBSCRIPTION PERIOD: **One (1) Year**

RENEWAL TERM: **One (1) Year**

Item Description	QTY	Annual Price	Period	Total
Notification Services				
CodeRED® - UNLIMITED MESSAGES **Includes:** • **Unlimited** Initiators • Up to **11,999** Recipients A deviation above 10% in the number of Recipients shall result in increased pricing at Provider's then-current rates. • GIS (Target Recipients by Geographic Location): **Town of Southwest Ranches, Florida** ("Notification Area") • Unlimited Customer Organizations • Unlimited Contact Groups • Access to Shared Telephony Port Pool • Launcher App (iPhone and Android) • **Public Records Community Notification Enrollment Page (self-registration)** • One (1) Annual Live Web-based Remote Training(s) • Unlimited Pre-recorded Web-based Remote Trainings • System Maintenance and Notification Services Upgrades • Initial Commercial Data Upload Provider will perform Commercial Data accuracy updates 3 to 4 times per year. These updates ensure that the Commercial Data maintained by Provider undergoes periodic accuracy checks using Provider's most current in-house compiled database including, but not limited to, household addresses and telephone numbers. • One (1) Annual Provider-Assisted Database Update for Customer data It will be the sole responsibility of the Customer to provide data and request the Provider-Assisted Database Update. This update does not include any manual data entry (eg. editing excel spreadsheets).	1 Account	$3,800.00	1 Year	$3,800.00
Foreign Message Translation ("FMT") for the Languages selected on Schedule 1 to this Services Order: All Notifications must be input in English. Once specified, languages may not be changed, absent execution of an updated Schedule 1. ONLY those Users that have opted-in to the Notification Services will receive their selected FMT. Translation is supplied by a third party and is AS-IS.	3 Languages	Included	1 Year	Included
Banks Messages are not transferable.				
Messages for the Notification Services	Unlimited		Annual	Included
Additional Features (will not be prorated for any partial year)				
GIS Custom Map (to be provided by Customer, and hosted by Provider) GIS information must be in a standard format recognizable and electronically transferable to the Notification Services. A full GIS map must be provided to be used in the Notification Services	1 Custom Map	$2,500.00	Annual	Upon Request
Additional Languages for FMT as selected on Schedule 1:	3 Languages	$250.00	Annual	Upon Request
Insurance Certificate Holder		**Included**		**Included**
Non-Recurring Services				
Setup Fee One (1) hour minimum. Set up is complimentary for the first 60 days from the Effective Date	1 Hour	$135.00		Waived for 60 Days
Additional Live Web-based Remote Trainings One (1) hour minimum	1 Hour	$150.00		Upon Request

Onsite Training - US and Canada One (1) trainer, for up to eight (8) hours. Customer will pay for travel expenses in accordance with Exhibit A	1 Day	$1,500.00		Upon Request
Additional Provider-Assisted Database Updates or Manual Data Entry One (1) hour minimum.	1 Hour	$100.00		Upon Request
Professional Services - Requires a SOW				Upon Request
			Total:	**$3,800.00**

***Transaction Fees**:

- A Message includes System Minutes or SMS Texts.
  - "System Minute" means sixty (60) seconds of connected call time in the Notification Services. Call time will be deducted in six (6) second increments. Only connected calls including live, answering machine, voicemail and/or fax tone connections will result in call time deduction.
  - "SMS Text" means a short message service text having approximately (140) characters or less (may vary by carrier). SMS Texts are deducted per SMS message. Lengthy notifications that are broken into multiple SMS messages will incur multiple charges.
  - CodeRED® Mobile Alert App and Email Notifications will not be deducted from Messages.
  - Transaction Fee is equal to $0.09/ Message (for refund purposes only).

ONSOLVE, LLC

Signed: [signature]

Printed Name: Amanda J Bouman

Title: Assistant Secretary

Date: July 23, 2018

TOWN OF SOUTHWEST RANCHES, FLORIDA

Signed: [signature]

Printed Name: Doug McKay

Title: MAYOR

Date: July 26, 2018

Initials

Customer_____

SCHEDULE 1 – FOREIGN MESSAGE TRANSLATION

Please select **Three (3)** languages.

Selected	Language
☐	Catalan (Catalan)
☐	Chinese (Simplified, PRC)
☐	Chinese (Traditional, Hong Kong S.A.R.)
☐	Chinese (Traditional, Taiwan)
☐	Danish (Denmark)
☐	Dutch (Netherlands)
☐	Finnish (Finland)
☐	French (Canada)
☐	French (France)
☐	German (Germany)
☐	Italian (Italy)
☐	Japanese (Japan)
☐	Korean (Korea)
☐	Norwegian, Bokmål (Norway)
☐	Polish (Poland)
☐	Portuguese (Brazil)
☐	Portuguese (Portugal)
☐	Russian (Russia)
☐	Spanish
☐	Spanish (Mexico)
☐	Spanish (Spain, International Sort)
☐	Swedish (Sweden)

EXHIBIT A - TERMS

1. **Certain Definitions.**

1.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement, where "control" means the control, through ownership or contract, of more than 50% of all the voting power of the shares entitled to vote for the election of the entity's directors or members of the entity's governing body; provided that such entity shall be considered an Affiliate only for the time during which such control exists.

1.2 "Applicable Law" means any domestic and/or foreign statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law.

1.3 "Data Processing Addendum" means a data processing addendum in the form provided by Provider and executed by the Parties that is applicable to the processing of data under this Agreement.

1.4 "Documentation" means any official, applicable documentation that Provider provides to Customer (electronic or written, as available in the Notification Services' resource library).

1.5 "Emergency" or "Emergencies" means any matter regarding immediate harm to life and/or property.

1.6 "EU or Swiss Personal Data" means Personal Data of any European Economic Area (EEA) resident as defined under Directive 95/46/EC, and any successor thereto, or of any Swiss resident as the Swiss Federal Data Protection Act of 1992, and any successor thereto.

1.7 "Fees" means any fees due hereunder, including without limitation all Transaction Fees and Subscription Fees.

1.8 "Initiator" means an individual person or application capable of creating and issuing Notifications through the Services.

1.9 "Notifications" means messages issued by an Initiator through the Notification Services, whether or not responded to by Recipient.

1.10 "Notification Content" means all content, data, text, messages and other material contained in a Notification.

1.11 "Notification Services" means Provider's System-based, Internet-accessed notification services to set up and send Notifications, as listed on the Services Order.

1.12 "Recipient" means an individual person capable of only receiving and responding to Notifications and, if permitted, updating its own user profile.

1.13 "Representatives" means Customer's employees and consultants and Customer's Affiliates and its employees.

1.14 "Sensitive Data" means any personally identifiable information relating to health/genetic or biometric information; religious beliefs or affiliations; political opinions or political party membership; labor or trade union membership; sexual preferences, practices or marital status; national, racial or ethnic origin; philosophical or moral beliefs; criminal record, investigations or proceedings or administrative proceedings; financial, banking or credit data; date of birth; social security number or other national id number, drivers' license information; or any other "sensitive data" category specifically identified under any Applicable Laws.

1.15 "Services" means the Notification Services and related services provided by Provider under this Agreement.

1.16 "Services Order" means the order attached hereto.

1.17 "Standard Personal Information" means name, business contact details (work telephone number, cell phone number, e-mail address and office address and location), personal contact details (home telephone number, cell phone number, other telephone, e-mail address and physical address), geolocation, and employee ID or other non-identifying ID number.

1.18 "Subscription Fee" means the fees for access to and use of the Notification Services.

1.19 "Subscription Period" means the subscription period specified on the Services Order.

1.20 "System" means the software, hardware, and infrastructure collectively used by the Notification Services, which may include third-party components.

1.21 "Term" means the Subscription Period and all Renewal Terms.

1.22 "Transaction Fee" means the fees for individual transactions of sending and/or receiving Notifications to and from devices.

1.23 "User(s)" is the collective term for Initiator(s) and Recipient(s). User subscriptions are for designated Users and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

2. **SCOPE OF THE SERVICES.**

2.1 **Notification Services.** Subject to the terms of this Agreement, Provider will provide Customer with access to use the Notification Services for communicating matters involving Emergencies and information of public interest and concern, and only in accordance with the Provider's Documentation. Only Customer and its Representatives may act as Initiators. All use of the Notification Services through Customer's account, whether by Customer or its Representatives or due to Customer or its Representatives' failure to maintain account security, are subject to the restrictions set forth in this Agreement, and Customer shall be responsible for (i) all Fees accruing from the use of the Notification Services as described herein, and (ii) all actions made through its account as described herein. Customer may not, and may not allow or assist any other entity to, sublicense, assign, transfer, distribute, rent or sell use or access the Notification Services, whether as a service bureau or otherwise, or remove, alter or obscure any product identification, copyright or other notices. Customer agrees that all communications with Provider under this Agreement will be with the Customer only; Customer will be responsible for all contact with Affiliates covered by this Agreement.

2.2 **Support for the Notification Services.** Provider will provide to Customer the technical support, maintenance, and generally available updates for the Notification Services. Customer shall not contract with or otherwise allow a third party to provide assistance or support for the Notification Services without the prior written consent of Provider.

2.3 **Service Components**. Customer shall not, and shall not allow or assist any other entity to, decompile, disassemble, or otherwise reverse engineer or attempt to discover any source code or underlying ideas of any component of the Notification Services, or modify any component of the Notification Services, except to the extent (but only to such extent) that applicable law prohibits such restrictions.

2.4 **Audit**. During the Term of this Agreement and for a period of four (4) years thereafter, each party shall have the right (at its own expense, upon reasonable notice, and no more frequently than once per calendar year unless prior breach has been uncovered) to conduct or have a third party auditor conduct an inspection of each party's compliance (including any other persons or entities that are permitted to use or access the Notification Services) with this Agreement. Each party will, and shall cause its Representatives, to cooperate in good faith with such audit activities. In the event an audit uncovers a breach of this Agreement, the breaching party agrees to pay the non-breaching party the costs of such audit within ten (10) days of receipt of notice of the results of such audit and the costs therefor. See below for additional audit rights of Customer.

2.5 **Professional Services.** From time to time, Customer may engage Provider to provide certain professional services ("Professional Services"), such as marketing, implementations, software testing and custom modifications, related to Provider's Notification Services. Each such engagement of Professional Services will be described in a statement of work ("SOW") that must be accepted in writing by an authorized representative of each party. In the event of a conflict between the terms provided in this Agreement and the terms of any SOW, the terms of this Agreement will prevail, except that the terms of the SOW shall prevail over conflicting terms of this Agreement (but only with respect to such SOW) where the SOW explicitly identifies such conflicting terms and confirms the intent of the Parties to supersede or modify the conflicting term of this Agreement.

3. **FEES AND PAYMENT.**

3.1 **Fees and Expenses.** Customer shall pay the Fees and expenses as set forth in the Services Order. If applicable, all reasonable and customary travel related expenses, such as airfare, hotel, transportation, and meals will be billed to Customer for any on-site work performed under this Agreement. If travel expenses are incurred, Provider will make reasonable efforts to hold travel costs to a minimum.

3.2 **Payment and Taxes.** Unless otherwise specified on the Services Order, Provider will invoice Customer for all Fees and reimbursable expenses incurred under this Agreement as set forth on the Services Order, and all invoiced amounts will be due and payable thirty (30) days after the date of the invoice. Overdue amounts will be subject to a late payment charge at the lesser of one and one half percent (1.5%) per month or the highest rate permissible under applicable law for the actual number of days elapsed from the date due. All billing and payment will be in United States dollars only. All payments hereunder are exclusive of all taxes, and Customer agrees to pay any taxes, whether foreign, federal, state, local or municipal that may be imposed upon or with respect to the Services performed or technology provided hereunder, exclusive of taxes on Provider's net income.

4. **TERM AND TERMINATION.**

4.1 **Term**. Unless earlier terminated in accordance with the terms of this Agreement, this Agreement will commence on the Effective Date and continue until the end of the Subscription Period listed on the Services Order. Customer may renew this Agreement for successive Renewal Terms of one (1) year each, up to a maximum of four (4) Renewal Terms unless otherwise agreed to in writing by the parties, by providing any of the following to Provider prior to the end of the Subscription Period or then-current Renewal Term: a signed renewal letter (in electronic or hard copy format); a purchase order for payment of the annual fee for one additional year; or payment for one additional year. Renewal Terms shall be on the same terms and conditions as herein, except as otherwise specified on the Services Order. The prices for any Renewal Term shall be those stated in the Services Order.

4.2 **Termination by Either Party**. If either party defaults in the performance of or compliance with any of its material obligations under this Agreement and such default has not been remedied or cured within thirty (30) days after written notice of such default, the non-defaulting party may immediately terminate this Agreement in addition to its other rights and remedies.

4.3 **Termination by Customer**. **(1)** Customer, acting through its Town Administrator or his/her designee, reserves the right to terminate this Agreement in whole or in part for default if Provider becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Provider under any State or Federal Law relating to bankruptcy, reorganization, receivership or assignment for the benefit of creditors. In the event of such termination Provider will refund an amount equal to the prorated amount of Subscription Fees paid for the remainder of the Term, less any expenses for Transactions completed prior to the date of termination, which shall be calculated based upon the Transaction Fees on the Services Order. Unless prohibited by applicable law, Customer is not required to engage in competitive re-procurement, nor is Customer required to obtain the lowest price. **(2)** Customer may terminate this

Agreement for its convenience as of 12:01am on the annual anniversary of the Effective Date by providing Provider with no less than thirty (30) days advance written notice, provided however, Customer shall pay all unpaid Fees that would become due under the then-current term and no Fees paid hereunder shall be refunded. Upon being notified of Customer's election to terminate, Provider shall immediately cease performing any further services or incurring additional expenses. **(3)** Notwithstanding anything herein to the contrary, Customer may also terminate this Agreement for lack of funds. In the event the funds to finance the services under this Agreement become unavailable or other funding source applicable, Customer may provide Provider with thirty (30) days written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the Parties from negotiating a new Agreement in this scenario. In the event that Customer elects to terminate Provider for lack of funds as provided for in this Section, and Customer's termination for lack of funds is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination will be automatically deemed converted to one for convenience, and Provider shall solely be paid and Provider's damages are solely limited to the compensation Provider would be entitled to pursuant to subparagraph (2) of this Section. **(4)** In addition to any other grounds for termination stated herein, Customer, in its sole discretion, may terminate this Agreement immediately upon the occurrence of any of the following events: a. Provider's violation of the Public Records Act; b. Provider's insolvency, bankruptcy or receivership; c. Provider's violation or non-compliance with Section 13.15 of this Agreement; or d. Provider's violation of non-compliance with Section 13.26 of this Agreement. In the event this Agreement is terminated by Customer pursuant to subparagraphs (1) and (4) of this section prior to the expiration of the Term of this Agreement (including any Renewal Term), Provider shall refund a prorated portion of the Subscription Fees based on the remaining unused portion of the prepaid Term (including any Renewal Term), less any expenses for usage accrued prior to the date of termination.

4.4 **Suspension**. Provider may suspend the provision of the Notification Services to Customer under this Agreement: (a) effective immediately upon notice if Customer breaches any provision under Section 8. (Customer Restrictions); or (b) if payment for any portion of the Fees is not received by Provider within fifteen (15) days after receipt of written notice from Provider that payment is past due. Such suspension shall not otherwise modify or lengthen the Term of this Agreement, nor shall any rights or obligations hereunder be waived during the suspension period.

4.5 **Effects of Termination**. Upon termination or expiration of this Agreement, (i) Provider will upon written request of Customer, erase Customer data from the production servers controlled by Provider to provide the Notification Services; provided, however, that data from production servers is backed up nightly to back-up servers that automatically store such data for up to ninety (90) days after it is transferred to the back-up servers from the production servers, (ii) Customer will immediately pay to Provider all amounts due and payable prior to the date of such termination and, except in the event of termination by Customer due to breach by Provider, all unpaid Subscription Fees that would become due under the then-current Subscription Period or Renewal Term if such termination did not occur, (iii) Provider shall retain any Subscription Fees paid to date, except in the event of termination by Customer due to breach by Provider, wherein Provider will refund an amount equal to the prorated amount of Subscription Fees paid for the remainder of the Term, less any expenses for Transactions completed prior to the date of termination, which shall be calculated based upon the Transaction Fees on the Services Order, (iv) Customer shall immediately cease all use of the Notification Services and return or destroy all copies, extracts, derivatives and reflections of the Notification Services, and upon Provider's request, provide a written notice signed by an executive officer authorized to bind Customer that certifies that Customer has fully complied with this clause, and (v) remedies for breach, rights to accrued payments and Sections 1 (Certain Definitions), 2.4 (Audit), 3. (Fees and Payment), 4.5 (Effects of Termination), 5 (Ownership), 7 (Confidentiality and Data Security), 8.2 (Liability for Content), 11 (Indemnification), 12 (Limitation of Liability), and 13 (General) will survive.

5. **OWNERSHIP.** All rights not expressly granted to Customer herein are expressly reserved by Provider. As between the Parties, the Notification Services and the System are and will remain exclusive property of Provider and its licensors. Provider shall own any and all developments, inventions and work product created under any Professional Services. Notification Content shall be owned by Customer. Provider shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Notifications Services or System any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the Notification Services or System. Users are subject to Provider's terms of service and privacy policy available on Provider's website.

6. **SYSTEM MONITORING.** Provider expressly reserves the right to monitor any and all use of the Notification Services. Provider may gather System data for the purpose of optimizing the Notification Services. This information includes, but is not limited to, data regarding memory usage, connection speed and efficiency. Provider shall have no obligation to monitor the Notification Content, but reserves the right to monitor the Notification Services for purposes of verifying compliance with the terms of this Agreement.

7. **CONFIDENTIALITY AND DATA SECURITY.**

7.1 **Confidential Information**. During the course of this Agreement, each party may have access to confidential, proprietary or trade secret information disclosed by the other party, including, without limitation, ideas, trade secrets, procedures, methods, systems, and concepts, whether disclosed orally or in writing or stored within the System, or by any other media ("Confidential Information"). Any information related to the Notification Services or System shall be deemed to be the Confidential Information of Provider, and any Notification Content shall be deemed to be the Confidential Information of Customer. Each party (the "Receiving Party") acknowledges that the Confidential Information of the other party (the "Disclosing Party") contains valuable trade secrets and other proprietary information of the Disclosing Party and that any such Confidential Information will remain the sole and exclusive property of the Disclosing Party. Each party will use the Confidential Information provided hereunder only for the purpose for which it was provided, restrict disclosure of Confidential Information solely to its employees and contractors with a need to know, not disclose such Confidential Information to any other entities, and otherwise protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. Information will not be deemed "Confidential Information" if such information: (a) is generally available to the public (other than through breach of this Agreement); (b) is received from a third party lawfully empowered to disclose such information without being subject to an obligation of confidentiality; or (c) was rightfully in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party. Notwithstanding the above, the Receiving Party will not be in violation of the confidentiality restrictions herein with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with prompt written notice prior to such disclosure where reasonably possible in order to permit the Disclosing Party to seek confidential treatment of such information. Provider understands and acknowledges that Customer (and Provider to extent required by Florida Law) must comply with Chapter 119, Florida Statutes – Florida's public records laws.

7.2 **Data Restrictions. The terms of this Section apply notwithstanding anything else.**

(a) Customer acknowledges and agrees that Provider does not require or "pull" any specific data from Customer, that Customer controls which data and content is input through the use of the Notification Services and which data is sent and to whom such data is sent, and that Provider has no obligation to monitor the content of any data or content. Customer shall be responsible for procuring any necessary consents and making any notifications under Applicable Law with respect to the provision of the data to Provider and the processing of such data by Provider through the Notification Services. Upon request of Provider, Customer will provide Provider with documentation to support such consent.

(b) Customer acknowledges and agrees that (i) Provider's System and Notification Services are not intended to transmit Sensitive Data, or health-related or financial-related information (including nonpublic information collected by financial institutions subject to regulations specific to the conduct of financial services), and (ii) that Provider only specifically tracks the privacy regulations of the United States, Canada, and the European Economic Area, Switzerland and Japan with respect to the Standard Personal Information and shall have no obligations with respect to privacy regulations in other countries or for other types of data.

(c) Customer agrees that it shall not, under any circumstances, transmit or store any Sensitive Data to or through the Notification Services.

(d) Customer shall not transmit or store any EU or Swiss Personal Data to or through the Notification Services unless Customer has executed the Data Processing Addendum with Provider, and in such case Customer shall fully comply with the Data Processing Addendum.

(e) Customer understands and agrees that private citizens and other persons may voluntarily contribute their contact information to Provider for use in the Notification Services (the "Resident Data"). Customer acknowledges and agrees that Provider shall notify such individuals that their data will be transmitted to Customer, and that the transmission of such data to Customer may render it public record. Customer agrees that Provider shall not be responsible for the failure of individuals to contribute their contact information because of such notice. Provider agrees that it will, upon the request of Customer, provided all Fees due during the then current Term are paid in full, transmit the Resident Data, two (2) times during the then current Term, to Customer at no charge. Customer acknowledges and agrees that, in addition to the Resident Data, Provider shall use its own commercially available data sources (the "Commercial Data") in the Notification Services and that such Commercial Data is subject to licensing requirements that do not permit Provider to transfer ownership of such Commercial Data to Customer. Accordingly, the Commercial Data shall remain the sole and exclusive property of Provider or its licensors.

(f) Upon written request of Customer, Provider will erase Customer data from the production servers controlled by Provider to provide the Notification Services; provided, however, that Customer understands and agrees that data from production servers is backed up nightly to back-up servers that automatically store such data after it is transferred to the back-up servers from the production servers.

7.3 **Hosted Security**. Provider maintains, and will continue to maintain throughout the Term of this

Agreement, security measures to protect Customer data and prevent unauthorized access in accordance with its then-current policies.

7.4 **Data Processing Addendum**. If executed by each party, each party shall comply with the Data Processing Addendum.

8. **CUSTOMER RESTRICTIONS.** This Section includes pass-through terms from certain Provider vendors to provide telephony, facsimile, GIS and/or Short Message Service (SMS) Transactions to Customer and as such, Provider may modify these terms upon thirty (30) days written notice to Customer if reasonably necessitated due to changes by the third party providers. Failure to comply with these terms could result in the termination of certain critical services from Provider's suppliers which would impact all of Provider's customers; thus, in the event that Customer breaches any of such terms or conditions, Provider may suspend the provision of the Notification Services if, in Provider's reasonable determination, suspension is reasonably necessary to avoid liability or termination of a contract with one of Provider's suppliers.

8.1 **Acceptable Use Policy.** Customer shall use the Notification Services in compliance with all Applicable Laws. The Notification Services may be used solely for the transmission of Notifications. Customer shall comply with the terms set forth in Exhibit B (Acceptable Use Policy) attached hereto.

8.2 **Liability for Content.** Customer shall be responsible for, and under no circumstances will Provider or Provider's Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Notification Content, including any mistakes contained in the Notification Content or the use or subject matter of the Notification Content. Further, Customer is responsible for any Notifications that are sent through its accounts (other than if caused by the System itself or breaches by Provider).

8.3 **Security of Account.** Customer agrees to maintain all security regarding its (and its Users') account ID, password, and connectivity with the Notification Services. If Customer's account ID or password are stolen, or otherwise compromised Customer is obligated to immediately change the password and inform Provider of the compromise.

9. **LIMITED WARRANTY AND DISCLAIMER.** Provider warrants that: (a) the Notification Services will perform materially in accordance with its Documentation; and (b) Provider shall provide the Services in a professional and diligent manner. In the event the Notification Services fail to perform materially in accordance with its Documentation (a "Program Error"), Provider agrees, for the Term of this Agreement, to use commercially reasonable efforts to correct, cure or otherwise remedy, at Provider's option, such Program Error at Provider's sole expense, provided such Program Error was not caused due to Customer's failure to use the Notification Services in accordance with the terms of this Agreement. Customer agrees to cooperate and work closely with Provider in a prompt and reasonable manner in connection with Provider's correction efforts. Customer's sole remedy for any breach of warranty under this Section will be to have Provider use its commercially reasonable efforts to cure such breach as provided herein. If Provider fails to remedy the breach within one (1) month, Customer may terminate this Agreement and Provider will promptly refund any unused portions of prepaid Subscription Fees, if any (less any expenses for usage accrued prior to the date of termination). EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND SYSTEM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES OR SYSTEM, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SYSTEM WILL BE PROVIDED ERROR FREE OR WITHOUT INTERRUPTION, THAT ALL NOTIFICATIONS WILL BE DELIVERED, OR THAT THE NOTIFICATION SERVICES WILL WORK WITH, OR BE SUPPORTED WITH RESPECT TO, ALL PROTOCOLS, NETWORKS OR OPERATING SYSTEMS OR ENVIRONMENTS.

10. **CHANGES TO THE NOTIFICATION SERVICES.** Provider may modify or delete any features of the Notification Services in any manner that (i) does not have an adverse impact on the Notification Services or (ii) may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands. Provider shall notify Customer at least fifteen (15) days in advance of such changes to the Notification Services under clause (ii) that have an adverse impact on the Notification Services.

11. **INDEMNIFICATION AND RESPONSIBILITY.**

11.1 **Provider IP Indemnification.** Provider will defend, indemnify, and hold harmless Customer and its employees (collectively, "Customer Indemnitees"), from and against any and all actions, claims or assertions brought against them by a third party ("Claims"), and all liabilities, awards, damages, settlements, fees, penalties, costs and expenses (including reasonable attorney's fees) owing to third parties (including for avoidance of doubt, government and regulatory agencies) in connection therewith (collectively, "Liabilities") arising from any infringement of any third party's patent, copyright, trademark, or trade secret rights by the Notification Services or the System provided by Provider under this Agreement (other than to the extent based on any Notification Content or any modifications to the Notification Services or System made by Customer).The foregoing obligation of indemnification does not apply with respect to the Notification Services or the System or portions or components thereof (i) that Provider did not supply, (ii) that are combined with other

products, processes or materials where the infringement or misappropriation relates to such combination, unless Provider expressly authorized such combination, (iii) to the extent that Customer continues allegedly infringing activity after being provided modifications that would have avoided the alleged infringement, or (iv) where Customer's use of the Notification Services or System is not strictly in accordance with this Agreement. In the event Provider believes that the System or Notification Services are, or are likely to be, the subject of an infringement claim, Provider may, at its option, (1) procure for Customer the right to continue using the Notification Services under this Agreement, (2) replace or modify the System or Notification Services so that it becomes non-infringing but substantially equivalent in functionality and performance, or (3) if neither clause (1) or (2) are reasonably feasible in spite of Provider's reasonable efforts, terminate this Agreement and the rights granted herein and refund a prorated portion of the Subscription Fees based on the remaining unused portion of the prepaid Term, less any expenses for usage accrued prior to the date of termination. The foregoing obligations are Provider's only obligations and liability in connection with infringement by the System or Notification Services.

11.2 **Provider General Indemnification.** Provider will defend, indemnify, and hold harmless Customer Indemnitees from and against any and all Claims, and all Liabilities in connection therewith, arising from any negligence, gross negligence or willful misconduct by Provider.

11.3 **Provider Data Security Indemnification.** Provider will defend, indemnify, and hold harmless Customer Indemnitees from and against any and all Claims, and all Liabilities in connection therewith, arising from any breach of Section 7 (Confidentiality and Data Security) by Provider.

11.4 Customer Responsibility. Customer will be responsible for any and all Claims and Liabilities in connection therewith, arising from: (i) any negligence, gross negligence or willful misconduct by Customer; (ii) any breach of Section 7 (Confidentiality and Data Security) by Customer, including any failure by Customer to procure appropriate consents or any use of the Notification Services to transmit or store any Sensitive Data; (iii) any breach of Section 8 (Customer Restrictions) by Customer; and/or (iv) Customer's and its Users' use of the Notification Services or any component thereof, including any Notification Content. This Section 11.4 is not intended, and shall not be construed to require indemnification of Provider by Customer from any such Claims or Liabilities resulting from third party claims against Provider.

11.5 **Indemnification Procedures.** In the event Customer seeks indemnification hereunder, Customer shall provide Provider with: (i) prompt written notice of any claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense. In any proceeding Customer shall have the right to retain, at its expense, its own counsel. Notwithstanding the foregoing, the Provider may not enter into a settlement of a claim without the Customer's written consent.

12. **LIMITATION OF LIABILITY.**

12.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION AND RESPONSIBILITY), OR FOR ANY BREACH OF SECTION 7 (CONFIDENTIALITY AND DATA SECURITY) OR SECTION 8 (CUSTOMER RESTRICTIONS), (I) NEITHER PARTY (OR ITS AFFILIATES, OR ITS OR THEIR LICENSORS OR SUPPLIERS) WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR LOSS OF PROFIT OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF THE PARTIES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND (II) EXCEPT AS SET FORTH HEREIN, EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES RENDERED HEREUNDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED (IN THE CASE OF PROVIDER LIABILITY) ANY FEES PAID BY CUSTOMER TO PROVIDER, OR (IN THE CASE OF CUSTOMER LIABILITY) ANY FEES PAID OR OWED BY CUSTOMER UNDER THIS AGREEMENT, DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE FIRST NOTICE IS PROVIDED BY EITHER PARTY REFERENCING THE RELEVANT CLAIM HEREUNDER.

13. **GENERAL.**

13.1 **Export Compliance**. The Notification Services, System, and other Provider technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use the Notification Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation, and will not permit any U.S.-sanctioned persons or entities to act as Users.

13.2 **Force Majeure.** Neither party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, or any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delays in transportation or communications, or any act or failure to act by the other party, its employees, agents or contractors; provided,

however, that the foregoing shall not excuse any failure of Provider to maintain its redundant hosted sites, unless such event impacts all redundant site locations. The Parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a substantial delay in the performance of this Agreement.

13.3 **General.** Each party to this Agreement agrees that any dispute arising under this Agreement shall be submitted, to non-binding mediation according to the rules and regulations of, and administered by, the commercial mediation division of the American Arbitration Association, and that any agreement which is executed by both Parties during such mediation may be enforced in any court of competent jurisdiction. Notwithstanding anything herein, either party may seek injunctive relief and the enforcement of judgments in any court of competent jurisdiction, no matter where located. The prevailing party in any action to enforce or interpret this Agreement shall be entitled to recover costs and expenses including, without limitation, attorneys' fees, whether in a court of first jurisdiction and any courts of appeal.

13.4 **Independent Contractors**. Customer and Provider are independent contractors and nothing in this Agreement will be deemed to create any agency, employee-employer relationship, partnership, or joint venture between the Parties. Except as otherwise specifically provided in this Agreement, neither party will have or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.

13.5 **Notices**. All notices and consents required or permitted under this Agreement must be in writing; must be personally delivered or sent by registered or certified mail (postage prepaid), by overnight courier or other nationally recognized carrier, or by facsimile (receipt confirmed), in each case to the appropriate party listed below and, if not indicated, at the address set forth on the Services Order, and will be effective upon receipt. Each party may change its address for receipt of notices by giving notice of the new address to the other party.

To Provider:	
Provider:	ONSOLVE, LLC
Attention:	Legal Notices
Address:	780 W. Granada Boulevard
City, State, Zip:	Ormond Beach, FL 32174
Phone:	866-939-0911
Fax:	386-676-1127
To Customer:	
Customer:	See Customer Business Contact on Services Order

13.6 **Publicity.** Provider may issue one (1) press release within thirty (30) days of the Effective Date of this Agreement announcing the existence of this Agreement and generally describing the terms hereof or as otherwise mutually agreed by the Parties. During the Term of this Agreement, Provider may use Customer's name and logo on the Provider web site and in Provider's collateral marketing materials relating to the Notification Services to simply identify Customer as a purchaser of the Services. Notwithstanding the foregoing or anything to the contrary in this Agreement, no endorsement by Customer of the product and/or services provided will be used by Provider in any way, manner or form in product literature or advertising.

13.7 **U.S. Government End Users**. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, *all software* and accompanying documentation provided in connection with this Agreement are "commercial items," "commercial computer software," and or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of this Agreement. Customer will ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

13.8 **Severability**. If any provision of this Agreement is held by a court of law to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby and the illegal, invalid, or unenforceable provision will be deemed modified such that it is legal, valid, and enforceable and accomplishes the intention of the Parties to the fullest extent possible.

13.9 **Waivers**. The failure of either party to enforce any provision of this Agreement, unless waived in writing by such party, will not constitute a waiver of that party's right to enforce that provision or any other provision of this Agreement.

13.10 **Entire Agreement.** This Agreement supersedes all prior discussions, understandings and agreements with respect to the subject matter and shall take precedence over any conflicting terms in a purchase order and related documentation such as order acknowledgement forms. Only a further writing that is duly executed by both Parties may modify this Agreement.

13.11 **Counterparts**. This Agreement may be executed in facsimile and in counterparts.

13.12 **Construction.** The headings contained in this Agreement shall not affect the interpretation of this Agreement and are for convenience only. Customer agrees that this Agreement shall not be construed against Provider as the drafter, and that Customer has read and understands this Agreement, and had the opportunity to review this Agreement with legal counsel.

13.13 **Signatures.** Provider and Customer each represent and warrant that the individual signing on behalf of such party has full authority to cause such party to enter into and be bound by the terms of this Agreement and that the execution of this Agreement has been properly made

in accordance with any applicable laws, ordinances, rules, regulations, and governing documents by which such party may be bound.

13.14 **Public Records.** Notwithstanding anything to the contrary herein, Provider acknowledges that Customer is subject to Chapter 119, Florida Statutes, "Public Records Law," and Customer shall comply with the provisions of this Section 13.14 and the Public Records Law. No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Provider acknowledges the public shall have access at all reasonable times, to all documents and information pertaining to Customer's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access Customer and the public to all documents subject to disclosures under applicable law. To the extent that Provider has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071, Provider shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes. Provider agrees to keep and maintain public records required by Customer to perform the services in Provider's possession or control in connection with Provider's performance under this Agreement, and upon the request from Customer's custodian of public records subject to 7.2(e), to provide Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the completion thereof if Provider does not transfer the records to Customer. Upon completion of this Agreement, Provider agrees subject to 7.2(e), at no cost to Customer to transfer to Customer all public records in possession of Provider or keep and maintain public records required by Customer to perform the services. If Provider transfers all public records to Customer upon completion of this Agreement Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements within the timeframes set forth in section 4.5. If Provider keeps and maintains public records upon completion of this Agreement, Provider shall meet all applicable requirements for retaining public records. All records stored electronically will be made available to Customer upon request from the Customer's custodian of public records the format in which it is held. Provider's failure or refusal to comply with the provisions of this Section shall result in the immediate termination for cause of this Agreement by Customer. Customer will notify Provider of any instance in which the disclosure or copies of Provider's Confidential Information is requested by any party to be disclosed under Florida Statute Chapter 119. If Provider wishes Customer to deny the request for disclosure or copies, Provider must reply to Customer as soon as reasonably possible, but in no event later than the time required for Customer to comply with the requirements of Florida Statute Chapter 119, and subject to a maximum response time of ten business days in any event. Further, Provider shall advise Customer of the legal basis for claiming the information should be withheld, and the specific section of the Florida Statutes that exempts this material from the mandatory disclosure requirements of Florida Statute Chapter 119. If Provider fails to respond as required under this Section, Customer may release the requested documents. If the party requesting the disclosure contests the legal basis for withholding any of the documents Provider contends should be held as confidential, then Provider will, at its sole cost, defend its position that the requested documents should not be released. To the extent Customer incurs liability for costs or attorneys' fees (including, without limitation, those awarded to the party requesting the disclosure) in connection with such challenge or appeal made at the request of Provider, Provider agrees to indemnify and hold harmless Customer for those costs and fees.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PHONE (954) 434-0008; EMAIL: RMUNIZ@SOUTHWESTRANCHES.ORG OR THE, ASSISTANT TOWN ADMINISTRATOR/TOWN CLERK, TOWN OF SOUTHWEST RANCHES, 13400 GRIFFIN ROAD, SOUTHWEST RANCHES, FLORIDA, 33330.

13.15 **Anti-Discrimination.** Provider shall not discriminate against any person in its operations, activities or delivery of services. Provider shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully sued as a basis for service deliver.

13.16 **Occupational Safety and Health**. Provider must comply with requirements under Chapter 440, Florida Statutes, and the Occupational Safety and Health Act of 1970.

13.17 **Customer's Audit and Inspection Rights and Retention of Records**. In addition to any other audit rights of Customer hereunder, Customer shall have the right to audit the accounting books, records and accounts ("Accounting Records") of Provider that are related to this Agreement. Provider shall keep such Accounting Records as may be necessary in order to record complete and correct entries related to this Agreement. Provider shall preserve and make available, at reasonable times for

examination and no more than once per year unless prior breach has been uncovered, and audit by Customer, all financial records, supporting documents, statistical records, and any other accounting documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of four (4) years after expiration or earlier termination of this Agreement, unless Provider is notified in writing by Customer of the need to extend the retention period. Such retention of such records and documents shall be at Provider's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or four (4) years, whichever is longer, the Accounting Records shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Customer to be applicable to Provider's records, Provider shall comply with all requirements thereof. However, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Provider. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Customer's disallowance and recovery of any payment upon such entry.

13.18 **Joint Preparation**. Customer and Provider both acknowledge that they have sought and received whatever competent advice and legal counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

13.19 **Drug-Free Workplace**. Contractor shall maintain a drug-free workplace.

13.20 **Truth-in-Negotiation Certificate**. Signature of this Agreement by Provider shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

13.21 **No Third Party Beneficiaries** This Agreement is solely for the benefit of the Parties hereto, and is not entered into for the benefit of any other person or entity. Nothing in this Agreement shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

13.22 **Sovereign Immunity.** Nothing in this Agreement is intended nor shall it be construed or interpreted to waive or modify the Customer's Sovereign Immunity defense or any other of the Customer's immunities and limitations on liability as provided for in Florida Statutes, as now worded or as may hereafter be amended and all Florida case law interpreting same.

13.23 **Jurisdiction and Venue** The exclusive venue for any litigation arising from or relating to the Agreement shall be in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida. This Agreement shall be governed by the substantive laws of the State of Florida.

13.24 **WAIVER OF RIGHT TO JURY TRIAL BY ENTERING INTO THIS AGREEMENT, PROVIDER AND CUSTOMER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.**

13.25 **Conflicts**. Neither Provider nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of judgment related to its performance under this Agreement. Provider agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against Customer in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Provider agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Customer in connection with any such pending or threatened legal or administrative proceeding in which he or she is not a party. The limitations of this section shall not preclude Provider or any other persons from representing themselves in any action or in any administrative or legal proceeding. In the event Provider is permitted to utilize subcontractors to perform any services required by this Agreement, Provider agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Section.

13.26 **Contingency Fee**. Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Customer shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

13.27 **Insurance**. The Provider shall include Certificate(s) of Insurance by an insurance company authorized to do business in the State of Florida Prior to award and in any event prior to commencing Work, the Provider shall provide the Town with certified copies of all insurance policies providing coverage which meets the requirements as outlined below:

A. **WORKER'S COMPENSATION**

Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all

applicable federal laws. Provider shall carry Worker's Compensation Insurance with the statutory limits, as required by Florida Statutes, chapter 440, as amended, which shall include employer's liability insurance with a limit of not less than Five Hundred Thousand Dollars ($500,000) for each accident, and Five Hundred Thousand Dollars ($500,000) for each disease.

B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**:
Provider shall carry business automobile liability insurance with minimum limits of One Million Dollars ($1,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.

C. **COMMERCIAL GENERAL LIABILITY**:
Provider shall carry Commercial General Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage, and not less than Two Million Dollars ($2,000,000) in the aggregate.

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of Provider to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring Provider, which relate to the activities of Provider and Customer. **Such notification shall be in writing, and shall be submitted by Provider to the Town Administrator prior to cancellation of such policies. The cancellation notice requirement shall be reflected on the Certificate of Insurance.**

End Exhibit A

EXHIBIT B – ACCEPTABLE USE POLICY

1. General Terms.

1.1 All Notification Content is Customer's sole responsibility. Customer is solely responsible for the integrity and quality of the Notification Content.

1.2 Customer shall be responsible for procuring any necessary consents with respect to the provision of any data transmitted through the Notification Services or System.

1.3 Customer shall use any data it uploads into the Notification Services in accordance with any and all restrictions applicable to such Data and all Applicable Laws.

1.4 Customer will use and permit its Users to use the Notification Services in accordance with this Agreement and all Applicable Laws, including without limitation the Telephone Consumer Protection Act, Fair Debt Collections Practices Act, Federal Communications Commission ("FCC") or Federal Trade Commission ("FTC") rules or regulations and any and all other Applicable Laws related to pre-recorded telephone and/or text messages and the use of automated dialing equipment.

1.5 Customer will include, at the beginning of each Notification, its official business or government name. Customer will include, at the end of each Notification, a telephone number for Customer.

1.6 Customer will not send any Notifications to mobile devices owned by a User unless Customer has obtained such User's "opt-in" consent to receive pre-recorded, telephone and text Notifications using automated dialing equipment. The Services include a website that allows for Users to opt-in.

1.7 Customer must provide Users with a simple mechanism for opting out or unsubscribing from receiving Notifications, including information on how to "opt-out" or unsubscribe. Provider's website includes a link to opt-out.

1.8 Customer will not send Notifications to phone numbers that are emergency numbers and/or other numbers that may not be called using automated dialing equipment under Applicable Law.

1.9 Per Provider's fair use policy, Customer's total Notifications to an individual Recipient will not exceed an average of one (1) Notification per day (via any contact method), absent an emergency or a specific use case for the Recipient. Should Customer exceed this fair use, the Parties will meet to discuss the reasons, review best practices and determine if an adjustment to Customer's Services plan is necessary. Due to vendor requirements for ensuring Notifications sent by the Services are not blacklisted, Customer shall adhere to this fair use policy.

1.10 Customer will not send any Notification Content that it knows, or has reason to know: (i) infringes another's rights in intellectual property; (ii) invades any privacy laws including without limitation another's right to privacy and/or any privacy policies of Customer or any third-party; and/or (iii) justifies a complaint to the FCC and/or FTC.

1.11 Customer will not, and will not permit its Users or any third parties to: (i) engage or facilitate any unethical, deceptive or misleading practices in connection with the use of the Notification Services; (ii) use the Notification Services in connection with any telemarketing, solicitations, donations, sales, spamming or any unsolicited messages (commercial or otherwise); and/or (iii) provide Notification Content to be transmitted in the Notification Services which: (a) is defamatory, libelous, obscene, pornographic, or is otherwise harmful; (b) promotes violence, discrimination, illegal activities, gambling, alcoholic beverages, guns or tobacco; and/or (c) contains or otherwise links to viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment.

1.12 In the event the Notification Services include SMS Texts, Customer may send SMS Texts in text format only.

1.13 Customer acknowledges and agrees that Notifications may not be delivered to the phone if not in range of a transmission site, or if sufficient network capacity is not available at a particular time. Even within a coverage area, factors beyond the control of the carrier may interfere with message delivery, including the customer's equipment, terrain, proximity to buildings, foliage, and weather. Customer acknowledges that urgent Notifications may not be timely received and that the carrier does not guarantee that messages will be delivered.

1.14 Customer acknowledges that Provider may block Notifications (e.g., based on instructions from Users, carriers, aggregators, government agencies, etc.).

1.15 Commercial, landline data supplied by Provider for use in the Notification Services may be used for emergency Notifications and non-commercial, informational Notifications only.

2. Third Party Terms. Customer agrees to the terms set forth in documents found at the following links, as applicable:

- **(i)** Google's Legal Notices (http://maps.google.com/help/legalnotices_maps.html);
- **(ii)** Google's Acceptable Use Policy (AUP) (http://maps.google.com/help/legalnotices_maps.html);
- **(iii)** Google's Maps Terms (http://maps.google.com/help/terms_maps.html)
- **(iv)** Google's Maps and Earth Enterprise Universal Acceptable Use Policy (https://enterprise.google.com/maps/terms/universal_aup.html)
- **(v)** ESRI Terms (http://www.esri.com/legal)
- **(vi)** National Weather Service Disclaimer (http://www.weather.gov/disclaimer)
- **(vii)** Microsoft Services Agreement (https://www.microsoft.com/en-us/servicesagreement)
- **(viii)** Microsoft Translator Privacy Statement (https://www.microsoft.com/EN-US/privacystatement/Translator/Default.aspx)

End Exhibit B

This Agreement includes the Services Order with Schedule 1 and Exhibits A and B, attached hereto (and if applicable the Data Processing Addendum).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the Effective Date.

ONSOLVE, LLC	TOWN OF SOUTHWEST RANCHES, FLORIDA
Signed:	Signed:
Printed Name: Amanda J Bowman	Printed Name: Doug McKay
Title: Assistant Secretary	Title: Mayor
Date: July 23 2018	Date: July 26, 2018