RESOLUTION NO. 2010-75-R

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT WITH CONTEXT CONNECT, LLC, FOR PROVISION OF ccALERT™ SERVICE

BE IT RESOLVED by the City Council of the City of Madison, Alabama, that Paul Finley and Melanie A. Williard, in their respective capacities as Mayor and City Clerk-Treasurer of the City of Madison, Alabama, are hereby authorized to execute on behalf of the City the attached Agreement with Context Connect, LLC, for the provision of the ccAlert™ Notification and Alert Platform, software which will enhance the City's emergency service capabilities by enabling better communication between the City's fire and police departments as well as members of other emergency response systems serving the citizens of Madison, said service to be provided for up to four hundred (400) users at a cost of one hundred fifteen dollars ($115.00) per month, totaling one thousand three hundred eighty dollars ($1,380.00) per year for a term of one (1) year.

ADOPTED this 12th day of April, 2010.

Bill Holtzclaw, President
Madison City Council
City of Madison, Alabama

ATTEST:

Melanie A. Williard, City Clerk-Treasurer

APPROVED this 12th day of April, 2010.

Paul Finley, Mayor
City of Madison, Alabama

ccAlert Messaging Service Agreement

MESSAGING SERVICE AGREEMENT (this ***Agreement***), dated as of _____, 2010 (***Effective Date***) by and between Context Connect, LLC., a Massachusetts limited liability company (***CCL***) and the City of Madison, Alabama, a Municipal corporation (type of legal entity) based in Madison, Alabama (***Customer***).

WHEREAS, CCL has developed software known as the ccAlert™ Notification and Alert Platform (the ***Software***) that enables communication of messages between individuals within specific community groups;

WHEREAS, CCL provides its customers access to and use of the Software at ccAlert.net (the ***Site***) hosted by or on behalf of CCL (the ***Service***);

WHEREAS, Customer provides emergency services to the residents of Alabama, and

WHEREAS, Customer desires to access the Service to enhance its emergency service capabilities;

NOW THEREFORE, In consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. License.

1.1 License Grant. Subject to the terms of this Agreement, CCL hereby grants to Customer a non-exclusive right (without a right to sublicense) to permit Registered Members to access and use the Service during the Term in the United States to provide communication messaging services among Customer's Registered Members (and itself).

1.2. Administration. Customer shall identify one person who is at least 18 years of age as its administrator (the ***Administrator***). CCL will issue to that person an Administrator ID consisting of a unique Administrator identification name and password. Use of the Administrator ID by any person other than the Administrator to whom such Administrator ID was issued is prohibited.

1.3 Registered Members. The Administrator will be permitted to specify which of its community members will be permitted to access and use the Service. Before Customer permits any community member to have access to the Service, the Administrator shall submit to CCL through the Service a deployment notice (each, a ***Deployment Notice***) which will (a) identify the member by name and title; (b) specify such member's email address, mobile phone number and mobile phone carrier, as well as other communication device information, such as fixed line phone number and fax number; and (c) specify whether such member will be permitted only to receive messages or if such member will also be permitted to send messages. CCL will then assign to each such person a unique user identification name and password for access to and use of the Services (***User ID***), whereupon such person will be a Registered Member. Customer shall be solely responsible for ensuring the security and confidentiality of all User IDs. Use of any User ID by any person other than the Registered Member to whom such User ID was issued is prohibited. Customer agrees to maintain a current list of all Registered Members and to promptly notify CCL in writing of changes to such list, including without limitation, the termination of any Registered Member's employment by Customer. Customer shall promptly notify CCL if any User ID is disclosed to any person who is not a Registered Member or is otherwise lost. No person under the age of 18 is permitted to be a Registered Member.

1.4 IP Generally. Customer obtains no rights to any service or software or information except as expressly set forth herein. CCL retains all rights, title, and interest in the Software, the Site, the Service and all CCL Confidential Information and Customer shall not take any action inconsistent with such title and ownership. Without limiting the foregoing, Customer shall not remove, alter, or obscure any copyright, patent, trade secret, proprietary rights, or other legal notices appearing in or on the Software or the Site or any report generated by the Service, and shall reproduce all such notices on any copies of such items made by or for Customer. Notwithstanding anything in this Agreement to the contrary, Customer acknowledges

that CCL shall be free to use (including, without limitation, disclose, display, reproduce, modify, publish, market, advertise, distribute, perform, import, and export) in its software or services, without obligation, liability, or compensation of any kind, any feedback or suggestions made by or on behalf of Customer or its affiliates regarding CCL's products or services or how to improve or alter such products or services. Customer agrees not to take action against any entity or person based on such use.

1.5 Government Use. If the Site or any Software or Service or documentation is accessed or acquired by or on behalf of a unit or agency of the U.S. Government, such Site, Software, Service or documentation is "commercial computer software" or "commercial computer software documentation". Absent a written agreement to the contrary, the U.S. Government's rights with respect to such Site, Software, Service or documentation are: (a) if for civilian agency use, Restricted Rights, as defined in and subject to 48 CFR 52.227-19; and (b) if for Department of Defense use, limited by the terms of this Agreement pursuant to DFARS 227.7202. Manufacturer is Context Connect LLC, 4 Henderson Circle, Newburyport, Massachusetts 01950.

2. Term. The term of this Agreement (the ***Term***) commences upon the Effective Date and expires on the first anniversary thereof, unless earlier terminated in accordance with this Agreement; provided that the initial term shall be renewed for successive one-year periods unless, no fewer than sixty (60) days prior to the expiration of the then-current contract year, either party notifies the other party in writing of its intention not to renew.

3. Fees.

3.1 Basic Fees. The Customer shall pay to CCL an amount equal to $115/month or $1380/year for up to 400 Registered Members for each contract year. CCL reserves the right to change its fees; *provided* that CCL shall notify Customer no fewer than ninety (90) days prior to the effective date of such change, which will not become effective until the following contract year.

3.2 Other Services. Any services (including without limitation, development or implementation services) requested of CCL by Customer beyond customary support services shall be invoiced on a time and materials basis at cost plus 25%.

3.3 Payments. All Fees payable under this Agreement shall be due net 30 days from the date of CCL's invoice. Payments due under this Agreement shall be made to CCL's notice address. Any amount not paid when due shall bear a late payment charge, until paid, at the lesser of 1.5% per month or the maximum amount permitted by law. Whenever the Agreement is renewed for an additional contract year, the invoice at the commencement of such contract year will include the annual fee for all Registered Members as of the end of the previous contract year, irrespective of whether they were Registered Members for the entirety of the previous contract year.

3.4 Taxes. All payments required by this Agreement are exclusive of all taxes, duties, tariffs, levies, and similar assessments. Customer agrees to bear and be responsible for the payment of all such charges imposed upon Customer's use of the Service or upon other services provided by CCL, excluding taxes based upon CCL's net income and CCL's corporate franchise taxes. All amounts due under this Agreement shall be grossed-up for any withholding taxes imposed by any government.

3.5 Cost of Equipment & Access. Customer shall be solely responsible, at its own expense, for acquiring, installing, maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for its Administrator and its Registered Members to connect to and access the internet to access the Services. The Software, the Site and the hosting equipment and underlying architecture and environment maintained by or on behalf of CCL are subject to change.

4. Confidentiality.

4.1 Definitions.

Confidential Information means any Information disclosed during the Term; *provided* that Confidential Information does not include Information (a) independently developed by employees of Recipient who have not had direct or indirect access to Discloser's Confidential Information; (b) generally known to the public through no act or omission of Recipient; or (c) obtained by a Recipient from any third party not owing any confidentiality obligation to the Discloser with respect to such Information; *provided further* that (i) no such exception shall apply except to the extent clearly demonstrated by the Recipient; and (ii) only the specific Information that meets the exclusion shall be excluded and not any other Information that happens to appear in proximity to such excluded portion (for example, a portion of a document may be excluded without affecting the confidential nature of those portions that do not themselves qualify for exclusion). Without limiting the generality of the foregoing, (1) Confidential Information of Customer includes all Information transmitted by Customer to the Service; and (2) Confidential Information of CCL includes means all data, text, graphics, photographs, video, audio, user interfaces, visual interfaces and software (including the Software) at the Site or made available by CCL through the Service (excluding links to third party websites and content at such sites) and the design, structure, selection, coordination, expression, "look and feel" and arrangement of such Information.

Derivative Information means all copies, digests, summaries of Information, as well as feedback, suggestions, improvements or other inventions, ideas or works of authorship derived from the Information.

disclose and its variants include any manner of revealing Information orally, visually or in any Medium, whether by affirmative action, omissions from disclosed Information (i.e., Information that is implied by the omission), or access or exposure to Information.

Discloser means the party disclosing Confidential Information or on whose behalf Confidential Information is disclosed [and such of Discloser's suppliers, contractors and customers as provide information in connection herewith].

Information means all forms and types of financial, business, marketing, operations, scientific, technical, economic and engineering information, whether tangible or intangible, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, codes, know-how, computer software, databases, product names or marks, marketing materials or programs, plans, specifications, shop-practices, customer lists, supplier lists, engineering and manufacturing information, price lists, costing information, employee and consulting relationship information, accounting and financial data, profit margin, marketing and sales data, strategic plans, trade secrets and all other proprietary information of Discloser (including all Derivative Information created therefrom or based thereon).

Medium (Media) means any communications or storage medium, regardless of method of storage, compilation or memorialization, if any, including without limitation, physical storage or representation (including models and prototypes), electronic storage, graphical (including designs and drawings) or photographic representation, or writings.

Permitted Purpose means (a) for Customer, the use of the Service by Customer for its internal business purposes and the transaction of business between CCL and Customer; and (b) for CCL, the provision of the Service by CCL and the transaction of business between CCL and Customer.

Recipient means the party receiving Confidential Information hereunder.

4.2 Confidential Information. Each party acknowledges that Confidential Information of the other party may be disclosed. Each Recipient agrees that it will (a) not disclose the Discloser's Confidential Information to anyone except for the Permitted Purpose; (b) take steps that are substantially equivalent to the steps it takes to protect its own proprietary information (and in any event no less than reasonable steps), during the term of this Agreement, and for a period of five (5) years following expiration or termination of this Agreement, to prevent the duplication or disclosure of Discloser's Confidential Information, other than to its employees or agents who must have access to such Confidential Information to perform such party's obligations hereunder, who each agree to comply with this provision; and (c) use the Confidential

Information only for the Permitted Purpose. Each Recipient shall bear the responsibility for breaches of this Section by any of its employees, contractors or agents irrespective of whether the breach occurs during or after the period of the employment, agency or contractor relationship.

4.3 Compelled Disclosures. Either party may disclose Confidential Information required to be disclosed by law; *provided* that it shall (i) notify the Discloser hereunder promptly upon learning about any court order or other legal requirement that purports to compel disclosure of any Confidential Information; and (ii) cooperate with the Discloser (at Discloser's expense) in the exercise of the Discloser's right to protect the confidentiality of the Confidential Information before any tribunal or governmental agency. Disclosure of Confidential Information pursuant to a court order or other legal requirement that purports to compel disclosure of any Confidential Information shall not constitute publication or otherwise alter the character of that information as Confidential Information as between the parties hereunder.

4.4 Equitable Relief. The parties agree that any breach or threatened breach of this Agreement by a Recipient would cause not only financial harm, but irreparable harm to the Discloser; and that money damages will not provide an adequate remedy. In the event of a breach or threatened breach of this Agreement by a Recipient, the Discloser shall, in addition to any other rights and remedies it may have, be entitled to an injunction (without the necessity of posting any bond or surety) restraining the Recipient from disclosing or using, in whole or in part, any Confidential Information.

4.5 Unauthorized Access. Notwithstanding the foregoing, Customer acknowledges that no internet website, nor any internet-connected server, is entirely safe from unauthorized access. CCL will use reasonable commercial efforts to keep Information transmitted to or through the Service by Customer on secure servers with the goal of preventing unauthorized access, but CCL shall bear no responsibility for unauthorized access to or unauthorized modification or destruction of any such Information.

5. Customer Information.

5.1 Limited Use. Subject to the obligations of confidentiality set forth herein, Customer grants to CCL a nonexclusive, nontransferable license to use the Customer Information only to the extent necessary for CCL to provide the Services to Customer and to transact business with Customer. Customer retains the rights in and title to all intellectual property rights in and to the Customer Information (including without limitation any trademark, service mark, logo, trade name or commercial marking, whether registered or not), and all rights not expressly granted hereunder by Customer are reserved by Customer.

6. Use of Service.

6.1 Generally. Customer shall (a) comply with all laws applicable to its use of the Service, including the laws of the United States (including without limitation, laws concerning the export of technical information) and the laws of each jurisdiction from which the Service is accessed; (b) not interfere with access or use of the Service by others; and (c) comply with the Rules published by CCL at the Site concerning use of the Service, the Software and the Site. Customer represents and warrants that it has sufficient rights in and to all Information that it transmits to the Service and that no such Information or transmission infringes or misappropriates the rights of any third party. Customer shall indemnify, defend and hold CCL harmless from and against any and all claims, actions and allegations brought against CCL, including third party claims, arising out of or in connection with any damage or destruction to the CCL facilities, data or equipment, or the facilities, equipment or data of CCL's other customers or third parties to the extent caused by the negligence or willful misconduct of Customer, its representative(s), agents or designees.

6.2 Rules. CCL posts at the Site rules concerning use of the Service, which rules may be modified by CCL from time to time by posting such revised rules at the Site no fewer than ten (10) days prior to the effective date of the change (the ***Rules***). The Rules are hereby incorporated into this contract and Customer agrees to cause its Administrator and all Registered Members to abide by such Rules.

6.3 Messages. As further described on Site, Registered Members with message-sending authorization may submit messages to be sent via the Services to other Registered Members (each, a ***Message***). CCL will use commercially reasonable efforts to send (a) the Messages to the designated recipient; and (b) an e-mail confirmation to the sender indicating that the Message has been transmitted. CCL shall have no liability if any Message is not received. It is the responsibility of the Customer to use customary backup methods of communicating if any Registered Member does not receive prompt confirmation from CCL that the Messages have been sent.

6.4 Message Content. Customer acknowledges and agrees that (a) CCL does not, nor does CCL have any obligation to, pre-screen the content of messages sent by any Registered Member (***Member Content***) (b) CCL does not endorse or adopt (and has not necessarily reviewed) any Member Content nor assumes any responsibility for, nor guarantees the accuracy, integrity or quality of, any material therein; (c) all Member Content posted on, transmitted through, or linked from the Services by any Registered Member is the sole responsibility of Customer and CCL acts as a passive conduit for the transmission of such Member Content, (d) CCL may configure and reformat the Member Content to meet the format requirements of the Services, *provided*, that such changes do not alter the meaning, substance or utility of the Member Content; and (e) CCL shall have the right (but not the obligation) in its sole discretion to refuse or remove any Member Content and to edit or delete any Objectionable Content, as defined below, *provided* that if CCL removes, edits or deletes Objectionable Content, it will provide Customer with notice. If Customer believes that CCL has acted mistakenly with respect to certain Member Content, Customer may contact CCL at **[info@contextconnect.com]**.

Objectionable Content means, as to any information in any medium or format, including without limitation text, data, graphics, audio or video, content (or use of the content) that: (i) is libelous or defamatory, pornographic, sexually explicit, unlawful or plagiarized, false or misleading; (ii) a reasonable person would consider harassing, abusive, threatening, harmful, vulgar, profane, obscene, excessively violent, racially, ethnically or otherwise objectionable or offensive in any way; (iii) constitutes a breach of any person's privacy or publicity rights, a misrepresentation of facts, hate speech; (iv) violates or encourages other to violate any applicable law; (v) constitutes unsolicited or unauthorized advertising, promotional material, or any other form of unsolicited commercial advertisement or promotes software or services that deliver unsolicited email; (vi) generates fraudulent impressions or clicks on any web site, (vii) contains viruses or any other computer programming routines or engines that are intended to damage or interfere with any system or information; or (vii) contain direct links (by a single click) to web sites that contain information of the kind described in this definition.

6.5 Message Limits. Customer acknowledges that CCL may establish limits concerning use of the Service, including the maximum number of days that Messages and Message Content will be retained and the maximum number, frequency and size of Messages or other content that may be transmitted or stored by the Service. Customer agrees that CCL has no responsibility or liability for the deletion or failure to store any Message or Member Content maintained or transmitted to or by the Service.

6.6 Site Access. Use of manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools, or the like) to "scrape" or download data from any web pages contained in the Site is strictly prohibited.

7. Warranty & Disclaimer.

7.1 Warranty. CCL will perform the Services in a competent and professional manner and substantially in accordance with the Service documentation. Customer's sole remedy for a breach of this warranty will be for CCL to re-perform the nonconforming Services at no additional charge to Customer.

7.2 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SITE, THE SOFTWARE, THE SERVICES AND ANY OTHER INFORMATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY CCL AND ITS SUPPLIERS, ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND AND

CUSTOMER'S USE OF THE SITE, THE SOFTWARE, THE SERVICES AND SUCH OTHER INFORMATION IS AT ITS OWN RISK. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CCL MAKES NO REPRESENTATIONS OR WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. . WITHOUT LIMITING THE FOREGOING, THE SERVICES AND CUSTOMER'S ACCESS TO AND USE THEREOF ARE NOT WARRANTED TO BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. CCL DISCLAIMS ANY RESPONSIBILITY FOR THE DELETION, FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL.

7.3 INTERNET ACCESS DISCLAIMER. CCL DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM ITS NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). CCL CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CCL DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS AND IN NO EVENT SHALL CCL BE LIABLE FOR ANY DAMAGES (WHETHER IN CONTRACT OR IN TORT) THAT ARE ATTRIBUTABLE TO THE PUBLIC INTERNET INFRASTRUCTURE, OR CUSTOMER'S ABILITY TO CONNECT TO THE INTERNET.

8. Termination.

8.1 Termination Events. This Agreement may be terminated:

(a) by Customer upon written notice to CCL;
(b) by either party, effective thirty (30) days after giving written notice to the other party, if the other party breaches a material obligation of this Agreement and fails to cure the breach within such thirty (30) day period;
(c) by either party, effective upon giving written notice to the other party if such other party is the subject of a Bankruptcy Event; or
(d) by either party upon written notice to the other if such other party's performance hereunder has been prevented by a Force Majeure Event (as defined in Section 11.12) for at least thirty (30) consecutive days.

Notwithstanding the foregoing, CCL reserves the right, in its sole discretion, to terminate or suspend Customer's access to the Services at any time, upon notice to Customer to protect its equipment, reputation, software or services or to mitigate potential legal liability. Termination includes (1) removal of access to all offerings within the Services, (b) deletion of the Administrator ID, User IDs, Messages, Message Content and all related information, files and content associated with Customer's account, and (c) barring further use of the Services. Customer agrees that CCL shall not be liable to Customer, any Registered Member or any third-party for any termination of access to the Services.

Bankruptcy Event means as to a party: (i) any assignment is made by such party for the benefit of creditors; (ii) a receiver, trustee in bankruptcy, or similar officer is appointed to take charge of any or all of such party's property; (iii) such party files a voluntary petition for bankruptcy or passes a resolution for dissolution, liquidation, winding up, or similar action; or (iv) a petition for bankruptcy is filed against such party and is not dismissed within 60 days after filing.

8.2 Effect of Termination. Upon the effective date of termination of this Agreement for any reason, all rights, obligations and licenses of the parties hereunder shall cease; *provided that* (a) upon any termination, Customer shall remain liable to CCL for any amount due for Services performed through the effective date of such termination; (b) no partial refund of amounts paid in advance will be made if Customer terminates

pursuant to Section 8.1(a) or if CCL terminates this Agreement; and (ii) the provisions of Sections 4, 7.2, 8, 9, 10 and 11 shall survive any expiration or termination of this Agreement.

9. Indemnification

9.1 Intellectual Property Indemnification. Except as provided in this Section 9, CCL shall indemnify, defend and hold Customer harmless from and against any third party claim (including reasonable attorneys' fees) against Customer that the Service, as delivered, infringes or misappropriates a patent, copyright, or trade secret right of a third party, where in each case such right is created under the laws of the United States. CCL shall, at CCL's sole option, settle any such action or will pay any final judgment awarded therein.

9.2 Replacement, etc. If any Service becomes, or in CCL's opinion is likely to become, the subject of any injunction preventing its use as contemplated in this Agreement, CCL will, at its option: (a) procure for Customer the right to continue using the Service; (b) replace or modify the Service so that it becomes non-infringing without substantially compromising its functionality; or, (c) if options (a) and (b) are not reasonably available to CCL, terminate Customer's license to the affected Service and refund to Customer an amount allocable to pre-paid fees attributable to the terminated Service.

9.3 Exclusions. CCL shall have no liability or obligation to Customer under Section 9.1 with respect to any claim to the extent based upon: (a) use of the Service in an application or environment or on a platform or with devices other than those for which the Service was designed or contemplated as described in the Service documentation; (b) modifications, combinations, or enhancements of the Service not created by CCL; (c) CCL's compliance with Customer's instructions or specifications; (d) Customer's continued use of the Service after being notified of modifications that would have avoided any claimed infringement or misappropriation, or after termination of this Agreement; or (e) any patent, copyright, or trade secret in which Customer or any of its affiliates has an interest. Customer shall indemnify, defend and hold CCL harmless from all costs, damages, and expenses (including reasonable attorneys' fees) arising from any claim enumerated in clauses (a) through (e) of this Section 9.3.

9.4 Customer Claims. Customer shall defend CCL from and against any third party claim (including without limitation any Message recipient, including and Registered Member) against CCL arising out of any Message, Message Content or breach of this Agreement by Customer, its Administrator or any Registered Member.

9.5 Defense, Notice & Cooperation. To obtain the benefit of the foregoing indemnification, the indemnitee must (a) promptly provide notification of the claim and reasonable cooperation to the indemnitor; (b) tender to the indemnitor complete control of the defense, settlement and compromise of the claim; provided that the indemnitor will not settle any such claim without the consent of the indemnitee unless an unqualified release of the indemnitee is obtained from all third party claimants; and (c) not make any admissions to any third party regarding the claim or settle any indemnified claim except as approved by the indemnitor in writing. Indemnitee may participate in its defense at its own cost and expense. Nothing contained in this Section 9 or this Agreement is, however, intended to require the indemnitor to pay to the indemnitee any amount other than (1) for the costs of the indemnitee's defense, if the indemnitor elects not to defend; (2) such amounts actually paid by the indemnitee to the third party claimant, if the indemnitor fails to pay the third party claimant directly for any settlement approved by indemnitor or any finally awarded judgment in favor of the third party claimant; and (3) in the case of CCL as indemnitor, amounts payable pursuant to Section 9.2(c).

9.6 Entire Liability. The foregoing states (a) the entire liability of CCL with respect to infringement or misappropriation of any intellectual property right by any aspect or use of the Service; and (b) the entire liability of Customer with respect to claims described in Section 9.4.

10. LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, (A) CCL'S LIABILITY FOR DAMAGES TO CUSTOMER FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, SHALL NOT EXCEED THE AGGREGATE AMOUNT

RECEIVED FROM MEMBER DURING THE YEAR PRIOR TO THE CLAIM; AND (B) NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, UNDER ANY THEORY INCLUDING BUT NOT LIMITED TO NEGLIGENCE, CONTRACT OR STRICT LIABILITY), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SERVICES AND/OR DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE SOFTWARE OR SERVICES, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SERVICES WOULD BE HIGHER. THIS SECTION 10 SHALL NOT APPLY TO DAMAGES ARISING FROM (1) ANY BREACH OF ANY CONFIDENTIALITY OBLIGATIONS CONTAINED OR INCORPORATED BY REFERENCE IN THIS AGREEMENT OR (2) INTERFERENCE BY CUSTOMER WITH USE OF THE SERVICE BY ANY OF CCL'S OTHER CUSTOMERS OR DISRUPTION OF THE SERVICE BY CUSTOMER OR DAMAGE TO CCL'S OR CCL'S CUSTOMER'S FACILITIES OR DATA OR EQUIPMENT; OR (3) OBLIGATIONS ARISING UNDER SECTION 9 (INDEMNIFICATION).

11. General Terms.

11.1 Relationship of Parties. For the purposes of this Agreement, each party hereto shall be, and shall be deemed to be, an independent contractor and not an agent, partner, joint venturer, representative or employee of any other party. Neither party shall have authority to make any statements, representations, compromise of rights or commitments of any kind, assume or create any obligations, or to accept process for or take any other action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing by the other party.

11.2 Notices. Unless otherwise provided herein, any notice, invoice, payment or document to be given by one party to the others shall be in writing and delivered personally, by certified or registered mail (postage prepaid), by recognized courier, by fax or by e-mail addressed (a) in the case of CCL, as indicated at the end of Section 1.4 to the Attention of [Sunny Ahn]; and (b) in the case of Customer, to [Central Coventry Fire District]; or to such other place as any party may designate as to itself by written notice to the other party. Any notice, if mailed by a certified or registered mail, properly addressed and postage prepaid, shall be deemed made on the third (3rd) business day after mailing. Any faxed notice shall be deemed made upon confirmation of the fax. In hand and couriered deliveries are deemed made when delivery to the recipient organization is complete. Any notice sent electronically shall be deemed delivered when dispatched; *provided* that the sending party bears the burden of proving that the notice was properly addressed and arrived intact at the first server owned or under contract to the intended recipient (i.e., it is the responsibility of the recipient to ensure that properly addressed messages are routed to individual recipients within its own organization).

11.3 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by both parties, except as expressly set forth herein.

11.4 Waiver. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a continuing waiver or a waiver of any subsequent breach. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar).

11.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of applicable law or public policy, all other conditions and provisions of this

Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereunder be consummated as originally contemplated to the fullest extent possible.

11.6 Assignment. Neither party shall have the right, without obtaining Written consent of the other party, to assign any of its rights and obligations hereunder to any other entities or persons, *provided* that either party may assign all, but not less than all, of its rights and obligations hereunder to a successor in interest of all or substantially all of the business of such party, whether by sale of assets, reorganization, merger or otherwise (a ***Business Sale***). Any attempted assignment, delegation or transfer in contravention of this Agreement shall be null and void. This Agreement shall bind and inure to the benefit of the parties to this Agreement and their respective successors, executors, heirs, representatives, administrators and permitted assigns.

11.7 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of Alabama, USA, without regard for any choice or conflict of laws rule or principle that would result in the application of the domestic substantive law of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11.8 No Implied Licenses. Nothing contained in this Agreement shall be construed as conferring any license or right whether by implication, estoppel or operation of law except as expressly stated herein, or construed as an admission of infringement or validity, or as a waiver of rights to contest the validity, infringement or enforceability of any intellectual property right.

11.9 Further Assurances. At any time and from time to time, each party will, without further consideration, take such further action and execute and deliver such further instruments and documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

11.10 Costs, Expenses & Attorneys' Fees. If either party commences any action or proceeding against the other party to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual costs, expenses and attorneys' fees (including all related costs and expenses), incurred by such prevailing party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

11.11 No Third Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a party to this Agreement, except successors and permitted assignees.

11.12 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, including without limitation any act of God, natural disaster, lightning, fire, storm, flood, earthquake, explosion, war, threat of war, terrorist act, riot, civil disturbances, acts of vandalism and acts of any government or agency thereof (a ***Force Majeure Event***), then the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence, subject to the termination rights of the other party as described in Section 8.

Signature page immediately follows

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as an instrument under seal as of the date first above written.

CONTEXT CONNECT, LLC.	**MADISON FIRE DEPARTMENT**
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: