



## Proposal

To provide:  
Hosted OMS and IVR

*For:*  
**Seguin, City of**  
Seguin, TX

*Presented to:*

*Issued:*  
**Thursday 11th of April 2024 03:10:47 PM**

*Contact:*  
Michael Hand  
*Manager of Sales and Marketing*

**DataVoice International**  
800 N. Watters Road, Ste 130  
Allen, TX 75013  
(972)390-8808

**Statement of Work:**

DataVoice will install and configure the product modules pursuant to the scope set forth in the Product Description section of the proposal. Products listed as Optional at the time of signing are not included in any installation and configuration until they are purchased by the customer. Any material changes or deviations from the standard configuration may, in DataVoice's sole discretion, result in additional fee(s). It is specifically understood that non-disclosed or misrepresented material facts and issues revealed during the discovery process may require additional fees.

This quote includes the following integrations:

AMI

GIS

CIS

AVL on tablets is included at no charge.

Project Management fees for a 90 day project implementation have been included. If the project delays beyond the 90 period, DataVoice reserves the right to submit a change order for additional project management fees as necessary.

## QUOTATION COST SUMMARY NON-RECURRING, INITIAL COSTS

### IVR

License Fees:	\$41,720.00
Professional Services:	\$23,512.50
<b>Subtotal:</b>	<b>\$65,232.50</b>

### OMS

License Fees:	\$88,725.00
Professional Services:	\$99,275.00
<b>Subtotal:</b>	<b>\$188,000.00</b>

<b>Total non-recurring costs</b>	<b>\$253,232.50</b>
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## RECURRING FEES, ANNUAL COST

### Maintenance

IVR:	\$8,991.25
OMS:	\$18,360.00
<b>Subtotal:</b>	<b>\$27,351.25</b>

	Users	Units	Per Unit	Total
<b>IVR SaaS and Subscription Fees</b>				
IVR Hosted Solution	ANNUAL	1	\$5,420.00	\$5,420.00
<b>Subtotal:</b>				<b>\$5,420.00</b>

	Users	Units	Per Unit	Total
<b>OMS SaaS and Subscription Fees</b>				
OMS Base System Hosted at DataVoice	ANNUAL	1	\$5,420.00	\$5,420.00
Employee Notification via Text	ANNUAL	1	\$1,300.00	\$1,300.00
WorkPal App	ANNUAL	1	\$5,885.00	\$5,885.00
WorkPal fee up to 50 users	NONE	1	\$9,000.00	\$9,000.00
Customer Facing Web Portal - For Water	ANNUAL	1	\$1,605.00	\$1,605.00
Real-time Managers Web App - For Water	ANNUAL	1	\$3,210.00	\$3,210.00
Texting & Campaign Interface with DataVoice	MONTHLY	12	\$1,144.00	\$13,728.00
Texting Partner				
<b>Subtotal:</b>				<b>\$40,148.00</b>

<b>Total annual cost of recurring fees</b>	<b>\$72,919.25</b>
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## Product Descriptions

### The IVR portion of the proposal includes the following modules:

**Linux VoIP IVR Base System License Fee - Price: \$19,280.00 Qty: 1**

**Inbound Per Port License - Price: \$2,602.50 Qty: 6**

The base IVR solution includes licensing for a specified number of inbound lines. Users can monitor the reports, graphs and charts to view current and historical usage. If more lines are needed, they can be activated for additional licensing fee.

**Outage Entry Module - Primary Service - Price: \$8,380.00 Qty: 1**

Allows customer's to use the automated system to report their outages. It will allow the customer to enter identifying information, verify the customer's location using text to speech and speak any outage information returned by the OMS, or allow the customer to report an outage at their location. The system also allows the caller's to leave a voice mail attached to the ticket if they have further information on the cause of the outage.

**Outage Entry Module - Other Services - Price: \$14,560.00 Qty: 1**

Outage Entry Module - Water

**Call Customers Verify Restored Power (Primary Service) - Price: \$825.00 Qty: 1**

Automatically places a call to customers who requested a restore notification call. It plays a friendly message letting the customers know that we believe their power has been restored, and if power has not been restored, allows them to press a key to automatically re-enter the outage report into the OMS.

**Call Customers Verify Restoration (Other Svc) - Price: \$3,180.00 Qty: 1**

Automatically places a call to customers who requested a notification when their service is restored. It plays a friendly message letting the customers know that we believe their service has been restored, and if it has not, allows them to press a key to automatically re-enter the issue into the OMS.

**Planned Outage Notification - Price: \$3,945.00 Qty: 1**

Informs customers about planned outages, tree trimming and other activities that might affect their service. Forewarning eliminates many unnecessary customer calls.

**Automated Ticket Entry through IVR (Other Svc) - Price: \$2,590.00 Qty: 1**

Provides IVR menu choices to allow callers to report an issue with an additional service such as water, gas, street or security light, etc.

**IVR Training & Prep - Price: \$825.00 Qty: 1**

Based on Training time and Prep time: IVR Training

**IVR Hosted Solution - Price: \$9,045.00 Qty: 1**

IVR System Hosted By dataVoice

## **The OMS portion of the proposal includes the following modules:**

### **OMS Product Foundation - Price: \$36,805.00 Qty: 1**

OMS Product Foundation includes back office features for entering, managing, dispatching and closing service interruption tickets.

### **Key Account Management - Price: \$3,985.00 Qty: 1**

Automatically alert utility representatives in charge of key accounts when outages have been entered in the system by a key account, or when a key account is part of a known device outage. Continues to send text messages updating the contact manager on the dispatch or restore information as well. Can be set up to notify major customers of issues.

### **After Hours Notification of Outages via email/SMS - Price: \$5,825.00 Qty: 1**

System can identify when an outage report is created by a customer and notify a utility employee that is designated. This notification is designed to be via email or texting only as the IVR is not in place. This module has the ability to use set escalation if the report is not acknowledged by a certain threshold.

### **OMS Base System Hosted at DataVoice - Price: \$9,545.00 Qty: 1**

OMS System Hosted By dataVoice

### **Check Disconnect List - Price: \$825.00 Qty: 1**

This will allow the OMS to query the CIS for the current customers cut for non-pay every 15 minutes. The IVR system (If applicable) will speak a message to customers disconnected for non-payment and transfer their call to a customer service agent, or if the call is being handled by a CSR, the OMS screens will provide a pop up indicating the customer has been disconnected for non-pay.

### **OMS Initial Training Description - Price: \$11,000.00 Qty: 1**

Travel time and Prep time included: Outage Management Basics Class - This class will review the basic functionality of the outage management system including log in access and instructions on entering outages in the system. Outage Management Operations and Dispatch Class - This class will review the crew assembly, dispatching and outage analysis portions of the solution. We will review the Map Viewer and procedures for grouping outages and other service trouble reports. System Administration - This class will review the administration of employee log in and contact management, as well as the modification of system variables within the application. Travel expenses will be billed after the event

### **OMS Actual Training Travel Expenses - Price: \$0.00 Qty: 1**

Reimbursement of actual travel expense (hotel, air fare, car rental and meals) to customer site will be billed separately

### **Additional Service Types for Tracking Incidents - Water - Price: \$7,575.00 Qty: 1**

Allows the utility to manage water trouble reports in the OMS

### **Import of Previous system History - Price: \$8,800.00 Qty: 1**

Import previous System's history into OMS

**GIS Integration Software - Price: \$20,050.00 Qty: 1**

The GIS Publisher allows you to generate browser based maps through a direct integration with your GIS Solution.

**Basic Water Map - Secondary Service - Price: \$7,110.00 Qty: 1**

Basic Water Map as a secondary service, points on the map only, no connectivity.

**Employee Notification via Text - Price: \$2,750.00 Qty: 1**

Allows employees to get true sms notifications from the Utility through texting provider. NOTE; The utility is required to have an existing Customer texting via a third party texting provider to establish an account, and provide DataVoice with login credentials. Addendum No. 1 of the TextPower Mobile Terms and Conditions apply

**WorkPal App - Price: \$16,450.00 Qty: 1**

WorkPal App for iOS, Android or Web Browser. This mobile app allows crews to view and manage outages/incidents remotely from an Apple or Android tablet device or via a web browser. Device tracking only available with iOS and Android

**WorkPal fee up to 50 users - Price: \$0.00 Qty: 1**

WorkPal App - Enterprise user license fee for up to 50 users. Each individual user will be required to have their own license.

**Customer Facing Web Portal - For Water - Price: \$3,235.00 Qty: 1**

**Real-time Managers Web App - For Water - Price: \$2,205.00 Qty: 1**

**Texting & Campaign Interface with DataVoice Texting Partner - Price: \$27,600.00 Qty:**

**1** Allows customers enroll in a service to both automatically report outages via text, as well as receive proactive notifications regarding outages affecting their account(s). NOTE; This will include Auto Enrollment for New Customers if available via third party provider.

**Outage Reporting and Notifications via Text - Water - Price: \$3,380.00 Qty: 1**

**Interface to ACLARA AMI - Price: \$20,860.00 Qty: 1**

Interface to ACLARA AMI to issue ping requests to individual meters or to a group of meters. Results from meter pings will appear in the DataVoice map.

## **1. PRICING**

Prices quoted here are good for ninety(90) days from the date of this document. Price includes software, license fees, unlimited seat licenses, database administration fees, installation, configuration, testing and training.

## **2. PAYMENT AND TERMS**

In consideration for the software provided and services delivered by DataVoice, Customer agrees to pay DataVoice the amount of \$253,232.50. DataVoice will bill, based on the Milestone table below. A Certificate of Installation and a Certificate of Completion will be issued as defined in the Section titled ACCEPTANCE TESTING. The payment terms will be 'net 30 days' on all invoices. Recurring fees and maintenance will be billed immediately following final milestone payment and will be due in 30 days.

Milestone	Contingent On	Terms	Amount
BU Amount from Sale	None		\$0.00
Contract Signing	None	50%	\$126,616.25
Start Project - Project Kickoff Meeting	None		\$0.00
Installation Complete	None	30%	\$75,969.75
Project Completed Ready for final testing	None	20%	\$50,646.50
Training	None		\$0.00
Go Live	None		\$0.00
Additional Billing-Month 1	None		\$0.00
Additional Billing-Month 2	None		\$0.00
Additional Billing-Month 3	None		\$0.00
Additional Billing-Month 4	None		\$0.00

## **3. FEES**

- a. License, Maintenance and Other Fee Rates: DataVoice may revise rates at any annual renewal date. Customer will be advised in writing of the revised rates 60 days prior to the renewal date.
- b. Auto-Renewal: At the end of the License Term, the services will automatically renew for consecutive terms of twelve months. If a party does not want the License to renew, they must provide the other party written notice to this effect at least sixty days (60) prior to the end of the current term.
- c. Prices are for quoted products and services only based on discovery and customers disclosures to date. Pricing for future and additional purchased products or pursuant to any Cooperative Purchasing Agreement will be at DataVoice then-current pricing and not based upon pricing in this Agreement.

## **5. DELIVERY METHOD FOR SOFTWARE AND MAINTENANCE SERVICES**

Software will be delivered electronically. If required, Customer shall make available a standard office environment on Customer's premises for on-site maintenance or other services. If upon arrival to site, DataVoice is not able to start work due to lack of access or preparation on the part of the Customer, work stoppage time is billable.

#### **4. CONDITIONS**

All software and services provided within the scope of this document have been priced accordingly and listed above. Any additional system requirements, software modules, software changes or configuration changes deemed necessary by the utility will be performed under a separate 'Change Order'. Any such changes may affect the annual maintenance. It is specifically understood by the parties that this Agreement, once negotiated, can and will serve as a Cooperative Purchasing Agreement pursuant to which affiliated entities may purchase products and services from DataVoice.

#### **6. ACCEPTANCE TESTING**

DataVoice will:

- Electronically deliver the software on server.
- Setup, configure and test the system.
- Provide Management a system presentation and issue a Certificate of Installation.
- Customer will be allowed 10 business days for System Testing and to report of any issues to DataVoice in writing, or the Certificate of Installation will be deemed accepted.
- Should an event occur that inhibits the Customer from performing System Testing during this time period, the Customer may submit a written request for an extension, which extension is subject to approval in DataVoice's sole discretion.
- DataVoice will correct valid issues identified by Customer, then allow customer 5 business days to verify corrections.
- The above process will repeat until all issues are resolved or the 5 day period has expired.
- DataVoice will then issue a Certificate of Completion and the final invoice.

#### **7. RESPONSIBILITIES OF DATAVOICE INTERNATIONAL, INC**

During the term of this agreement, DataVoice take commercially reasonable measures to:

- a. Under normal conditions, keep the DataVoice Software and covered hardware (if applicable) in good operating condition and shall provide maintenance when the covered hardware is inoperative and/or software fixes in a timely fashion.
- b. Software fixes will be provided in a timely fashion.
- c. Provide remote maintenance software for DataVoice System.
- d. Provide software for 24 hour system monitoring to detect material and relevant software and hardware issues
- e. Install, maintain and upgrade all third party software applications such as PostGreSQL, Post GIS, Apache2, PHP, etc.
- f. Provide emergency technical support 24 hours a day.
- g. Install, configure and upgrade DataVoice supplied system software at DataVoice's discretion when patches or upgrades are available.
- h. Provide backup prior to any upgrade
- i. PCI Compliance Requirements: DataVoice's PCI compliance is limited to the communication between the caller and the credit card provider once the call has been transferred to the PCI IVR. If the call or any data is still resident on the utility's network, it is the responsibility of the utility to maintain the compliance for any hardware that is involved.

#### **8. RESPONSIBILITIES OF CUSTOMER**

At all times during the term of this agreement, Customer shall:



- a. **Customer will designate a project manager responsible for keeping the project on schedule and ensuring delivery of requirements as specified.**
- b. If applicable, Customer will maintain the room in which the DataVoice System is located in a clean and appropriate fashion which includes adequate air conditioning and lighting and adequate power outlets.
- c. Provide an Internet connection to each DataVoice System for remote maintenance software. Customer shall keep this connection activated at all times.
- d. Customer is responsible for all backups of programs and operating system.
- e. Customer responsible for monitoring the health of the PC (including but not limited to the monitoring of disk space, memory utilization, etc.)
- f. Customer will designate a responsible individual and one alternate as the Customer contact for IT service coordination.
- g. Customer will be responsible for notifying DataVoice of any password changes, upgrades, or IP address changes to any third party systems (if needed).
- h. Customer will provide a UPS system for the equipment.
  - i. For non-hosted solutions, Customer will be responsible for running and maintaining anti-malware software on any server running DataVoice software.
- j. Customer will not permit real time scanning of network traffic on any servers hosting DataVoice software.
- k. Customer will not disclose to any third parties any confidential information provided by DataVoice unless agreed upon in writing by DataVoice. This includes, but is not limited to, DataVoice training guidance, software, hardware, and any other data or information provided by DataVoice during a demonstration of services to Customer and/or during the term of this agreement. This provision shall survive the expiration or termination of this agreement.
  - l. For non-hosted solutions, Customer will not install any software without written DataVoice approval.
- m. Customer understands and acknowledges that failure to maintain up-to-date systems in reasonable compliance with DataVoice IT specifications may result in additional support and other charges on a time and material basis.
- n. For non-hosted solutions, Customer will not run any OS that has been deprecated by its vendor, and failure to do so may result in significant additional support and other charges on a time and material basis.

## 8.1 SECURITY RESPONSIBILITIES OF CUSTOMER

Customer agrees to comply:

- a. **Passwords.** Customer agrees to comply with all DataVoice's security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords, user ID's, log-in credentials and private keys assigned to its Users secret and confidential. User ID's, passwords, login-in credentials and private keys are for Customer's internal use only and Customer may not sell, transfer or sub-license them to any other entity or person except that Customer may disclose its private key to its agents performing work on its behalf. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's or log-in credentials and private keys, as well as any obligation that may result from such use. Customer agrees to notify DataVoice in writing if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify DataVoice immediately of any unauthorized use of

any password or user ID or any other breach of security suspected by Customer.

- b. **Compliance with Laws.** Customer represents and warrants to DataVoice that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- c. **Data Security.** Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as DataVoice's) computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to DataVoice's servers; and (iii) Data is encrypted. Some content or Data may be subject to governmental regulations or may require security measures beyond those specified by DataVoice. Customer will not input or provide such content or Data unless DataVoice has first agreed in writing to implement additional required security measures.
- d. DATAVOICE AND ITS SERVICE PROVIDERS DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. DATAVOICE AND ITS SERVICE PROVIDERS SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND DATAVOICE SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION. FURTHER, CUSTOMER DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD PARTY SERVICE PROVIDER.

## **9. RESTRICTIONS ON USE**

Customer agrees that:

- a. Customer may not give away, rent, lease or otherwise sell, re-sell, sub-license, distribute or transfer the rights granted under this Agreement except as expressly permitted by this Agreement without the prior written consent of DataVoice.
- b. Customer will not reverse engineer, de-compile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the DataVoice's Software or Services or any other software included, or attempt to otherwise convert or alter the Software into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- c. Customer may not modify, translate, adapt, alter, or create derivative works of the Documentation or DataVoice Content; however, Customer may duplicate Documentation and content, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.
- d. No third party, other than duly authorized agents or employees of Customer authorized herein, shall have access to or use of the Software.
- e. Customer shall not copy, frame or mirror any part or content of the DataVoice Software and services, other than copying or framing on Customer's own intranets or otherwise for

Customer's own internal business purposes.

- f. Customer shall not access DataVoice Software or services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of DataVoice.

## **10. WARRANTY**

DataVoice warrants the covered hardware against defective parts and workmanship for the date period determined on warranty options selection page. Upon notification of a defect, DataVoice shall have the option to repair or replace the defective part of the hardware (if covered), and such repair or replacement shall be Customer's sole and exclusive remedy. All replaced parts will become the property of DataVoice. All warranty parts shall be FOB Allen, Texas.

### **10.1 WARRANTY DISCLAIMER**

- i. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE GREATEST EXTENT PERMITTED BY LAW, THE LICENSE, THE SOFTWARE, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.
- ii. DATAVOICE, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE OR NON-INFRINGEMENT. DATAVOICE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, FREE OF HARMFUL COMPONENTS, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE HOSTING SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED AND THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.
- iii. WITHOUT LIMITING THE FOREGOING, DATAVOICE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.
- iv. NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF DATAVOICE.

## **11. SUPPORT AND MAINTENANCE SERVICES**

### **Definitions relevant to Support and Maintenance Services:**

- i. **“Release”** means an Update and an Upgrade.
  - ii. **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
  - iii. **“Upgrade”** means a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
1. DataVoice shall supply all Upgrades at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by DataVoice outside of the scope of those services provided by DataVoice including additional training not covered by any agreement(s) for the installation and implementation of the Upgrade that will be subject to the DataVoice's then-prevailing policies, terms and fees related to pricing and hourly rates.
  2. For non-hosted solutions, when a Customer upgrades its OS, DataVoice will provide software Updates and Upgrades as part of its support and maintenance services. However, when Customer migrates from one OS to another, there may be additional license or other fees.

## **12. DEFAULT AND DELAY**

If Customer breaches any provision of this Agreement, including, without limitation, its payment obligation, Customer shall in default hereunder, and all unpaid amounts shall at DataVoice's option, become immediately due and payable. Upon Customer's default, DataVoice shall have all the rights and remedies of a secured party under the Uniform Commercial Code, and any other applicable laws. DataVoice shall be entitled to recover reasonable attorney's fees and costs of collection associated with enforcing its rights hereunder. Additionally, once the initial project schedule is delivered, it is anticipated that the project to be completed within that agreed-upon timeframe. Any additional delay not solely attributable to DataVoice will entitle DataVoice to issue a change order for project management fees to extend the project beyond its original scheduled delivery. Refunds by DataVoice will not be provided under any circumstances.

## **13. LIMITATIONS OF LIABILITY**

The Customer and DataVoice recognize that circumstances may arise entitling the Customer to damages for breach or other fault on the part of the DataVoice arising from this Agreement. The parties agree that in all such circumstances the Customer's remedies and DataVoice's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

- i. **Except for claims arising from the gross negligence or willful misconduct of DataVoice, BOTH PARTIES AGREE THAT THE DataVoice's LIABILITY (UNDER BREACH OF**

**CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO DataVoice BY CUSTOMER TO DataVoice DURING THE LAST TWELVE MONTHS OF THE THEN CURRENT TERM OF THIS AGREEMENT.**

- ii. IN ADDITION TO THE FOREGOING NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. *CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT. (iii) UTILITY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS DATAVOICE FOR ANY END-USER CLAIMS ARISING FOR DAMAGES ARISING FROM NOTIFICATIONS SENT THROUGH DATAVOICE SOLUTIONS.***

#### **14. FORCE MAJEURE**

Performance by either party of any obligation required of it hereunder will be excused if prevented by Acts of God, or public enemy, lightning strike, commercial power outage, war, riot, embargo, fire, explosion, sabotage, flood, accident; or without limiting the foregoing, any circumstances of like or different character beyond its reasonable control; or interruption of, or delay in transportation, shortage of failure of supply of raw materials or finished merchandise; labor trouble from whatever cause arising or compliance with an order, direction or request from any government officer, department or agency.

#### **15. MEDIATION**

Except for termination by DataVoice for non-payment of fees due under this Agreement, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

#### **16. SEVERABILITY**

In the event of invalidity of any portion of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and DataVoice and Customer agrees to substitute for the invalid provision, a valid provision which must closely approximate the economic effect and intent of the invalid provision.

#### **17. ASSIGNMENT**

This Agreement may not be assigned by Customer without DataVoice's prior written consent. DataVoice and Customer hereby agree that there are no intended or incidental third party beneficiaries to this agreement. Customer shall provide 30 days written notice prior to Customer's dissolution, merger, or transfer in ownership.

#### **18. ENTIRE AGREEMENT AND CHOICE OF LAW**

This Agreement represents the entire agreement between DataVoice and Customer and supersedes any prior agreement negotiations between the parties. Both parties acknowledge they are not relying on any statements or representations (including pre- contractual presentations and product demonstrations) made during the contractual negotiations other than those expressly set out in this document, and therefore they effectively waive their rights to rely subsequently on anything said before the formation of this contract. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes hereunder or related in any way to the subject matter of this agreement shall be a federal or state court or arbitration tribunal of competent jurisdiction in Guadalupe County, Texas. This Agreement will not be interpreted for or against a party on account of drafting.

#### **19. NO WAIVER**

No modification of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of the parties. None of the provisions herein shall be deemed waived because of previous failure to insist upon strict performance thereof. DataVoice and Customer each represent that they have the power and authority to enter into this Agreement and that this agreement constitutes a valid and binding obligation of each party.

#### **20. SOVEREIGN IMMUNITY**

To the extent Customer is provided immunity from suit and/or liability, Customer expressly waives any such immunity protection at law or in equity.

**ACCEPTANCE OF AGREEMENT**

Customer warrants and represents that the price and conditions are satisfactory and are hereby accepted through Customer's authorized signature below.

Customer's authorized signature below is authorization for DataVoice International, Inc. to perform under the conditions contained herein and expressly made a part of this agreement. This Agreement may be executed in counterparts.

Customer Signature:

**Seguin, City of**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DataVoice International**

By: Kelli D. Froman \_\_\_\_\_

Printed Name: Kelli Froman

Title: Vice President

Date: April 25, 2024 \_\_\_\_\_