



**Office of the Administrator**

---

**Odie Donald, II**  
**Administrator**

**May 4, 2021**

**Ms. Donna Williams**  
**Finance Director**  
**535 Telfair Street**  
**Augusta, GA 30901**

**Dear Director Williams:**

**At the regular meeting held Tuesday, May 4, 2021, the Augusta, Georgia Commission took action on the following:**

- 12. Approved to continue GPS tracking of city fleet vehicles with UniteGPS (RFP 21-121). (Approved by Finance Committee April 27, 2021)**

**If you have any questions, please contact me.**

**In Service,**



**Odie Donald, II**  
**Administrator**

**cc: Risk Management**

**SOFTWARE AS A SERVICE AGREEMENT BETWEEN AUGUSTA, GEORGIA and  
UNITEGPS**

This Contractual Services Agreement (the "Agreement") made and entered into this 4th day of May, 2021 between UniteGPS, LLC, a Maine limited liability company, having its principal place of business at 223 Western Promenade, Unit 1, Portland Maine 04102 ("UniteGPS" and "Vendor"), and Augusta, Georgia, a political subdivision of the State of Georgia ("Augusta" and "Customer").

WHEREAS, Augusta, Georgia seeks a qualified vendor to provide global positioning system services for Augusta's Fleet and Risk Management; and

WHEREAS, UniteGPS has submitted its proposal for RFP #21-121 to provide such services to Augusta; and

WHEREAS, Augusta selected UniteGPS to license the software products and perform the services set forth in UniteGPS' proposal and UniteGPS desires to perform such actions under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the Parties agree as follows:

**1. Definitions**

(a) Components. "Components" means the individual modules or products that make up the System. From time to time, new Components or features will be introduced to the System, and those Components or features may be restricted to specific Editions.

(b) Customer Data. "Customer Data" means any of Customer's information, documents, or electronic files that are provided to UniteGPS hereunder.

(c) Documentation. "Documentation" means the online documentation provided at [www.UniteGPS.com](http://www.UniteGPS.com).

(d) Error. "Error" means any reproducible material failure of the System to function in accordance with its Documentation.

(e) Maintenance Windows. "Maintenance Windows" means collectively, standard maintenance and emergency maintenance. Emergency maintenance will occur as needed. UniteGPS will make reasonable efforts to publish emergency maintenance windows on UniteGPS's website in advance of the emergency maintenance window, but it is possible that advanced notification of an emergency window may not occur.

(f) System. "System" means the software service for which Customer has paid, including any Updates relating thereto that may be provided hereunder or thereunder,



and any derivative works of the foregoing. A System is made up of individual Components.

(g) Service Administrator. "Service Administrator" means the person(s) that Customer designate(s) to purchase on behalf of Customer usage of the Service, authorize Users under the Agreement, create accounts for additional Users and otherwise administer Customer's use of System.

(h) Support. "Support" means the ongoing services by UniteGPS to support the System as defined in Section 3 below.

(i) Update. "Update" means any patch, bug fix, release, version, modification or successor to the System.

(j) User. "User" means a named individual to whom Customer has granted access to use the System on Customer's behalf, regardless of whether or not the User actually accesses the Software. Users may be Customer's employees, consultants, contractors or agents.


(k) Edition. "Edition" means the named configuration of the System that has been licensed to the Customer. An Edition defines what Components, features, limits, and/or usage restrictions are placed on the System licensed to the Customer. From time to time, new Components or features will be introduced to the System, and those Components or features may be restricted to specific Editions. New named Editions may also be introduced from time to time.

(l) Effective Date. "Effective Date" is the date on which the Customer's subscription to the licensed Edition of the System starts. The beginning of the contract term.

## **2. Use Rights**

(a) Use Rights. During the term and subject to the terms of this Agreement, UniteGPS hereby grants to Customer a nonexclusive, nontransferable, non-sub-licensable right to permit Customer's Users to use the licensed Edition of the System for Customer's business purposes. The use right in the preceding sentence is limited to use by the number of Users for which Customer has paid. Said use rights are nontransferable, except in the event of a voluntary transfer of substantially all assets by Customer to a transferee which executes UniteGPS's form of agreement agreeing to be bound by all of the terms and conditions of this Agreement. All rights in and to the System not expressly granted herein are reserved to UniteGPS.

(b) License and Use Restrictions. Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the System; (ii) modify, create derivative works based upon, or translate the System; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System in any form to any other party, nor shall Customer attempt to do any of the foregoing or



cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. You acknowledge and agree that UniteGPS shall own all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any of Customer's Users relating to the System.

**(c) System Administrator: User Access.** Customer shall designate one or more System Administrators. System Administrators shall be responsible for managing User access, including adding and subtracting Users. The System Administrator shall ensure that multiple Users do not share a password or user name. Customer acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users.


**(d) Customer Data.** Customer owns all right, title and interest in the Customer Data. Customer hereby grants to UniteGPS, a nonexclusive, nontransferable (except as set forth in Section 9(d) below), non sub-licensable right and license to use, copy, transmit, modify and display the Customer Data solely for purposes of Customer's use of the System. UniteGPS shall not use the Customer Data except to improve the System and as necessary to perform its obligations hereunder.

**(e) No Sensitive Data; Customer Responsibilities.** Customer acknowledges that the System is not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or other similarly sensitive personal information, and that Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer is responsible for ensuring that Customer and Customer's Users' use of the System is in compliance with all applicable laws and governmental regulations and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.

**(f) Security.** Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. UniteGPS will act as though any electronic communications it receives under Customer's user names have been sent by Customer. Customer will immediately notify UniteGPS if it becomes aware of any loss or theft or unauthorized use of any of Customer's passwords or user names. UniteGPS has the right at any time to terminate or suspend access to any User or to Customer if UniteGPS believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or UniteGPS's network.

### **3. Support**

**(a) Services Generally.** Subject to the terms of this agreement, UniteGPS shall use commercially reasonable efforts to make the System available to Customer.



(b) Updates. UniteGPS shall deliver Updates to the System that apply to the Customer's currently licensed Edition at no additional charge. From time to time, new Components or features may be released that are applied selectively to different Editions of the System. Only those Updates that apply to the Customer's currently licensed Edition will be delivered automatically to the Customer at no additional charge.

(c) Support Options and Procedures. UniteGPS shall provide general support to the Customer as set forth on the Support Section of the UniteGPS website for the Customer's currently licensed Edition. Different Editions of the System will be entitled to different levels of support. In addition, UniteGPS may offer premium support options to Customer at an additional charge.

(d) Error Correction. UniteGPS shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during UniteGPS's normal business hours. Customer shall provide such access, information, and support as UniteGPS may reasonably require in the process of resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.


(e) Support Exclusions. UniteGPS is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the System or its operating environment; (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of UniteGPS's firewall); (iii) Customer's use of the System other than in accordance with the System's documentation; or (iv) a Force Majeure Event.

(f) Support Fees. UniteGPS has the right to bill Customer at its standard services rates for any support issues excluded by Section 3(e) above that have been preapproved in writing (including in an email) by Customer.

(g) Limitation of Remedies. Correction of Errors as defined in this Agreement are Customer's sole remedies for any Errors in the System.

(h) Obsolescence. If the software or licenses required to run the System become obsolete, no longer in use, or can no longer be accessed, UniteGPS is responsible, at its own expense, for finding a compatible substitute that will allow this Agreement to be carried out.

(i) Specified excuses for delay or non-performance. UniteGPS is not responsible for delay in performance caused by hurricanes, tornadoes, floods, and other severe and unexpected acts of nature. In any such event, the contract price and schedule shall be equitably adjusted. However, for any such delay that causes UniteGPS to be unable to supply the required number of units by the required delivery time for such units, UniteGPS shall compensate Augusta at a rate of \$1.09 per unit for each day beyond



the required delivery time. This compensation is not a penalty, rather it is to compensate Customer for the effects caused by the deprivation of the use of the units.

#### **4. Financial Terms**

(a) Fees. In return for the products, services and use rights provided by UniteGPS to Customer hereunder, Customer shall pay to UniteGPS the fees in the amount set forth. All dollar amounts refer to U.S. dollars.

(b) Payment Terms. UniteGPS shall invoice Customer monthly or yearly in advance for all recurring charges, which invoices will also include all nonrecurring charges and expenses incurred since the previous invoice. Customer shall pay all UniteGPS invoices within thirty (30) days of receipt of the invoice.

(c) Invoice Disputes. If Augusta believes any delivered software or service does not conform to the warranties in this Agreement, Augusta will provide UniteGPS with written notice within thirty (30) days of its receipt of the applicable invoice. The written notice must contain reasonable detail of the issues Augusta contends are in dispute so that UniteGPS can confirm the issue and respond to the notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. Augusta may withhold payment of the amount(s) actually in dispute, and only those amounts, until the dispute is resolved. If the parties cannot resolve the dispute, then the parties may avail themselves of bringing an action or proceeding before a court of competent jurisdiction as described below in Section 9 (i).

(d) Taxes. Customer shall pay or shall reimburse UniteGPS for all sales taxes and other taxes, however characterized by the taxing authority, based upon the license fees or other charges under this Agreement or otherwise incurred on account of Customer's use of the System, except for any taxes based upon UniteGPS's net income or gross receipts or for any franchise or excise taxes owed by UniteGPS. If Customer is a tax exempt organization, then, upon UniteGPS's receipt of proof of such status, then UniteGPS shall not charge Customer for any taxes from which Customer is exempt.

(e) Pricing Changes. Customers selecting annual pricing will receive notice of changes in pricing at least 45 days before each anniversary of the Effective Date. Customers selecting monthly pricing will receive notice of changes in pricing at least 45 days before the month in which the change in pricing will take effect.

(f) Defective pricing. To the extent that the pricing provided by United GPS is erroneous and defective, the parties may, by agreement, correct pricing errors to reflect the intent of the parties.

(g) Georgia Prompt Pay Act not applicable. The terms of this agreement supersede any and all provisions of the Georgia Prompt Pay Act.




(h) **Lack of Appropriations.** If Augusta should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the software or services set forth in this Agreement, Augusta may unilaterally terminate this Agreement effective on the final day of the fiscal year through which you have funding. Augusta shall make every effort to give UniteGPS at least thirty (30) days' written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, Augusta shall pay us for all undisputed fees and expenses related to the software and/or services Augusta has received, or UniteGPS has incurred or delivered, prior to the effective date of termination. Any disputed fees and expenses must have been submitted to the Invoice Dispute process set forth above in Section 4(c) at the time of termination in order to be withheld at termination.

## **5. Term and Termination**

(a) **Term.** The term of this Agreement commences on the Effective Date hereof and terminates absolutely and without further obligation on the part of Augusta, Georgia each and every December 31<sup>st</sup>, unless terminated earlier in accordance with the termination provisions of the Agreement. If Augusta, Georgia has elected an annual pricing plan, this Agreement automatically renews on each January 1<sup>st</sup>, unless terminated in accordance with the termination provisions of the Agreement. If Augusta, Georgia has elected a monthly pricing plan, this Agreement terminates at the last day of each month and renews at the first day of the succeeding month unless terminated in accordance with the provisions of this contract. Augusta, Georgia may terminate this Agreement in part or in whole upon written notice to UniteGPS.

(b) **Termination for Cause.** Either party can terminate this Agreement for cause upon written notice to the other party: (i) if a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 days of written notice by the other party specifying the amounts owed; in the case of UniteGPS, immediately upon any breach by Customer of Section 2(b) and/or Section 2(e) above; (ii) immediately upon any breach of any confidentiality obligations owed to such party by the other party; (iii) the failure of UniteGPS, which has not been remedied or waived, to perform to otherwise comply with a material condition of the Agreement (also known as default) (iv) upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement; or (v) a breach of Section 3(h) above. Notwithstanding the above, to the extent that it does not alter the scope of this Agreement, Augusta, Georgia may unilaterally order a temporary stopping of the work, or delaying of the work to be performed by UniteGPS under this agreement.

(c) **Termination for Convenience.** Customer may terminate this Agreement at its convenience, in part or in whole, upon thirty (30) days' written notice UniteGPS. UniteGPS shall be paid for any validated services under this Agreement up to the time of termination.



(d) **Obligations Upon Termination.** Upon termination of this Agreement: (i) provided that Customer has paid all amounts owed to UniteGPS hereunder, UniteGPS shall, upon written request received within 30 days of termination, provide any Customer who purchased access rights to an Edition requiring payment of a fee with access to the System for a period of 24 hours for the limited purpose of exporting Customer Data; (ii) UniteGPS shall immediately terminate access to the System by Customer. For Termination for Cause pursuant to Section 5(b)(v), UniteGPS shall immediately pay Customer any payments that it has received related to the services that can no longer be performed.

CUSTOMER ACKNOWLEDGES THAT IF CUSTOMER IS USING AN EDITION OF THE SYSTEM THAT IS PROVIDED FREE OF CHARGE, UPON TERMINATION OF THIS AGREEMENT, UNITEGPS IS UNDER NO OBLIGATION TO EITHER MAINTAIN CUSTOMER DATA OR TO PROVIDE CUSTOMER WITH ACCESS TO OR A COPY OF THE CUSTOMER DATA.

## **6. Confidentiality**

(a) **Confidential Information.** "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third party information that Customer or UniteGPS is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder. Anything that would become "public record" as defined by O.C.G.A. §50-18-70(b)(1) that includes what would otherwise be Confidential Information obtained by Augusta, Georgia must be accompanied with an affidavit prepared by UniteGPS affirmatively declaring that specific information in the written or otherwise recorded item constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10 in the Official Code of Georgia. Any information that does not comply with O.C.G.A. § 50-18-72(a)(34) is not Confidential Information pursuant to this article.

(b) **Exclusions.** Notwithstanding the above, the term "Confidential Information" does not include any information that is either: readily discernible from publicly available products or literature; or approved for disclosure by prior written permission of an executive officer of the disclosing party.

(c) **Use of Confidential Information.** Each party shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this



Agreement, and, except as authorized in this Agreement, it shall not disclose the Confidential Information to any other persons without the disclosing party's express written authorization. No prohibition for disclosure shall exist on any "public record" as defined by O.C.G.A. §50-18-70(b)(1) that is not accompanied with the affidavit as described in Section 6(a).

(d) Required Disclosures. A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.


(e) Return of Information. Except as set forth otherwise in the specific provisions concerning Customer Data set forth in Section 5(c) above, if a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.

(f) Survival. The parties hereto covenant and agree that this Section 6 will survive the expiration, termination, or cancellation of this Agreement for a period of 3 years, except for Confidential Information constituting a trade secret, with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

(g) Georgia Open Records Act. UniteGPS warrants that it has reviewed O.C.G.A. § 50-18-71 et seq. and acknowledged that Augusta, Georgia is an "agency" pursuant to O.C.G.A. § 50-18-70(b)(1). UniteGPS acknowledges and understands that "Confidential Information" as defined in Section 6 may be contained in a "public record" as defined by O.C.G.A. § 50-18-70(b)(2). UniteGPS releases and holds harmless Augusta, Georgia and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the disclosure of Confidential Information in this article due to the failure of UniteGPS to provide an affidavit as described in O.C.G.A. § 50-18-72(a)(34).

## **7. Indemnification**

(a) Indemnification by UniteGPS. Except as otherwise provided in this agreement, UniteGPS shall indemnify and hold harmless Augusta, Georgia and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of this Agreement (other than to the extent indemnified by UniteGPS under Section 7(a) or, in the case of a Customer using only a free Edition of the System, other than to the



extent the third party claim would have been subject to indemnification by UniteGPS under Section 7(a) if Section 7(a) applied to Customer).


(b) Indemnification Process. Augusta shall promptly notify the UniteGPS, in writing, of any third party claim, stating the nature and basis of the third party claim, to the extent known. UniteGPS shall have sole control over the defense and settlement of any third party claim, provided that, within fifteen (15) days after receipt of the above described notice, UniteGPS notifies Augusta of its election to so assume full control. The foregoing notwithstanding, Augusta shall be entitled to participate in the defense of such third party claim and to employ counsel at its own expense to assist in the handling of such claim, except that Augusta's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) UniteGPS fails or refuses to assume control over the defense of the third party claim within the time period set forth above; (y) Augusta deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (z) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. UniteGPS shall not settle any such third party claim without the written consent of Augusta, except for a complete settlement requiring only the payment of money damages to be paid by UniteGPS.

(c) Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party in the nature of intellectual property infringement or misappropriation.

(d) Insurance Requirements. UniteGPS shall, at all times that this Agreement is in effect, cause to be maintained in force and effect an insurance policy(s) that will ensure and indemnify the Augusta against liability or financial loss resulting from injuries occurring to persons or property or occurring as a result of any negligent error, act, or omission of the UniteGPS in performance of the work during the term of this Agreement.

The UniteGPS shall provide, at all times that this agreement is in effect, Worker's Compensation insurance in accordance with the laws of the State of Georgia.

The UniteGPS shall provide, at all times that this Agreement is in effect, insurance with limits of not less than:

- A. Workmen's Compensation Insurance – in accordance with the laws of the State of Georgia.
  - B. Public Liability Insurance – In an amount of not less than One Million (\$1,000,000) Dollars for injuries, including those resulting in death to any one person, and in an amount of not less than One Million (\$1,000,000) Dollars on account of any one occurrence.
  - C. Property Damage Insurance – In an amount of not less than One Million (\$1,000,000) Dollars from damages on account of an occurrence, with an aggregate limit of One Million (\$1,000,000) Dollars.
- 

- D. Valuable Papers Insurance – In an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project.
- E. Professional Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars or an amount that correlates to the aggregate fee on the project should it exceed \$1,000,000.
- F. Technology E&O            \$1,000,000.00


Augusta will be named as an additional insured with respect to UniteGPS liabilities hereunder in insurance coverage's identified in items (b) and (c).

The policies shall be written by a responsible company(s), to be approved by Augusta, and shall be noncancellable except on thirty-(30) days' written notice to Augusta. Such policies shall name Augusta as co-insured, except for worker's compensation and professional liability policies, and a copy of such policy or a certificate of insurance shall be filed with the Director at the time of the execution of this Agreement.

#### **8. Service Level Commitments, Disclaimers and Limitations**

(a) Service Level Commitments: Credits. UniteGPS guarantees that the System and all Services provided on the System will be accessible to Customer's authorized Users 97.5% of the time in any given calendar year, excluding Maintenance Windows. Notwithstanding the foregoing, UniteGPS does not guarantee network availability between Customer and the UniteGPS hosting servers, as such availability can involve numerous third parties and is beyond the control of UniteGPS. UniteGPS will not be liable for nor provide any service credits hereunder for any downtime caused in whole or part by a third party data center provider nor for any downtime that Customer experiences as a result of Customer or Customer's Users' own network connectivity issues. If Customer experiences a System or Service outage and is unable to access the System or any Service, Customer must immediately contact UniteGPS's help desk, providing any/all necessary information that may assist UniteGPS in determining the cause of the outage. UniteGPS will determine in good faith whether the outage was within UniteGPS's reasonable control. If UniteGPS determines that a timely reported outage was attributable to UniteGPS, then UniteGPS will credit Customer 1day of Service fees for every 2 hours of downtime Customer experienced, up to a maximum of half of that month's Service fees. This shall be Customer's sole remedy, and UniteGPS's sole liability, for UniteGPS's failure to provide the guaranteed availability set forth in this Section 8(a).

(b) Disclaimer of Warranties. EXCEPT FOR THE LIMITED SERVICE LEVEL COMMITMENTS SET FORTH IN SECTION 8(A), UNITEGPS MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, THE SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR




RESULTS OF USE OF THE SYSTEM. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH IN THE LIMITED SERVICE LEVEL COMMITMENTS IN SECTION 8(A), UNITEGPS DISCLAIMS ANY WARRANTY THAT THE SYSTEM, THE SERVICES PROVIDED BY UNITEGPS, OR THE OPERATION OF THE SYSTEM ARE OR WILL BE ACCURATE, ERRORFREE OR UNINTERRUPTED. UNITEGPS MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(c) Disclaimer of Consequential Damages. UNITEGPS HAS NO LIABILITY WITH RESPECT TO THE SYSTEM, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF UNITEGPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) Limitations of Remedies and Liability. UNITEGPS'S TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO (1) IN THE CASE OF CUSTOMER ON A MONTHLY PAYMENT PLAN, ALL FEES PAID TO UNITEGPS BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY; (2) IN THE CASE OF CUSTOMER ON AN ANNUAL PAYMENT PLAN, ALL FEES PAID TO UNITEGPS BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY; OR (3) IN THE CASE OF CUSTOMER USING ONLY A FREE EDITION OF THE SYSTEM, ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

(e) Modification Requires Legislative Approval. UniteGPS acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, UniteGPS is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, UniteGPS agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or



services provided by UniteGPS. UniteGPS assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity.


## **9. General**

(a) **Notices.** All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

(b) **Promotional Materials.** Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the System.

(c) **Force Majeure.** "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, local states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, or the availability of funds in the budget of Augusta, Georgia.

(d) **Assignment.** UniteGPS may assign any of its rights or obligations under this Agreement at any time, with the prior written approval of Customer, which shall not be unreasonably withheld; provided, however, that UniteGPS shall not assign the rights




granted to Customer Data in Section 2(d) except in connection with the sale (whether by merger, asset sale, equity sale or otherwise) of (i) UniteGPS, (ii) the System or (iii) a portion of UniteGPS or the System that would reasonably require the acquirer of said portion to be assigned such rights to the Customer Data. Customer shall not assign any of its rights under this Agreement, except with the prior written approval of UniteGPS, which shall not be unreasonably withheld. The preceding sentence applies to all assignments of rights, except in the event of a voluntary transfer of substantially all assets by Customer to a transferee which executes UniteGPS's form of agreement agreeing to be bound all of the terms and conditions of this Agreement. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

(e) Prohibition on Contingent Fees. UniteGPS warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by UniteGPS for the purpose of securing business and that UniteGPS has not received any non-Augusta fee related to this Agreement without the prior written consent of Augusta. For breach or violation of this warranty, Augusta shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage or contingent fee.

(f) Independent Contractor. Each party will perform its duties under this Agreement as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other party. Nothing in this Agreement will be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

(g) E-Verify. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's E-Verify number as



evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.


(h) Right to Inspect. Augusta, Georgia, may at reasonable times, inspect that part of the plant, place of business, or work site of UniteGPS or any subcontractor of UniteGPS or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta, Georgia.

(i) Governing Law; Venue. The law of the State of Georgia shall govern this Agreement between Augusta and UniteGPS with regard to its interpretation and performance and any other claims related to this agreement. All claims, disputes and other matters in question between Augusta and UniteGPS arising out of or relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. UniteGPS, by executing this Agreement, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Courts of Richmond County Georgia.

(j) Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorneys' fees and costs associated with any action or proceeding that is brought in good faith. If the action or proceeding is found by a court of law to not be brought in good faith, the party initiating such action or proceeding shall pay the other party's reasonable attorneys' fees, other costs incurred in the action or proceeding, and any additional relief as determined by a court of law.

(k) Performance Bond. UniteGPS shall secure a performance bond ("Bond") agreeable to both parties within ten (10) Business Days after execution of this Agreement in the face amount of \$ NA---. The cost of the Bond, equal to \$ NA---, is based on the total contract dollar amount of this Agreement for an initial term and is payable in accordance with the terms set forth in the Bond. All bond renewals shall be subject to underwriting or surety approval.

(l) Contract Documents. This Agreement includes the following documents, which are hereby referenced and incorporated herein:

1. SAAS Agreement
  2. UniteGPS Proposal to RFP # 21-121
  3. Exhibits I, II
- 


In the event of a conflict between this Agreement and the above stated documents, the UniteGPS Proposal to RFP #21-121 shall control.

(m) Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

(n) No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

(o) Entire Agreement. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.

(p) Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement. (i) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 1, 2(b), 5(c), 6, 7, 8, and 9 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.





**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

UniteGPS, LLC.

Augusta, Georgia

By: [Signature]  
Name: Christopher Bunnell  
Title: CEO  
Date: 5/12/21

By: [Signature]  
Name: Hardie Davis, Jr.  
Title: Mayor  
Date: \_\_\_\_\_

Attest: [Signature]  
Lena J. Bonner, Clerk of Commission

Address for Notices:

UniteGPS, LLC

51 Cragmore Ave  
South Portland ME 04106  
Attention: Chris Bunnell

Address for Notices:

Augusta, Georgia

535 Telfair Street, Suite 200

Augusta, GA 30901

Attention: Mayor Hardie Davis, Jr.

With copies to:

Tameka Allen, IT Director