

## GRAYSHIFT, LLC

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**1. ENTIRE AGREEMENT.** The parties hereby agree that all rights connected to the use of the Software by the Licensee are governed exclusively by the terms and conditions set out in this Agreement and shall prevail over any additional, different, or conflicting terms and conditions contained in any pricing statement from Grayshift for the Product ("Quote"), bid package, or other communication or document relating to this Agreement. Acknowledgement, whether express or implied, by either party of the other party's bid packages, Quotes, or other communications or documents relating to this Agreement which contain additional, different or conflicting terms shall not constitute acceptance of such terms and conditions by the acknowledging party. This Agreement may be amended only by a writing executed by both parties.

**2. ACCEPTANCE AND DELIVERY.** Software will be provided by electronic means. Acceptance of Software ("Acceptance") shall be automatic upon the successful completion of Grayshift's standard installation procedures on the Product.

**3. LICENSE GRANT.** Subject to the terms of this Agreement and for the consideration specified in the Order (defined below), Grayshift, LLC ("Grayshift") hereby grants to you ("Licensee" or "You") a limited, revocable, nontransferable, non-assignable, non-sublicensable, non-exclusive license to use and allow Authorized Users to use the Software, in object code form, solely as such Software is embedded in proprietary equipment provided herewith ("Product") and solely for the intended purpose and consistent with Section 9 hereto when accessing mobile devices ("Devices") in your possession or control. Licensee may only use the Product in online mode at authorized physical locations (the "Authorized Locations") specified in the online order (the "Order") or that Licensee has otherwise registered with Grayshift, and Licensee further acknowledges and agrees that in order for the Product to function properly in online mode, the Product must be connected to the Internet. Use of the Product in offline mode does not require the Product to be connected to the Internet. Grayshift may use certain

third-party monitoring tools to ensure that Licensee is in compliance with the foregoing restrictions, which such tools may be subject to Third Party Components terms as further described herein. For purposes of this Agreement, "Authorized Users" means collectively, employees, agents, or contractors who are empowered by Licensee to access or use the Product and Software. The Licensee shall notify Grayshift in writing within thirty (30) calendar days following a change of an Authorized User's employment status such that the Authorized User ceases to be empowered by the Licensee to access or use the Product and Software either through ceasing to be employed by the Licensee or a change in his or her position within the Licensee's organization such that he or she is no longer authorized to access or use the Product and Software.

**4. THIRD PARTY COMPONENTS.** The Software makes use of or otherwise incorporates third party components, including certain Google Maps features and content. Use of Google Maps features and content is subject to the then-current versions of the: (1) Google Maps/Google Earth Additional Terms of Service at [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html); and (2) Google Privacy Policy at <https://www.google.com/policies/privacy/>.

**5. LICENSE RESTRICTIONS.** Notwithstanding anything to the contrary in this Agreement, Licensee will not (or allow an Authorized User or any other individual to): (a) modify any Product; (b) reverse compile, reverse assemble, reverse engineer or otherwise translate all or any portion of any Product, including by removal, disassembly or alteration of any of the Product's components; (c) pledge, rent, lease, share, distribute, sell or create derivative works of any Product; (d) use any Product on a time sharing, service bureau, application service provider (ASP), rental or other similar basis; (e) make copies of any Product; (e) remove, alter or deface (or attempt any of the foregoing) proprietary notices, labels or marks in any Product; (f) distribute any copy of any Software to any third party, including without limitation selling any Product in a secondhand market; (g) use the Software other than with Products provided by

Grayshift; (h) use the Product in online mode other than at an Authorized Location; (i) deactivate, modify or impair the functioning of any disabling code in any Software; (j) circumvent or disable Grayshift copyright protection mechanisms or license management mechanisms; (k) use any Product in violation of any applicable Law or to support any illegal activity; (l) use any Product to violate any rights of any third party; or (m) photograph any of the Product's components, whether internal or external. To the extent legally practicable, Devices must remain in the Licensee's possession and control until after the software agent has been successfully uninstalled on the Devices. Grayshift expressly reserves the right to seek all available legal and equitable remedies to prevent any of the foregoing and to recover any lost profits, damages or costs resulting from any of the foregoing.

**6. FEES.** Licensee shall pay the license fees set forth in the relevant Quote for the Software and Product. Except as exempt by law, Licensee will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Grayshift's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Licensee will make all required payments to Grayshift free and clear of, and without reduction for, any withholding taxes. Any portion of any amount payable hereunder that is not paid when due will accrue interest at two percent (2%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

**7. TITLE.** As between the parties, Grayshift and its licensors retain all right, title, and interest, including, without limitation, all intellectual property rights to the Product. Licensee understands that Grayshift may modify or discontinue offering the Product at any time. The Product is protected by the copyright laws of the United States and international copyright treaties. This Agreement does not give Licensee any rights not expressly granted herein. This Agreement does not constitute a sale of the Product or any portion or copy of it. All rights not granted are reserved for Grayshift.

**8. LIMITATION OF LIABILITY.** UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, SHALL GRAYSHIFT OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM USE. GRAYSHIFT'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE FOR THE PRODUCT.

**9. LICENSEE WARRANTIES.** Licensee represents, warrants and covenants to Grayshift that (a) only Authorized Users of Licensee who have obtained any necessary consents and approvals pursuant to applicable laws shall be permitted to use

any of the Grayshift Products or Software in connection with any Devices; (b) Licensee and its Authorized Users shall only use the Products and Software in compliance with all applicable laws; and (c) Licensee and its Authorized Users shall only use the Products and Software in accordance with the consents and approvals obtained pursuant to applicable laws.

**10. WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, GRAYSHIFT PROVIDES THE PRODUCTS AND SOFTWARE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, QUIET ENJOYMENT, INTEGRATION, TITLE, NON-INTERFERENCE AND NON-INFRINGEMENT. FURTHER, GRAYSHIFT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE PRODUCT OR SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR THAT THE PRODUCT, SOFTWARE OR ANY WRITTEN MATERIALS WILL BE CORRECT, ACCURATE, OR RELIABLE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

Licensee acknowledges that all case stakeholders are aware of and understand the associated risk that the Device may become damaged and/or Device data may be unrecoverable when used with the Product or Software, in particular for Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. Licensee further understands that not all permutations of Device software, software builds, Device states, and usage profiles have been tested by Grayshift. Before utilizing the Product and Software on Devices under any of the above conditions, please consult [support.grayshift.com](http://support.grayshift.com).

**11. CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS.** Subject to applicable law, Licensee acknowledges that the Product and Software are sensitive technologies whose Confidential Information requires the highest duty of care. Licensee, Licensee's employees or agents who require access in order to perform hereunder, and all final users of the Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information, as defined below, nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Grayshift's rights therein, at all times exercising the highest duty of care. Further, the Receiving Party shall not attempt to use any Confidential Information to discover, reverse compile, reverse assemble or reverse engineer the Product, including by removal, disassembly or alteration of any of the Product's components,

whether internal or external. Receiving Party agrees to restrict access to Grayshift's Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Grayshift.

**11.1.** For the purposes of this Agreement, "Confidential Information" means any proprietary, trade secret, financial, technical and non-technical information related to Grayshift's business and current, future and proposed products and services and any derivatives therefrom containing, including, referring to, or otherwise reflecting and/or generated from such Confidential Information. Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, features, functions and solutions of Grayshift's software or product offerings (including the Product and the Software), information found on the Grayshift support website, and (ii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as "confidential" or "proprietary."

**11.2.** Confidential Information shall not include any information that is (i) already known to the Receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with Grayshift that rightfully acquired such information; or (iv) communicated to a third party by the Receiving Party with Grayshift's express written consent.

**11.3.** A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the Receiving Party promptly notifies Grayshift in writing, if notification is permitted by law, and uses commercially reasonable efforts to assist Grayshift, at Grayshift's expense, in opposing such disclosure or obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

**11.4.** The Receiving Party acknowledges and agrees that due to the unique nature of Grayshift's Confidential Information, there can be no adequate remedy at law for any breach of its obligations under this Section 11, that any such breach will cause irreparable and continuing damage to Grayshift and, therefore, that upon any such breach or any threat thereof, Grayshift shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the

protection of legitimate business interests and are reasonable in scope.

**12. TERM AND TERMINATION.** This Agreement shall continue until terminated as set forth herein. Notwithstanding the foregoing, the license to any Product or Software is only during the license term applicable to such Product or Software. The license term shall be determined in the Quote. At Grayshift's sole discretion, Grayshift may also revoke such license and/or terminate this Agreement immediately without refund or reimbursement if Licensee violates any Material Provision of this Agreement. For the purposes of this Section 12, "Material Provision" means each of Sections 3 (License Grant), 5 (License Restrictions), 9 (Licensee Warranties), and 11 (Confidentiality and Non-Disclosure Obligations). Any termination of this Agreement shall terminate the licenses granted hereunder. All Confidential Information, Software and/or derivatives therefrom delivered pursuant to this Agreement shall be and remain the property of Grayshift, and upon expiration or termination of this Agreement for any reason, Licensee shall destroy (or return, at Grayshift's election) (i) all materials in the possession of Licensee in any medium that contain, refer to, or relate to all other written, printed, or tangible materials containing Confidential Information; and (ii) any derivatives therefrom, and shall so certify to Grayshift that such actions have occurred. No such material shall be retained or used by the Receiving Party in any form or for any reason. Except for the license and except as otherwise expressly provided herein, the terms of this Agreement, including the Confidentiality and Non-Disclosure obligations in Section 11 hereto and any additional terms agreed-to in writing by both parties pursuant to Section 1 hereto, shall survive expiration and termination. Notwithstanding any other provision of this Agreement, the obligations of the parties as to Confidential Information shall remain binding in perpetuity until such information no longer qualifies as Confidential Information or until Grayshift sends the Receiving Party written notice releasing the Receiving Party from its obligations under Section 11 hereto, whichever occurs first.

**13. INDEMNITY.** Subject to applicable law, Licensee shall indemnify, defend, or at its option settle, any third party claim or suit against Grayshift based on a claim: (i) of any breach of this Agreement by Licensee, its affiliates, employees, agents, successors and assigns; and (ii) relating to or based on the activities conducted by Licensee or its Authorized Users, using or that used the Software and Product; and Licensee shall pay any final judgment entered against Grayshift in any such proceeding or agreed to in settlement. Grayshift will notify Licensee in writing of such claim or suit and give all information and assistance reasonably requested by Licensee or such designee.

**14. GOVERNMENT USE.** If Licensee is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product or any related documentation is restricted in accordance with the Federal Acquisition Regulation 12.212 for civilian agencies and the Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Product and documentation is a "commercial item", "commercial computer software" and

“commercial computer software documentation.” The use of the Product and documentation is further restricted in accordance with the terms of this Agreement, or any modifications thereto.

**15. EXPORT CONTROLS.** Licensee shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of the United States or foreign agency or authority. Licensee will not export, or allow the export or re-export, of the Product in violation of any such laws, restrictions or regulations.

**16. MISCELLANEOUS.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of Grayshift to act with respect to a breach of this Agreement by

**17. ADDENDUM.** the terms of the Mandatory Addendum to City of Tupelo Contracts, attached as Exhibit “A” are incorporated herein, and in the event that any of the aforementioned Terms and Conditions contradict any of the terms of the Mandatory Addendum attached herewith, Grayshift and the City of Tupelo and the Tupelo Police Department agree that the terms of the Mandatory Addendum shall control.”

Licensee or others does not constitute a waiver and shall not limit Grayshift’s rights with respect to such breach or any subsequent breaches. This Agreement is personal to Licensee and may not be assigned, sublicensed, or transferred for any reason whatsoever (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control involving Licensee) without Grayshift’s consent and any action or conduct in violation of the foregoing shall be void and without effect. This Agreement shall be governed by and construed under the laws of the State of Georgia, U.S.A. without regard to the conflicts of laws provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the state and federal courts in Georgia; Licensee hereby agrees to service of process in accordance with the rules of such court.

GRAYSHIFT, LLC	LICENSEE: _____
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## EXHIBIT "A"

Mandatory Addendum to  
All City of Tupelo Contracts  
August 2019

The City of Tupelo (TUPELO), despite any contrary provision contained in any contract to which TUPELO is a party, does not waive any rights, benefits, or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contact to which TUPELO is a party are hereby null, void and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which TUPELO is a party.

1. TUPELO does not indemnify or hold harmless any party.  
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
2. TUPELO does not make any warranty.  
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
3. TUPELO does not waive any claim; past, present, or future.  
Miss. Const. Art. 4, § 100; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
4. TUPELO does not waive its sovereign immunity. TUPELO shall only be responsible for liability resulting from the actions of its officers, agents, and employees acting within the course and scope of their official duties.  
Miss. Code Ann. § 11-46-1, et seq.
5. TUPELO does not waive its Constitutional Eleventh (11<sup>th</sup>) Amendment immunity.  
U.S. Const. Amend. XI.
6. TUPELO does not agree to the application of laws of another state.  
U.S. Const. amend XI; Miss. Code Ann. 11-11-3; Miss. Code Ann. 11-45-1; *City of Jackson v. Wallace*, 196 So. 223 (1940)
7. TUPELO does not limit the tort liability of another party to the amount of the contract or to any other set amount.  
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002); Miss. AG Op., Hathorn (May 28, 1992); Miss. AG Op., Davis (March 3, 1993).
8. TUPELO does not agree to waive warranties of merchantability, fitness for a particular purpose, or any common law warranties to which TUPELO is entitled.  
Miss. Const. Art 4, § 100; Miss Code Ann. § 75-2-719; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).

9. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO. (CITATION NEEDED.)
10. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.  
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
11. TUPELO does not agree to submit to binding arbitration.  
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.  
Miss. Code Ann. § 31-7-305.
13. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.  
Miss. Code § 25-61-9 (7).
14. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.  
Miss. Code § 25-61-9 (1).
15. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:  
(a) Collect, process, store, and retrieve information which is exempt; (b) Control and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

16. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the successors' rights and powers conferred by law, unless there is specific statutory authority to enter into such contract. In the absence of specific statutory authority, such contracts are voidable by the successors in office.  
MS AG Ops., Barton (January 8, 2014) and Barton (July 15, 2011)(both relying on Biloxi Firefighters Assoc. v. City of Biloxi, 810 So.2d 589 (Miss. 2002).
  
17. TUPELO does not have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. TUPELO cannot grant, renew, or extend any such franchise, privilege or right, without compensation or for any longer period than twenty-five years.  
Miss. Code Anno. 21-27-1
  
18. All contracts must be approved by the City Council of TUPELO, subject to the veto power of the Mayor of TUPELO.  
MS AG Ops. 2012-00013