

**AGREEMENT BETWEEN  
ALACHUA COUNTY, FLORIDA AND  
RAVE WIRELESS, INC.  
FOR SMART911 SYSTEM**

This is an Agreement between Alachua County, Florida, a charter county and political subdivision of the State of Florida, hereinafter referred to as the COUNTY, by and through its Board of County Commissioners, and Rave Wireless, Inc., a Delaware corporation, its successors and assigns, and herein after referred to as CONTRACTOR.

**WITNESSETH:**

**WHEREAS**, the COUNTY desires to employ the CONTRACTOR to provide Smart911; and,

**WHEREAS**, the CONTRACTOR is qualified to provide these services

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually agree as follows:

**1. Scope of Services.**

1.1. On the terms and conditions set forth in this Agreement, COUNTY hereby engages CONTRACTOR to provide the services outlined in the Statement of Work set forth in Exhibit A, attached hereto and incorporated herein by reference. Additional terms and conditions are contained within Exhibit B, attached hereto and incorporated herein by reference, hereinafter the "Standard Terms and Conditions," but in the event of a conflict between such terms and conditions and this Agreement, the provisions of this Agreement shall control. The following provisions shall supersede or modify the Standard Terms and Conditions shown in Exhibit B:

- A. Indemnification Provisions: All references in the Standard Terms and Conditions requiring the COUNTY to indemnify the CONTRACTOR are deleted. Nothing within the Standard Terms and Conditions shall waive the COUNTY's sovereign immunity under Florida Law.
- B. Confidentiality Provisions. All references to Confidentiality or Confidential Information, or restrictions upon the release thereof, shall not restrict the COUNTY from complying with the Florida Public Records' laws contained within the Florida Statutes. The CONTRACTOR agrees and acknowledges that the COUNTY is subject to the Florida Public Records' laws and shall be prohibited from penalizing the COUNTY for release of

any information as requested by a third party under such laws.

C. Arbitration Provisions. The arbitration provisions shall be deleted and of no force and effect as against the COUNTY.

D. Automatic Renewal Provisions. There shall be no automatic renewals of this Agreement.

E. Governing Law. All references to laws governing this Agreement, or venue, or any similar item, shall be changed to the laws of the State of Florida, and Alachua County, respectively.

F. Payment. The County shall make payment to the Contractor, of all sums properly invoiced under the provisions of this paragraph, in accordance with the provisions of Chapter 218, Part VII ("Florida Prompt Payment Act"), Florida Statutes.

## **2. Term.**

2.1. This Agreement shall be effective for a five (5) year period commencing October 1, 2013 and ending September 30, 2018. The Agreement prices shall prevail for the full duration of this agreement. No increases in price shall be permitted unless duly approved by both parties hereto. This agreement shall automatically renew in five (5) year increments unless either party objects in writing within 60 days of the term expiration date.

2.2. The COUNTY'S performance and obligation to pay under this agreement is contingent upon a specific annual appropriation by the Board of County Commissioners. The parties hereto understand that this Agreement is not a commitment of future appropriations.

## **3. Representations and Warranties.**

3.1. By executing this Agreement, the CONTRACTOR makes the following express representations and warranties:

- A. The CONTRACTOR is a professional qualified to perform the services described.
- B. The CONTRACTOR warrants all the work performed by the CONTRACTOR is adequate and sufficient to meet the requirements and accomplish the purposes of the agreement.
- C. The CONTRACTOR acknowledges that the COUNTY's review of the work performed in no way diminishes the CONTRACTOR'S warranty pertaining to the work performed.

## **4. Method of Payment.**

4.1. For the initial term of the contract the COUNTY shall pay CONTRACTOR for the services rendered herein the price of **\$225,000.00** divided as follows: (a) year one initial fee of **\$125,000**; (b) years two through five annual fee of **\$25,000** to be licensed for five years which includes the primary and backup 911 facilities (PSAP's). There shall be no annual increase in the fee.

4.2. The COUNTY shall remit payment for the first year's fee in the amount of **\$125,000.00** within thirty (30) days after the term commencement date. Each year thereafter, for years two through five, the COUNTY shall remit to the CONTRACTOR the annual fee of **\$25,000.00** upon receipt of an invoice from the CONTRACTOR.

4.3. As a condition precedent for any payment, the Contractor shall submit an invoice to the County requesting payment for services properly rendered and expenses due. The Contractor's invoice shall describe with reasonable particularity each service rendered and the date thereof and [the person(s) rendering such service. The Contractor's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the County may require. Each invoice shall bear the signature of the Contractor, which signature shall constitute the Contractor's representation to the County that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Contract, that all services provided are for a public purpose, that all obligations of the Contractor covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Contractor that payment of any portion thereof should be withheld. Submission of the Contractor's invoice shall further constitute the Contractor's representation to the County that, upon receipt by the County of the amount invoiced, all obligations of the Contractor to others, including its consultants, incurred in connection with the provision of services for the billing period will be paid in full.

4.4. CONTRACTOR shall submit invoices to the COUNTY at the following address:

Alachua County Fire Rescue  
ATTN: E911/Communications Section Chief  
Post Office Box 5038  
Gainesville, FL 32627-5038

4.5. The COUNTY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes ("Local Government Prompt Payment Act") to:

Rave Wireless, Inc.  
ATTN: Accounts Receivable  
50 Speen Street, Suite 301  
Framingham, MA 01701

4.6. Other than the rates set forth herein, the CONTRACTOR shall not be entitled to payment for any additional expenses, it may incur at any time and in any connection with its performance hereunder.

## **5. Termination.**

5.1. This Agreement may be terminated by the COUNTY for reasons provided hereunder upon thirty (30) days advance written notice to the other party; but if any service hereunder is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the COUNTY until said service(s) is completed and accepted.

- A. Termination for Cause. Termination by COUNTY for cause, default, or negligence on the part of CONTRACTOR shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.
- B. Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the CONTRACTOR shall be reimbursed for services satisfactorily performed under this Agreement.

## **6. Project/Public Records.**

6.1. For a period of five (5) years, or as required by Chapter 119, Florida Statutes (Public Records Act) and schedules published by the Florida Bureau of Archives and Records Management, or federal requirements, whichever period is greater, the CONTRACTOR shall keep and make available to the COUNTY for inspection and copying, upon written request by the COUNTY, all records in CONTRACTOR'S possession relating to the Agreement. Additionally, the CONTRACTOR shall make said records available, upon written request by the COUNTY, to any state, federal, or other regulatory authority, and any such authority may review, inspect, and copy said records unless exempted under Chapter 119, Florida Statutes.

6.2. Any document submitted to the COUNTY may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(11), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes.

6.3. During the term of this Agreement or license, CONTRACTOR may claim that some or all of CONTRACTOR'S information, including, but not limited to, software, documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as, confidential and

proprietary by CONTRACTOR in accordance with Section 812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Records Act. CONTRACTOR shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the COUNTY shall use its best efforts to maintain the confidentiality of the information properly identified by the CONTRACTOR as "Confidential Information" or "CI".

6.4. The COUNTY shall promptly notify the CONTRACTOR in writing of any request received by the COUNTY for disclosure of CONTRACTOR'S Confidential Information and the CONTRACTOR may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. CONTRACTOR shall protect, defend, indemnify, and hold the COUNTY, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of CONTRACTOR'S Confidential Information. CONTRACTOR shall investigate, handle, respond to, and defend, using counsel chosen by CONTRACTOR, at CONTRACTOR'S sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. CONTRACTOR shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. Subject to the terms and conditions of this Section 6.4, CONTRACTOR releases COUNTY from claims or damages related to disclosure by COUNTY of CONTRACTOR'S Confidential Information.

6.5. If CONTRACTOR refuses to perform its duties under this section within 14 calendar days of notification by COUNTY that a demand has been made to disclose CONTRACTOR'S Confidential Information, then CONTRACTOR waives its claim that any of its information is confidential, and releases COUNTY from claims or damages related to the subsequent disclosure by COUNTY.

## **7. Insurance.**

7.1. CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees or subcontractors.

### **A. COMMERCIAL GENERAL LIABILITY.**

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

### **B. AUTOMOBILE LIABILITY.**

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

C. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY.

- a. Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws.
- b. Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

D. OTHER INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

- a. Commercial General Liability and Automobile Liability Coverage
  - (i) The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.
  - (ii) The CONTRACTOR'S insurance coverage shall be considered primary insurance as respects the COUNTY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officials, employees or volunteers shall be excess of CONTRACTOR'S insurance and shall be non-contributory.
- b. Workers' Compensation and Employers' Liability Coverage
  - (i) The insurer shall agree to waive all rights of subrogation against the COUNTY, for losses arising from work performed by the CONTRACTOR for the COUNTY.
- c. All Coverage
  - (i) The CONTRACTOR shall provide a Certificate of Insurance to the COUNTY with a Thirty (30) day notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under a claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contract is renewed) or prior.

E. SUBCONTRACTORS.

CONTRACTORS shall include all subcontractors as insured under its policies. All subcontractors shall be subject to the requirements stated herein.

**CERTIFICATE HOLDER: Alachua County Board of County Commissioners**

**MAIL or FAX CERTIFICATES TO:**

**Ebix  
212 Kent Street  
PO Box 257  
Portland, MI 48875  
Ph. 517-647-1700  
Fax 517-647-7900**

**8. Other Terms and Conditions.**

- 8.1. Permits. CONTRACTOR will obtain and pay for all necessary permits, permit application fees, licenses, or any fees required.
- 8.2. Laws & Regulations. CONTRACTOR will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. CONTRACTOR is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If the CONTRACTOR is not familiar with state and local laws, ordinances, code rules and regulations, the CONTRACTOR remains liable for any violation and all subsequent damages or fines.
- 8.3. Indemnification. See Standard Terms and Conditions contained within **Exhibit B**. All references in the Standard Terms and Conditions requiring the COUNTY to indemnify the CONTRACTOR are deleted. Florida Statutes. Nothing within the Standard Terms and Conditions shall waive the COUNTY's sovereign immunity under Florida Law.
- 8.4. Assignment of Interest. The CONTRACTOR and COUNTY recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the COUNTY. Therefore, the CONTRACTOR hereby assigns to the COUNTY any and all claims for such overcharges as to goods, material or services purchased in connection with the Agreement. However, for all other assignments (except as otherwise expressly provided in Section 9.5 of the Standard Terms and Conditions), neither party will assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this Agreement and shall not transfer any interest in same without prior written consent of the other party.
- 8.5. Successors and Assigns. The COUNTY and CONTRACTOR each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and

provisions of this Agreement.

- 8.6. Independent Contractor. In the performance of this Agreement, the CONTRACTOR is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the COUNTY. The CONTRACTOR is solely responsible for the means, method, technique, sequence, and procedure utilized by the CONTRACTOR in the full performance of the agreement.
- 8.7. Collusion. By signing this Agreement, the CONTRACTOR declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, contractors, or corporations and that this Agreement is fair and made in good faith without any outside control, collusion, or fraud.
- 8.8. Conflict of Interest. The CONTRACTOR warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The CONTRACTOR shall notify the COUNTY of any conflict of interest due to any other clients, contracts, or property interests.
- 8.9. Third Party Beneficiaries. This agreement does not create any relationship with, or any rights in favor of, any third party.

## **9. General Conditions.**

- 9.1. Governing Law and Venue. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Alachua County, Florida. All references contained within **Exhibit B** to a venue or law governing this Agreement in any location other than Alachua County, Florida shall be superseded by this section.
- 9.2. Severability. If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect
- 9.3. Non Waiver. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
- 9.4. Attachments. All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
- 9.5. Amendments. The parties may amend this Agreement only by mutual written agreement of the parties.
- 9.6. Notices. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States



registered or certified mail or sent by facsimile, addressed as follows:

If to CONTRACTOR:

Rave Wireless, Inc.  
50 Speen Street, Ste. 301  
Framingham, MA 01701  
ATTN: CEO

If to COUNTY:

Alachua County Fire Rescue  
ATTN: Chief  
Post Office Box 5038  
Gainesville, FL 32627-5038

WITH Cc's to:

J. K. Irby  
Clerk of the Court  
12 SE 1st Street  
Gainesville, FL 32602  
ATTN: Finance and Accounting

Office of Management and Budget  
105 SE 1st Avenue, Suite 6  
Gainesville, Florida 32601  
Attn: Contracts/Grants

- 9.7. Captions and Section Headings. Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
- 9.8. Construction. This agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.
- 9.9. Counterparts. This agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument
- 9.10. Entire Agreement. This agreement, together with the Standard Terms and Conditions, constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

**ALACHUA COUNTY, FLORIDA**

By: Mike Byerly  
Mike Byerly, Chair  
Board of County Commissioners

ATTEST:

APPROVED AS TO FORM

Steve Donahay, D.C.  
J. K. Irby, Clerk

[Signature]  
Alachua County Attorney's Office

(SEAL)

**CONTRACTOR**

ATTEST (By Corporate Officer)  
By: [Signature]  
Print: TOM M. S. AXBY  
Title: PRESIDENT & CEO

By: Todd W. Miller  
Print: Todd W. Miller  
Title: VP Operations

MUST BE ATTESTED (WITNESSED) BY A DESIGNATED OFFICER OF THE CORPORATION. IF NOT INCORPORATED, THEN SHOULD BE NOTARIZED. SAMPLE FORMATS FOR NOTARY ARE AVAILABLE ON THE INTRANET UNDER OFFICE OF MANAGEMENT AND BUDGET SECTION.

**Exhibit A**  
**STATEMENT OF WORK**



**Smart911**  
**Statement of Work (SOW)**  
**ALACHUA COUNTY FLORIDA**  
5/8/2013



## 1 Management Summary

This Statement of Work covers the effort necessary to implement Smart911. Day 1 in this document refers to the working day following the execution of this agreement and marks the beginning of the proposed schedule. Smart911 will provide call takers, dispatchers and first responders with additional critical caller data about subscribed callers in order to speed response times and improve response effectiveness. This SOW includes integration of the Smart911 service into the Alachua County's PSAPs, configuration of the hosted Smart911 service, access to the Smart911 First responder/dispatcher portal, installation of the Smart911 client on selected workstations and necessary technical support and user training. This SOW also outlines the responsibilities of the Client and the supported PSAP to ensure project success. Unless otherwise noted, all work will be performed remotely.

## 2 Summary of Smart911 Components

Below is a summary of the Smart911 components being delivered as a part of the deployment.

| <i>Item</i>                             | <i>Description</i>  |
|---|---|
| Smart911 License                        | License to access hosted, secure national database of Smart911 citizen profiles.  |
| Smart911 First Responder Portal         | Hosted, secure online portal providing first responder and dispatchers access to subscriber account profiles for active cases based on userid, password and case ticket number (which is generated by Smart911) |
| Smart911 CPE Server Software            | Software installed on local server which listens to the ALL spill, queries the Smart911 SaaS Server and broadcasts results on the local network to the Smart911 Workstation client.                             |
| Smart911 Client Workstation Application | Lightweight .exe installed on work station that interacts with CPE server to provide call taker or dispatcher with customer profile data via an embedded, pop-up web browser.                                   |
| Smart911 Administration Portal          | Hosted, secure online portal providing administrative functions such as user management and reporting.  |
| Smart911 SMS License                    | License to utilize Smart911's SMS chat functionality.   |

### 3 Roles and Responsibilities

Below is a summary of the roles and responsibilities for the deployment.

| Rave Mobile Safety  | Client  |
|---|---|
| Provide a copy of this SOW and Smart911 Launch Form.  | Identify Functional and Technical contacts, as well as appropriate backups  |
| Project management and executive support.   | Project management and executive support.   |
| Provide the Smart911 CPE and Profile viewer software. Procure Hardware for Local Smart911 Servers.  | Procure internet connectivity for Smart911 CPE.   |
| Facilitate the installation of the Smart911 CPE and Client Workstation Applications.  | Installation of the Smart911 CPE and Client Workstation Software. Allow for VPN access, or Webex desktop share or some other sort of control of CPE Server and Client Workstations to facilitate Smart911 Support from Rave for install |
| Perform the necessary set up and configurations to track citizen registrations and PSAP usage data for reporting purposes   | Integration of information available from Smart911 into the correct PSAP procedures and best practices as well as any training required to ensure proper implementation of those procedures   |
| Configurations to ensure proper parsing of the ALI spill.   | Provide access to the ALI Spill. Allow for VPN access, or Webex desktop share or some other sort of control of CPE Server and Client Workstations to facilitate Smart911 Support from Rave  |
| <p>Rave will provide the following training services:</p> <ul style="list-style-type: none"> <li>&gt; 2 training sessions via WebEx in a "Train the Trainer" format</li> <li>&gt; Training tools (powerpoint decks, Administration Guide, etc)</li> <li>&gt; Provide sample SOPs and FAQ documents</li> </ul> | Training of call takers, dispatchers, and supervisors that will be utilizing Smart911.  |

|   |   |
|---|---|
| Provide access to Smart911 First Responder Portal   | Training of necessary personnel to provide First Responder Portal access.   |
| Provide 24x7 phone and email technical support as well as 8x5 phone and email support for non-critical support questions  | Provide IP addresses and/or ranges from your network in which we can expect to receive traffic and work with Rave Mobile Safety to test and troubleshoot any connectivity issues.   |
| <p>Rave Mobile Safety will provide the following Marketing tools:</p> <ul style="list-style-type: none"> <li>&gt; Marketing best practices and communication channel overview</li> <li>&gt; Marketing asset templates, including web banners for municipal web sites, press kit, and example newsletters for schools and community outreach groups</li> <li>&gt; As part of the early adopter program, Rave will also customize all marketing materials per the needs of the County and participating municipalities</li> </ul> | Broad public awareness campaign to ensure citizen adoption. Examples include: inclusion of registration links on community web sites; inclusion of registration reminders in written communications with citizens; email marketing campaigns; and distribution of registration information through community channels such as schools, elderly centers, hearing disabled communities and libraries. |

#### 4 Proposed Schedule

| <i>Milestone</i>  | <i>When*</i> |
|---|--------------|
| Client and Rave Mobile Safety execute Agreement.  | Day 0        |
| Rave sends Welcome email to Client with Launch Form, Admins guides, Training Materials and other pertinent Implementation documents | Week 1       |
| Client identifies project manager and technical contacts.   | Week 1       |
| Smart911 Kickoff  | Week 1       |
| Rave Provides Smart911 CPE and Workstation Software   | Week 1       |
| Client Returns Smart911 Launch Form to Rave   | Week 1       |
| Rave will provide CPE Server available for software installation  | Week 2       |
| Client installs CPE Software and Workstation Software   | Week 2       |
| Client provides access to CPE Server and Workstations for Rave to complete configurations (May be VPN, Webex etc)                   | Week 2       |
| Rave completes CPE Server and Workstation Configurations  | Week2        |
| Client makes personnel available to assist Rave with testing  | Week 2       |
| Training and continued testing  | Week 3       |
| Deploy Marketing Plan, Go-Live  | Week 4       |

\* "Week" refers to Working Weeks starting with the Week following the execution of Agreement. Delays in this schedule by Client may impact subsequent activities.

## EXHIBIT B

### STANDARD TERMS AND CONDITIONS

This Smart911 Services Agreement (together with any exhibits attached hereto and terms expressly incorporated by reference herein, "Agreement") governs the acquisition and use of all Services (as defined below) provided by Rave Wireless, Inc. d/b/a Rave Mobile Safety ("Rave"). By executing this Agreement or any related order form that incorporates this Agreement by reference therein or is otherwise attached as an exhibit hereto ("Order Form"), Client (as defined below) agrees to the terms and conditions of this Agreement effective as of the date specified in the Order Form ("Effective Date"). Each of Rave and Client shall also be referred to individually as a "Party" and collectively as the "Parties". Any other capitalized terms used herein shall have the meanings assigned to them in Section 10 hereof and throughout this Agreement.

#### 1. SERVICES AND PRODUCTS

**1.1 Services.** In consideration of the Fee(s) payable by Client pursuant to Section 4 hereof, Rave shall provide the Client with (i) the Smart911 services specified in the Order Form and/or the Statement of Work(s) attached hereto as an exhibit (collectively, "SOW"), as the case may be, (ii) the related technical support services specified in the Smart911 Support and Service Level Policy ("Support"), and (iii) the license to Rave's related proprietary application software product(s) and Documentation (collectively, "Products") set forth in Section 1.2 below. For purposes of this Agreement, the Smart911 services, Support and Products referred to above in (i)-(iii) are collectively referred to as the "Services".

**1.2 Products License.** Subject to the terms and conditions of this Agreement, Rave hereby grants to Client a non-exclusive, non-transferable, non-sublicenseable right and license during the Term (i) to access and operate the Products, (ii) to permit Administrators to use the features and functions of the Products, and (iii) to make copies of the Documentation solely for Client's internal use by Administrators. Rave may, in its discretion, develop and release generally to licensees updates or upgrades to the Products. Subject to Client's payment of the Fees and all other amounts that may be payable with respect to the Products, Rave shall, during the Term, make any such updates and upgrades available to Client if and when generally released to licensees at no additional cost (not including any software marketed by Rave as a separate product or as a module for which additional fees are charged). Any such updates and upgrades provided under this Agreement shall be deemed to constitute part of the Products and shall be subject to all terms and provisions set forth in this Agreement. Client acknowledges that Rave and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, and other intellectual property rights in and to the Products, and Rave expressly reserves all rights not expressly granted to Client hereunder.

**1.3 Product Restrictions.** Except to the extent otherwise expressly authorized by Rave under this Agreement, Client may not copy, modify, adapt, translate, publicly display, publish, create derivative works or distribute the Products. Client will not use the Products for any purposes beyond the scope of or otherwise not in accordance with the licenses granted in 1.2 above. Without limiting the foregoing, Client will not (i) authorize or permit use of the Products by or for persons other than Administrators; (ii) assign, sublicense, sell, lease or otherwise transfer or convey the licenses granted hereunder; (iii) modify or create any derivative works of the Products (or any component thereof); or (iv) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Product is compiled or interpreted. Client hereby acknowledges that nothing in this Agreement shall be construed to grant Client any right to obtain or use such source code or any derivative works thereof. Client shall duplicate all proprietary notices and legends of Rave and its suppliers or licensors upon any and all copies of the Product authorized to be made by Client and shall not remove, alter or obscure any such proprietary notice or legend.

#### 2. TERM AND TERMINATION

**2.1 Term.** The initial term of this Agreement shall be set forth in the Order Form ("Initial Term"). Thereafter, this Agreement shall automatically renew, unless sooner terminated as provided below, on an ongoing basis for successive terms equal to the Initial Term (each, a "Renewal Term") and on the same terms and conditions herein, unless either Party gives the other Party written notice of its intent to terminate at least ninety (90) days prior to the expiration date of the then-current Renewal Term. As used in this Agreement, "Term" means the entire period during which this Agreement is in effect, including the Initial Term and all Renewal Term(s).

**2.2 Termination for Breach/Bankruptcy.** Either Party may terminate this Agreement upon written notice in the event that the other Party fails to make a required payment hereunder or materially breaches this Agreement and thereafter (i) in the case of non-payment, has failed to pay such amounts within five (5) days after receiving written notice thereof; or (ii) in the case of material breach, has failed to cure the breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the other Party) within thirty (30) days after receiving written notice thereof. In addition, either Party may terminate this Agreement upon written notice after the other Party has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event that a receiver has been appointed for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within thirty (30) days.

**2.3 Effect of Termination.** Upon any termination or expiration of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information and, in the case of the Client, the Products; (ii) return to the other Party or, at the other Party's option, destroy, all originals and all copies of such other Party's Confidential Information then in its possession; and (iii) shall promptly pay all amounts due and remaining payable hereunder.

**2.4 Survival of Obligations.** The provisions of this Agreement that, by their nature, are intended to survive a termination or expiration of this Agreement, including without limitation Client's obligations to pay any amounts due and outstanding hereunder and the provisions of Sections 1.3, 2.3, 2.4, 4, 5, 6, 7, 8, 9 and 10 hereof, shall survive termination or expiration of this Agreement.

#### 3. SUPPORT AND AVAILABILITY

**3.1 Support.** Rave shall provide Support for the Products in accordance with the Smart911 Support and Service Level Policy set forth in Exhibit A hereto ("SLP").

**3.2 Availability.** Rave will have no liability for unavailability of any Services caused, in whole or in part, by Client's use of the Services other than in accordance with the terms and conditions hereof or the Documentation, by any Subscriber's use of the Services other than in accordance with the Smart911 Terms of Service, or for any causes beyond the reasonable control of Rave or that are not reasonably foreseeable to Rave, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs, failures or the failure or unavailability of any services provided by Third Party Service Providers, or any inaccuracy or insufficiency in Subscriber Information.

#### 4. FEES AND PAYMENTS

**4.1 Fees Payable.** Client shall pay to Rave, or its designee, without offset or deduction, the fees set forth in the Order Form or the SOW, as the case may be, within the timeframe set forth therein, respectively (collectively, "Fees"). All amounts payable under this Agreement shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. Client will be responsible for payment of all such taxes (other than taxes based on Rave's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any Fees, the grant of license rights or the delivery of Services under this Agreement.

**4.2 Disputed/Late Charges.** Client must notify Rave, or its designee, in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice. Absent such notice, Client shall be deemed to have agreed to the Fees as invoiced upon the expiration of such time period. Rave reserves the right to charge, and Client agrees to pay, a late charge equal to the greater of one and one-half percent (1½%) or the highest rate permitted by law, per month, on any amount that is not the subject of a reasonable, good faith dispute that is unpaid on the due date, and on any other outstanding balance.

#### 5. CLIENT REPRESENTATIONS AND OBLIGATIONS

**5.1 Client Operation.** Client acknowledges and agrees (i) that Client is responsible for certain aspects of the operation of the Products, as set forth in the Documentation, including the related training and supervision of Administrators, and (ii) that in no event shall Rave have any liability relating to Client's failure to operate the Products in accordance with the Documentation.



**5.2 Client Compliance.** Client shall use the Services in compliance with all applicable laws, statutes, regulations, ordinances, rules or other requirements promulgated by governing authorities or otherwise imposed by Third Party Service Providers having jurisdiction over the Parties or the operation or use of the Services, including without limitation any contract provisions prohibiting Client from utilizing the Services to deliver to any Third Party Service Provider for transmission or dissemination material that violates any content restrictions set forth therein. Under no circumstances shall Client be authorized to make any representations, warranties or guarantees with respect to the Services, except to the extent expressly set forth in this Agreement.

**5.3 Client Content.** If Client provides or otherwise makes available any information or any other data collected by Client or a third party regarding Subscribers to Rave or any Third Party Service Provider in connection with the operation or use of the Services, Client represents and warrants that Client owns, has sufficient rights in and to, or has received and will maintain permission or consent with respect to, all such information and materials provided to Rave hereunder (collectively, the "Client Content"), including, without limitation, personal, educational and medical information contained within the Client Content, in order to use and disclose, and permit use and disclosure of, the Client Content in connection with the operation and utilization of the Services as contemplated by the Documentation or this Agreement.

**5.4 Client Authority.** The individual representative of Client executing the Order Form or the signature page of this Agreement, as the case may be, has full authority to bind Client and its Affiliates to the terms and conditions of this Agreement.

## **6. LIMITED WARRANTY AND LIMITATIONS**

**6.1 Limited Warranty.** THE SERVICES AND PRODUCTS ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RAVE EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, RELATING TO THE SERVICES AND PRODUCTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, DATA ACCURACY, SATISFACTORY QUALITY, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY RAVE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. Rave does not warrant that the Services will meet Client's requirements, that the operation thereof will be uninterrupted or error-free, or that all errors will be corrected. Without limiting the foregoing, the Client acknowledges and agrees that (i) Rave cannot guarantee the performance of any Third Party Service Provider and that neither Party may make any claims or guarantees on behalf of Third Party Service Providers regarding any matters, (ii) delivery of any Subscriber Information using the Services is not guaranteed and neither Rave nor any Third Party Service Provider shall be responsible for any failure of delivery, and (iii) Rave shall not be responsible for any disruption to or failure of the Services resulting from the actions or inactions of any Third Party Service Providers.

**6.2. Limitation of Liability.** IN NO EVENT SHALL RAVE OR ANY RAVE REPRESENTATIVE BE LIABLE TO CLIENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF RAVE OR SUCH RAVE REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. Notwithstanding anything herein to the contrary, the cumulative liability of Rave to Client and any third party for all claims arising from or relating to this Agreement or the operation or use of the Services shall not exceed the total amount of all Fees paid to Rave by Client hereunder during the twelve (12)-month period immediately prior to the event, act or omission giving rise to such liability, regardless of whether any action or claim is based on warranty, indemnification, contract, tort, negligence, strict liability or otherwise. The existence of multiple claims will not enlarge this limit. The warranty disclaimers and exclusions and limitations of liability in this Section 6 are intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective and form an essential basis of the bargain between the Parties. Absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## **7. CONFIDENTIALITY**

**7.1 Mutual Confidentiality Obligations.** Each Party agrees: (i) to use the Confidential Information of the other Party only for the purposes of this Agreement; (ii) to hold in confidence and protect the Confidential Information of the other Party from dissemination to, and use by, any third party; (iii) not to create any derivative work from Confidential Information of the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants who have a need to have access and who have been advised of and have agreed in writing or are otherwise required to treat such information as confidential; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

**7.2 Confidentiality Exceptions.** The foregoing restrictions shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure shall first have given written notice to the other Party (if permitted) and made a reasonable effort to obtain a protective order; or (b) to establish a Party's rights under this Agreement, including to make court filings.

**7.3 Disclosure of Information about Subscribers.** Rave shall not disclose personally identifiable information regarding Subscribers to any party other than to Client and/or any safety and emergency response services, including without limitation, 911 or equivalent, fire, police, emergency medical and public health services (collectively, "Emergency Service Providers"); provided, however, that notwithstanding anything to the contrary contained in this Agreement, (i) Rave may disclose such information to Third Party Service Providers and as otherwise permitted in Rave's then-current Smart911 Terms of Service and Privacy Policy and (ii) under no circumstances shall Rave or any Affiliate of Rave be liable for the failure of Client or any third party (including, but not limited to, any Third Party Service Provider or Emergency Service Provider) to comply with its own privacy policies and all applicable privacy laws and regulations.

## **8. INDEMNIFICATION**

**8.1 Rave Indemnification.** Except as otherwise provided below, Rave shall defend or, at its option, settle, any claim, cause of action, suit, proceeding or other action brought by a third party (not including any non-practicing entity) against Client directly and to the extent arising out of an allegation by such third party that any use of or access to a Product by Client as expressly authorized under this Agreement infringes any U.S. patent issued as of the Effective Date (each, a "Claim"), and Rave shall indemnify and hold Client harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any such Claim finally awarded to such third party by a court of competent jurisdiction after all appeals have been exhausted or at the time of a final settlement of such Claim by Rave (collectively, "Losses"), provided that Client gives Rave (i) prompt written notice of such Claim; (ii) sole authority to control and direct the defense and/or settlement of such Claim; and (iii) such information and assistance as Rave may reasonably request, at Rave's expense, in connection with such defense and/or settlement. Rave shall not be liable hereunder for any costs or expenses incurred by or on behalf of Client without the prior written consent of an authorized officer of Rave. Notwithstanding the foregoing, Rave shall have no obligation or liability for any claim and any related losses, costs, expenses, damages and liabilities whatsoever arising from (a) the combination, operation, or use of the Product with products, services, information, materials, technologies, business methods or processes not furnished by Rave; (b) modifications to the Product, which modifications are not made by Rave; (c) use of the Product except in accordance with this Agreement, the Documentation and any other applicable user documentation or specifications furnished by Rave in writing; (d) failure of Client to implement any updates and upgrades provided by Rave that would make the Product non-infringing; (e) Rave's compliance with Client's designs, specifications or instructions; or (f) any intellectual property provided or otherwise made accessible to Rave by Client or any of its Affiliates. Upon the occurrence of any Claim for which indemnity is or may be due under this Section 8.1, or in the event that Rave believes that such a Claim is likely, Rave may, at its option (i) modify the Product so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Client and refund to Client any unused license fees under the then-current Term. The obligations set forth in this Section 8.1 shall constitute Rave's entire liability and Client's sole remedy for any actual or alleged intellectual property infringement or misappropriation with respect to the Services or Products.

**8.2 Client Indemnification.** Client shall defend, indemnify, and hold Rave and each Rave Representative harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim against Rave and/or such Rave Representative by a third party (including without limitation any Subscriber or governmental agency) in connection with any material breach of this Agreement by Client or any Intellectual property infringement claim against Rave and/or any Rave Representative by a third party arising out of any actions or omissions by Client covered by Section 8.1(a)-(f) above, provided that Rave gives Client (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Client may reasonably request, at Client's expense, in connection with such defense and/or settlement.

## **9. MISCELLANEOUS**

**9.1 Applicable Law.** This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with, and shall be governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its rules regarding conflicts of laws, and (ii) subject to Section 9.2 below or otherwise in connection with any action for injunctive or other equitable arising from the breach by the other Party of any license, usage or confidentiality obligations hereunder, the Parties agree that any and all causes of action between the Parties arising from or in relation to this Agreement shall be brought exclusively in the State or Federal courts located within the Commonwealth of Massachusetts.

**9.2 Arbitration.** The Parties agree that any and all disputes regarding this Agreement that cannot be resolved through negotiations between the designated representatives from each Party within thirty (30) days of the date the dispute arose shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") at its Boston, Massachusetts location. Any such arbitration will be conducted in accordance with the Commercial Arbitration Rules of the AAA. Any such arbitration will be conducted by a single arbitrator, and the arbitrator will issue his/her award in writing with findings. The decision of the AAA shall be binding as between the Parties and shall not be subject to appeal.

**9.3 Force Majeure.** Rave shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of Rave.

**9.4 Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid or by nationally recognized overnight courier service, to the Parties to the Agreement and addressed, if to Client, as set forth in the Order Form, or if to Rave, as follows:

Rave Wireless, Inc.  
50 Speen Street, Suite 301  
Framingham, MA 01701  
Attention: Chief Executive Officer

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient and sends a duplicate of such notice by the means specified herein. Such notices shall be effective on the date indicated in such confirmation.

**9.5 Assignment.** Neither Party may assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect; provided, however, that either Party may assign this Agreement in connection with any merger, consolidation, corporate restructuring, sale of any substantial portion of its assets, or any transaction in which more than fifty percent (50%) of its voting securities are transferred. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Rave and Client and their respective permitted successors and assigns.

**9.6 Independent Contractors.** Client and Rave acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

**9.7 Amendment/Waiver.** No amendment to this Agreement or any addendum shall be valid unless in writing and signed by the authorized representatives of the Parties. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

**9.8 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability.

**9.9 Export Controls.** Client will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of any Product to any country for which any export license or approval is required under the laws of the United States or any other country unless the appropriate export license or approval has first been obtained.

**9.10 No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties and their permitted successors and assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**9.11 U.S. Government End-Users.** Each of the components that constitute the Product is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Product with only those rights set forth herein.

**9.12 Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

**9.13 Signatures.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement. This Agreement may be executed by facsimile or electronic signature. Notwithstanding the foregoing, this Agreement may be deemed to be executed upon the execution by the Parties of the Order Form incorporating this Agreement by reference therein.

**9.14 Entire Agreement.** This Agreement, together with the Order Form and the SOW (if applicable), sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein. In the event a conflict arises between this Agreement and the provisions of any other document comprising part of this Agreement, this Agreement will govern unless the other document expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement.

## **10. DEFINITIONS**

**10.1 "Administrators"** mean Client personnel authorized by Client to access the Products on behalf and for the benefit of Client.

**10.2 "Affiliate"** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity, whether directly or indirectly through one or more Intermediaries.

**10.3 "Client"** means the client specifically identified on the Order Form or in the signature block of the Agreement.

**10.4 "Confidential Information"** means the terms of this Agreement and all documents, material or information relating to the Services and the provision thereof, including, but not limited to, the Documentation, personally identifiable information regarding Subscribers, and all other information that either Party treats as proprietary or confidential.

**10.5 "Control"** and its derivatives means legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding voting capital stock (or other ownership interest, if not a corporation) of an entity, or actual managerial or operational control over such entity.

**10.6 "Documentation"** means Rave's then-current standard product and user guides and/or related documentation generally made available to licensees of Products, as such Documentation may be modified by Rave, in its sole discretion, from time to time.

**10.7 "Privacy Policy"** means Rave's then-current Privacy Policy for Subscribers of the Services.

**10.8 "Rave Representatives"** means Rave and its Affiliates and each of their respective officers, directors, employees, contractors and representatives.

**10.9 "Subscribers"** means individuals who register with Smart911 to provide Subscriber Information or are otherwise eligible to receive or utilize the benefits of the Services.

**10.10 "Subscriber Information"** means all Information provided or otherwise made available by a Subscriber in registering with Smart911 in connection with the Services, including, but not limited to, critical care, rescue, account information, communications history and any other information relating to the Subscriber's Smart911 account.

**10.11 "Support and Service Level Policy"** means the Smart911 Support and Service Level Policy for the Products set forth in Exhibit A hereto.

**10.12 "Terms of Service"** means Rave's then-current Terms of Service Agreement for Subscribers of the Services.

**10.13 "Third Party Service Provider"** means a telecommunications, Internet, voice broadcasting, voice messaging or other service provider providing mobile telephone, Internet or other intermediary services that allow or relate to the utilization of the Services by Subscribers.

## EXHIBIT A

### SMART911 SUPPORT AND SERVICE LEVEL POLICY ("SLP")

#### Purpose

This SLP sets forth Rave's undertakings with respect to providing customer support to the Client and the service levels associated with the Services provided to Client.

**1. Service Reliability.** Rave shall provide an uptime of 99% for the Services, subject to scheduled updates and maintenance and to any downtime caused by the Client or by Third Party Service Providers. For unplanned downtime (an "Event"), Rave will assign a trouble severity code based on Rave's assessment of the Event at the point of trouble identification. Rave will make adjustments to the trouble severity code based on how the Event proceeds.

| Trouble Severity Code | Description   | Initial Response Time   | Status Update Intervals |
|-----------------------|---|---|-------------------------|
| Sev 1                 | "Sev 1 Error" means a catastrophic Event causing a complete (100%) loss of a key safety related feature of the Services   | 20 min.   | 30 min.                 |
| Sev 2                 | "Sev 2 Error" means a non-catastrophic Event causing a significant component of the Services to fail or to perform materially different than expected, creating significant inconvenience to the Client | For Events reported during normal business hours (9am to 5pm EST Monday through Friday), 24 hours from time of report. For Events reported outside of normal business hours, 24 hours from beginning of next business day | 2 hour                  |
| Sev 3                 | "Sev 3 Error" means an Event that: (a) has minimal current impact on the Client, and (b) causes a malfunction of a non-essential Product feature.   | For Events reported during normal business hours, 24 hours from time of report. For Events reported outside of normal business hours, 24 hours from beginning of next business day  | As appropriate          |

**2. Points of Contact and Escalations.** If Client experiences an Event, Client may contact Rave's customer support hotline at 888-605-7163 available 24X7X365 or by e-mail at [techsupport@smart911.com](mailto:techsupport@smart911.com).

- Non-Sev 1 Events are submitted via email at [techsupport@smart911.com](mailto:techsupport@smart911.com).
- For Sev 1 Events, Rave will provide continual support until the Event is resolved.

Client and Rave will exchange ticket numbers for tracking an Event beginning with the Initial report of trouble. Client may be required to interface with any third party hardware and software vendors, carriers or other service providers.

Client Contact Information (for escalation or technical issues)

|                                  | Contact Name & Title | Phone | Mobile | Email |
|----------------------------------|----------------------|-------|--------|-------|
| 1 <sup>st</sup> Point of Contact |                      |       |        |       |
| 1 <sup>st</sup> Escalation       |                      |       |        |       |
| 2 <sup>nd</sup> Escalation       |                      |       |        |       |

**3. Carrier and Other Service Provider Related Service Guarantees.** Rave does not provide any service levels or support with respect to any carrier or other Third Party Service Provider. Rave's sole responsibility with respect to carriers and other Third Party Service Providers will be to make commercially reasonable efforts to ensure availability of such third party's services.

**4. Change Control Management/Update Management.**

- A. **Product Modifications by Rave:** Rave may modify Products from time to time to install bug fixes and required updates (as deemed appropriate by Rave).
- B. **Implementation of Updates/Maintenance:** Rave will ensure that any planned maintenance and update events within the Products will be executed in a professional manner. Proper execution includes advance notification to Client by Rave.
- C. **Service Interruptions and Advanced Notification Requirements:** Rave will provide Client with at least 72 hours advance notice via e-mail of all planned maintenance activities resulting in any service interruptions or possibility of any service interruption that will have a direct impact on Services.

Unless otherwise arranged, Rave will perform planned service interruptions within a maintenance window from Monday to Sunday between the hours of 05:00 AM to 07:00 AM Eastern Standard Time.

Rave shall perform emergency maintenance as necessary and will, if possible, give advance notice thereof to Client. "Emergency" shall mean that Rave has become aware of a problem that, if an immediate remedy is not implemented, will prevent Rave from continuing to support and provide the elements and aspects of the Services. Emergency downtime outside of the maintenance window will be counted as unscheduled downtime in determining whether Rave has achieved its service uptime goal.

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