InfoSend Master Service Agreement

This Master Service Agreement ("**Agreement**") is entered into as of _____ ("Effective Date") by and between **The City of Ankeny, IA,** a Municipality, having its main office at 410 West First Street, Ankeny, IA 50023 ("**Client**") and **InfoSend, Inc.**, a California Corporation, having its main office at 4240 E. La Palma Avenue, Anaheim, California 92807 ("**InfoSend**"). Client and InfoSend are collectively referred to herein as the "Parties" and individually as a "Party."

In consideration of the mutual promises and upon the terms and conditions set forth below, the Parties agree as follows:

1 Definitions

For the purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise.

1.1 "Agreement" shall refer to this Agreement, as amended from time to time, which shall constitute an authorization for the term of this contract for InfoSend to provide the Services, described herein, to the Client.

1.2 "User(s)" shall mean a customer or employee of Client accessing InfoSend hosted applications via the Internet. Users of the System will agree to accept all the terms and conditions herein, and may be issued a unique User ID and/or password by InfoSend or Client.

1.3 "Effective Date" shall be the last date upon which the parties signed this Agreement. The Agreement will not be effective against any party until the said date.

1.4 "Services" shall include the performance of the Services outlined in Section 2 and detailed in Exhibits A and C of this Agreement.

1.5 "System" shall include all InfoSend hosted data and software applications.

2 Services Provided by InfoSend

2.1 Scope of Services

Subject to the terms and conditions of this Agreement, InfoSend shall provide to Client, and Client shall purchase from InfoSend, the services listed in Exhibit A ("Scope of Primary Services") to this Agreement at the price set forth in Exhibit B ("InfoSend Fees"). In the event Client requires other consulting, installation, development and/or customization services, InfoSend shall perform and Client shall purchase such services in accordance with the provisions of Exhibit C ("Professional Services") of this Agreement.

2.2 Professionalism

InfoSend and Client shall operate in a professional manner under this Agreement: in providing and receiving Services under this Agreement, the parties will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession under similar circumstances.

2.3 Time of the Essence

InfoSend and Client acknowledge and agree that time is of the essence for the completion of the Services to be performed and each party's respective obligations under this Agreement.

3 License Grant and Restrictions

3.1 Grant of License

InfoSend agrees to provide to Users the right to use software and the provision of Services, but in all cases only in full and complete compliance with all of the terms and conditions of this Agreement. Subject to the terms of this Agreement, InfoSend hereby grants, and Client hereby accepts, for the Term (as defined herein) of this Agreement, a non-exclusive, non-transferable license to access and use and to permits its Users to access and use the System via the Internet ("the License").

3.2 License Restrictions

Client hereby agrees not to: (i) reproduce, download, modify, create derivative works from, distribute, or attempt to reverse engineer, decompile, disassemble, or access the source or object code for, the System; (ii) use the System, or any component thereof, in any manner contrary to applicable laws or government regulations; or (iii) otherwise affect, attempt to enable the authorized use (with or without User ID and/or password) of the System.

4 Privacy and Security

4.1 Regulatory Compliance

InfoSend will maintain compliance with required Payment Card Industry (PCI) Data Security Standards and Cardholder Information Security Standards, applicable rules and regulations of the Health Insurance Portability and Accountability Act (HIPAA), and applicable sections of the Gramm-Leach-Bliley Act of 1999.

4.2 Data and Human Resources Security

InfoSend takes great care in both data and human resources security. InfoSend company policy requires all new employees to pass a background check and a drug-screening test, both performed by outside companies. These practices will remain in place for the duration of the Agreement.

5 Term & Termination

5.1 Term

The initial term of this Agreement shall commence on the effective date of this Agreement and continue for a period of two (2) years **("Initial Term")** from the effective date. This Agreement will then automatically renew for four (4) successive one (1) year periods **("Renewal Terms")** unless either Client or InfoSend provides the other party with at least sixty (60) days' written notice prior to the end of the current term indicating that such party elects not to automatically renew the term of this Agreement. The party giving non-renewal notice may indicate if it prefers for the contract to be terminated at the end of the current term or to continue on a month-to-month basis, if mutually agreeable to both parties.

5.2 Termination for Cause

This Agreement may be terminated for cause as follows:

(i)   Material Breach

A material breach of this Agreement by either party shall be cured within thirty (30) days ("Cure Period") after a party notifies the other of such breach. For those breaches which cannot reasonably be cured within thirty (30) days, the breaching party shall promptly commence curing such breach and thereafter proceed with all due diligence to substantially cure such breach. In the event that such material breach has not been cured within the Cure Period, the non-breaching party may terminate this Agreement in its entirety, or as it pertains to a particular Product, Deliverable, Service or Professional Service, by providing the other party

with thirty (30) days' written notice as of a date specified in such notice.

(ii)   Failure to Pay

After sixty (60) days of nonpayment on undisputed invoices, InfoSend may, at InfoSend's option, terminate this Agreement in its entirety or as it pertains to a particular Product, Deliverable, Service or Professional Service, by giving written notice to Client, as of a date specified in such termination notice, pursuant to Section 6.3.

(iii)   Insolvency or Bankruptcy

In the event that either party becomes or is declared insolvent or bankrupt, is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, then the other party hereto may, by giving written notice thereof to such party, terminate this Agreement as of the date specified in such notice of termination.

(iv)   Representations

This Agreement is predicated on Client representations of Client and Client User transactional usage. Should Client's actual continuous volume and/or recurring frequency deviate from representations provided by Client to InfoSend, as defined in Exhibit B, Section 2, InfoSend reserves the right to invalidate the Fees listed in this Agreement. Should this rare situation arise then InfoSend will notify Client immediately and negotiate with Client in good faith to pass on any increased costs to Client, in line with actual Client and Client User transactional usage. Should InfoSend and Client be unable to agree upon updated Fees, InfoSend reserves the right to terminate this Agreement with one hundred eighty (180) days' notice.

5.3 Upon Termination

Upon termination of this Agreement, the parties agree to cooperate with one another to ensure that all accounts receivable are accounted for. Upon termination, InfoSend shall cease all Services being provided hereunder unless otherwise directed by the Client in writing. Client will promptly pay to InfoSend any and all charges due,

including but not limited to payables that are due pursuant to this Agreement, accrued finance charges, and the Discontinuance Fee set forth below, where applicable.

5.4 Discontinuance Fee

The parties have mutually agreed upon the Fees for the Services to be provided hereunder based upon volumes Client has represented in Exhibit B, Section 2 and the Term of this Agreement. Because of the difficulty in ascertaining the actual damages to InfoSend that would result from a premature termination of the Agreement, Client agrees to pay a discontinuance fee to InfoSend in the event that (i) Client terminates the Agreement without cause prior to the expiration of the then-current term; or (ii) the Agreement is terminated due to a breach by Client prior to the expiration of the then-current term.

The discontinuance fee will be equal to two (2) months of the Client's average monthly billing for the previous six (6) months of Service (excluding any postage charges and professional services fees that were invoiced in that time period). Client agrees to pay the discontinuance fee prior to the effective date of such termination and in addition to all other payables then due and owing to InfoSend.

5.5 Force Majeure

Neither party shall be liable, or deemed to be in default, to the other for any failure or delay in performing an obligation under this Agreement to the extent that its performance is delayed, impaired or rendered impossible by an event beyond its control ("Force Majeure Event") such as natural disasters, war, terrorist acts, riots, labor strikes, civil disturbances, extra-ordinary losses of utilities (including telecommunications services), computer "hacker" attacks on internet infrastructure, regulatory restrictions, change in law or regulation or other acts of government authority, including civil and military authorities and courts, fuel or energy shortages, transportation stoppages or slowdowns, the inability to procure parts or raw materials, and/or acts or omissions of common carrier. These causes will not excuse Client from paying accrued payables due to InfoSend through any available lawful means acceptable to InfoSend.

6   Invoicing and Payments

6.1 Invoicing

InfoSend will invoice Client monthly and Client will pay InfoSend the fees described in and/or computed in accordance with **Exhibit B (InfoSend Fees).** Client

payment of these invoices is due upon receipt in U.S. dollars and shall be paid NET 30 unless expressly agreed to by InfoSend.

6.2 Dispute of Invoice

Should Client dispute any invoices, it must do so within ninety (90) days of the invoice date.

6.3 Late Payments

The recurring nature of InfoSend's Services result in a rapid rise in financial loss to InfoSend if a Client's accounts payable process is delayed, particularly when InfoSend is invoicing Client for postage charges. Therefore, in the event that invoices remain unpaid for over sixty (60) days from due date, unless otherwise expressly agreed to by InfoSend in writing, InfoSend reserves the right to suspend Services until payments are brought current. InfoSend's Accounting staff monitors Client debt regularly, and will notify Client in writing before Services are suspended. Should a hold be instated, it will immediately be removed once payment is received.

InfoSend may elect to charge Client interest on all undisputed invoices that remain unpaid for over sixty (60) days from due date at a rate of 1.5% per month, and any collection costs incurred by InfoSend (including attorneys' fees).

After ninety (90) days of nonpayment on undisputed invoices, InfoSend may terminate Services under this Agreement.

7   Communications

7.1 Notices

Any notice hereunder must be in writing and sent by overnight courier service (such as FedEx or UPS), or USPS certified mail, all with delivery signature requested, to the other party hereto at the respective address set forth below:

To Client:
C/O   (Department):   _Finance Department_____
Address: ____410 West First Street
Ankeny, IA 50023_____

_____

To InfoSend:
C/O: President
Address: 4240 E. La Palma Avenue

Anaheim, CA 92807

Notice shall be deemed to have been given and received one (1) business day after being sent via overnight courier service, or three (3) business days after being mailed by USPS certified mail. Each party may update its address or email address by providing written notice to the other party of such change in accordance with this section.

8 Confidentiality & Intellectual Property

8.1 Confidentiality

All information and data relating to Client's business, as well as all User information, submitted by Client to InfoSend under this Agreement shall be treated as confidential by InfoSend and shall not, except as required to perform the Services under this Agreement or otherwise required by law, be disclosed to any third party by InfoSend without Client's written consent. InfoSend shall promptly notify Client should InfoSend be served with a summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admission, or other discovery request or court order from any third party regarding this Agreement and/or the Services performed under this Agreement.

Client will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential or proprietary non-public information it obtains during the term of this Agreement about InfoSend's business, operations, financial condition, technology, systems, products, services, suppliers, clients or prospective clients, marketing data, plans, pricing, and models, or personnel, unless required by applicable law. Client will ensure that its employees and agents similarly abide by the requirements hereof.

InfoSend, and its licensors, where applicable, owns all rights, title and interest, including all related Intellectual Property Rights, in and to InfoSend technology, the content and the Services. The InfoSend name, the InfoSend logo, and the product names associated with the Service are trademarks of InfoSend or third parties, and no right or license is granted to use them.

9 Representations & Warranties

9.1 InfoSend Representations and Warranties

InfoSend represents and warrants that it has the legal power and authority to enter into this Agreement and that

Services will be provided in a professional and workmanlike manner.

InfoSend warrants that the Services will materially perform the functions that the Client has selected under normal use and circumstances and that InfoSend shall use commercially reasonable measures to protect Client Data to the extent that it retains such data in the operation of the Services. Provided that Client gives InfoSend written notice of failure to meet the foregoing warranty within sixty (60) days following delivery of any Services, or as otherwise specified in a Statement of Work ("SOW"), InfoSend warrants that it will use commercially reasonable efforts to correct any Services that fail to comply with the foregoing warranty. If there is no notice by Client within sixty (60) days following delivery of any Services, or as otherwise specified in a Statement of Work ("SOW"), it shall be deemed Client has accepted the Services.

9.2 Client Representations and Warranties

Client represents and warrants that it has the legal power and authority to enter into this Agreement. Client further warrants that it will comply with all laws, regulations, and compliance requirements applicable to Client's and User's activities covered by this Agreement.

9.3 Warranty Disclaimer

Except as expressly set forth in Section 9.1 above, InfoSend disclaims all other representations or warranties, express or implied, made to Client or any other party, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under this Agreement, to the extent permitted by applicable law.

InfoSend and its licensors and payment processors do not represent or warrant that (i) the use of the Services will be uninterrupted or error-free, or operate in combination with any other hardware, software, system or data; or (ii) the Services will not delay in processing or paying. Service may be subject to the limitations, delays, and other problems inherent in the use of the Internet and electronic communications. InfoSend is not responsible for any delays, delivery failures, or other damage resulting from such problems.

9.4 Outbound Services Disclaimer

InfoSend Outbound services are intended to create additional methods of communication for Clients in

support of existing processes. These services are not intended to replace all interaction with Client's end users or employees. While the outbound services have been created with the best available tools and practices, they are dependent on infrastructure that is inherently not fail-proof, including but not limited to infrastructure such as United States Postal Service ("USPS") delivery standards, software, computer hardware, network services, telephone and SMS services, and e-mail. Examples of situations that could cause failure include but are not limited to: USPS failure to deliver, down phone lines, all lines busy, equipment failure, email address changes, and Internet service disruptions. For this reason, while outbound services are valuable in providing enhanced communication, they are specifically not designed to be used as the sole method to deliver critical messages. Client acknowledges that it is aware of the potential hazards associated with relying on an automated outbound service feature, when using InfoSend services, and Client acknowledges and agrees that it is giving up in advance any right to sue or make any claim against InfoSend, and that Client forever releases InfoSend from any and all liability caused by (a) any failed USPS delivery; (b) any failed email delivery; (c) any failed SMS or call attempts (including excess of calls over and above network or system capacity), incomplete calls, or any busy-outs; (d) any failure to transmit, obtain or collect data from callers or for human and machine errors, faulty or erroneous input, inarticulate caller communication, caller delays or call lengths exceeding estimated call lengths or omissions, delays and losses in connection with the Services provided hereunder; or (e) if Client, Client's employees, or Client's end user suffer injury or damage due to the failure of outbound services to operate, even though InfoSend does not know what or how extensive those injuries or damages might be, unless such losses were directly attributable to InfoSend's gross negligence or willful misconduct.

10   Insurance

10.1 InfoSend's Insurance Provisions
InfoSend will maintain the following minimum insurance levels during the Initial Term of this Agreement and any Renewal Terms:

- Commercial General Liability coverage in the amount of $1,000,000.00 per occurrence and $2,000.000.00 in aggregate.

- Automobile Liability Insurance coverage in the amount $1,000,000.00 per occurrence.
- Umbrella Liability Insurance in the amount of $5,000,000.00 per occurrence and in aggregate.
- Worker's Compensation Insurance with at least the minimum coverage amounts required by law.
- Errors & Omissions Insurance with a $5,000,000.00 coverage limit.

11   Indemnification & Limitation of Liability

11.1 Indemnification & Limitation of Liability
InfoSend is a service provider; as such, Client acknowledges that data processing involves the risk of human and machine errors and that InfoSend shall not be liable for any errors, omissions, delays or losses.

InfoSend will not be responsible for actions, omissions or delays to Services resulting from incomplete, late or faulty data and/or instructions transmitted by Client. No damages shall be assessed against InfoSend when any delay or breach on InfoSend's part is caused by failure of Client to perform Clients' responsibilities or any other reason beyond the control of InfoSend, including, without limitation, (a) failures or limitations on the availability of third-party telecommunications or other transmission facilities; (b) Client failure to maintain security or confidentiality of data or access credentials; (c) violation of the applicable terms of this agreement or any applicable laws, regulations or industry standards.

In no event shall InfoSend be liable for indirect, special or consequential damages even if InfoSend has been advised of the possibility of such potential claim, loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

12   General

12.1 Independent Contractor
Client and InfoSend agree and understand that the relationship between both parties is that of an independent contractor. No joint venture, partnership, employment or agency relationship exists between Client and InfoSend as a result of this Agreement or use of the Service.

12.2 Governing Law

This Agreement shall be governed by the substantive laws of the state of Iowa without regard to the choice or conflicts of law provisions of any jurisdiction.

12.3 Amendment of Agreement

Modifications or changes to this Agreement must be in writing and executed by the parties bound to this Agreement.

12.4 Severability

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

12.5 Assignment

This Agreement may not be assigned by either party without the prior written approval of the other party, unless it is being assigned to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

12.6 Immigration Laws

For Services performed within the United States, InfoSend will assign only personnel who are legally authorized to work in the United States. InfoSend represents and warrants that it complies with all applicable immigration laws with respect to the personnel assigned to Client.

12.7 Survival

All of the terms of this Agreement which by their nature extend beyond the expiration or termination of the Agreement, including but not limited to indemnification obligations, confidentiality obligations and limitations of liability, shall survive expiration or termination of the Agreement and remain in full force and effect.

12.8 Attachments

The following documents are attached hereto as Exhibits, and are incorporated by reference in their entirety:
Exhibit A: Scope of Primary Services
Exhibit B: InfoSend Fees
Exhibit C: Professional Services

12.9 Cooperative Agreement ("Piggybacking")

The parties agree that InfoSend may offer the prices, terms and conditions offered herein to other government agencies that wish to participate in a cooperative purchase program with Client. InfoSend will review these requests from other government agencies on a case-by-case basis to decide whether this Agreement can be extended to the new agency. At minimum, the following requirements must be met for the prices in this Agreement to be extended to the new agency:

- The new agency must require similar types of service for similar document types (i.e. statements, late notices);
- The monthly document volume that InfoSend will produce must be similar, or at a minimum, acceptable; and,
- The new agency must agree to use InfoSend's standard materials.

If the above conditions are not met then InfoSend will provide the new agency with revised pricing that it can elect to accept if it moves forward with the cooperative purchase program. Other agencies will be responsible for entering into separate agreements with the contract and for all payments thereunder made directly to InfoSend.

The parties below hereby execute this Agreement as of the Effective Date:

AGREED TO BY:

Client: **InfoSend:**

By: _____   By: _____
Name: _____   Name: _____
Title: _____   Title: _____
Date: _____   Date: _____