



# BOARD OF COMMISSIONERS

## REVISED AGENDA

November 12, 2019

7:30 PM

304 E. Grand River, Board Chambers, Howell MI 48843

*"The mission of Livingston County is to be an effective and efficient steward in delivering services within the constraints of sound fiscal policy. Our priority is to provide mandated services which may be enhanced and supplemented to improve the quality of life for all who work, reside and recreate in Livingston County."*

Pages

1. **CALL MEETING TO ORDER**
2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **ROLL CALL**
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  - b. Alger County Resoluiton #2019-21 Trial Court Funding Commission Interim Report
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5. **CALL TO THE PUBLIC**
6. **APPROVAL OF MINUTES** 9
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7. **TABLED ITEMS FROM PREVIOUS MEETINGS**
8. **APPROVAL OF AGENDA**
9. **REPORTS**
  - a. **Tribute to Judge David Reader**  
Senator Lana Theis
10. **APPROVAL OF CONSENT AGENDA ITEMS**  
Resolutions 2019-11-165 through 2019-11-170

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**11. RESOLUTIONS FOR CONSIDERATION**

**12. CALL TO THE PUBLIC**

**13. ADJOURNMENT**

Minutes of a regular meeting of the Otsego County Board of Commissioners, held in Room 100 at the County Building, 225 W. Main St., Gaylord, Michigan on the 22<sup>nd</sup> day of October, 2019 beginning at 9:30 a.m.

**PRESENT:** Julie Powers, Henry Mason, Paul Liss, Duane Switalski, Rob Pallarito, Ken Glasser, Doug Johnson, Ken Borton, Bruce Brown.

**ABSENT:** None.

The following preamble and resolution was offered by Commissioner Rob Pallarito, seconded by Commissioner Ken Glasser.

**RESOLUTION NO. OCR 19-23**  
**AUTHORIZING RESOLUTION**  
**OTSEGO COUNTY BOARD OF COMMISSIONERS**  
October 22, 2019

**OTSEGO COUNTY RESOLUTION IN SUPPORT OF LINE 5 TUNNEL**

**WHEREAS**, Enbridge's Line 5 has been operating safely and reliably in Straits of Mackinac for more than 66 years; and

**WHEREAS**, Enbridge's Line 5, a light crude and natural gas liquids pipeline, helps to safely meet Michigan's energy needs by fulfilling more than half of the propane needs of the state; and

**WHEREAS**, the products delivered to regional refineries provide jobs and ultimately fuel our lives; and

**WHEREAS**, multiple and extensive inspections and safety tests over the last several years have confirmed the integrity of Line 5 at the Straits of Mackinac as fit for service.

**WHEREAS**, Consequences to energy supply, local producers, regional airports and refineries, jobs, local economies and the pocketbook of Michiganders across the entire state are too great for Line 5 to be shut down before the tunnel replacement can be completed;

**WHEREAS**, Issues have been raised by several concerned parties regarding the possibility and impact of a breach of Line 5 into the Straits of Mackinac. These concerns have resulted in the State of Michigan and Enbridge negotiating an "agreement" for a 5 year \$500 million project, to construct a tunnel 100 feet below bedrock to encase Line 5, the entire length of the Straits, in one-foot-thick concrete walls in order to mitigate the chances of any leaks of product into the Great Lakes.

**WHEREAS**, the recently elected Michigan Attorney General, Dana Nessel, has subsequently opposed the negotiated "agreement" and filed a lawsuit in Ingham County Circuit Court to close down Line 5 immediately effectively canceling all efforts to begin construction of the tunnel; and

**WHEREAS**, this action may very well provide unintended consequences for all parties as the litigation to close down Line 5 may take years to be resolved in the courts with no assurance of the outcome and;

**WHEREAS**, the time to resolve the litigation may simply result in the delay of the start of the construction of the tunnel thereby leaving the existing Line 5 in place unnecessarily for several additional years.

**WHEREAS**, Enbridge has demonstrated a willingness to work with the state to both protect the Great Lakes and ensure the continued safe delivery of energy we all rely on.

**NOW, THEREFORE, BE IT RESOLVED** that the Otsego County Board of Commissioners hereby joins with Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Mackinac, Marquette, Ontonagon, Cheboygan, and Grand Traverse Counties and the Michigan Association of Counties (MAC) in extending its support for Enbridge's proposed tunnel replacement project and urges the State of Michigan to work with Enbridge to complete the tunnel project as quickly as possible and not disrupt Line 5 service before the tunnel can be completed.

**AND, BE IT FURTHER RESOLVED** that Otsego County sends this resolution to all counties of Michigan as an invitation to join in expressing support for increasing the safety of our current energy infrastructure as our society simultaneously seeks energy efficiencies and energy alternatives that will continue to reduce negative impacts and risks to our environment.

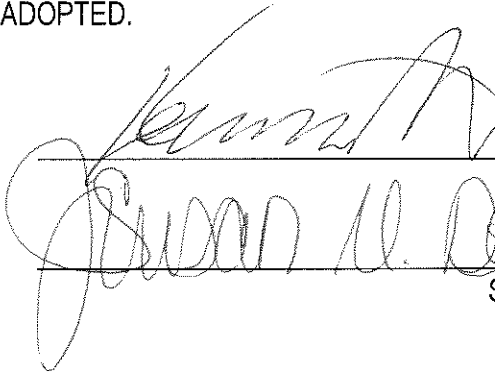
A ROLL CALL VOTE WAS TAKEN AS FOLLOWS:

YES: UNANIMOUS.

NO: NONE.

ABSTAIN: NONE.

THE RESOLUTION WAS DECLARED ADOPTED.



Kenneth C. Borton, Chairman

Susan I. DeFeyter, County Clerk

STATE OF MICHIGAN)  
§  
COUNTY OF OTSEGO)

The undersigned, being the duly qualified and acting Clerk of the County of Otsego, hereby certifies that the foregoing is a true and complete copy of a resolution duly adopted by the Otsego County Board of Commissioners at its regular meeting held on the 22<sup>nd</sup> day of October, 2019, at which meeting a quorum was present and remained throughout and that an original thereof is on file in the records of the County. I further certify that the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that the minutes of such meeting were kept and will be or have been made available as required thereby.

Susan I. DeFeyter, County Clerk

DATED: \_\_\_\_\_, 2019

# ALGER COUNTY BOARD OF COMMISSIONERS

Mary Ann Froberg, Clerk

101 COURT STREET, MUNISING, MI 49862

## RESOLUTION #2019-21

### TRIAL COURT FUNDING COMMISSION INTERIM REPORT

**WHEREAS**, the County Clerks in Michigan have a constitutional stake in the trial court funding question, but were excluded from participation in the Trial Court Funding Commission. The County Clerks have a unique relationship with the courts and a perspective that should be heard when making recommendations for substantial changes.

**WHEREAS**, the goal of Public Act 65 of 2017 was to create a Trial Court Funding Commission to "review and recommend changes to the trial court funding system in light of *People v. Cunningham*".

**WHEREAS**, the vast majority of the Interim Report deals with the consolidation of all local court staff and operations under state control but does not solve the funding problems that *Cunningham* created (simply moving collections of fines and costs and payment of court salaries/benefits to the state does not mitigate the fact that we will still not be funded adequately).

**WHEREAS**, centralized control of our court process does not necessarily serve the best interest of the public. The County Clerks believe that local judges and citizens are better served by local custodial control. It has been proven to be a more responsive method of serving their needs.

**WHEREAS**, research of other state-funded court systems has shown that state funding creates a culture of complacency that tolerates delay. Accountability is removed from the local level and placed in the hands of bureaucrats in state government who are less connected to the people.

**WHEREAS**, we are concerned that transferring funding to state control would tether the judicial branch to the short term whims of the legislative and executive branches even more than they exist already. In the event of a lack of state funding (government shutdown) this process would also force the shutdown of the court system, resulting in constitutional violation of due process.

**WHEREAS**, it is critical to note that the finding of 46th Circuit Trial Court v. County of Crawford, 2006:143 states directly: "In order for the judicial branch to carry out its constitutional responsibilities as envisioned by the Constitution of 1963, art3, SS 2, the judiciary cannot be totally beholden to legislative determinations regarding its budgets."

**WHEREAS**, this Interim Report recommends altering the Michigan Constitution to provide that circuit court clerks are employed by the court and under the supervision of state government rather than the County Clerk.

**WHEREAS**, County Clerks serve a critical role in the judicial system. They are constitutionally mandated to ensure the integrity of the records and protecting the best interests of our citizens. Removing County Clerks from the picture would serve as substantial disruption to the purpose that we serve.

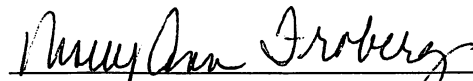
**NOW, THEREFORE, BE IT RESOLVED**, the Alger County Board of Commissioners is opposed to the Trial Court Funding Commission Interim Report dated April 8, 2019. We believe that it is imperative to maintain local control and accountability because that is how our constituents are best served. We strongly oppose this Interim Report and possible pending legislation and encourage the other 82 Michigan counties to join us.

**BE IT FURTHER RESOLVED**, that a copy of this resolution be forwarded to Governor Gretchen Whitmer, Senator Ed McBroom, Representative Sara Cambensy, the Michigan Association of Counties and the other 82 Michigan Counties.

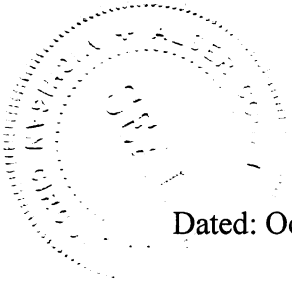
**CERTIFICATION**

I hereby certify that the above is a true copy of a Resolution adopted by the Alger County Board of Commissioners at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

  
\_\_\_\_\_  
Mary Ann Froberg, Alger County Clerk

Dated: October 21, 2019



**ALGER COUNTY BOARD OF COMMISSIONERS**

Mary Ann Froberg, Clerk  
101 COURT STREET, MUNISING, MI 49862

**RESOLUTION #2019-22**

**COUNTY RESOLUTION ON HOUSE BILL 4590  
A BILL TO CREATE A TOURISM REINVESTMENT EXCISE TAX**

WHEREAS, Tourism rates have increased steadily across the Upper Peninsula in recent years. This growth is apparent in an almost 20 percent increase in visitor spending in the U.P. between 2011 and 2017, according to the Michigan Economic Development Corporation.

WHEREAS, While this growth in tourism results in positive economic impacts to the private sector and increased state tax revenue, local revenue growth is far more restricted. This local revenue growth is limited to local property taxes, any modest increase of which is insufficient to cover the costs of the growth in tourism.

WHEREAS, Recreational activity by tourists result in measurable increased strain on local services. This is especially true of life-saving medical services that impact not only visitor safety but that of residents as well. Alger County has witnessed a 240 percent growth in non-residential emergency runs between 2012 and 2018. Additionally, the number of out-of-state tickets for traffic violations has more than doubled in the past five years.

WHEREAS, The geographic distances between local services, hospitals and the sites of emergency events can be very large. This places further strain on the ability of EMS to respond in a timely manner when multiple calls are received in one day, putting lives at risk.

WHEREAS, Large numbers of tourists impact the cost of emergency services, public safety, as well as county parks and recreation, in local budgets. There is currently no recourse for County governments to levy taxes that impact visitors only in order to account for these increased costs.

WHEREAS, local residents should not be asked to subsidize with their own limited resources the increased costs of tourism. U.P. residents already pay relatively high property taxes, due in part to greater amounts of non-taxable and tax-restricted properties, which shifts the tax burden onto regular property owners. Local voters have also been asked to approve a greater number of special assessments in recent years, due to constrained local revenue in rural counties.

WHEREAS, House Bill 4590, introduced by State Representative Sara Cambensy, provides for a Tourism Reinvestment Excise Tax that, if approved by local voters, would allow Counties the option to tax local room rentals at rate not to exceed 5 percent of the total room rate. The revenue generated would be designated specifically for emergency services, public safety, and county parks and recreation.

BE IT THEREFORE RESOLVED that, the Alger County Board of Commissioners supports the passage House Bill 4590 and that this resolution will be forwarded to State Representative Sara Cambensy, State Senator Ed McBroom, Governor Gretchen Whitmer, the Michigan Association of Counties and the other 82 Michigan Counties.

Alger County is an Equal Opportunity Employer

**CERTIFICATION**

I hereby certify that the above is a true copy of a Resolution adopted by the Alger County Board of Commissioners at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

  
\_\_\_\_\_  
Mary Ann Froberg, Alger County Clerk



Dated: October 21, 2019



## LIVINGSTON COUNTY BOARD OF COMMISSIONERS

### MEETING MINUTES

October 28, 2019, 7:30 p.m.

304 E. Grand River, Board Chambers, Howell MI 48843

Members Present: Donald Parker, Dennis Dolan, Kate Lawrence, William Green, Wes Nakagiri, Douglas Helzerman, Robert Bezotte, and Carol Griffith

Members Absent: Gary Childs

#### 1. CALL MEETING TO ORDER

The meeting was called to order by Chairperson Donald Parker at 7:30 p.m.

#### 2. PLEDGE OF ALLEGIANCE TO THE FLAG

All rose for the Pledge of Allegiance to the Flag of the United States of America.

#### 3. ROLL CALL

Roll call by the Clerk indicated the presence of a quorum.

#### 4. CORRESPONDENCE

None.

#### 5. CALL TO THE PUBLIC

None.

#### 6. APPROVAL OF MINUTES

a. Minutes of Meeting Dated: October 15, 2019

b. Minutes of Work Session Dated: October 15, 2019

c. Minutes of Meeting Dated: October 23, 2019

Motion to approve the minutes as presented.

It was moved by R. Bezotte

Seconded by D. Dolan

**MOTION Carried (8-0-1)**

#### 7. TABLED ITEMS FROM PREVIOUS MEETINGS

None.

#### 8. APPROVAL OF AGENDA

Motion to approve the Agenda as presented.

It was moved by D. Dolan

Seconded by C. Griffith

**MOTION Carried (8-0-1)**

#### 9. REPORTS

Commissioner Nakagiri provided a handout and discussed the same.

Chairperson Parker requested a moment of silence in remembrance of Ken Hinton. He also invited everyone to attend the State of the County Address on Wednesday, October 30, 2019 at 6 p.m. at the EMS Building.

**10. APPROVAL OF CONSENT AGENDA ITEMS**

Resolutions 2019-10-161 and 2019-10-163

Motion to approve the resolutions on the Consent Agenda.

It was moved by K. Lawrence

Seconded by C. Griffith

Commissioner Nakagiri requested the removal of Resolution 2019-10-162, Resolution Authorizing the Purchase of Military Service Credit by Todd Cox – Drain from the Consent Agenda and placing said resolution in the Resolutions for Consideration as 11.a.

Roll Call Vote: Yes (8): K. Lawrence, W. Green, W. Nakagiri, D. Helzerman, R. Bezotte, C. Griffith, D. Parker, and D. Dolan; No (0): None; Absent (1): G. Childs

**MOTION Carried (8-0-1)**

**10.a 2019-10-161**

Resolution Approving Newly Created Public Defender Positions - Public Defender

**10.c 2019-10-163**

Resolution Amending the LETS Inclement Weather Policy - LETS

**11. RESOLUTIONS FOR CONSIDERATION**

Resolution 2019-10-162 and 2019-10-164

**11.a 2019-10-162**

Resolution Authorizing the Purchase of Military Service Credit by Todd Cox - Drain

Motion to adopt the Resolution.

It was moved by K. Lawrence

Seconded by R. Bezotte

Discussion

Motion to amend the Resolution to add THEREFORE BE IT ADDITIONALLY RESOLVED that as of January 1, 2020, the Livingston County Board of Commissioners hereby discontinues this service credit purchase program until such time that Livingston County's defined benefit pension plan is no longer underfunded and has reached a funding level of at least 100%.

It was moved by W. Nakagiri

Seconded by W. Green

Discussion

Roll Call Vote: Yes (2): W. Nakagiri and W. Green; No (6): D. Helzerman, R. Bezotte, C. Griffith, D. Parker, D. Dolan, and K. Lawrence; Absent (1): G. Childs

**MOTION FAILED (2-6-1)**

Motion to adopt the original Resolution.

It was moved by K. Lawrence

Seconded by R. Bezotte

**MOTION Carried (8-0-1)**

**11.b 2019-10-164 (Roll Call)**

Resolution Authorizing a Third Quarter Supplemental Appropriation to the Fiscal- Year 2019  
Budget – Fiscal Services

Motion to adopt the Resolution.

It was moved by W. Green

Seconded by C. Griffith

Discussion

Roll Call Vote: Yes (8): W. Green, W. Nakagiri, D. Helzerman, R. Bezotte, C. Griffith, D. Parker, D. Dolan,  
and K. Lawrence; No (0): None; Absent (1): G. Childs

**MOTION Carried (8-0-1)**

**12. CALL TO THE PUBLIC**

J.T. Morales, Tyrone Township, commented on veterans.

**13. CLOSED SESSION**

Discuss Pending Litigation in Case No. 2:18-CV-13511 Pursuant to MCL 15.268(e)

Motion to recess to Closed Session at 7:59 p.m.

It was moved by D. Dolan

Seconded by C. Griffith

Roll Call Vote: Yes (8): D. Dolan, K. Lawrence, W. Green, W. Nakagiri, D. Helzerman, R. Bezotte, C. Griffith,  
and D. Parker; No (0): None; Absent (1): G. Childs

**MOTION Carried (8-0-1)**

Motion to return to Open Session at 8:29 p.m.

It was moved by D. Dolan

Seconded by C. Griffith

**MOTION Carried (8-0-1)**

**14. ADJOURNMENT**

Motion to adjourn the meeting at 8:30 p.m.

It was moved by C. Griffith

Seconded by D. Dolan

**MOTION Carried (8-0-1)**

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Elizabeth Hundley, Livingston County Clerk

# LIVINGSTON COUNTY BOARD OF COMMISSIONERS

## MEETING MINUTES

November 6, 2019

IMMEDIATELY FOLLOWING THE FINANCE COMMITTEE

304 E. Grand River, Board Chambers, Howell MI 48843

Members Present Donald Parker, Dennis Dolan, Kate Lawrence, William Green, Wes Nakagiri,  
Douglas Helzerman, Robert Bezotte, and Gary Childs

Members Absent Carol Griffith

### 1. CALL MEETING TO ORDER

The meeting was called to order by Chairperson D. Parker at 9:15 a.m.

### 2. PLEDGE OF ALLEGIANCE TO THE FLAG

All rose for the Pledge of Allegiance to the Flag of the United States of America.

### 3. ROLL CALL

Indicated the presence of a quorum.

### 4. CALL TO THE PUBLIC

None.

### 5. APPROVAL OF AGENDA

Motion to approve the Agenda as presented.

**Moved By** K. Lawrence

**Seconded By** G. Childs

**Motion Carried (8-0-1)**

### 6. FINANCE COMMITTEE RECOMMENDATION FOR APPROVAL OF CLAIMS

Dated: November 6, 2019

Motion to approve the Claims.

**Moved By** R. Bezotte

**Seconded By** D. Dolan

**Motion Carried (8-0-1)**

### 7. FINANCE COMMITTEE RECOMMENDATION FOR APPROVAL OF PAYABLES

Dated: October 24 through November 6, 2019

Motion to approve the Payables.

**Moved By** D. Dolan

**Seconded By** K. Lawrence

**Motion Carried (8-0-1)**

8. **CALL TO THE PUBLIC**

None.

9. **ADJOURNMENT**

Motion to adjourn the meeting at 9:17 a.m.

**Moved By** D. Helzerman

**Seconded By** G. Childs

**Motion Carried (8-0-1)**

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Elizabeth Hundley, Livingston County Clerk

UNAPPROVED

RESOLUTION

NO: 2019-11-165

LIVINGSTON COUNTY

DATE: November 12, 2019

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**Resolution Authorizing an Agreement with Thomson Reuters to Provide Online Legal Research Services (Westlaw) – Court Administration**

**WHEREAS,** Livingston County has a need for online legal research; and

**WHEREAS,** the current contract will expire on December 31<sup>st</sup>, 2019; and,

**WHEREAS,** there is a need to add additional attorneys to the contract because of the newly established Public Defender's Office; and,

**WHEREAS,** Thomson Reuters has been approved by the County Administrator as a sole source vendor; and

**WHEREAS,** Thomson Reuters of Eagan, MN, submitted a quote that will provide the online legal research services at the rate of \$35,084.40 per year for the period of January 1<sup>st</sup>, 2020 through December 31<sup>st</sup>, 2020, with an option for two one-year renewals; and

**WHEREAS,** funding for the Public Defender's Office's portion is available through the MIDC grant in the amount of \$8,019.29; and

**WHEREAS,** funding for the remainder is available through the Court Central Services Budget.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners hereby authorize entering into an agreement with Thomson Reuters for online legal research at the rate of \$35,084.40 for the period of January 1<sup>st</sup>, 2020 through December 31<sup>st</sup>, 2020, together with an option for two one-year renewals for services described above.

**BE IT FURTHER RESOLVED** that the Chairman of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments related to the above upon review and/or preparation of Civil Counsel.

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MOVED:  
SECONDED:  
CARRIED:



LIVINGSTON COUNTY, MICHIGAN  
**TRIAL COURTS**

204 S. Highlander Way, Howell, MI 48843  
Phone 517.540.7814 Fax 517.546.0048  
Email [rsacharski@livgov.com](mailto:rsacharski@livgov.com)

## MEMORANDUM

**To:** Livingston County Board of Commissioners

**From:** Roberta Sacharski, Trial Court Administrator

**Date:** October 30<sup>th</sup>, 2019

**RE:** Resolution Authorizing an Agreement with Thomson Reuters to Provide Online Legal Research Services (Westlaw)

For many years, the Livingston County Courts have maintained a contract with Thomson Reuters (previously Thompson West) to provide online legal research to the Courts, Prosecutor's Office, and Friend of the Court. The current contract expires on December 31<sup>st</sup>, 2019.

In 2020, the Courts will add the Public Defender's Office to this contract, increasing the amount of attorney users. Further, the 2020 contract includes an upgrade to the new Westlaw Government Plan with the EDGE Platform as the current platform is no longer supported.

The EDGE Platform incorporates a range of new features:

- Keycite Overruling Risk, a citatory warning that cautions when a point of law has been implicitly undermined based on its reliance on an overruled or otherwise invalid prior decision;
- Procedural Posture, which assists in targeting cases that mirror the same stage of litigation as your search;
- Statute Compare, which demonstrates how a statute or regulation has evolved over time;
- Quick Check, which securely analyzes briefs to suggest highly relevant authority;
- Litigation Analytics, which provides data-driven insights on judges, courts, attorneys, law firms, and case types to help build clear strategy and gain better understanding of cases that a judge relies upon when drafting opinions;
- Precedent Analytics, which offers understanding of citation patterns of judges.

The cost for the online legal research services through Thomson Reuters is \$2,923.70 per month or \$35,084.40 per year. A portion of this is entitled to reimbursement under the MIDC grant.

Thank you for your time and attention to this important matter. Should you have any questions, please feel free to reach out to me directly.



## APPENDIX B

### LIVINGSTON COUNTY FISCAL SERVICES

#### SOLE / SINGLE SOURCE VENDOR JUSTIFICATION OF PURCHASE

**VENDOR NAME:** Thomson Reuters

**REQUESTOR'S REASON (REQUIRED):**

**SOLE SOURCE:**

☒ Only known source that will meet requirements

**SINGLE SOURCE:**

☐ Supplier able to meet urgent timing requirements

☐ Supplier is current vendor of compatible service

☐ Repeat of a purchase order recently placed on a competitive basis  
Date of Bid or Award: \_\_\_\_\_

☐ Previous experience with this vendor

☐ Piggyback off of contract:

Contract Holder: \_\_\_\_\_

Contract Number: \_\_\_\_\_

**DETAILED JUSTIFICATION (REQUIRED):**

Thomson Reuters is the sole source of Gilliespie, a treatise on Michigan Criminal Law and Procedure.

Robert Sachowski

Department Head Signature

10/28/19

Date

Robert Sachowski

Typed Name of Requestor & Department

\_\_\_\_\_  
County Administrator / Designee Signature

Date

\_\_\_\_\_  
Typed Name



RESOLUTION

NO: 2019-11-166

LIVINGSTON COUNTY

DATE: November 12, 2019

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**Resolution Amending 2013-11-345 to Remove the Dog Licensing Late Fee from the County's Fee Structure - Treasurer**

**WHEREAS,** resolution #2013-11-345 established the current dog licensing fee structure for Livingston County which includes a \$20 late fee; and

**WHEREAS,** MCL 287.266 sec 6(5) provides, "The license fee *may* be set higher for a delinquent application than for a timely application"; and

**WHEREAS,** the collection of this fee has been inconsistent over the years across the 18 local units and 2 county offices currently issuing licenses; and

**WHEREAS,** the recent implementation of new licensing software in October 2018 included functionality that automatically assesses the late fee; and

**WHEREAS,** this has 1) added burden to our local unit Treasurers of enforcing a "County Policy" and 2) upset several dog owners trying to comply with the law; and

**WHEREAS,** the County Treasurer, as Administrator of Dog Licensing on behalf of Livingston County seeks to build partnerships with veterinary offices for the purpose of selling licenses on our behalf; and

**WHEREAS,** the total late fee revenue collected over the last year is \$5,440.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners hereby amend resolution #2013-11-345 and the Livingston County Animal Ordinance, as it pertains to the dog licensing fee structure, to remove the \$20 Late Fee effective immediately upon final Board Approval of this resolution

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**MOVED:**

**SECONDED:**

**CARRIED:**



## Memorandum

**To: Livingston County Board of Commissioners**  
**From: Jennifer M. Nash, Treasurer**  
**Date: November 4, 2019**  
**Re: RESOLUTION AMENDING DOG LICENSING FEES IN**  
**LIVINGSTON COUNTY**

Resolution 2013-11-345 established the current dog licensing fee structure for Livingston County, which includes a \$20 late fee as authorized by MCL 287.266 sec 6(5) for all dog license applications submitted untimely. The county's fee structure going has historically included this a late fee. However, with licenses sold at 18 local unit Treasurer Offices, the County Animal Shelter and County Treasurer's Office, the collection of the late fee has been extremely inconsistent across the years.

In October of 2018, we implemented a web-based dog licensing software called MiDogs. This new software has functionality that automatically assesses the \$20 late fee to dog owners who untimely submit their dog license application. As you can imagine this has caused some upset dog owners. These are folks trying to comply with the law. It has also put our local township/city Treasures in a position of having to enforce the County's policy.

As I begin to move forward building partnerships with veterinary offices to potentially sell dog licenses on our behalf I would like to make the process as easy as possible and a pleasant experience for all involved.

For these reasons, I am requesting the removal of the late fee from the County's dog licensing fee structure. Over the course of the year, we have issued approximately 5,150 licenses with 272 of those transactions incurring a late fee for a total late fee revenue of \$5,440.

Thank you for your consideration and I am happy to answer any further questions you may have.

RESOLUTION

NO:

2013-11-345

LIVINGSTON COUNTY

DATE:

November 18, 2013

**RESOLUTION TO INCREASE DOG LICENSING FEES IN LIVINGSTON COUNTY -  
LIVINGSTON COUNTY TREASURER**

**WHEREAS,** the current revenue generated from Livingston County dog licensing fees are not adequate to support the Animal Shelter in a manner acceptable to Livingston County; and

**WHEREAS,** the Livingston County Animal Control Director has researched the dog licensing fees charged by neighboring Counties; and

**WHEREAS,** moderate increases will establish fees in Livingston County more in line with the surrounding communities; and

**WHEREAS,** the increased rates will enable the Animal Control Director the ability to implement changes in her office which will result in improved health of the sheltered animals, enhanced service to the public, and greater management of her supervisory personnel; and

**WHEREAS,** the proposed increases are conservative in nature as follows:

(Applies to dogs 4 months old or older)

	CURRENT	PROPOSED
1 Year Spay/Neuter	\$7.00	\$10.00
3 Year Spay/Neuter	\$21.00	\$25.00
1 Year Intact	\$25.00	\$25.00
3 Year Intact	\$60.00	\$60.00
Late Fee	\$15.00	\$20.00
Replacement License	\$1.00	\$5.00
Service Dogs	FREE	FREE

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**WHEREAS,** the projected 2014 increase in revenue is estimated to be \$15,000.00 to \$20,000.00; and

**WHEREAS,** the increased fees will take effect on December 1, 2013.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners authorizes a moderate increase to the Livingston County Dog Licensing fees as stated above, to facilitate the improved health of the sheltered animals, enhance the service to the public, and to assist the Director in general management of the Shelter.

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MOVED: Commissioner Childs

SECONDED: Commissioner Dolan

CARRIED: 8-0-1 absent

RESOLUTION

NO: 2019-11-167

LIVINGSTON COUNTY

DATE: November 12, 2019

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**Resolution Authorizing the County Treasurer to Establish Fund 272 US Treasury Equitable Sharing - Treasurer**

**WHEREAS,** Fund 266 was established many years ago as the Equitable Sharing Fund to account for both U.S. Dept of Justice and U.S. Treasury asset forfeiture funds; and

**WHEREAS,** the bookkeeping procedures within the “Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies” require the revenues and expenses related to DOJ and Treasury to be accounted for separately and not comingled; and

**WHEREAS,** it is the intent of Livingston County to be compliant with the rules / regulations of the Asset Forfeiture Program.

**THEREFORE BE IT RESOLVED** the Livingston County Board of Commissioners hereby authorizes the Livingston County Treasurer to establish Fund 272 US Treasury Equitable Sharing to be used strictly for the recording and use of Department of Treasury Asset Forfeiture Funds.

**THEREFORE BE IT FURTHER RESOLVED** the Livingston County Board of Commissioners hereby authorizes the Livingston County Treasurer to rename Fund 266 as the US Dept of Justice Equitable Sharing Fund to be used strictly for the recording and use of DOJ Asset Forfeiture Funds.

**THEREFORE BE IT FURTHER RESOLVED** the Livingston County Board of Commissioners hereby authorizes the Livingston County Treasurer and Finance Office to prepare necessary transfers and budget amendments to effectuate this resolution.

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**MOVED:  
SECONDED:  
CARRIED:**

## VI. What Are the Accounting Procedures and Requirements for Shared Cash, Proceeds, and Tangible Property?

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls that are consistent with the guidelines set forth below to track equitably shared funds and tangible property. At any time, the Department of Justice or the Department of the Treasury may request documents related to equitable sharing, conduct an audit or compliance review, or implement additional reporting requirements and spending plans. Department of Justice and Department of the Treasury equitable sharing funds must be tracked and maintained separately.

### A. Bookkeeping Procedures and Internal Controls

The state or local participating law enforcement agency must:

1. Maintain equitable sharing funds with the same entity that maintains the agency's appropriated funds and administers procurement actions. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds.
2. Establish separate Department of Justice and Department of the Treasury accounts or accounting codes to track both revenues and expenditures for each respective Program. No other funds may be commingled in these accounts or with these accounting codes.
3. Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions.
4. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account.
5. Maintain and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable provisions of the OMB *Uniform Administrative Requirements, Costs, Principles, and Audit Requirements for Federal Awards* or any subsequent updates and jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel.
6. Maintain records of all revenue and expenditures posted to the account or accounting code—to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement process.
7. Report all transactions using cash-based accounting methods.

8. Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and if consistent with the agency's procurement and disposal policies, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies.
9. Ensure the law enforcement agency head, or designee, authorizes all expenditures from the sharing accounts.
10. Obtain approval for expenditures from the governing body, such as the town council or city manager's office, when required.



**LIVINGSTON COUNTY, MICHIGAN**  
**LIVINGSTON COUNTY TREASURER**

**200 E. Grand River  
Howell, MI 48843**

**Phone 514-546-7010 Fax 517-545-9638**

**Web Site: [livingstonlive.org](http://livingstonlive.org)**

## Memorandum

**To: Livingston County Board of Commissioners**  
**From: Jennifer M. Nash, Treasurer**  
**Date: November 4, 2019**  
**Re: RESOLUTION AUTHORIZING THE CREATION OF FUND**  
**272 - DEPT OF TREASURY EQUITABLE SHARING FUND**

Fund 266 was created many years ago as the Sheriff's Equitable Sharing Fund. The Fund accounts for all financial activity related to the Asset Forfeiture Programs provided by the U.S. Department of Justice and the U.S. Department of Treasury.

Over the years we have recorded revenues and expenses of both DOJ and Treasury within the same fund 266. It has come to my attention that the Bookkeeping Procedures as stated in the "Guide to Equitable Sharing" require the DOJ and Treasury funds be accounted for completely separate and not comingled.

For this reason, I am requesting the already established Fund 266 will be renamed DOJ Equitable Sharing Fund and the creation of a new Fund 272 to be named Treasury Equitable Sharing Fund.

Thank you for your consideration and I am happy to answer any further questions you may have.



**RESOLUTION**

**NO: 2019-11-168**

**LIVINGSTON COUNTY**

**DATE: November 12, 2019**

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**Resolution Authorizing Updated LETS Drug and Alcohol Policy – LETS**

**WHEREAS,** the Federal Transit Administration (FTA) requires all transit systems to maintain a Drug and Alcohol Policy consistent with 49 CFR Part 655, as amended, as a condition of receiving Federal funding; and

**WHEREAS,** the policy must be updated periodically to reflect changes in Federal rules and best practices and approved by the agency's governing board when substantive changes are made; and

**WHEREAS,** LETS has maintained a Drug and Alcohol Policy since 1996 with the last major update occurring in December 2015 per resolution 2015-12-240; and

**WHEREAS,** significant changes in Federal rules and best practices have occurred since the last update and the LETS Drug and Alcohol policy has been revised to remain in compliance; and

**WHEREAS,** the updated policy will be distributed to all LETS employees and will take effect on December 1, 2019.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners hereby adopts the updated LETS Drug and Alcohol Policy with an effective date of December 1, 2019.

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**MOVED:**

**SECONDED:**

**CARRIED:**

Livingston Essential Transportation Service  
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**Bold = FTA Requirements**  
*Italics = Drug Free Workplace Act of 1988 Requirements*  
Standard Print = L.E.T.S. Requirements

The Livingston Essential Transportation Service (L.E.T.S.) implemented a Drug & Alcohol Program in 1996 as an essential element of its commitment to provide safe and reliable transit service and to maintain a safe and healthy work environment for its employees.

The Department of Transportation (DOT) is required by the Omnibus Transportation Employees Testing Act (Omnibus Act) to follow the Health and Human Services requirements for the testing procedures/protocols and drugs for which L.E.T.S. may test. Therefore, the Federal Transit Administration (FTA) – as a DOT agency – requires all transit systems to adopt a Drug and Alcohol Policy that is consistent with 49 CFR Part 40, as amended.

While the FTA Drug and Alcohol Program is applicable only to “safety-sensitive employees”, the L.E.T.S. Drug and Alcohol Policy applies to all L.E.T.S. employees. The L.E.T.S. Drug and Alcohol Policy provides for additional grounds under which L.E.T.S. may order a NON-DOT. test of safety-sensitive employees on its own authority. Any testing ordered under L.E.T.S. Authority will be conducted using non-Federal forms. A list of safety-sensitive job classifications is included in Attachment 3.

The Drug and Alcohol Policy of L.E.T.S., as required by the FTA and 49 CFR Part 40, as amended, is hereby adopted and confirmed as the Drug and Alcohol Policy of L.E.T.S.

### **Illegal Drug Policy**

The Drug Policy of L.E.T.S. shall be as follows:

1. Statement of Policy

The use of illegal drugs is prohibited.

2. Application of Policy

This policy applies to all L.E.T.S. employees and includes additional requirements for those employees employed in safety-sensitive positions as defined by FTA.

3. Definition of Illegal Drug

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An “illegal drug” is any drug which is not legally obtainable, or which is legally obtainable but has not been legally obtained, or is not being used for its prescribed purposes.

4. Use of an Illegal Drug(s) by an Employee is Prohibited and will Result in Termination

The use of any illegal drug or substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), as amended, as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times. This includes, but is not limited to, marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any substance which causes the presence of these drugs or drug metabolites such as hemp-related products, coca leaves or any substance not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

**FTA 655.21(c) provides that consumption of marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine is prohibited at all times.**

Applicants and employees are prohibited from using marijuana, including use pursuant to medical marijuana laws. Marijuana is a Schedule 1 drug and its use is not an acceptable legitimate medical explanation for a positive drug test result in the L.E.T.S. drug and alcohol testing program even when such use is pursuant to a physician’s recommendation under a state law that authorizes such a recommendation under “medical marijuana” laws that some states, including the State of Michigan, have adopted.

Illegal use, includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The “use” of drugs means presence in the body system while an employee is on duty. A positive test is sufficient to support a finding of “use.”

**FTA Rule Section 655.45(i) states a covered employee may be randomly tested for prohibited drug use anytime while on duty.**

5. Testing for Illegal Drugs

While on duty, if an employee performs an unusual act, or has unusual behavior, which may suggest drug use, or has been off duty for an extended period of time, or has an attendance problem, or has an on-the-job injury which requires medical attention, the employee may be tested for Drugs and/or Alcohol on L.E.T.S. authority.

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**Applicants for safety-sensitive positions will be tested before they are hired. FTA 655.45(i) provides that a covered employee may be randomly tested for prohibited drug use anytime while on duty.**

6. Refusal to be Tested

A refusal to be tested will result in termination.

7. Positive Tests

If the initial drug screen is positive, the split specimen may be tested at the request of the employee by a HHS-certified laboratory. If the HHS-certified laboratory confirms the positive test, the employee will be terminated. It is not necessary that the employee be under the influence of the drug(s).

8. Disclosure of a Drug Problem

If an employee has a drug problem and voluntarily discloses it to L.E.T.S. before a disciplinary matter develops and before being selected for testing, L.E.T.S. will refer the employee to a substance abuse or chemical dependency program or other Employee Assistance Program.

9. Prescriptions and Over-the-Counter Medications

Prescription and over-the-counter medications can significantly affect the performance of people taking them. Many such medications can make the patient drowsy or dizzy, affect vision or hearing, or bring about other physical conditions that could reduce the effectiveness of an employee. An employee is permitted to use such medications, as determined by a physician or treating medical practitioner, if the use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties. L.E.T.S. employees are required to notify their supervisor of all prescription and over-the-counter medications by completing and submitting a Supplemental Medical Examination Report (see Form # 4 and attachments) so that the Employer can allow qualified medical personnel to determine the medication's potential effects on employee performance. Failure to notify the supervisor of all prescription and over-the-counter medications will result in discipline, up to and including discharge.

10. Possession of Drugs

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Consistent with the *Drug-free Workplace Act of 1988*, all employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including L.E.T.S. premises, L.E.T.S. vehicles, while in uniform, or while on L.E.T.S. business.

Employees violating this policy are subject to appropriate personnel/disciplinary action, up to and including termination for the first offense.

In addition, all employees are required to notify the Drug and Alcohol Program Manager at L.E.T.S. of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction.  
Failure to report such conviction will result in termination.

Within ten (10) calendar days of receiving notice that an employee has been convicted of a criminal drug offense occurring in the workplace, L.E.T.S. must provide written notice of the conviction to the FTA.

11. **Application of FTA Drug and Alcohol Policy**

**This applies to employees who perform or are called upon to perform or may be called upon to perform a safety-sensitive function. Such employees shall be referred to as “safety-sensitive employees.”**

12. **Definition of Safety-Sensitive Employees**

**A safety-sensitive employee is any employee whose duties relate to the safe operation of transportation services including: (a) operating a revenue vehicle, whether or not the vehicle is in service, (b) operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License (CDL), (c) controlling the dispatch or movement of a revenue service vehicle, (d) maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service (excluding contractors for Section 5311 systems), (e) armed security personnel, or (f) supervisors who perform safety-sensitive duties.**

13. **Testing of Safety-Sensitive Employees**

**A safety-sensitive employee shall be tested for drugs as follows: (a) before an applicant or a non safety-sensitive employee is allowed to perform a safety-sensitive function for the first time, (b) post accident, (c) when there is**



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reasonable suspicion to believe a test is necessary, (d) on a random unannounced basis, and (e) for return-to-duty and follow-up purposes.

**FTA 655.45(i) provides that a covered employee may be randomly tested for prohibited drug use anytime while on duty.**

**Safety-sensitive employee will be tested for marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any substance which causes the presence of these drugs or drug metabolites, such as hemp-related products, coca leaves or any substance not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.**

**FTA 655.21(c) provides that consumption of marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine is prohibited at all times.**

**Illegal use includes the use of any illegal drug, misuse of legal prescribed drugs, and use of illegally obtained prescription drugs in accordance with DOT and FTA regulations and 49 CFR Part 40, as amended.**

14. Termination

A verified positive urine test for prohibited drugs shall result in termination. A refusal to be tested shall result in termination.

A confirmed breath alcohol test of 0.04 or greater is a “positive test.” A positive test will result in termination. A refusal to be tested shall result in termination.

15. Use of Alcohol

L.E.T.S. policy prohibits the consumption of alcohol by any safety-sensitive employee eight (8) hours prior to performing safety-sensitive functions. A safety sensitive-employee is prohibited from reporting for duty or remaining on duty if they have consumed alcoholic beverages within eight hours prior to the start of their shift.

**Performing safety-sensitive duties with an alcohol concentration of 0.02 or greater is prohibited. If the alcohol concentration is 0.02 or greater, as evidenced by an evidential breath-testing device, a confirmation test will be performed. A confirmation test result equal to or greater than 0.02 but less than 0.04 will result in immediate removal of the employee from safety-sensitive functions for a period of eight hours or until a later re-test shows a concentration of less than 0.02.**

Employees will be subject to disciplinary action, up to and including termination.

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**A test result of less than 0.02, as evidenced by a breath-testing device shall be considered a “negative” test.**

**The “use” of alcohol by a safety-sensitive employee is defined as having an alcohol test result of 0.04 or greater while on duty, subject to duty, or just after performing a safety-sensitive function, as confirmed by an evidential breath testing device. A confirmed alcohol test of 0.04 or greater is a “positive test.”**

A positive test will result in termination.

16. Testing

The provisions of Section 5 and 15 relating to testing for drugs shall also apply to testing for alcohol.

17. Testing Results

**Performing safety-sensitive duties with an alcohol concentration of 0.02 or greater is prohibited. A test result of less than 0.02, as evidenced by a breath-testing device shall be considered a “negative” test.**

**If the alcohol concentration is 0.02 or greater, as evidenced by an evidential breath-testing device, a confirmation test will be performed. A confirmation test result equal to or greater than 0.02 but less than 0.04 will result in immediate removal of the employee from safety-sensitive functions for a period of eight hours or until a later re-test shows a concentration of less than 0.02.**

Employees will be subject to disciplinary action, up to and including termination.

**A confirmed alcohol test of 0.04 or greater is a “positive test.”**

A positive test will result in termination.

18. Refusal to be Tested for Alcohol

A refusal to be tested for alcohol will result in termination.

19. Possession of Alcohol

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Consistent with the *Drug-Free Workplace Act of 1988*, the possession, purchase, sale, distribution, or consumption of alcohol while on duty, or while on L.E.T.S. premises, in a L.E.T.S. uniform, or in a L.E.T.S. vehicle is prohibited. Violation of this provision will result in termination.

20. Alcohol Consumption

**FTA Rule Section 655.33(a) - Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within 4 hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions. FTA Rule Section 655.33(b) – An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include: (1)The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function [and] (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.**

L.E.T.S. prohibits the consumption of alcohol by an employee while on duty or within eight hours prior to reporting for duty.

All L.E.T.S. employees involved in an accident must refrain from alcohol consumption until a determination is made that a post-accident alcohol test is – or is not - necessary.

**L.E.T.S. / FTA DRUG AND ALCOHOL PROGRAM GUIDELINES**

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**I. Introduction**

L.E.T.S. is dedicated to providing safe, dependable, and economical transportation services to Livingston County residents. L.E.T.S. is also dedicated to providing a healthy, satisfying drug and alcohol free work environment for its employees. These obligations are severely jeopardized by an employee who is unfit for duty due to drug or alcohol usage. Both employees and customers have a right to expect a drug and alcohol free workplace. In 1991, the United States Congress passed the Omnibus Transportation Employee Testing Act, which requires drug and alcohol testing of safety-sensitive employees in the transit industry. In February 1994, the Department of Transportation published rules requiring agencies such as L.E.T.S. to implement specific drug and alcohol testing programs beginning January 1, 1996.

**In response to these Federal requirements, and as a means of continuing our commitment to maintaining a safe and productive work environment, L.E.T.S. has revised its policies regarding drugs and alcohol to be in compliance with the Federal Transit Administration (FTA) rules on the Prevention of Prohibited Drug Use and Alcohol Misuse (49 CFR Part 655), and Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40), as amended.**

It is the goal of L.E.T.S. to establish a work environment that is free of drugs and alcohol, and to foster a sober and drug-free work force. To achieve the drug-free environment that every transit rider, community member, and employees of L.E.T.S. is entitled to will require the best efforts of employees and management.

The following Guidelines have been developed as help in administering L.E.T.S.'s Drug and Alcohol Policy. As guidelines, they are not intended to be all-inclusive, nor are they intended to be used as hard fast rules regarding the application of L.E.T.S.'s Drug and Alcohol Policy in any particular case. Cases where substance abuse is at issue may be evaluated on the circumstances of that case and the Drug and Alcohol Policy applied as warranted by those circumstances.

**In those situations governed by regulations promulgated under federal authority, such as the U.S. Department of Transportation, Federal Transit Administration (49 CFR Part 40), as amended, or as required by state or local law, the applicable law will govern.**

**II. Contact Person**

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Questions regarding the Drug and Alcohol Policy or these guidelines should be referred to the L.E.T.S. Operations Manager at (517) 546-6600.

**III. Affected Employees**

All L.E.T.S. employees are subject to the Drug and Alcohol Policy, including drug and alcohol testing. The only exceptions are the random testing and certain alcohol provisions that apply only to safety-sensitive employees.

**A safety-sensitive employee is any employee whose duties relate to the safe operation of transportation services including: (a) operating a revenue vehicle, whether or not the vehicle is in service, (b) operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License (CDL), (c) controlling the dispatch or movement of a revenue service vehicle, (d) maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service (excluding contractors for Section 5311 systems), (e) armed security personnel, or (f) supervisors who perform safety-sensitive duties.**

**IV. Definitions**

For purposes of these Guidelines, the following definitions of terms apply. The definitions are written for explanatory purposes to help in working with this document.

**Adulterated Specimen** – A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

**Alcohol Concentration** – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

**Alcohol Confirmation Test** – A subsequent test using an EBT, following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

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**Alcohol Use** – The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

**Breath Alcohol Technician (BAT)** – A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

**Cancelled Test** – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**Chain of Custody** – The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

**Confirmatory Drug Test** – A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmatory Validity Test** – A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

**Confirmed Drug Test** – A confirmation test result received by an MRO from a laboratory.

**Designated Employer Representative (DER)** – An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

**Dilute Specimen** – A urine specimen with creatinine and specific gravity values that is lower than expected for human urine.

**DOT, The Department, DOT Agency** – These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials

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Safety Administration (PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

**Drugs** – The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

**Evidential Breath Testing Device (EBT)** – A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

**EMIT** – An immunoassay test used as the initial drug screening technique to eliminate "negative" urine specimens from further testing. Federally Mandated Controlled Substance Testing – is a test, mandated by schedules I through V of section 202 of the Controlled Substance Act (21 USC 812), as amended, as further defined by 21 CFR 1300.11 through 1300.15 that determines the use of any illegal drug or substance as defined by the ACT.

**Illegal Drugs** – Any drug which is not legally obtainable, or which is legally obtainable but has not been legally obtained, or is not being used for its prescribed purpose or in the prescribed manner (this includes prescription drugs prescribed to someone else).

**Initial Drug Test (also known as a "Screening drug test")** – The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**Initial Specimen Validity Test** – The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

**Invalid Drug Test** – The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

**Laboratory** – Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

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**Legal Drugs** – Legally obtained drugs (prescription and non-prescription remedies) used according to directions to alleviate a specific condition.

**Limit of Detection (LOD)** – The lowest concentration at which a measurane can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

**Limit of Quantitation** – For quantitative assays, the lowest concentration at which the identity and concentration of the measured can be accurately established.

**Medical Review Officer (MRO)** – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

**Metabolite** – The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

**Negative Dilute**: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

**Negative Result** – The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

**Non-Negative Specimen** – A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

**Positive Alcohol Test** – The confirmed presence of alcohol in the body system at a concentration of 0.04 or greater as measured by an Evidential Breath Testing (EBT) device. Refusal to take a breath test constitutes a positive alcohol test.

**Positive Dilute Specimen** – A specimen with creatinine and specific gravity values that are lower than expected for human urine but which tested positive for the presence of a prohibited substance.

**Positive Result** – The result reported by an HHS-certified laboratory when a specimen contains a drug metabolite equal to or greater than the cutoff concentrations.



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**Primary Specimen** – In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**Reconfirmed** – The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

**Rejected for Testing** – The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

**Safety-Sensitive Employee** – A safety-sensitive employee is any employee whose duties relate to the safe operation of transportation services including: (a) operating a revenue vehicle, whether or not the vehicle is in service, (b) operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License (CDL), (c) controlling the dispatch or movement of a revenue service vehicle, (d) maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service (excluding contractors of Section 5311 systems), (e) armed security personnel, or (f) supervisors who perform safety-sensitive duties.

**Screening Drug Test** – See Initial Drug Test definition above.

**Service Agent** – Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part.

**Split Specimen Collection** – A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

**Substance Abuse Professional (SAP)** – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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**Super Dilute** – Is an MRO reference for a specimen with extremely low creatinine and specific gravity values that are considerably lower than expected for human beings, but which cannot be positively identified as substituted or adulterated.

**Substituted Specimen** – A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

**Use** – Presence of a prohibited substance in the body.

**Validity Testing** – The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

**V. Employee Education and Training**

L.E.T.S. believes that the education and training of all employees in the effects and treatment of substance abuse will contribute to a safer and more efficient workplace for everyone. Therefore, continuing education, and providing information to employees about the dangers of drug abuse or alcohol misuse and the possible penalties for violation of the Drug and Alcohol Policy are essential components of this program.

**VI. Responsibilities**

**A. Employer**

L.E.T.S. is responsible for developing and implementing substance abuse policies and programs that include drug and alcohol testing of employees and applicants for employment. The goals of these activities are to enhance productivity and safety for L.E.T.S. employees and L.E.T.S. customers, and to foster a sober and drug-free workforce.

**B. Employee**

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Employees are required to indicate in writing that they have received a copy of the L.E.T.S. Drug and Alcohol Policy and that they have had time to read the policy, ask questions and understand the policy.

C. Managers and Supervisors

Managers, Maintenance Trainer and Supervisors will be held accountable for the consistent application and enforcement of the policy.

D. Union

Not applicable at this time.

**VII. Enforcement**

For any program to be effective, enforcement of policies is essential. L.E.T.S. will rigorously enforce its Drug and Alcohol Policy in order to protect the safety of our employees and customers, as well as to protect the efficiency of our operation. It is the responsibility of all employees to ensure that the standards of performance contained in the Drug and Alcohol Policy are met. **Violations of the policy will result in removal from safety-sensitive duty** and discipline up to and including discharge.

**A. Consequences for Policy Violation**

**1. Alcohol**

**Alcohol testing will be done by a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Testing Device (EBT), which measures Breath Alcohol Concentration.**

**If a safety-sensitive employee's test result is equal to or greater than 0.02 but less than 0.04, the employee will immediately be removed from performing safety-sensitive duties for at least eight (8) hours or until another breath test is administered, and the result is less than 0.02, and will subject the employee to disciplinary action, up to and including termination.**

**If a safety-sensitive employee's confirmed alcohol test result is equal to or greater than 0.04, the employee will be removed from duty, are referred to a**

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**Substance Abuse Professional as required by 49 CFR Part 40 as amended, Subpart Q.**

A confirmed alcohol test result equal to or greater than 0.04 will result in termination.

**2. Illegal Drug**

The presence of illegal drugs, as defined in the Policy Section and Section IV of the Guidelines, in the body system, while an employee is on duty is prohibited.

**A positive urine test in accordance with 49 CFR Part 40, as amended is sufficient to support a finding of “use” for safety-sensitive employees for the following substances:**

- **Marijuana (THC) and metabolites**
- **Cocaine and metabolites**
- **Amphetamines and metabolites (Amphetamine, Methamphetamine, MDMA, MDA, MDDA)**
- **Opioids and metabolites (Codeine, Morphine, 6-AM ( Heroin))**
- **Phencyclidine (PCP)**

If test results are verified positive, the employee will be terminated. A positive dilute test result will be considered a positive test and the employee will be terminated.

**3. Refusal to be tested**

**For pre-employment purposes (applying to new hires only) the following do not constitute a refusal:**

- 1. Failure to appear.**
- 2. Failure to remain at the collection site prior to the commencement of the test.**
- 3. Aborting the collection before the test commences.**

**For DOT purposes, a refusal to take a company NON-DOT test does not constitute a refusal to DOT test.**

L.E.T.S. employees who refuse to be tested will be terminated.

**The following actions constitute a refusal to be tested by a safety-sensitive employee:**

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- **Failure to appear for any test within a reasonable time, as determined by L.E.T.S., after being directed to do so by L.E.T.S.**
- **Failure to remain at the testing site until the testing process is complete, excluding pre-employment prior to commencement of the test.**
- **Failure to provide a urine or breath specimen for any drug or alcohol test required by DOT or FTA regulations.**
- **In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen.**
- **Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.**
- **Failure or decline to take a second test L.E.T.S. or collector has directed you to take.**
- **Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by L.E.T.S. as part of the “shy bladder” or “shy Lung” procedures.**
- **Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process) or verbal or written refusal to provide a required urine specimen.**
- **For an observed collection, failure to follow the observer’s instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.**
- **Possess or wear a prosthetic or other device that could be used to interfere with the collection process.**
- **Admit to the collector or MRO that you have adulterated or substituted the specimen.**
- **Failure to remain at the scene of an accident prior to submission to drug and alcohol tests without a legitimate explanation.**

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- **If the MRO reports a verified adulterated or substituted test result, that is a refusal to take a drug test.**
- **Failure or refusal to sign Step 2 of the Alcohol Testing Form.**

**B. Disputes**

L.E.T.S. will work cooperatively to resolve issues relating to the application, and enforcement of the Drug and Alcohol Policy. Nothing in this program shall be interpreted so as to limit L.E.T.S.'s right to assess disciplinary action, including termination, under the terms of the policy.

**VIII. Circumstances Requiring Testing**

**A. Pre-Employment**

A drug test will be performed as part of the medical examination of all selected applicants. An individual will not be hired if they fail to pass a Federally Mandated Controlled Substance Test. Individuals who apply for a position with L.E.T.S. will be notified of this requirement at the time of an interview. All offers of employment for safety-sensitive positions shall be extended conditional upon the applicant passing a drug test. If an applicant fails a pre-employment drug test, no employment shall be offered.

**All applicants for safety-sensitive positions shall undergo urine drug testing prior to hire or transfer into a safety-sensitive position.**

**An applicant shall not be hired into a safety-sensitive position unless the applicant takes a drug test with verified negative result.**

**A non-safety-sensitive employee shall not be placed, transferred or promoted into a covered position unless the employee takes a drug test with verified negative results.**

**If an employee being placed, transferred, or promoted from a non-safety-sensitive position to a safety-sensitive position has a confirmed positive drug test result, the employee will be terminated. (Refer to Section VII, Enforcement).**

**If a test is cancelled, the applicant/employee will be required to re-test with a negative test result. A negative dilute test result on a pre-employment test may require a re-test. If the MRO does order a re-test, the MRO may require an observed collection.**

**For pre-employment purposes, applicants are required to report the name and contact information for all DOT covered employers for the previous two years.**

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**The applicant is required to provide a consent statement permitting the previous DOT covered employers to release drug and alcohol test results to L.E.T.S.**

**Section 655.41(a)(2) requires a covered employee or applicant who has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62.**

**Failure to provide information or provision of inaccurate or misleading information will result in immediate termination and/or rescission of employment offer. The outcome of the investigation may also result in termination and/or rescission of employment.**

**If more than 90 days have elapsed between the time of successfully completing pre-employment tests and the assignment of safety-sensitive duties, another pre-employment test will be required prior to the individual being assigned safety-sensitive duties.**

**Safety-sensitive employees who have been off duty for 90 days or more for any reason, and have been out of the random pool, must successfully pass a pre-employment drug test prior to the performance of a safety-sensitive function.**

**B. Reasonable Suspicion Testing**

**A safety-sensitive employee may be required to submit to a drug and/or alcohol test, when one trained Supervisor, Trainer or Manager reasonably suspects the employee has used a prohibited drug or has misused alcohol. The request to undergo a reasonable suspicion test will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee. A reasonable suspicion drug test can be performed any time the covered employee is on duty. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function.**

**If an alcohol test required by this section is not administered within two (2) hours following the reasonable suspicion determination, a record of the reasons the alcohol test was not promptly administered must be prepared and maintained on file. If the alcohol test is not administered within eight (8) hours following the reasonable suspicion determination, then attempts to administer an**

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**alcohol test must cease and the reasons for not administering the test must be included in the record.**

**Examples of reasonable suspicion include but are not limited to:**

**Physical Indicators**

- ☐ Observable physical evidence (drugs and/or paraphernalia)
- ☐ Bloodshot or watery eyes
- ☐ Flushed or very pale complexion
- ☐ Extensive sweating/skin clamminess
- ☐ Dilated or constricted pupils
- ☐ Disheveled clothing/unkempt grooming
- ☐ Unfocused, blank stare
- ☐ Runny or bleeding nose
- ☐ Puncture marks
- ☐ Jerky eye movement
- ☐ Body odor

**Behavioral Indicators**

- ☐ Fidgety/agitated
- ☐ Irregular breathing
- ☐ Nausea/vomiting
- ☐ Slow reactions
- ☐ Unstable walking
- ☐ Poor coordination
- ☐ Hand tremors
- ☐ Suspicious, paranoid
- ☐ Depressed, withdrawn
- ☐ Lackadaisical attitude
- ☐ Irritable, moody
- ☐ Extreme fatigue

**Speech Indicators**

- ☐ Slurred or slowed speech
- ☐ Loud, boisterous
- ☐ Incoherent, nonsensical
- ☐ Repetitious, rambling
- ☐ Rapid, pressured
- ☐ Excessive talkativeness
- ☐ Exaggerated enunciation
- ☐ Cursing, inappropriate speech
- ☐ Inability to concentrate
- ☐ Impulsive, unusual risk-taking
- ☐ Delayed decision-making
- ☐ Reduced alertness

**Altercations (either physical or verbal) with others, or erratic or violent behavior will lead to an interview with a trained Supervisor, Manager or Trainer who will determine if there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee.**

**Other unusual acts or unusual behavior that may suggest drug use or alcohol misuse will lead to an interview with a trained Supervisor, Manager or Trainer who will determine if there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee.**

**In these cases, the trained Supervisor, Manager or Trainer will determine if a DOT Test, a NON-DOT Test, or NO Test is required.**

Notwithstanding the above, under L.E.T.S. authority, all L.E.T.S. employees are subject to reasonable suspicion testing. Reasonable suspicion testing is designed to provide a tool to identify employees who may pose a danger to themselves and others in the performance of their job duties. Employees may be at work in a condition that raises concern regarding their safety or productivity. A trained Supervisor, Trainer or Manager, trained in the detection of drug and alcohol misuse must then make a decision as to whether reasonable suspicion exists to conclude that substance abuse may be causing the behavior

**C. Post-Accident Testing**



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**1. Definition of Accident**

**Testing for prohibited drugs and alcohol will be conducted in the case of certain transit accidents. An accident as defined by the FTA is an occurrence associated with the operation of a Vehicle in which:**

- **An individual dies, or**
- **An individual receives injuries requiring immediate transport to a medical treatment facility, or**
- **Any time one or more vehicles (Revenue Service or not) receives disabling damage. “Disabling damage” does not include damage to headlights, taillights, turn signals, horn, windshield wipers, and tires or other damage that could be remedied temporarily at the scene of the occurrence if special tools or parts were available.**

**This definition is not directed at vehicle collisions exclusively; it also included incidents such as passenger or pedestrian injuries when the individual requires immediate transport to a medical treatment facility.**

L.E.T.S. may send an employee for a NON-DOT drug and alcohol test following any incident or accident, which does not meet the above thresholds if the supervisor makes a determination that a test is necessary.

**2. Fatal Accident**

**Whenever there is a loss of human life, the surviving safety-sensitive employee operating the Revenue Service Vehicle at the time of the accident must be tested. Safety-sensitive employees not on the vehicle (e.g., maintenance personnel, dispatcher) whose performance could have contributed to the accident (using the best information available at the time of the accident) must be tested.**

**3. Non-Fatal Accident**

**Following non-fatal accidents, the vehicle operator will be tested if one or more individuals receive injuries requiring immediate transport to a medical treatment facility or any time one or more vehicles including Revenue Service Vehicles receive disabling damage.**

**For non-fatal accidents, any other safety-sensitive employee whose performance could have contributed to the accident (as determined using**

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**the best information available at the time of the accident) will also be tested. However, if an employee's performance can be completely discounted as a contributing factor, then he or she must not be tested under FTA authority.**

**4. Testing Guidelines**

**FTA post-accident drug and alcohol tests will be performed as soon as possible. Drug tests will be performed within 32 hours following the accident. Alcohol tests will be performed within 8 hours.**

**If an alcohol test is not administered within 2 hours following the accident, L.E.T.S. must document the reason the test was not performed and still attempt to administer the test. If an alcohol test is not administered within 8 hours following the accident, attempts to administer an alcohol test will be ended and a record will be filed explaining the circumstances surrounding the missed test.**

**The requirement to test for drugs and alcohol following an accident will in no way delay necessary medical attention for injured people or prohibit an employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.**

Notwithstanding the above, under L.E.T.S. authority, all L.E.T.S. employees must remain readily available, which means that L.E.T.S. knows the location of the employee. Failure to remain readily available will be considered a refusal to test. A refusal to test will result in termination.

**A safety-sensitive employee involved in an accident must refrain from alcohol consumption for eight (8) hours following the accident or until a post-accident alcohol test can be administered.**

Notwithstanding the above, under L.E.T.S. authority, all L.E.T.S. employees are subject to refrain from alcohol consumption for eight (8) hours following the accident or until a post-accident alcohol test can be administered. A violation of this policy will result in termination.

When L.E.T.S. is unable to perform a post-accident test in accordance with FTA regulations, it will use the results of Post-Accident drug and alcohol tests administered by State or local law enforcement personnel under their independent authority. This is acceptable only under limited circumstances, and the test results must be obtained in conformance with State and local law.

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**D. Random Testing**

**1. Requirement for Random Testing**

FTA regulations require random testing of drugs and alcohol for all safety-sensitive employees. Random testing identifies employees who are using drugs or misusing alcohol but are able to use the predictability of other testing methods to escape detection. More importantly, it is widely believed that random testing serves as a strong deterrent against employees beginning or continuing prohibited drug use and misuse of alcohol.

**2. Methodology for Random Testing**

A scientifically valid random-number selection method to select safety-sensitive employees will be used. L.E.T.S. currently uses Allied Substance Abuse Professionals as their Drug and Alcohol Testing Review and Consulting Services. There is no discretion on the part of management or operations in the selection and notification of individuals for random testing.

The number of employees randomly selected for drug/alcohol testing during the calendar year shall be in accordance with FTA regulations. Random testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA Administrator.

Section 655.45(g) requires each employer to ensure that random tests are spread reasonably throughout the calendar year. Random testing shall be conducted at all times of day whenever safety-sensitive functions are performed. Employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work.

All safety-sensitive employees in the random pool will have an equal chance of being selected for testing and will remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years.

The process for testing will be unannounced and unpredictable as well as random. Once the employee has been notified that he or she has been selected for testing, he or she must then report immediately to the collection site.

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**E. Voluntary Disclosure, Return-to-Duty and Follow-up Testing**

Under L.E.T.S. authority, an employee who voluntarily discloses a substance abuse problem, before a disciplinary matter develops and before being selected for a test, will be subject to return-to-duty and follow-up testing by L.E.T.S. The employee must be evaluated by a Drug and Alcohol Counselor, and pass a return-to-duty test. The purpose of this procedure is to provide some degree of assurance that the individual is presently free of alcohol and/or any prohibited drugs and is able to return to work without undue concern about continued substance abuse.

A return-to-duty test will include testing for both prohibited drugs and alcohol. The employee must have a negative drug test result and an alcohol test result of less than 0.02 to return to a safety-sensitive function. In addition, the employee must complete all return-to-duty requirements of L.E.T.S.

Once allowed to return to duty, an employee will be subject to unannounced follow-up testing for at least 12 but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by a Counselor, but L.E.T.S. will require a minimum of six tests be performed during the first twelve months after the employee has returned to duty.

Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing will remain in the standard random pool and must be tested whenever their names come up for random testing.

Any testing done under L.E.T.S. authority will be done using non-DOT forms.

**IX. Drug Testing Procedures**

It is not the intent of these guidelines to specify the requirements and protocol of the collection site personnel. These guidelines do, however, provide information about the requirements for employees and job applicants.

**Drug and Alcohol testing under this policy will be performed in accordance with Federal Transit Administration (FTA) rules on the Prevention of Prohibited Drug Use and Alcohol Misuse 49 CFR Part 655, and Procedures for Transportation Workplace Drug and Alcohol Testing Programs 49 CFR Part 40, as amended.**

**FTA Part 655.51 the Drug and Alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this Part, unless expressly provided otherwise in this Part.**

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**FTA Part 655, Part III, Subpart B, Section A states FTA also believes that it is reasonable for employers to incorporate by reference 49 CFR Part 40, as amended, in the Drug and Alcohol Policy statement and make it available for review by employees when requested.**

L.E.T.S. will make 49 CFR Part 40 as amended available to employees upon request.

**In the following circumstances, the collection personnel must directly observe a second collection in compliance with FTA regulations:**

- 1. The individual has presented a urine sample that falls outside the normal temperature range.**
- 2. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g. substitutes urine in plain view, blue dye in specimen presented, etc.).**
- 3. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to L.E.T.S. that there was not an adequate medical explanation for the result.**
- 4. The MRO reports to L.E.T.S. that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.**
- 5. The collector observes materials brought to the collection site, or the employees conduct clearly indicates an attempt to tamper with the specimen.**
- 6. All return to duty tests. – New Federal Requirement – Effective 8/31/2009 Return-to-duty and follow-up testing will be conducted in accordance with 49 CFR part 40 (as amended), subpart O including requiring an observed specimen collection.**
- 7. All follow-up tests. - New Federal Requirement – Effective 8/31/2009 Return-to-duty and follow-up testing will be conducted in accordance with 49 CFR part 40 (as amended), subpart O including requiring an observed specimen collection.**
- 8. Any time the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.**

**Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided. In an observed collection the donor will be**

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required to raise clothing above the waist, lower clothing and underpants, and turn around to permit the observer to determine if any type of prosthetic or other device could be used to interfere with the collection process. In addition, the observer must view the urine stream from the donor to the collection container. The direct observation must be by a collection site person of the same gender as the donor being tested.

An employee has 72 hours after being informed by the MRO of a verified positive test to request a test of the split sample. All requests for a split specimen analysis will be processed by the MRO, and sent to a second HHS-certified laboratory.

Should the result of the second test be positive, L.E.T.S. will require the employee to reimburse L.E.T.S. for the cost of the test. Employees are directly responsible for the cost of split sample testing under this provision, if they choose to exercise it.

**X. Alcohol Testing**

**A. Alcohol Testing Methodology**

**FTA regulations prohibit an employer from allowing an employee with an alcohol concentration of 0.04 or greater to perform any safety-sensitive duties. A confirmed alcohol test of 0.04 or greater is a “positive test.”**

A positive test will result in termination.

**An employee with an alcohol concentration of 0.02 or greater, but less than 0.04, must be removed from duty for eight (8) hours or until a re-test shows an alcohol concentration of less than 0.02.**

An employee removed from work based on a violation of these conduct standards will not be paid for time missed.

**Section 655.45(i) requires that a covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A safety-sensitive employee will be tested using an evidential breath-testing device (EBT).**

**B. Breath Alcohol Technician**

**Alcohol screening testing may be performed by any screening test device and testing methodology approved and authorized under 49 CFR Part 40, as**

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amended, however alcohol confirmation tests must be performed by a Breath Alcohol Technician (BAT) who is trained to proficiency in the operation of the DOT approved EBT device being used and in the alcohol testing procedures specified in the Federal Regulations.

**C. Incomplete Tests**

If a screening or confirmatory test cannot be completed, the BAT must, if practicable, begin a new test using a new alcohol test form and a new sequential test number.

Refusal by an employee to complete and sign the alcohol testing form (at step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the collection process, will be noted on the form. The employee will be terminated.

If an employee attempts and fails to provide an adequate amount of breath, the BAT must note this on the form and immediately contact the employer. If no valid medical reason can be determined, the inadequate amount of breath will be considered a refusal to test.

Refusal to be tested will result in employee termination.

**XI. Medical Review Officer**

A qualified Medical Review Officer (MRO) will review FTA drug testing laboratory results. The purpose of this review is to verify and validate test results. The MRO is a licensed physician responsible for receiving laboratory results generated by an HHS-certified laboratory. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

The MRO will perform various functions, including but not limited to the following:

1. Receive the results of drug tests.
2. Review and interpret an individual's confirmed non-negative test by: a) reviewing the individual's medical history, including any medical records and biomedical information provided; b) affording the individual an opportunity to discuss the test results; and c) deciding whether there is a

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**legitimate medical explanation for the result, including legally prescribed medication.**

- 3. Notify each employee who has a verified positive test that the employee has 72 hours in which to request a test of the split specimen.**
- 4. If, after the MRO makes all reasonable efforts, the MRO is unable to reach the individual directly, the MRO will contact the Designated Employer Representative who will direct the individual to contact the MRO as soon as possible. If after making all reasonable efforts, the Designated Employer Representative is unable to contact the employee, the Designated Employer Representative may place the employee on mandatory leave status.**
- 5. Report each verified test result to the Drug and Alcohol Program Manager or Designated Employer Representative authorized to receive results.**
- 6. Maintain all necessary records and send test results to the employer's Drug and Alcohol Program Manager.**
- 7. Protect the employees' privacy and testing program confidentiality.**

**XII. Substance Abuse Professional (SAP)**

**A SAP is required to recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.**

**A safety-sensitive employee who has a verified positive drug and/or confirmed alcohol test result of 0.04 or greater will be immediately removed from his or her safety-sensitive job duties. In addition, he or she will be advised of the resources available to evaluate and resolve problems associated with drug abuse and/or alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.**

Referral to a SAP does not shield a safety-sensitive employee from disciplinary action or guarantee employment or reinstatement with L.E.T.S. Appropriate disciplinary action will be taken for all policy violations.

Employees will be referred to an Employee Assistance Program (EAP) after voluntarily disclosing a substance abuse problem prior to being selected for testing.

**XIII. Rehabilitation**



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Drug and alcohol abusers must be encouraged to make every effort to overcome the abuse and addiction that comes from use. Successful rehabilitation hinges upon users voluntarily rehabilitating themselves, with the assistance of outside professionals.

Employees of L.E.T.S. who have problems with drugs or alcohol misuse are strongly encouraged to seek help voluntarily. In addition, all employees are encouraged to make use of other available resources for treatment of substance abuse problems.

Voluntary enrollment in a rehabilitation program does not excuse or exempt an employee from discipline if he or she tests positive for drugs while on duty or for alcohol just before, during, or following the performance of a safety-sensitive function.

**XIV. Confidentiality**

**Laboratory reports or test results for FTA testing will not appear in a safety-sensitive employee's personnel file. Information of this nature, however, will be included in a separate confidential medical folder maintained in a confidential manner. The reports or test results may be disclosed to L.E.T.S. management on a strictly need-to-know basis and to the tested employee upon request by a written signed release. Disclosure, without employee consent, may also occur when:**

- **The disclosure is compelled by legal proceedings, (civil or criminal). These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated, or substituted test results). These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties. In such a proceeding, the release of information to the decision maker in the proceeding (e.g., the court in a lawsuit) will only be released with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding.**
- **The DOT, FTA or any DOT agency, or federal, state, or local safety agency requests the information with regulatory authority over L.E.T.S. or any of its employees.**

Livingston Essential Transportation Service  
Drug and Alcohol Policy  
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- **The information is requested by a subsequent employer (if the employee has expressly authorized the particular records be transmitted to that employer).**
- **The information has been placed at issue in a formal dispute between the tested employee or applicant and L.E.T.S.**
- **Medical personnel for the diagnosis or treatment of the employee or applicant who is unable to authorize disclosure need the information.**
- **The information is requested by the National Transportation Safety Board during an accident investigation; or**
- **In cases of a contractor or sub-recipient or a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.**

**Attachment 1**

**Drug and Alcohol Abuse Information Helplines**

Brighton Center for Recovery  
12851 E. Grand River

Livingston Essential Transportation Service  
Drug and Alcohol Policy  
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Brighton, MI 48116  
(810) 227-1211

Alcohol and Drug Referral Hotline  
(800) 252-6465

St Joseph Behavioral Services  
(810) 844.7300

Al-Anon & Alateen  
(800) 344-2666

Al-Anon & Alateen of Livingston County  
(517) 546-9350

Center for Substance Abuse Treatment  
(800) 662-4357

Mothers against Drunk Driving (MADD)  
(800) 438-6233

National Institute on Drug Abuse Hotline  
(800) 662-HELP (4357)

**Attachment 2**

**Health and Safety Issues  
Related to Drug Abuse and Alcohol Misuse**

Substance abuse, the misuse of drugs and alcohol, is not a new issue, but it is one of growing concern to employers. Substance abuse is a problem in the workplace. Research has shown that substance abuse affects organizations, as evidenced by increased medical benefit claims,

Livingston Essential Transportation Service  
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increased absenteeism, increased worker's compensation claims, and decreased productivity. Substance abuse poses serious safety and health risks not only to the users, but also to those who work with or come into contact with the user. As a result, employers have become even more concerned about the misuse of drugs and alcohol by employees who perform safety-sensitive functions in the organization, and in functions involving direct contact with the public.

**Alcohol Facts**

Alcohol, when consumed primarily for its physical and mood-altering effects, is a substance of abuse. As a depressant it slows down physical responses and progressively impairs mental functions. Signs and symptoms of use include dulled mental processes, lack of coordination, odor of alcohol on the breath, slowed reaction rate, and slurred speech. The chronic consumption of alcohol over time may result in decreased sexual functioning, dependency, fatal liver disease, kidney disease, and birth defects.

It takes one hour for the average person (150 pounds) to process one serving of an alcohol beverage from the body. Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body. A person who is legally intoxicated is six times more likely to have an accident than a sober person.

**Amphetamine Facts**

Amphetamines are central nervous system stimulants that speed up the mind and body. Signs and symptoms of use include hyper excitability, restlessness, confusion, panic, talkativeness, inability to concentrate, and heightened aggressive behavior. Regular use produces strong psychological dependence and increasing tolerance to the drug.

Low-dose amphetamine use will cause short-term improvement in mental and physical functioning. With greater use, however, the effect reverses and has an impairing effect. Hangover effect is characterized by physical fatigue and depression, which may make operation of equipment or vehicles dangerous.

**Cocaine Facts**

Cocaine is abused as a powerful physical and mental stimulant; the entire central nervous system is energized. Signs and symptoms of use include financial problems, increased physical activity and fatigue, isolation and withdrawal from friends and normal activities, unusual defensiveness, anxiety, agitation, and wide mood swings. Cocaine use causes the heart to beat faster and harder and rapidly increases blood pressure. Cocaine causes spasms of blood vessels in the brain and heart and can lead to ruptured vessels causing strokes or heart attacks. Extreme mood and energy swings create instability. Work performance is characterized by forgetfulness, absenteeism, tardiness, and missed assignments.

Livingston Essential Transportation Service  
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**Marijuana**

People use marijuana for the mildly tranquilizing, mood altering and perception altering effects it produces. Signs and symptoms of use include reddened eyes, slowed speech, chronic fatigue, and lack of motivation. Chronic smoking of marijuana causes emphysema-like conditions. Regular use can cause diminished concentration, impaired short-term memory, impaired signal detection, and impaired tracking (the ability to follow a moving object with the eye).

Marijuana smoking has a long-term effect on performance. Combining alcohol and other depressant drugs and marijuana can produce a multiplied effect, increasing the impairing effect of both the depressant and marijuana.

**Opioids(Narcotics) Facts**

Opioids(also called narcotics) are drugs that alleviate pain, depress body functions, and when taken in large doses, cause a strong euphoric feeling. Signs and symptoms of use include mood change, impaired mental functioning, depression and apathy, impaired coordination, and physical fatigue and drowsiness. IV needle users have a high risk for contracting hepatitis and AIDS due to sharing of needles.

Unwanted side effects of opioidssuch as nausea, vomiting, dizziness, mental clouding, and drowsiness place the legitimate user and abuser at higher risk for an accident. Workplace use may cause impairment of physical and mental functions.

**Phencyclidine (PCP) Facts**

Phencyclidine acts as both a depressant and a hallucinogen, and sometimes a stimulant. Signs and symptoms of use include impaired coordination, severe confusion and agitation, extreme mood shifts, rapid heartbeat, and dizziness. The potential for accidents and overdose is high due to the extreme mental effects combined with the anesthetic effect on the body. PCP use can cause irreversible memory loss, personality changes, and thought disorders.

**Attachment 3**

**List of Safety-Sensitive Employee Job Classifications**

- Vehicle Operators

Livingston Essential Transportation Service  
Drug and Alcohol Policy  
Amended October 2019

- Trainer
- Dispatchers / Drivers
- Utility Workers / Driver
- ~~Operations Manager~~
- ~~Administrative Aide~~

**Attachment 4**

**Minimum Thresholds  
Drug Screen Cutoff Levels**

Livingston Essential Transportation Service  
Drug and Alcohol Policy  
Amended October 2019

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) <sup>2</sup> .....	50 ng/mL <sup>3</sup> .....	THCA .....	15 ng/mL.
Cocaine metabolite (Benzoylecgonine) ...	150 ng/mL <sup>3</sup> .....	Benzoylecgonine .....	100 ng/mL.
Codeine/ .....	2000 ng/mL .....	Codeine .....	2000 ng/mL.
Morphine .....		Morphine .....	2000 ng/mL.
Hydrocodone/ .....	300 ng/mL .....	Hydrocodone .....	100 ng/mL.
Hydromorphone .....		Hydromorphone .....	100 ng/mL.
Oxycodone/ .....	100 ng/mL .....	Oxycodone .....	100 ng/mL.
Oxymorphone .....		Oxymorphone .....	100 ng/mL.
6-Acetylmorphine .....	10 ng/mL .....	6-Acetylmorphine .....	10 ng/mL.
Phencyclidine .....	25 ng/mL .....	Phencyclidine .....	25 ng/mL.
Amphetamine/ .....	500 ng/mL .....	Amphetamine .....	250 ng/mL.
Methamphetamine .....		Methamphetamine .....	250 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup> .....	500 ng/mL .....	MDMA .....	250 ng/mL.
		MDA .....	250 ng/mL.

<sup>1</sup> For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):  
*Immunoassay:* The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.  
*Alternate technology:* Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.  
<sup>2</sup> An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).  
<sup>3</sup> *Alternate technology (THCA and Benzoylecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).  
<sup>4</sup> Methylenedioxymethamphetamine (MDMA).  
<sup>5</sup> Methylenedioxyamphetamine (MDA).

**Table Source:** Federal Register / Vol. 82, No. 217 / Monday, November 13, 2017 / Rules and Regulations

Employees should note that thresholds are subject to change due to DOT requirements. Efforts will be made to keep employees abreast of changes; however, it is the employee's responsibility to keep abreast of changes. Information regarding the thresholds may be obtained by reviewing the drug and alcohol regulations available at most public libraries or on the Internet at: <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Default.aspx>

## Attachment 5

### List of Contacts

Livingston Essential Transportation Service  
Drug and Alcohol Policy  
Amended October 2019

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s):

**Drug and Alcohol Program Administrator**

Name: Trisha Reed  
Title: Operations Manager  
Address: L.E.T.S. Transportation  
3950 W. Grand River Ave.  
Howell, MI 48855  
Telephone No: 517-546-6600 Ext #7848  
Direct Line: 517-540-7848  
Cellular No: 517-295-8003

**Medical Review Officer**

Name: Martin Duke, MD  
Title: Medical Review Officer  
Address: Integrity Testing  
6015 19 Mile Road  
Sterling Heights, MI 48314  
Telephone No: 586-991-0000  
Fax: 586.991.0004

**Substance Abuse Professional (SAP)**

Name: William Livingston  
Telephone No: 248-345-3977

Confirmed D.O.T. Credentials

**Drug and Alcohol Testing Facility**

Name: Ascension Medical Center, Howell  
Address: 1225 S. Latson Rd.  
Howell, MI 48843  
Medical Director:  
Telephone No: (866) 501-3627 Fax:

**Attachment 6**

**Forms**



Livingston Essential Transportation Service  
Drug and Alcohol Policy  
Amended October 2019

1. Certificate of Receipt
2. Reasonable Suspicion Determination Report
3. Supplemental Medical Examination Report
4. Safety-Sensitive Employee Guidelines for Use  
of Rx and Over-the-Counter Medication

**Form #1**  
**Certificate of Receipt**

I hereby acknowledge receipt of the “L.E.T.S. / FTA Drug and Alcohol Program Guidelines” revised 2011, which contains the following employee awareness topics required by the Department of Transportation (DOT) (49 CFR Part 40), as amended:

- Illegal Drug Policy
- Drug Policy Required by the FTA
- Alcohol Policy of L.E.T.S. or as required by FTA
- L.E.T.S. / FTA Drug and Alcohol Program Guidelines
  - I. Introduction
  - II. Contact Person
  - III. Affected Employees
  - IV. Definitions
  - V. Employee Education and Training
  - VI. Responsibilities
  - VII. Enforcement
  - VIII. Circumstances Requiring Testing
  - IX. Drug Testing Procedures
  - X. Alcohol Testing
  - XI. Medical Review Officer
  - XII. Substance Abuse Professional
  - XIII. Rehabilitation
  - XIV. Confidentiality
  - XV. Effective Date
- Attachments
  - 1. Drug and Alcohol Abuse Information Helplines
  - 2. Health and Safety Issues Related to Drug Abuse and Alcohol Misuse
  - 3. List of Safety-Sensitive Employees
  - 4. Minimum Thresholds
  - 5. List of Contacts
  - 6. Forms

\_\_\_\_\_  
Employee’s Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor’s Signature

\_\_\_\_\_  
Date

Program Administrator: This Certificate of Receipt should be signed by both the employee and supervisor and permanently retained in the employee’s medical file.

**Form #2**  
**Reasonable Suspicion Determination Report**

**Livingston Essential Transportation Service (L.E.T.S.)**

Employee Name: \_\_\_\_\_ Employee ID/SSN: \_\_\_\_\_

Date of Observation: \_\_\_\_\_ Time of Observation: \_\_\_\_\_ AM/PM

**Observed Indicators of Prohibited Drug Use/Alcohol Misuse**

*Reasonable Suspicion determinations must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee.*

*Check all indicators observed:*

**Physical Indicators**

- ☐ Observable physical evidence (drugs and/or paraphernalia)
- ☐ Bloodshot or watery eyes
- ☐ Flushed or very pale complexion
- ☐ Extensive sweating/skin clamminess
- ☐ Dilated or constricted pupils
- ☐ Disheveled clothing/unkempt grooming
- ☐ Unfocused, blank stare
- ☐ Runny or bleeding nose
- ☐ Puncture marks
- ☐ Jerky eye movement
- ☐ Body odor

**Behavioral Indicators**

- ☐ Fidgety/agitated
- ☐ Irregular breathing
- ☐ Nausea/vomiting
- ☐ Slow reactions
- ☐ Unstable walking
- ☐ Poor coordination
- ☐ Hand tremors
- ☐ Suspicious, paranoid
- ☐ Depressed, withdrawn
- ☐ Lackadaisical attitude
- ☐ Irritable, moody
- ☐ Extreme fatigue

**Speech Indicators**

- ☐ Slurred or slowed speech
- ☐ Loud, boisterous
- ☐ Incoherent, nonsensical
- ☐ Repetitious, rambling
- ☐ Rapid, pressured
- ☐ Excessive talkativeness
- ☐ Exaggerated enunciation
- ☐ Cursing, inappropriate speech
- ☐ Inability to concentrate
- ☐ Impulsive, unusual risk-taking
- ☐ Delayed decision-making
- ☐ Reduced alertness

**Written Summary**

*Summarize the facts and circumstances surrounding the incident. Attach additional sheets as needed.*

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**Testing Information:**

Collection Site Location: \_\_\_\_\_ Time Arrived: \_\_\_\_\_AM/PM

1. Was the **alcohol** test performed within **2** hours of the time of the observations that led to the reasonable suspicion determination?

\_\_\_\_\_ YES

\_\_\_\_\_ NO, **Explain:** \_\_\_\_\_  
\_\_\_\_\_

2. Was the **alcohol** test performed within **8** hours of the time of the observations that led to the reasonable suspicion determination?

\_\_\_\_\_ YES

\_\_\_\_\_ NO, **Explain:** \_\_\_\_\_  
\_\_\_\_\_

**If the alcohol test is not conducted within 8 hours cease all efforts to administer the test.**

*The above documentation of the observed physical, behavioral, and performance indicators of the named employee was provided by:*

Supervisor Name: \_\_\_\_\_

Phone No: \_\_\_\_\_

Signature: \_\_\_\_\_

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

## Form #3 - Supplemental Medical Examination Report

For Livingston Essential Transportation Service (L.E.T.S.)

### 1. DRIVER'S INFORMATION

\_\_\_\_\_  
Driver's Name (Last, First, Middle)

\_\_\_\_\_  
Social Security No.

\_\_\_\_\_  
Birth date

\_\_\_\_\_  
Age

\_\_\_\_\_  
Sex (M, F)

\_\_\_\_\_  
Date of Exam

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Work Tel.

\_\_\_\_\_  
Driver License No.

### 2. MEDICATION CHANGES

List all medications (including over-the-counter medications) used regularly or recently.

\_\_\_\_\_  
\_\_\_\_\_  
I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Date

I hereby authorize LETS (Livingston Essential Transportation Service) to forward and release this Supplemental Medical Examination Report and any related medical record(s) to CONCENTRA for the purpose of medical evaluation to determine the medication's potential effects on my job performance.

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Date

I hereby authorize CONCENTRA to release this Supplemental Medical Examination Report and related medical record(s) to LETS (Livingston Essential Transportation Service) for the purpose of conveying the status of my Medical Examiner's Certificate.

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Date

### MEDICAL EXAMINER'S COMMENTS ON MEDICATIONS:

\_\_\_\_\_ Medications are acceptable; continue with your current Medical Examiner's Certificate.

\_\_\_\_\_ Medications are not acceptable; please report to the medical examiner's office for reevaluation and for re-issuance of your Medical Examiner's Certificate.

Medical Examiner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Address: \_\_\_\_\_

Medical Examiner's Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

## Form #4

### Safety-Sensitive Employee Guidelines for Use of Rx and Over-the-Counter Medication

- 1. Be cautious.** All medications, prescriptions (Rx) and over-the-counter (OTC) medications have the potential to be dangerous. Use medications cautiously and always in accordance with your physician's directions. Do not perform any safety-sensitive function if you are impaired by any medication. However, this caution should not be construed to require any FTA covered employee to delay or deny any necessary medical treatment.
- 2. Inform your prescribing physician, dentist or other medical professional.** It is your responsibility, before accepting a prescription, inform your physician of your safety-sensitive position and explain your job duties. Do not assume he/she will remember your explanation from one visit to the next. Remind him/her of any other medications you might be taking; make sure to include those medications prescribed by other physicians. Make sure the physician has your complete medical history. Ask if you will be able to perform your duties safely on these medications. If not, ask if there is an alternative. Follow your employer's policy and procedures for documenting the physician's assessment and release to work statement, if applicable. If you have a doubt you may contact L.E.T.S. medical review officer to assist in your decision.
- 3. Solicit information from your pharmacist.** Anytime you need additional information about an Rx or OTC, ask your pharmacist. A pharmacist will be very knowledgeable about the medication ingredients, side effects, precautions, drug interactions, and effects when combined with other drugs. Even if you have already obtained information from your prescribing physician, your pharmacist may be more knowledgeable and be able to provide additional information and insight. Read warning labels and side effects provided on information summaries provided with Rx and OTCs.
- 4. Do not over-medicate.** Always follow the prescription directly as written. Never increase the dosage or frequency of use without explicit directions from your doctor. Not only is this practice medically risky, but also increased doses of a medication may cause impairment when the same medication used as recommended may not.
- 5. Check the strength of the prescription.** Sometimes medicines are prescribed in different strengths (i.e., 500 vs. 250 MG). Do not take a pill without first checking the dosage and comparing it to the prescription, even if you have taken this medication before or this is a refill.

6. **Never take someone else's medication.** Even if you have taken this medication or one like it before. This is illegal, dangerous, and it may cause impairment.
7. **Always monitor your reaction.** Anytime you take any medication (Rx or OTC) watch for any side effects, which could impact your ability to perform your job safely including drowsiness, dizziness, confusion, etc. Try to get used to the medication first before reporting for work. The same applies even if you have taken this medication in the past with no previous side effects. An individual's reaction to a medication may vary with each treatment, the nature of the illness and other medications taken.
8. **Avoid Rx/OTCs that have been problems in the past.** If you have taken medications in the past that have caused negative side effects, make a note of the active ingredients and avoid these in the future. Inform your prescribing physician of your problem with the previous medication and ask for alternative medications that do not have this ingredient. For OTCs, read the ingredient portion of the label and ask the pharmacist for assistance.
9. **Ask for alternative treatments or dosage schedule.** If you notice side effects that could pose a safety risk, consult your prescribing physician (or pharmacist in the case of an OTC) about an alternative treatments, medications, dosages, or schedule of use. You may be able to avoid the negative side effects by simply shifting the dosage schedule to take your medications following your shift rather than before.
10. **Do not perform safety-sensitive duties while impaired.** In instances where no alternative is available, you must inform your supervisor and follow your employers Rx/OTC procedures for removal from safety-sensitive duty. Do not perform any safety-sensitive duty while you are impaired by any medication.



**3950 W. Grand River Ave., Howell, MI 48855**  
**Phone (517) 540-7847 Fax (517) 546-5088**

# Memorandum

**To: Livingston County Board of Commissioners**  
**From: Trisha Reed, LETS Operations Manager**  
**Date: October 29, 2019**  
**Re: Resolution Authorizing Updated LETS Drug and Alcohol Policy – General Government/ Finance/ Board**

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The Federal Transit Administration (FTA) requires all transit systems to maintain a Drug and Alcohol Policy consistent with 49 CFR Part 655, as amended, as a condition of receiving Federal funding. The policy must be updated periodically to reflect changes in Federal regulations and best practices and approved by the agency's governing board when substantive changes are made.

The LETS Operations Manager serves as the primary Drug and Alcohol Program manager. It is my responsibility as such to ensure that the LETS Drug and Alcohol policy is in compliance with the latest Federal rules and best practices and to keep employees informed of updates to the policy. To stay abreast of those changes I regularly review FTA newsletters and attend the annual FTA Drug and Alcohol Conference.

LETS has maintained a Drug and Alcohol Policy since 1996 with the last major update occurring in December 2015 per resolution 2015-12-240. Significant changes in Federal rules and best practices have occurred since the last update and the LETS Drug and Alcohol policy has been revised to remain in compliance. Significant changes include:

- The term "opiates" has been changed to "opioids" to reflect the addition of semi-synthetic opioids to the DOT 5-panel drug test.
- The Methodology for Random Testing has been revised to reflect an increase in the minimum annual testing rate from 25% to 50% of all covered employees.
- The Operation Manager has been removed from the List of Safety Sensitive Employee Job Classifications to prevent dilution of the random pool.

The updated policy will be distributed to all LETS employees and will take effect on December 1, 2019.

Please contact me with any questions or to review the Federal guidance on the above changes at x7848.



RESOLUTION

NO: 2019-11-169

LIVINGSTON COUNTY

DATE: November 12, 2019

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**Resolution Authorizing Livingston County Health Department to Enter into an Agreement with Washtenaw County Public Health to Share Medical Director Services– Health Department**

**WHEREAS,** Livingston County’s current Medical Director is planning on retiring in early 2020; and

**WHEREAS,** It has been determined that shared Medical Director services would be mutually beneficial for Washtenaw and Livingston County Health Departments; and

**WHEREAS,** Michigan Public Health Code (Act 368 of 1978) states a Medical Director working in multiple counties may divide their time among the counties as necessary but must be full time (32 plus hours per week); and

**WHEREAS,** expanding the responsibilities of Medical Director services to include both Livingston and Washtenaw Counties will result in a savings of overall expense for both counties, without sacrificing quality of service for either county; and

**WHEREAS,** Livingston County is entering into an agreement to reimburse Washtenaw County our portion of the costs including salary and fringes; and

**WHEREAS,** Expenses for the Medical Director services for Livingston County Health Department will not exceed the proposed 2020 budgeted amount of \$85,360.

**WHEREAS,** this Resolution has been recommended for adoption by the Health & Human Services, and Finance Committees.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners hereby authorizes entering in to a contract for shared Medical Director services between Livingston and Washtenaw Counties contingent upon an acceptable agreement which demonstrates Livingston County’s expenses will not exceed fiscal year 2020 budgeted amounts;

**BE IT FURTHER RESOLVED** that the Livingston County Board of Commissioners hereby authorizes any future budget amendments necessary to effectuate this agreement.

**BE IT STILL FURTHER RESOLVED** that the Chair of the Board of Commissioners be authorized to sign the above referenced contract upon review and approval by Civil Counsel.

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**MOVED:**  
**SECONDED:**  
**CARRIED:**



## LIVINGSTON COUNTY HEALTH DEPARTMENT

2300 East Grand River Avenue, Suite 102  
Howell, Michigan 48843-7578

[www.lchd.org](http://www.lchd.org)

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**PERSONAL/PREVENTIVE HEALTH SERVICES**

**P: (517) 546-9850**

**F: (517) 546-6995**

**ENVIRONMENTAL HEALTH SERVICES**

**P: (517) 546-9858**

**F: (517) 546-9853**

To: Livingston County Board of Commissioners

From: Dianne McCormick

Re: Resolution to Enter into Agreement for Medical Direction Services with Washtenaw County Health Department

Dear Board Members,

Please see the attached Resolution which allows Livingston County Health Department to enter into shared Medical Director Services with the Washtenaw County Health Department. As previously discussed, our current Medical Director provided notification that he wishes to retire in 2020, giving ample time to find his replacement.

I have had discussions with Washtenaw County Health Department. They too are interested in sharing a Medical Director and we have had similar agreements in the past. Washtenaw currently has an interim Medical Director, so timing for both agencies to combine medical direction oversight is ideal. Washtenaw County will be the employer and we will contract with Washtenaw for these services. If the Resolution is approved, Washtenaw County will advertise the position in the next few weeks, with interviews starting in early January. Expenses for shared services will not exceed fiscal year 2020 budgeted amounts, and we will most likely see a cost savings as a result of this agreement.

Please let me know if you have any questions.

RESOLUTION

NO: [Title]

LIVINGSTON COUNTY

DATE: Click or tap to enter a date.

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**Resolution Amending Resolution 2019-08-118 Authorizing the Upgrade of the IVR System and Purchase of SelecTXT Module from Selectron Technologies - Building Department**

**WHEREAS,** Resolution 2019-08-118 authorized entering into an agreement with Selectron Technologies to implement the Relay IVR upgrade and SelecTXT module to enhance the Building Inspection Department's customer service, at a cost not to exceed \$38,000; and

**WHEREAS,** the Agreement that was provided as supporting documentation at the time Resolution 2019-08-118 was adopted was incorrect; and

**WHEREAS,** this Amended Resolution ~~replaces approved Resolution 2019-08-118 with~~ has an appropriate Agreement attached ~~ment,~~ setting forth the initial upgrade cost not to exceed \$38,000, with subsequent years estimated at \$14,000, depending on usage, for an initial Five (5) year term with successive One (1) year maintenance renewals.

**THEREFORE BE IT RESOLVED** that the Livingston County Board of Commissioners hereby authorizes entering into an initagreement with Selectron Technologies to implement the Relay IVR upgrade and SelecTXT module, at an initial upgrade cost not exceed \$38,000, with subsequent years estimated at \$14,000, depending on usage, for an intial Five (5) year term with successive One (1) year maintenance renewals.

**BE IT FURTHER RESOLVED** that the Board of Commissioners authorize the following supplemental appropriations to the Fiscal-Year 2019 Budget as illustrated below:

Fund	Approved 2019 budget	Proposed amendment	Amended 2019 budget
542 – Building Inspection	\$ 3,126,282	\$38,000	\$ 3,164,282

**BE IT FURTHER RESOLVED** that the Chairman of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments related to the above upon review and/or preparation of Civil Counsel.

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MOVED:

SECONDED:

CARRIED:

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**2300 E. Grand River Ave.**  
**Phone 517.546.3240 Fax 517.546.7461**  
**Web Site: <https://www.livgov.com/building>**

## Memorandum

**To: Livingston County Board of Commissioners**  
**From: Jim Rowell**  
**Date: 10/30/2019**  
**Re: Selectron Technologies SelecTXT Product – amending**  
**Resolution 2019-08-118**

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The Livingston County Board of Commissioners approved Resolution 2019-08-118 for the upgrade of the Building Inspections Selectron Interactive Voice Response (IVR) system, along with the purchase of a new module, SelecTXT.

The attachments to the 2019-08-118 were inaccurate. This resolution includes the correct attachment for Board and counsel approval.

If you have any questions regarding this matter please contact me.

October 30, 2019

Diane Gregor, Applications Manager  
Livingston County  
304 E Grand River  
Howell, Michigan 48843

Dear Ms. Gregor,

This letter is intended to be a letter of understanding between the County and Selectron Technologies, Inc., regarding the Scope of Work and for the implementation of your Selectron Upgrade.

As accepted by the County below, this will constitute acceptance of the items within this letter, the enclosed Statement of Work and the terms and conditions currently in effect in the Support and Maintenance Agreement for the purchase of the Selectron Solution. If there is a conflict with a term within these documents, the order of precedence will be:

- Letter of Understanding
- Scope of Work starting on page 2 of this letter
- Statement of Work starting on page 7 of this letter
- Software License Agreement dated December 30, 2002

If you have any questions or concerns, please do not hesitate to contact us at your earliest convenience.

Sincerely,

Todd A. Johnston  
President and CEO

Accepted By: \_\_\_\_\_  
Authorized Representative

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

## Scope of Work

### **Relay Upgrade** **\$60,000**

#### **Upgrade to Relay Platform, Including Relay Administration Portal**

##### New Virtual Server for Production Relay Permits IVR

Required Components to be Provided by Livingston County:

- Host Server Virtualization Environment: VMWare ESXi 5.1 (or newer)
- Server Image Specifications:
  - Windows 2016, 64-Bit (License to be provided by the County)
  - 250 GB Hard Drive
  - 16 GB RAM
- The County will be responsible for installing the virtual servers in a VMWare ESXi 5.1 (or newer) environment. Virtual Servers & OS will not be covered under the County's Support & Maintenance Agreement with Selectron.

##### Professional Services for Virtual Production Server Setup & Configuration

Virtual Server Set up, Software Installation, Configuration and Testing  
Labor to Procure, Assemble, Configure and Test Server Components and Software  
Remote Installation Support and Configuration  
System Documentation

##### Re-Host Four (8) HMP Production Licenses

The County's existing HMP licenses will be re-hosted on the new servers.

##### Decommission Existing Production *VoicePermits* IVR Servers

In accordance with the Software License Agreement, the County agrees to decommission the existing Production *VoicePermits* IVR (on a physical server) after cutover to the new Relay Permits IVR (on a virtual server). Selectron's Project Manager will work with the County on software deletion, and will need signoff for confirmation.

##### Update Existing 8-Port CT ADE Production License Software & Key to Latest Version

This upgrade is only free of charge if the existing 8-port CT ADE license key is sent back to Selectron after cutover to the new Production IVR (with new keys). Otherwise, standard costs for new license keys will apply.

*One-Time Discount on Relay Platform Upgrade* *(\$36,000)*

**Total Investment for Relay Upgrade** **\$24,000**

## Relay Cloud Services Outbound

Customer Setup <i>(includes Voice, Email, and SMS channels, and Static Notifications)</i>	\$5,000
Automatic Results Notification Setup <i>(created by Selectron)</i>	\$1,500
20,000 Delivered Messages	\$6,000

### RCS OUTBOUND SCOPE

The Relay Cloud Services Outbound system offers the following functionality.

- English Notifications with Spanish Add on Option for Dynamic Notifications
- Static Notification: General Information/ non-account specific messages that are configured and recorded by the Customer.
- Dynamic Notifications: Account-specific message created by Selectron that utilizes account specific information that is accessed through a real-time interface OR a flat file provided by the Customer. Dynamic Notifications to be created for Livingston include:
  - Automatic Results Notification
- Flat file information, consisting of call lists and account information, can be uploaded directly on the RCS website or automatically placed and uploaded via an FTP site.
- RCS Outbound has a web-based interface to configure and send messages as campaigns. Campaigns are initiated by the Customer; however, some Target Notifications are automated based on system data.
- A transfer is treated as an additional message in terms of the total bundle of messages purchased by the Customer, and are charged on a per-call basis. A “call” is defined as any valid telephone connection (does not include telephony errors and no answers). A single call is up to 4 minutes in length; each subsequent period up to 4 minutes is considered an additional call.

Outbound messages are purchased in annual message bundles. Messages, as defined by the agreement, that are not used rollover to the next qualifying renewal. The rollover messages from one period may only be used to offset overages in the next immediate period. If there are no overages from one period, the rollover messages from the prior period expire.

A qualifying renewal is one that is equal to or greater than the previous period. If customer chooses to reduce their annual plan renewal, rollover messages do not apply.

<i>Discount for purchase with Relay Upgrade</i>	<i>(\$6,250)</i>
<b>Total Investment for RCS Outbound</b>	<b>\$6,250</b>

### **SelectTXT – Inspection Scheduling** *(Requires Relay IVR)*

<b>Setup Fee</b>	<b>\$7,500</b>
<b>Annual Platform Fee</b>	<b>\$5,000</b>
<b>Message Bundle- 40,000 Messages</b>	<b>\$3,000</b>
<i>Discount for purchase with Relay Upgrade</i>	<i>(\$7,750)</i>
<b>Total Investment for SelectTXT</b>	<b>\$7,750</b>

The SelectTXT Inspection Scheduling offers the following functionality:

- Allows contractors and users to manage their inspection requests and results from a mobile device
- Schedule, Reschedule and Cancel inspection dates via an interactive text message conversation
- View inspection results
- Provides both simple step-by-step menu-driven and “power user” entries

Scheduling, rescheduling and cancelling inspections requires a text message “conversation” back and forth between the application and the mobile user, where the application requests specific permit-related information and the mobile user provides responses. A conversation consists of multiple text messages for each inspection request process.

SMS messages adhere to standard text message usage conventions, with a limit of 160 characters including spaces. If messages exceed the 160 character limit they may be split into multiple SMS text messages, therefore using more than one message.

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## Livingston County Pricing Summary

1. Relay Upgrade	\$24,000
2. Relay Cloud Services Outbound	\$6,250*
3. SelecTXT	\$7,750*
<b>Total Investment</b>	<b>\$38,000</b>

\*Discounted pricing above requires the purchase of the relay Upgrade

### Three-Year Overview

Product	Year 1	Year 2	Year 3
Relay	\$24,000	0	0
Outbound	\$6,250	\$6,000	\$6,000
SelecTXT	\$7,750*	\$8,000*	\$8,000*
<b>Total</b>	<b>\$38,000</b>	<b>\$14,000</b>	<b>\$14,000</b>

\* Includes 40,000 messages. These are estimates and may change based on actual usage  
Does not include support and maintenance for Relay

#### Required Items Not Included in This Quote:

- Existing Network Services & SIP Trunks
- Virtual Host Server, OS License, and Virtualization Environment
- All required applicable interfaces and licensing for access to data

## **SELECTRON PRODUCT AND SERVICE PRICING & PAYMENT INFORMATION**

Pricing does not include additional application integration charges that may be required as part of this solution. This includes Application Vendor API, user, or implementation fees, additional licensing fees, or other surcharges directly or indirectly charged by or remitted to the Application Vendor.

### **PAYMENT TERMS**

Receipt of a Purchase Order by the Customer will constitute acceptance of the terms and conditions utilized in the Professional Services Agreement executed with the initial purchase of your interactive system.

#### **RELAY IVR UPGRADE**

##### **SETUP FEE PAYMENT SCHEDULE**

45% (\$10,800) Invoiced at time of execution of contracts

55% (\$13,200) Invoiced when products purchased are delivered and made available for testing

#### **RCS OUTBOUND**

##### **SETUP FEE PAYMENT SCHEDULE**

100% (\$3,250) Invoiced at time of execution of contracts

##### **PRE-PAID MESSAGE BUNDLE FEE SCHEDULE**

100% (\$3,000) Invoiced when solution is delivered and made available for testing and then 45 days prior to annual renewal (\$6,000) or as needed prior to renewal.

#### **SELECTXT**

##### **SETUP FEE PAYMENT SCHEDULE**

100% (\$3,750) Invoiced at time of execution of contracts

##### **ANNUAL PLATFORM FEE SCHEDULE**

100% (\$4,000) Invoiced when products purchased are delivered and made available for testing and then 45 days prior to annual renewal of bundle (\$8,000) or as needed prior to renewal.

Text messages are purchased in annual message bundles. SelecTXT bundles will be priced separately from other types of text messages, including Outbound SMS bundles. Messages, as defined by the agreement, that are not used will rollover to the next qualifying renewal. The rollover messages from one period may only be used to offset overages in the next immediate period. If there are no overages from one period, the rollover messages from the prior period expire. A qualifying renewal is one that is equal to or greater than the previous period. If customer chooses to reduce their annual plan renewal, rollover messages do not apply.

### **PREMIERPRO ON-GOING SUPPORT**

An active Support and Maintenance Agreement and all applicable fees are required as qualification for the discounted pricing offered in this quote. Based upon evaluation of the items contained in this quote, Support and Maintenance fees will be adjusted accordingly upon the next renewal of the active Support and Maintenance Agreement.

### **TAXES**

Sales Tax or any other applicable taxes are **NOT** included in any of this proposal's pricing information. If taxes become applicable, these taxes will then need to be added to the proposed pricing.



# Statement of Work

Livingston County, MI

## Relay

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## 1. Overview

This Statement of Work (SOW) outlines the services provided by Selectron Technologies, Inc. (Selectron) to Livingston County, MI (Livingston County or Customer). This SOW is in the context of Livingston County's move from Selectron's Gen4 solution to the Relay Platform. The features, functionality, and services are provided through Selectron Technologies' Relay communication platform (Relay).

### 1.1. Revision History

Version #	Details	Date
1.0	Initial Release	8/28/2019

## 2. Functionality

This section details the functionality of each application included in Relay. All functions and features are dependent upon the accessibility of Livingston County's BS&A application database to provide the given data to Relay.

### 2.1. The Relay Platform

Livingston County's solution is powered by Selectron's Relay platform. Relay is a multi-channel, multi-agency platform that is designed to connect customers, constituents, and field workers to government agencies and utilities. Relay offers interactive voice response (IVR), web, mobile, outbound, call center agent, and field worker capabilities all in a single platform.

The following sections detail the functionality that will be implemented for Livingston County. Additional channels, applications, and integrations that are not specified in this SOW are not included, but may be able to be added to the system under a supplemental statement of work. Please contact your Selectron representative for more details for additional functionality.

#### 2.1.1. Application Packs and Channels

Livingston County's solution includes the following application pack and channels:

- Application packs:
  - Permits Pack
- Channels:
  - IVR
  - Outbound
  - SelecTXT

### 2.2. Permits Pack

Livingston County will be configured with the Relay Permits Pack. The Permits Pack offers Livingston County's customers with a central point of access for permit information and services. Callers will be able to enter a permit number and perform the following actions:

- Contractor Menu
  - Access inspection results
  - Permit based messaging
  - Schedule/reschedule inspections
  - Cancel inspections
  - Hear site address for the permit
- Inspector Menu
  - Post inspection results

- Post correction codes
- Leave Message for contractor

In addition to the above, the following add on features are included with this implementation of the Relay Permits Pack:

- Inspection Prerequisite Logic
- Limit Inspections

All permit, inspection, and/or code information is made available through an API to the BS&A application database. For any of the features detailed below to function as described, data must be available in this database to be presented to users.

### **2.2.1. IVR Channel**

The IVR Channel for the Permits Pack provides callers with an Interactive Voice Response (IVR) system for accessing and posting permit information. The IVR offers functionality in the form of a Contractor Menu and an Inspector Menu.

Using the Contractor Menu, a contractor can enter a permit number to access permit information and functions. Upon entering a valid permit number, the user can schedule, reschedule, and/or cancel inspections. After an inspection has been scheduled/rescheduled/canceled, the caller will receive a confirmation number. Additionally, contractors can use the IVR to access inspection results, including any associated correction codes and descriptions. Finally, the contractor can access messages left for them by an inspector, or leave a message for an inspector.

Using the Inspector Menu, accessible via a hidden main menu option, an inspector can enter a permit number to post inspection results via the IVR. When posting results, the caller will need to enter a valid Inspector PIN number (or some other validation number to be determined during implementation). The PIN can be determined by Livingston County, but must be validated by the BS&A database. When posting results, inspectors can add correction codes as well as leave a message for the contractor.

If desired, callers can be given the option to transfer to an agent. If a caller requests a transfer, the Relay IVR performs a transfer to a number specified by Livingston County.

### **2.2.2. Add Ons**

The following Add Ons are included with Livingston County's Permits Pack. These add ons provide additional functionality for the channel(s) purchased as part of this Relay solution.

#### **2.2.2.1. Inspection Prerequisite Logic**

System administrators can configure Relay to disallow inspections from being scheduled until other, associated inspections have been scheduled or approved. When callers attempt to schedule an inspection, whose prerequisites have not been met, the system provides the specific unmet prerequisites. Livingston County's business rules determine whether or not inspection prerequisites must be scheduled or approved prior to scheduling associated inspections. Inspection Prerequisites are defined in the application as part of the implementation process. Adding, updating, or removing prerequisite logic will incur additional professional services cost.

#### **2.2.2.2. Limit Inspections**

When implemented, this module allows Livingston County to set a maximum number of scheduled inspections per day, per defined group. This module can be implemented to allow inspection limitation using one of two schemes: by inspection group (such as Electrical, Plumbing, etc.) or by a Customer-defined custom group (limitations set by city, by inspection type, location, or other criteria desired by the Customer). The implemented grouping scheme is dependent upon the Customer's requirements. Inspection groups that have reached the daily maximum limit are not available for scheduling.

### **2.3. Relay Cloud Services Outbound**

Relay Cloud Services (RCS) Outbound provides Livingston County with a multi-channel outbound communication platform capable of sending Voice, SMS, and email messages to citizens. Two kinds of notifications can be sent: Targeted Notifications, which include dynamic account data and are designed to be sent to specific recipients; and Static Notifications, which do not include customer-specific data and are designed as more 'general information' style messaging. Static Notifications can be designed and recorded by Livingston County staff using the Relay Portal.

Livingston County's RCS Outbound will include targeted notification messaging in the following language(s): English.

Dynamic Notifications require development and are designed during the implementation process. This project includes the following Dynamic Notifications:

#### **2.3.1. Automatic Results Notification**

During the inspection scheduling process, the permit holder may request to be contacted when results have been posted by the inspector. After selecting this option, the permit holder is prompted to enter their telephone number.

After inspectors have posted the results of an inspection, permit holders that have opted in are contacted with the notification. The Automatic Results Notification provides the following information: the permit number, inspection type, inspection result, and the date of inspection. If the call is answered by voice mail, a generic message is played stating that a result was posted to the inspection, but the actual result is not played.

#### **2.3.2. Static Notifications**

Livingston County will be able to send Customer-defined static notifications to citizens via phone, email, or SMS text. Livingston County is responsible for defining and configuring these notifications, which can be done via the Relay Portal. Training for configuring and recording static notifications will be provided at the end of the implementation process.

#### **2.4. SelecTXT**

SelectTXT for inspection scheduling allows Livingston County contractors to manage their inspection requests and results from a mobile device. Users can schedule, reschedule, and cancel inspection dates via an interactive text message conversation, as well as view inspection results. SelecTXT provides both step-by-step, menu-driven and “power user” entries. Scheduling, rescheduling, and cancelling inspections requires a text message “conversation” back and forth between the application and the mobile user, where the application requests specific permit-related information and the mobile user provides responses. A conversation consists of multiple text messages for each inspection request process.

### **3. System Integration**

Depending on the implemented features, Relay requires varying levels of integration with other Livingston County components. These are described in the following sections.

#### **3.1. Application Database Interfaces**

It is anticipated that Selectron will be integrating with Livingston County’s BS&A application database. All data-based interactivity on the solution is reliant upon data being available via the application vendor APIs.

During the implementation phase, if data elements are identified as necessary but are not available via the included APIs, the project will be impacted. This may affect the implementation timeframe and will result in additional professional services fees.



## 4. Deployment Model

### 4.1. Relay IVR for Permitting

This implementation of Relay will be deployed on premise at Livingston County.

For virtual or physical servers, relay requires these minimum specifications:

- Quad-Core Intel Processor
- 16gb RAM
- 250gb RAID 5 drives
- MS Windows 2012 R2, 64-bit
- ESXi v5.1 (or newer)

If the customer is providing SQL:

- Microsoft SQL Server 2008 or 2012

### 4.2. RCS Outbound

This implementation of Relay will be deployed to Selectron's Relay Cloud Services environment. Relay Cloud Services is a multi-tenant SaaS application located in Selectron's hosting facility. Selectron's hosting facility is a co-located data center featuring keyed entry and individual server locks for security. With an RCS solution, Selectron owns all hardware and is responsible for security, ongoing maintenance, and proactive support.

### 4.3. Solution Licensing

Livingston County's solution is licensed for:

- Eight (8) inbound VoIP/SIP IVR ports allowing for up to eight concurrent calls
- 20,000 outbound messages
- 40,000 annual SMS text messages for SelectTXT (additional may be purchased as needed)

## 5. Administrative Tasks

This section details administrative tasks that can be performed in order to manage Relay. All system administration for Relay is handled through the Relay Portal web application. An administrator from

Livingston County will be provided with user credentials for the Relay Portal application during the implementation process. Additional users can be created by the administrator as needed. Permissions can be assigned on a per-user basis; permissions govern the functionality available to a given user.

The Relay Portal provides Livingston County administrators with a single platform for viewing system usage and health, running reports, and configuring various system settings. The Relay Portal is supported on all modern, “evergreen” browsers including: Chrome, Firefox, IE10+, Microsoft Edge, and Safari.

## **5.1. Run System Reports**

Livingston County administrators will be able to run system reports via the Relay Portal. Reports that can be run by the administrator include:

- Call Statistics
- Call Activity
- Call Detail
- SelectTXT Activity Detail Report
- Outbound Statistics/Reports
- Outbound Campaign Summary
- Outbound Campaign Detail

## **5.2. Schedule Outbound Campaigns**

Using the Relay Portal, administrators can create, edit, and review outbound campaigns made using Relay Outbound. Each instance of an outbound campaign must be scheduled individually. This includes selecting the type of notification, the date/time of delivery, and (for static notifications) the configuration of the message.

The administrator will also need to upload a contact list in .csv format for the notification. The exact formatting of the .csv file will vary depending on the notification being scheduled. Selectron will provide Livingston County with example .csv files for the configured notifications included in this project, as well as assistance in generating the outbound call list.

# **6. Responsibilities**

## **6.1. Selectron Technologies, Inc.**

This section outlines Selectron Technologies’ responsibilities regarding service initiation and operation.

### **6.1.1. Provide Project Management**

Selectron Technologies assigns a Project Manager to the service implementation. The Project Manager is the Customer's primary contact at Selectron Technologies and coordinates all necessary communication and resources.

### **6.1.2. Provide Documentation**

The Project Manager provides the Customer with the following documents to help facilitate the service implementation process:

- Implementation Questionnaire- gathers critical information needed to setup and initiate the service. This includes information on the toll-free numbers, call volume, APIs.
- Remote Access Questionnaire- details information needed by Selectron Technologies to remotely access the Customer's network and application database, prior to system initiation, to allow for complete system testing.
- Implementation Timetable- details project schedule and all project milestones.
- Quality Assurance Test Plan- assists the Customer in determining that the interactive solution is functioning as specified in the Contract.
- Service Acceptance Sign-off Form- indicates that the Customer has verified service functionality.

### **6.1.3. Develop Channel Design**

The Project Manager works with the Customer to develop and complete the following portions of channel design:

- IVR call flow design
- Outbound messaging configuration

Software development cannot begin until these design elements are completed and approved by the Customer.

### **6.1.4. Perform Quality Assurance Testing**

Selectron Technologies thoroughly tests all applications and integration points prior to initiation, ensuring system functionality. This includes data read from and written to the application database and the general ability for a customer to successfully access live data and complete a transaction.

### **6.1.5. Provide Installation and Administrative Training**

Selectron will provide two days of onsite installation and training for Livingston County's Relay solution.

#### **6.1.6. Provide Marketing Materials**

Selectron Technologies provides marketing collateral that the Customer can use to promote the interactive solution to citizens. Marketing collateral includes a poster, tri-fold brochure, and business card; standard templates for each item are used. Collateral is provided to the Customer in PDF format (original Adobe InDesign files are provided upon request).

Marketing collateral will be provided for each department included in this project. Selectron Technologies' Project Manager will assist in gathering the correct information to be displayed on the marketing collateral. Information displayed includes the following:

- IVR phone number(s)
- Department logo (preferably in EPS format)
- Department address
- A description of functionality
- Additional contact/informational phone numbers
- Samples: where to find account/ permit/ case numbers, etc.

Any changes to the collateral that do not include the items listed above (e.g., design changes to the template) are billed on a time and materials basis. Any changes to the marketing materials after final delivery are also billed on a time and materials basis.

#### **6.1.7. Interface Upgrades**

After service initiation, Livingston County's BS&A database application may release new updates to their application or its interface. Upgrading the Relay interface to be compatible with any Livingston County application database (or other application database software) may require professional services outside the scope of this service.

### **6.2. Livingston County, MI**

This section outlines the Customer's service implementation and maintenance requirements and responsibilities.

#### **6.2.1. Return Questionnaires and Information**

Selectron Technologies' Project Manager provides Livingston County with an implementation questionnaire. The implementation questionnaire must be returned prior to developing the call flow design and the implementation timetable.

#### **6.2.2. Provide Customer Specific Information**

The following information should be supplied to Selectron Technologies, in conjunction with the Implementation Questionnaire, to help create a precisely integrated product.

For further clarification on the format and detail of the following data, refer to the Implementation Questionnaire or contact your Selectron Technologies' Project Manager.

- Street names
- Observed holidays
- Extensions used for transfer functions
- Permit status codes and types
- Inspection types and descriptions
- Validations used for scheduling an inspection
- Correction codes and descriptions
- Permit numbering scheme

### **6.2.3. Approve Channel Configuration**

The Customer is responsible for approving the application design developed by Selectron Technologies' Project Manager. This includes reviewing:

- Call flow for the IVR solution
- Outbound messaging format

Once the channel design(s) have been approved, software development begins.

### **6.2.4. Provide Remote Network Access to Application Database(s)**

In order to fully test the interactive solution, Selectron Technologies requires access to Livingston County's application database(s) prior to installation. Selectron Technologies' Project Manager provides a Remote Access Questionnaire to help Livingston County identify the necessary requirements.

If remote access is not granted, the Customer should inform the Project Manager immediately. While system installation can be successful without prior access to the database, additional, post-installation development and testing time will be necessary, significantly delaying system activation.

### **6.2.5. Provide System Access**

Selectron Technologies requires access to the Customer's network and database/system. Changing or deleting access accounts could lead to disruption in service for the interactive solution and/or Selectron Technologies' ability to provide timely support. Please notify Selectron Technologies immediately if the accounts for the Application Database or network are modified. Livingston County is responsible for providing Selectron with appropriate application database network access as defined in the System Integration section.

#### **6.2.6. Confirm Service Functionality**

Livingston County, MI has 30 calendar days after service initiation to verify the functionality of the interactive solutions. Within the 30-day system acceptance period the Customer should test system functionality using the provided Quality Assurance Test Plan. Additionally, the System Acceptance Sign-off form must be sent to Selectron Technologies' Project Manager within this period.

#### **6.2.7. Contact Customer Support**

Anytime the Customer requests a significant change to their Selectron interactive solution, an authorized contact from the agency must provide acknowledgement to Selectron's Customer Support Department. A significant change is a modification that will A) change system behavior, B) allow users to change the system, or C) allow access to protected data.

## 7. Master Services & Hosting Agreement

The following is Selectron's Master Services & Hosting Agreement.



## Master Services and Hosting Agreement

This Master Services and Hosting Agreement (this “**Agreement**”) by and between Selectron Technologies, Inc., an Oregon corporation having a principal place of business at 12323 SW 66<sup>th</sup> Avenue, Portland, OR 97223, and its successors and assigns (“**Selectron**”), and Livingston County, Michigan (“**Licensee**”).

### Recitals

**Whereas**, as between Selectron and Licensee, Selectron is the owner of all rights, titles, and interest in and to certain software and materials, identified more particularly in this Agreement as the “**Licensed Software**”; and

**Whereas**, Selectron wishes to grant to Licensee, and Licensee desires to obtain from Selectron, certain rights to access and use, and to permit authorized Licensee employees to access and use the Licensed Software through Selectron’s application hosting service, as more particularly described below and in accordance with the terms and conditions of this Agreement.

**Now, Therefore**, in consideration of the mutual promises and covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

### Agreement

#### 1. Definitions

For purposes of this Agreement, the following terms shall have the following meanings. Any capitalized terms used in this Agreement that are not defined in this Section 1 shall have the meaning given to them elsewhere in this Agreement.

**1.1 “Aggregate Data”** means information, data, and statistics about a group of individuals, organizations, or transactions that cannot be used to identify Licensee or a particular individual, including Licensee Data that has been de-identified and anonymized and combined with data about other individuals and transactions.

**1.2 “Authorized User”** means an Employee that Licensee provides with access to the Licensed Software.

**1.3 “Customer Tools”** means the Licensed Software components and interfaces that, as described in the Documentation, are designed and intended to be accessed by customers of Licensee through an application that is set up and maintained as part of the Services and/or Licensee’s website.

**1.4 “Derivative Work”** shall mean a new or modified work that is based on or derived from a preexisting work, including, without limitation, a work that

in the absence of a license, would infringe the Intellectual Property Rights associated with such preexisting work.

**1.5 “Documentation”** shall mean the standard documentation for the Licensed Software, as generally provided by Selectron to its other customers.

**1.6 “Employee”** shall mean a then-current employee of Licensee.

**1.7 “Intellectual Property Rights”** shall mean all rights associated with (a) patents, designs, algorithms, and other industrial property rights; (b) works of authorship, including copyrights, “moral rights”, and derivative works thereof; (c) the protection of trade and industrial secrets and confidential information; (d) Trademarks (as defined herein); (e) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated), whether arising by operation of law, contract, license, or otherwise; and (f) all registrations, initial applications, divisions, continuations, renewals, extensions, divisions, and re-issuances of any of the foregoing, now existing or acquired in the future.

**1.8 “Licensed Software”** shall mean, collectively, (a) the software programs that are listed in Exhibit A and further described in this statement of work; (b) the Documentation; and (c) any Updates.



**1.9 “Licensee Data”** means structured data about and identifiable to customers of Licensee, including without limitation data about transactions between such customers and Licensee, (a) that Licensee provides to Selectron to enable Selectron to provide the Licensed Software and the Services, (b) that Selectron collects from Licensee’s customers to facilitate payments by those customers to Licensee, or (c) that Selectron otherwise collects or creates, including by automated means, in the course of performing the Services or providing the Licensed Software to Licensee.

**1.10 “PCI Data”** means Cardholder Data (including, without limitation, Primary Account Number, cardholder name, expiration date, and Service Code) and Sensitive Authentication Data (including without limitation full magnetic stripe data or the equivalent on a chip, CAV2/CVC2/CW2/CID, PINs/PIN block), as such terms are defined by the PCI Security Standards Council.

**1.11 “Security Incident”** means a breach of security resulting in an unauthorized third party gaining access to Licensee Data if (a) such breach creates a substantial risk of harm to Licensee or any individual(s) and (b) the Licensee Data was accessed in unencrypted, usable, or readable form or it is reasonably likely that the unauthorized third party has acquired or will acquire the decryption key or other means of converting the Licensee Data to readable or usable form.

**1.12 “Services”** means the outbound call management, customization, training, set-up, configuration, or other services listed in Exhibit A and further described in this statement of work, the Technical Support Services, and any other services Selectron provides to Licensee as described herein.

**1.13 “Technical Support Services”** means the maintenance and technical support services described in Exhibit B hereto.

**1.14 “Term”** shall have the meaning set forth in Section 11.1.

**1.15 “Trademarks”** shall mean (a) the trademarks, trade names, and service marks used by a party, whether registered or unregistered; (b) the respective stylistic marks and distinctive logotypes for such trademarks, trade names, and service marks; (c) such other marks and logotypes as either party may designate from time to time in writing; and (d) the goodwill connected with the use of and symbolized by any of the foregoing.

**1.16 “Updates”** shall mean any modifications, error corrections, bug fixes, new releases, or other updates of or to Licensed Software, including the Documentation, that may be provided or otherwise made available hereunder by Selectron to Licensee during the Term.

**1.17 “Work Product”** means any and all work product, deliverables, materials, drawings, works of authorship, creative works, designs, inventions, documentation, methods, processes, techniques, software, reports, or data created or developed by Selectron in the course of performing the Services or providing the Licensed Software, excluding Licensee Data.

## **2. Grant of License; Restrictions**

**2.1 Grant of License to Use Licensed Software.** Subject to the terms and conditions of this Agreement, including the End User License Agreement (“EULA”) attached hereto as Exhibit D which is incorporated into and made a part hereof, and the timely payment of all fees hereunder, Selectron hereby grants to Licensee a non-exclusive, nontransferable, nonsub licensable, limited license, during the Term, to access and use the Licensed Software solely in accordance with the Documentation and the EULA and solely for Licensee’s own internal business use. Except as set forth in this Section 2.1 or the EULA, no other right or license of any kind is granted by Selectron to Licensee hereunder with respect to the Licensed Software.

**2.2 Software Restrictions.** Licensee hereby acknowledges and agrees that it shall not use the Licensed Software for any purpose other than the purpose for which Selectron has developed the Licensed Software, and that it shall use the Licensed Software in accordance with the EULA and all applicable laws, rules, and regulations. In the event of any violation of this Section 2.2 or the terms of the EULA by Licensee or any person Licensee provides with access to the Licensed Software (whether or not such person is an Authorized User), Selectron may terminate this Agreement in accordance with Section 11.2, and shall be entitled to equitable relief in accordance with Section 12.5.

**2.3 Data Restrictions.** Selectron hereby acknowledges that the Licensee Data may contain sensitive, personally-identifiable information. Selectron will not disclose Licensee Data to any third-party except as required to perform its obligations under this Agreement (e.g., transmittal of PCI Data to Licensee’s designated payment gateway) and will maintain and use the Licensee Data only for purposes of performing its obligations under

this Agreement. Except as otherwise expressly provided herein, Selectron will promptly delete any Licensee Data that Licensee requests in writing to be deleted (except for data retention required by law).

#### **2.4 Rights in Aggregate Data.**

Notwithstanding Section 2.3, Selectron may, (a) during the term of this Agreement, use and analyze the Licensee Data to generate Aggregate Data and (b) during and after the term of this Agreement, retain, use, publish, and otherwise disclose Aggregate Data without restriction, so long as the Aggregate Data is disclosed in a form in which it cannot be used to identify Licensee or any particular individual(s). By way of example and without creating any limitation, Selectron may analyze the Licensee Data along with data gathered from other sources to generate statistics and analytics about success rates of municipalities in collecting payments in response to application notification calls.

### **3. Deliverables and Services**

**3.1 Services.** Selectron shall perform the Services described in Exhibit A and this statement of work and the Technical Support Services described in Exhibit B in accordance with the terms of this Agreement.

**3.2 Delivery, Testing, and Acceptance.** All deliveries of equipment or physical goods required under this Agreement shall be F.C.A. Selectron's facilities. Selectron shall provide Licensee with the Documentation and access to the Licensed Software according to the delivery, testing, and acceptance schedule and terms and conditions set forth in Exhibit A and this statement of work. Unless a testing period of different duration is set forth in Exhibit A or this statement of work, Licensee shall have a testing period of thirty (30) days from the date of delivery of any Licensed Software, including any customized Licensed Software, to inspect and test the Licensed Software. If Licensee provides Selectron with written notice during the applicable testing period describing the Licensed Software's failure to substantially comply with the limited warranty set forth in Section 7.2 in sufficient detail to enable Selectron to reproduce such failure, the Service Fees for the non-conforming Licensed Software shall be suspended until Selectron corrects any such substantial non-conformity. If Licensee does not provide such notice during the testing period, the Licensed Software shall be deemed accepted, and Licensee's sole remedy for any non-conformance shall be the Technical Support Services provided hereunder.

**3.3 Authorized Users; Licensee Identification and Passwords.** Except as provided in

Section 3.4, Licensee shall not permit any person to access the Licensed Software other than Employees whom Licensee has designated as Authorized Users. Each individual natural person shall be a separate Authorized User for purposes of this Agreement. Licensee shall create or request that Selectron create unique log-in credentials, consisting of a "**User Identification**" and "**User Password**", for each individual Authorized User who shall be accessing the Licensed Software. Licensee hereby acknowledges that Licensee and its Authorized Users bear sole responsibility for protecting the confidentiality of all User Passwords and shall remain fully responsible and liable for (and Selectron shall not be responsible or liable for) any unauthorized use of any User Identifications or User Passwords. Licensee shall not share or disclose, and shall not permit any Authorized User to share or disclose, such Authorized User's log-in credentials with or to any other individual or entity, even if such other individual is also an Authorized User. A User Identification may not be transferred from one Authorized User to another Authorized User. Licensee shall promptly terminate (or cause to be terminated by requesting that Selectron terminate) the User Identification for any individual who ceases to be an Authorized User for any reason, including without limitation due to termination of such individual's employment with Licensee. Licensee shall promptly notify Selectron if it discovers or suspects that any log-in credentials have been accessed or used by any person other than the Authorized User to which such log-in credentials were granted, in which case Selectron shall promptly reset or provide Licensee with a means of resetting the password associated with such log-in credentials.

**3.4 Customer Tools.** Licensee may permit its customers to access and use the Customer Tools solely through Licensee's website and/or an application that is set up and maintained as part of the Services, and solely for the purpose of enabling such customers to (a) receive notifications sent by or on behalf of Licensee, (b) make payments to Licensee, (c) view their invoices from Licensee and history of payments to Licensee, and (d) update their contact information with Licensee.

**3.5 Hosting.** During the Term, Selectron and/or its designees shall host and maintain the Licensed Software, and provide access thereto, subject to the terms and conditions of this Agreement and the EULA.

**3.6 Updates, Maintenance, and Technical Support.** During the Term, Selectron shall provide Licensee with Updates as they are made generally available by Selectron to its other customers, as well as

maintenance and technical support, in accordance with the terms and conditions set forth in Exhibit B. Any Update provided or made available by Selectron hereunder shall be deemed part of the Licensed Software and shall be subject to the terms and conditions of this Agreement.

**3.7 Other Modifications to the Licensed Software.** Licensee understands and agrees that Selectron may make modifications and updates to the Licensed Software from time to time. Selectron may determine in its sole discretion whether to provide such modifications and updates to Licensee and its other customers as an Update hereunder, or whether such modifications and updates will be issued as a separate or new product or premium version of the Licensed Software that is available only at an additional charge.

**3.8 Further Licensee Obligations.** Licensee shall be solely responsible for acquiring and maintaining, at its own expense, the necessary equipment and Internet and telecommunication services required to access the Licensed Software and the Services. Licensee acknowledges that Selectron shall have no obligation to assist Licensee in using or accessing the Licensed Software or the Service except as expressly set forth in this Agreement.

#### **4. Fees and Payment**

**4.1 Service Fees.** Licensee shall pay to Selectron service fees ("**Service Fees**") in the amounts and according to the terms and conditions set forth in Exhibit A. In addition to the payment of Service Fees, unless different terms are provided for in Exhibit A, Licensee agrees to reimburse Selectron for all actual, documented and reasonable travel and out-of-pocket expenses incurred by Selectron in connection with the performance of any Services.

**4.2 Payment Terms.** Unless different payment terms are set forth in Exhibit A, all fees and expenses payable hereunder shall be due thirty (30) days from the date of invoice, and any amounts not paid when due will incur late fee charges at the rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is lower, calculated on a daily basis. If any amounts are past due and outstanding, Selectron reserves the right to suspend the licenses granted hereunder, suspend access to the Licensed Software, and discontinue the Services until all outstanding amounts are paid. Selectron is entitled to recover all costs of collection, including attorney's fees and related expenses.

**4.3 Disputed Amounts.** Any disputed charges must be presented by Licensee to Selectron in writing within fifteen (15) days of the date of invoice, and the parties agree to cooperate in good faith to promptly resolve any disputed invoice within fifteen (15) days of Selectron's receipt of Licensee's written notice of dispute. In the event Licensee disputes any amounts invoiced by Selectron in good faith, the undisputed amount shall be paid when due, and only disputed amounts shall be withheld pending resolution of the dispute. If payment of a disputed amount has already been made and later resolution of the dispute is in Licensee's favor, a credit will be issued by Selectron to Licensee on the next invoice.

**4.4 Fee Increases.** During the Initial Term, the Service Fees set forth in Exhibit A shall apply. After the Initial Term (as defined in Section 11.1 below), Selectron may increase or change its fees by providing Licensee with notice of such increase or change at least ninety (90) days prior to the effective date of such increase or change. Licensee's sole alternative to such fee increase or change shall be to terminate this Agreement by providing notice of termination to Selectron within twenty (20) days after receipt of the notice of price increase or change, which termination will become effective thirty (30) days after such written notice of termination.

**4.5 Taxes.** All prices set forth in this Agreement are in U.S. Dollars and are exclusive of any applicable taxes. Licensee shall pay, indemnify, and hold Selectron harmless from all import and export duties, customs fees, levies, or imposts, and all sales, use, value added, or other taxes or governmental charges of any nature, including penalties and interest, and all government permit or license fees assessed upon or with respect to any products sold, leased, or licensed to Licensee and any services rendered to Licensee; provided, however, that Licensee shall not be responsible for paying any taxes imposed on, or with respect to, Selectron's income, revenues, gross receipts, personnel, or real or personal property or other assets.

#### **5. Proprietary Rights**

As between Selectron and Licensee, Selectron and/or its licensors own and shall retain all right, title and interest, including, without limitation, all Intellectual Property Rights in and to the Licensed Software and any Work Product resulting from performance of the Services and any portions thereof, including without limitation any copy or Derivative Work of the Licensed Software (or any portion thereof) and any Updates and upgrades thereto. Licensee agrees to take any action reasonably requested

by Selectron to evidence, maintain, enforce, or defend the foregoing. Licensee shall not take any action to jeopardize, encumber, limit, or interfere in any manner with Selectron's or its licensors' ownership of and rights with respect to the Licensed Software or Service, or any Derivative Work or Update or upgrade thereto. The Licensed Software and any Work Product are licensed, not sold, and Licensee shall have only those rights in and to the Licensed Software and Work Product and any Derivative Work or Update or upgrade thereto as are expressly granted to it under this Agreement, including the EULA.

## 6. Proprietary Information

During the Term of this Agreement and after the termination of this Agreement, the parties will take all steps reasonably necessary to hold the other party's Proprietary Information in confidence, will not use the disclosing party's Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without the disclosing party's express prior written consent; provided, however, that each party (the "receiving party") may disclose Proprietary Information of the other party (the "disclosing party") (a) to such receiving party's employees, directors, officers, contractors, and agents (collectively, "Representatives") who have a need to know such information and who have been advised of and have agreed to comply with the confidentiality restrictions contained in this Section 6 and (b) to such third parties as are authorized or directed by the disclosing party in writing. Each party shall be responsible and liable for the actions and omissions of its Representatives. "Proprietary Information" belonging to a disclosing party includes, but is not limited to, such disclosing party's (a) trade secrets, inventions, ideas, processes, formulas, source and object codes, data, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (b) information regarding its plans for research, development, new products, marketing and selling, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; (c) information regarding the skills and compensation of employees, and (d) other information about or belonging to such disclosing party that the receiving party should reasonably know, due to the nature of the information or the circumstances surrounding its disclosure, is regarded by the disclosing party as confidential. Proprietary Information includes reports, analyses, notes, and other information or materials that contain or are derived using the disclosing party's Proprietary Information, even if developed in whole or in part by the receiving party.

For clarity, information about the Licensed Software, including information about its features, functionality, and pricing, are and shall remain the Proprietary Information of Selectron. For further clarity, Licensee Data is and shall remain the Proprietary Information of Licensee.

Notwithstanding the foregoing, information will not be considered to be Proprietary Information if (a) it is readily available to the public other than by a breach of this Agreement; (b) it has been rightfully received by the receiving party from a third party without confidentiality limitations; (c) it has been independently developed by the receiving party without reference to or use of the disclosing party's Proprietary Information; or (d) it was rightfully known to the receiving party prior to its first receipt from the disclosing party. The receiving party shall be entitled to disclose the disclosing party's Proprietary Information if required by law or a judicial order; provided that the receiving party first provides prompt notice of the required disclosure to the disclosing party, and complies with any protective or similar order obtained by the disclosing party limiting the required disclosure.

## 7. Representations and Warranties; Warranty Disclaimer.

**7.1 Mutual Representations.** Each party represents and warrants to the other party that the execution, delivery and performance of this Agreement (a) is within its corporate, municipal, or governmental powers, as the case may be (b) has been duly authorized by all necessary corporate, municipal, or governmental action on such party's part, and (c) does not and shall not contravene or constitute a default under, and is not and shall not be inconsistent with, any law, regulation, judgment, decree or order, or any contract, agreement, or other undertaking, applicable to such party.

**7.2 Limited Software Warranty and Exclusive Remedy.** Subject to the limitations set forth in this Agreement, Selectron represents and warrants to Licensee that the Licensed Software, when used in accordance with the Documentation, shall throughout the Term substantially conform to the functional specifications in such Documentation. If Licensee finds what it reasonably believes to be a failure of the Licensed Software to substantially conform to the functional specifications in the Documentation, and provides Selectron with a written report that describes such failure in sufficient detail to enable Selectron to reproduce such failure, Selectron shall use commercially reasonable efforts to correct or provide a workaround for such failure at no additional charge to Licensee in accordance with

Exhibit B hereto. Outside the United States, this limited warranty is only available with proof of purchase from an authorized source. EXCEPT FOR THE EXPRESS WARRANTY ABOVE, SELECTRON PROVIDES THE LICENSED SOFTWARE TO LICENSEE "AS IS" AND "AS AVAILABLE." SELECTRON MAKES NO WARRANTY THAT ALL ERRORS, FAILURES, OR DEFECTS SHALL BE CORRECTED, OR THAT ACCESS TO OR USE OF THE LICENSED SOFTWARE SHALL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY SELECTRON, ITS AGENTS, OR ITS EMPLOYEES, SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT. This Section states the entire liability of Selectron and the sole and exclusive remedy of Licensee with respect to any breach of the foregoing express warranty.

**7.3 Limited Services Warranty and Exclusive Remedy.** Subject to the limitations set forth in this Agreement, Selectron warrants that the Services shall be performed in a professional and workmanlike manner. Selectron's sole obligation, and Licensee's exclusive remedy for breach of the foregoing warranty, is that Selectron shall use its commercially reasonable efforts to re-perform the Services or otherwise cure such breach. If, in Selectron's sole judgement, curing the breach is not commercially feasible, Selectron shall credit Licensee for a portion of the fees allocable to the affected period of time that is proportionate to the period the Services or Licensee's ability to access or use the Licensed Software was impaired.

**7.4 Disclaimer of Other Warranties.** THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7 AND SECTION 8.5.5 CONSTITUTE THE ONLY WARRANTIES MADE BY SELECTRON WITH RESPECT TO THE LICENSED SOFTWARE AND THE SERVICES AND ANY OTHER SUBJECT MATTER OF THIS AGREEMENT. SELECTRON MAKES NO OTHER, AND HEREBY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, WITH RESPECT TO THE LICENSED SOFTWARE, THE SERVICES, OR ANY OTHER SUBJECT MATTER OF THIS AGREEMENT. SELECTRON EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. SELECTRON DOES NOT WARRANT THAT ANY USE OF OR ACCESS TO THE LICENSED SOFTWARE SHALL BE ERROR-FREE OR SECURE, OR THAT OPERATION OF THE

LICENSED SOFTWARE SHALL BE UNINTERRUPTED, AND HEREBY DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION THEREWITH. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN SECTION 7 AND SECTION 8.55 OF THIS AGREEMENT.

#### **7.5 Defects Not Covered by Warranties.**

Selectron shall have no obligations under Section 7.2 to the extent any nonconformance or failure of, or error in, the Licensed Software is caused by (a) use of any attachment, feature, hardware, software, or device in connection with the Licensed Software, or combination of the Licensed Software with any other materials or service, unless the combination is performed by Selectron;

(b) transportation, neglect, misuse, or misapplication of the Licensed Software, or any use of the Licensed Software that is not in accordance with this Agreement, the EULA, and/or the Documentation; (c) alteration, modification, or enhancement of the Licensed Software, except as may be performed by Selectron; (d) failure to provide a suitable use environment for all or any part of the Licensed Software; or (e) failure to maintain systems and environments that are compatible with Updates.

### **8. Security**

**8.1 Internet Security.** Selectron's Licensed Software is made available through the Internet and may be used to access and transfer information over the Internet. Licensee is solely responsible for the security and integrity of information it transfers from the Licensed Software, if any. Selectron makes no representations or warranties to Licensee regarding (a) the security or privacy of Licensee's network environment, or (b) any third-party technologies' or services' ability to meet Licensee's security and privacy needs. These third-party technologies and services may include, but are not limited to, operating systems, database management systems, web servers, and payment processing services. Licensee is solely responsible for ensuring a secure environment for information it transfers from the Licensed Software, if any. Further, Licensee acknowledges and agrees that Selectron does not operate or control the Internet and that Selectron shall have no responsibility or liability in connection with a breach of security or privacy regarding the Licensed Software or information contained therein that is caused by (a) viruses, worms, Trojan horses, or other undesirable data or software; (b) unauthorized users, e.g., hackers; or (c) any other third party or activity beyond Selectron's reasonable control; in each of the foregoing cases, except to the extent caused by Selectron's breach of Section 8.4 or 8.5.

**8.2 Remote Access Security.** In order to enable code development and support and maintenance of the software, Selectron may require remote access capability. Remote access is normally provided by installing PC-Anywhere, ControllIT, or other industry standard remote access software. It may also be provided through a Licensee solution such as VPN access. Regardless of what method is used to provide remote access, or which party provides remote access software, it is Licensee's responsibility to ensure that the remote access method meets Licensee's security requirements. Selectron makes no representations or warranties to Licensee regarding the remote access software's ability to meet Licensee's security or privacy needs. Selectron also makes no recommendation for any specific package or approach with regard to security. Licensee is solely responsible for ensuring a secure network environment.

**8.3 Outbound Services Disclaimer.** Outbound services are intended to create additional methods of communication for Licensee's employees who use the Licensed Software in support of existing processes. These services are not intended to replace all interaction with Licensee'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 software, computer hardware, network services, telephone services, and e-mail. Examples of situations that could cause failure include but are not limited to: 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. Licensee acknowledges that it is aware of the potential hazards associated with relying on an automated outbound service feature, when using the Licensed Software, and Licensee acknowledges and agrees that it is giving up in advance any right to sue or make any claim against Selectron, and that Licensee forever releases Selectron from any and all liability caused by (a) any failed call attempts (including excess of calls over and above network or system capacity), incomplete calls, or any busy-outs; (b) 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 (c) if Licensee, Licensee's employees, or Licensee's end user suffer injury or damage due to the failure of outbound services to operate, even

though Licensee does not know what or how extensive those injuries or damages might be, unless such losses were directly attributable to Selectron's gross negligence or willful misconduct.

**8.4 Privacy and Security Standards.** Selectron agrees that it will gather, collect, receive, generate, store, use, maintain, transmit, process, import, export, transfer and disclose the Licensee Data substantially in compliance with applicable data protection, security, breach notification and privacy laws, rules, regulations and industry standards to which Selectron is subject. Selectron shall, at all times, use reasonable measures to protect the confidentiality of the Licensee Data in its possession or care, including technical, administrative, and physical safeguards that are appropriate given the nature of the Licensee Data.

**8.5 PCI Compliance.** Selectron warrants that, during the Term of this Agreement, (a) all system components, people, processes, and the cardholder data environment that are used in Selectron's collection, transmittal, or other processing of PCI Data on behalf of Licensee are and shall remain compliant with the applicable provisions of PCI DSS; and (b) Selectron PayEngine™, Selectron's proprietary payment application, is and shall remain compliant with PA-DSS. On an annual basis or upon Licensee's request, Selectron shall provide Licensee with an Attestation of Compliance or Attestation of Validation confirming such compliance.

**8.6 Incident Response.** In the event Selectron becomes aware of a confirmed or suspected Security Incident involving the unauthorized disclosure or theft of PCI Data, Selectron shall (a) notify Licensee, (b) cooperate in any investigation, (c) promptly take reasonable measures to prevent further unauthorized access or use of the Licensee Data, (d) cooperate with Licensee's notification to affected individuals if such notification is required by applicable law or regulation, and (e) perform all such other acts, or cooperate with Licensee's performance of all such other acts, that are required with respect to such Security Incident by applicable law or regulation.

**8.7 Limited Scope of PCI Data Processing.** The parties acknowledge that Selectron's sole processing of PCI Data on behalf of Licensee shall consist of (a) collecting PCI Data needed to facilitate payments to Licensee, (b) transmitting such PCI Data to a third party payment gateway designated by Licensee, and (c) receiving confirmation via the payment gateway that the payment transaction has been completed. After

transmittal of PCI Data to the payment gateway, Selectron will not retain, store, or continue to use or process such PCI Data.

**8.8 Data Transfers Between Licensee and Selectron.** The parties acknowledge that, to facilitate providing the Services and the Licensed Software, Selectron and Licensee shall regularly transfer Licensee Data to each other. Licensee, not Selectron, is responsible for providing and maintaining a secure file transfer protocol for such transfer of Licensee Data, and shall be responsible for maintaining the security of the system components, environment, and procedures of such file transfer protocol.

**8.9 Licensee's Privacy Practices.** Licensee acknowledges that the Licensee Data includes information about individuals with whom Licensee, rather than Selectron, has direct relationships. Therefore, it is Licensee's obligation, and not Selectron's obligation, to provide any privacy notices or disclosures to, and obtain any consent from, such individuals as may be required by applicable law with respect to processing of the Licensee Data by Selectron on Licensee's behalf. Licensee represents, warrants, and covenants to Selectron that (a) Licensee has the authority to transmit the Licensee Data to Selectron; and (b) Selectron's collection, storage, transmittal, and other processing of the Licensee Data on behalf of Licensee, as described in the Documentation and this Agreement, does not and will not violate any applicable laws, regulations, ordinances, contracts, policies, orders, or decrees to which Licensee is subject.

## **9. Indemnification**

**9.1 Infringement Indemnity Obligations of Selectron.** Selectron shall defend any action brought against Licensee to the extent it is based on a third party claim that use by Licensee of the Licensed Software as furnished hereunder, which use is in accordance with the terms and conditions of this Agreement, directly infringes or misappropriates any valid United States patent, copyright, or trade secret. Selectron shall pay any liabilities, costs, damages, and expenses (including reasonable attorney's fees) finally awarded against Licensee in such action that are attributable to such claim. Licensee agrees to promptly notify Selectron of any known or suspected infringement or misappropriation of Selectron's proprietary rights of which Licensee becomes aware. Should the Licensed Software become, or be likely to become in Selectron's opinion, the subject of any claim of infringement, Selectron may, at its option (a) procure for Licensee the right to continue using the potentially

infringing materials; (b) replace or modify the potentially infringing materials to make them non-infringing; or (c) terminate this Agreement and provide Licensee with a refund equal to the set-up fees paid by Licensee, less an amount equal to the depreciated portion of such fees calculated on a five (5) year straight-line basis. This Section 9.1 states the entire liability of Selectron and the exclusive remedy of Licensee with respect to infringement of any third-party intellectual property or other rights, whether under theory of warranty, indemnity, or otherwise.

**9.2 Infringement Indemnity Obligations of Licensee.** Selectron shall have no liability for any claim based upon (a) the use, operation, or combination of the Licensed Software with non-Selectron programs, data, equipment, or documentation if liability would have been avoided but for such use, operation, or combination; (b) use of other than the then-current, unaltered version of the Licensed Software that incorporates all Updates; (c) Licensee's or its agents' or Employees' activities after Selectron has notified Licensee that Selectron believes such activities may result in infringement; (d) any modifications to or markings of the Licensed Software that are not specifically authorized in writing by Selectron; (e) any third party software; (f) any Licensee Data; or (g) Licensee's breach or alleged breach of this Agreement. Licensee shall indemnify, defend, and hold Selectron harmless for, from and against all liabilities, costs, damages, and expenses (including reasonable attorney's fees) awarded against or incurred by Selectron in such action(s) that are attributable to such claim.

**9.3 Security Related Indemnity Obligations of Selectron.** If an investigation performed by a qualified third party forensic investigator confirms that a Security Incident was caused solely by an act or omission of Selectron, including any security vulnerability in system components, procedures, or environments owned or controlled by Selectron, then Selectron shall defend, indemnify, and hold harmless Licensee for, from and against all liabilities, costs, damages, fines, penalties, and expenses (including reasonable attorney's fees) incurred by Licensee as a result of such Security Incident, including the reasonable costs of investigation and reasonable costs of notification to affected individuals and providing credit monitoring or other fraud prevention services, but only to the extent such notification, credit monitoring, or other fraud prevention services are required by applicable laws, regulations, a court order or consent decree, or the terms of a settlement and release of claims arising from such Security Incident that Selectron has consented to (collectively, "**Losses**").

**9.4 Security Related Indemnity Obligations of Licensee.** Selectron shall have no liability or obligation to defend or indemnify Licensee with respect to any Losses caused by Licensee's breach of Sections 8.8 or 8.9 or any Security Incident to the extent caused in whole or in part by an act or omission of Licensee or any third party (other than Selectron's subcontractors) or any of their affiliates, employees, directors, officers, agents, or contractors (other than Selectron), including without limitation any of the following acts or omissions: (a) their loss of control of any device, (b) their failure to maintain the confidentiality of log-in credentials, (c) their transmission of data via methods that are not secure, (d) their failure to maintain systems and environments that are compatible with any Update, (e) their violation of the applicable terms of this Agreement or any applicable laws, regulations, or industry standards, or (f) any vulnerability in their environment, systems, hardware, software, or physical or administrative security safeguards or procedures, including without limitation any vulnerability in the file transfer protocol maintained by Licensee pursuant to Section 8.8. Licensee shall indemnify, defend, and hold harmless Selectron for, from and against all Losses arising from any such Security Incident or Licensee's breach of Sections 8.7 or 8.8, including without limitation any expenses incurred by Selectron in complying with its obligations under Section 8.6.

**9.5 Conditions for Indemnification.** The parties' indemnification obligations hereunder shall apply only if (a) the party to be indemnified (the "**indemnatee**") notifies the party obligated to indemnify them (the "**indemnitor**") in writing of a claim promptly upon learning of or receiving the same; and (b) the indemnatee provides the indemnitor with reasonable assistance requested by the indemnitor, at the indemnitor's expense, for the defense and settlement, if applicable, of any claim. The indemnatee's failure to perform any obligations or satisfy any conditions under this Section 9.5 shall not relieve the indemnitor of its obligations hereunder except to the extent that the indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

**9.6 Control of Defense.** After receipt of notice of a claim, the indemnitor shall be entitled, if it so elects, at its own cost, risk and expense (a) to take control of the defense and investigation of such lawsuit or action; and (ii) to employ and engage attorneys of its own choice to handle and defend the same; *provided, however*, that the indemnatee's consent shall be required for any settlement that does not include a full release of all claims. If the indemnitor fails to assume the defense of such claim within ten (10) business days after receipt of notice of the

claim, the indemnatee will (upon delivering notice to such effect to the indemnitor) have the right to undertake, at the indemnitor's cost and expense, the defense, compromise or settlement of such claim on behalf of and for the account and risk of the indemnitor; provided, however, that such claim shall not be compromised or settled without the written consent of the indemnitor. The party that assumes control of the defense of the claim will keep the other party reasonably informed of the progress of any such defense, compromise or settlement. Notwithstanding the foregoing, the indemnatee shall be entitled to conduct its own defense at the cost and expense of the indemnitor if the indemnatee establishes that the conduct of its defense by the indemnitor would reasonably be likely to prejudice materially the indemnatee due to a conflict of interest between the indemnatee and the indemnitor; and provided further that in any event, the indemnatee may participate in such defense at its own expense.

## **10. Limitation of Liability**

**10.1 Limited Remedy.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL SELECTRON OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR, OR BE OBLIGATED TO INDEMNIFY LICENSEE FOR, ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR OTHER ECONOMIC LOSS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, EVEN IF SELECTRON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED.

**10.2 Maximum Liability.** Notwithstanding anything in this Agreement to the contrary or the failure of essential purpose of any limited remedy or limitation of liability, Selectron's entire liability arising from or relating to this Agreement or the subject matter hereof, under any legal theory (whether in contract, tort or otherwise), shall not exceed the amounts actually received by Selectron from Licensee hereunder in the twelve (12) months immediately preceding the action that gave rise to the claim. Licensee acknowledges that the Service Fees reflect the allocation of risk set forth in this Agreement and that Selectron would not enter into this Agreement without the limitations on liability set forth in this Agreement.

## **11. Term and Termination**



**11.1 Term.** The term of this Agreement shall commence on the Effective Date and continue for an initial period of five (5) years therefrom (the “**Initial Term**”), and shall automatically renew for successive one (1) year periods unless either party notifies the other of its intention not to renew at least ninety (90) days before the end of the then-current term (collectively, the “**Term**”). If Licensee cancels prior to the end of the Initial Term of five (5) years, all fees for the Initial Term of this agreement that are unpaid will become immediately due.

**11.2 Termination for Default.** If either party materially defaults in any of its obligations under this Agreement, the non-defaulting party, at its option, shall have the right to terminate this Agreement by written notice to the other party unless, within sixty (60) calendar days after written notice of such default, the defaulting party remedies the default, or, in the case of a default which cannot with due diligence be cured within a period of sixty (60) calendar days, the defaulting party institutes within the sixty (60) day-period substantial steps necessary to remedy the default and thereafter diligently prosecutes the same to completion. Notwithstanding anything herein to the contrary, in the event Licensee breaches the EULA or Sections 2.2, 5 and/or 6 of this Agreement, Selectron may immediately terminate this Agreement. Licensee shall notify Selectron within twenty-four (24) hours of Licensee’s becoming aware of any breach (other than by Selectron) of the terms and conditions of this Agreement, including, without limitation, any breach of Sections 2.2, 5 or 6.

**11.3 Termination for Bankruptcy.** Either party may terminate this Agreement if the other party (a) becomes insolvent; (b) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (c) is declared insolvent or admits its insolvency or inability to pay its debts or perform its obligations as they mature; or (d) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment, or composition, or makes a general assignment for the benefit of creditors, provided that, in the case of an involuntary proceeding, the proceeding is not dismissed with prejudice within sixty (60) days after the institution thereof.

**11.4 Effect of Termination.** Upon the expiration or termination of this Agreement, all rights and licenses granted to Licensee hereunder shall immediately and automatically terminate. Within ten (10) days after any termination or expiration of this Agreement, Licensee shall, at its sole expense, return to Selectron (or destroy, at Selectron’s sole election) all Licensed Software and

Proprietary Information of Selectron (and all copies, summaries, and extracts thereof) then in the possession or under the control of Licensee and its current or former employees. Licensee shall furnish to Selectron an affidavit signed by an officer of Licensee certifying that, to the best of its knowledge, such delivery or destruction has been fully effected. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party’s obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms. Either party’s termination of this Agreement shall be without prejudice to any other right or remedy that it may have at law or in equity, and shall not relieve either party of liability for breaches occurring prior to the effective date of such termination. Any provisions that would reasonably be expected by the parties to survive termination of this Agreement shall survive such termination, including without limitation the provisions of the EULA and Sections 1 (“Definitions”), 2.2 (“Software Restrictions”), 2.3 (“Data Restrictions”), 2.4 (“Rights in Aggregate Data”), 4 (“Fees and Payment”) (with respect to amounts accrued but as-yet unpaid), 5 (“Proprietary Rights”), 6 (“Proprietary Information”), 7 (“Representations and Warranties; Warranty Disclaimer”), 8 (“Security”), 9 (“Indemnification”), 10 (“Limitation of Liability”), 11 (“Term and Termination”) and 12 (“General Provisions”).

## **12. General Provisions**

**12.1 Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement, and shall be deemed to be properly given (on the earliest of) (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt; or (c) upon receipt three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All notices shall be sent to the address set forth on the signature page below (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 12.1).

**12.2 Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, U.S.A., without reference to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to and shall not be used to interpret this Agreement. Any dispute

regarding this Agreement must be brought in the state or federal courts located in Livingston County, Michigan, U.S.A.

**12.3 Construction.** This Agreement has been negotiated by the parties and their respective counsel. This Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

**12.4 Attorneys' Fees.** If any legal action is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment shall be entitled to the full amount of all reasonable expenses, including all court costs and reasonable attorney fees paid or incurred.

**12.5 Injunctive Relief.** In the event that Licensee breaches any provision of the EULA or Sections 2, 5, or 6 or any other material provision of this Agreement, Licensee acknowledges and agrees that there may be no adequate remedy at law to compensate Selectron for such breach, that any such breach may result in irreparable harm to Selectron that would be difficult to measure; and, therefore, that upon any such breach or threat thereof, Selectron shall be entitled to seek injunctive and other appropriate equitable relief (without the necessity of proving actual damages or of posting a bond or other security), in addition to whatever remedies Selectron may have at law, in equity, under this Agreement, or otherwise.

**12.6 Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement, shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder, operate as a waiver of any right or remedy.

**12.7 Severability.** If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, and reformed without further action by the parties, to the extent necessary to make such provision valid and enforceable. Without limiting the generality of the foregoing, Licensee agrees that Section 7.4 will remain in

effect notwithstanding the unenforceability of any other provision hereof.

#### **12.8 Independent Contractor Relationship.**

Selectron's relationship with Licensee will be that of independent contractor, and nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, or employer-employee relationship. Licensee is not an agent of Selectron and is not authorized to make any representation, contract, or commitment on behalf of Selectron, or to bind Selectron in any way. Selectron is not an agent of Licensee and is not authorized to make any representation, contract, or commitment on behalf of Licensee, or to bind Licensee in any way. Selectron will not be entitled to any of the benefits that Licensee may make available to its employees, such as group insurance, profit sharing, or retirement benefits.

**12.9 Force Majeure.** Except for the payment of monies due hereunder, neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, war, error in the coding of electronic files, Internet or other network "brownouts" or failures, power failures, novelty of product manufacture or other unanticipated product development problems, and acts of civil and military authorities; provided that such party gives the other party prompt written notice of the failure to perform and the reason therefor and uses its reasonable efforts to limit the resulting delay in its performance and to mitigate the harm or damage caused by such delay.

**12.10 Public Announcements.** Licensee shall cooperate with Selectron so that Selectron may issue a press release concerning this Agreement; provided, however, Selectron may not release any such press release without the prior approval of Licensee (which shall not be unreasonably withheld, delayed, or conditioned). However, without seeking prior approval in each instance, Selectron shall have the right to use Licensee's name as a customer reference, and to use Licensee's trade name on Selectron's customer lists.

**12.11 U.S. Government Rights.** (a) The Licensed Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent

with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, the Licensed Software are licensed to any U.S. Government End Users (i) only as a commercial item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Manufacturer is Selectron Technologies, Inc., 12323 SW 66<sup>th</sup> Avenue, Portland, OR 97223, USA. This Section, consistent with 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202 is in lieu of, and supersedes, any other Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, or other clause or provision that addresses United States Government rights in computer software, technical data, or computer software documentation.

(b) The parties agree that, in the event that Licensee is a governmental entity, all other state and local governments within Licensee's state may purchase a license from Selectron to use the Licensed Software under the same terms and conditions as set forth in this Agreement by entering into a master services and hosting agreement with the same terms and conditions as set forth herein with Selectron.

**12.12 Export Controls.** The Licensed Software is subject to the export control laws of the United States and other countries. Licensee may not export or re-export the Licensed Software, unless Licensee has first obtained Selectron's prior written permission and the appropriate United States and foreign government licenses, at Licensee's sole expense. Licensee must otherwise comply with, and contractually require that all of its employees comply with, all applicable export control laws and regulations in the use of the Licensed Software. None of the Licensed Software may be downloaded or otherwise exported or re-exported (a) into any country for which the United States has a trade embargo, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List. Licensee represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list. Licensee shall defend, indemnify and hold Selectron and all successors, assigns, affiliates, suppliers, and each of their officers, directors, employees, and agents harmless for, from, and against any and all claims, allegations, damages, liabilities, and costs and expenses (including without

limitation attorneys' fees and costs) arising out of Licensee's violation of such export control laws. Licensee further agrees to comply with the United States Foreign Corrupt Practices Act, as amended.

**12.13 Captions and Section Headings.** The captions and Section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

**12.14 Counterparts.** This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and, when taken together, shall be deemed to constitute one and the same agreement. Each party agrees that the delivery of this Agreement by facsimile transmission or by PDF attachment to an e-mail transmission will be deemed to be an original of the Agreement so transmitted and, at the request of either party, the other party will confirm facsimile or e-mail transmitted signatures by providing the original document.

**12.15 Modification; Subsequent Terms.** No amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized signatory of Selectron and Licensee. To the extent that the terms and conditions of the Exhibits hereto or Exhibits to subsequent amendments or modifications of or to the Agreement ("Subsequent Terms") differ from those herein, those Subsequent Terms shall control the interpretation and any conflict resolution thereof. The terms on any purchase order or similar document submitted by Licensee to Selectron will not modify the terms and conditions of this Agreement.

**12.16 Entire Agreement; Amendment.** This Agreement, including the Exhibit(s) attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes (a) all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, agreements, and communications, whether oral or written, between the parties relating to the subject matter of this Agreement, and (b) all past courses of dealing and industry custom.

**In Witness Whereof**, the parties have caused this Agreement to be executed by duly authorized representatives of the parties as of the Effective Date.

**SELECTRON TECHNOLOGIES, INC.**

**LICENSEE**

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

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

Name: Todd A. Johnston

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

Title: President

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

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

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

Address: 12323 SW 66<sup>th</sup> Avenue  
Portland, OR 97223

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

Scope of Work

See "Scope of Work" on page 2 of the Letter of Understanding

## EXHIBIT B

### Maintenance and Technical Support

This Exhibit describes the software maintenance and support services that Selectron shall provide for Licensee.

#### I. Definitions

Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

**A. “Error”** means any failure of the Licensed Software to conform in any material respect with the Documentation.

**B. “Error Correction”** means either a bug fix, patch, or other modification or addition that brings the Licensed Software into material conformity with the Documentation.

**C. “Priority A Error”** means an Error that renders Licensed Software inoperative or causes a complete failure of the Licensed Software, as applicable.

**D. “Priority B Error”** means an Error that substantially degrades the performance of Licensed Software, as applicable, or materially restricts Licensee’s use of the Licensed Software, as applicable.

**E. “Priority C Error”** means an Error that causes only a minor impact on Licensee’s use of Licensed Software, as applicable.

#### II. Error Reporting and Resolution

**A. Error Reporting.** Selectron shall provide Licensee with telephone customer support twenty-four (24) hours per day, seven (7) days per week for the reporting of Priority A Errors, and telephone support during Selectron’s normal business hours for the reporting of Priority B and Priority C Errors, in each event excluding Selectron holidays.

**B. Licensed Software Error Resolution.** Selectron shall use commercially reasonable efforts to: (a) notify applicable Vendors of all Licensed Software Errors properly reported by Licensee in accordance with Section II(A) of this Exhibit B; (b) make available to Licensee any Error Corrections that are made available by such Vendor(s) to Selectron promptly after such Error Corrections are delivered to Selectron; and (c) update Licensee with respect to the progress of the resolution of all Licensed Software Errors.

**C. Error Resolution.** Licensee shall report all Errors in the Licensed Software to Selectron in sufficient detail, with sufficient explanation of the circumstances under which the Error occurred or is occurring, and shall reasonably classify the Error as a Priority A, B, or C Error. Selectron shall use commercially reasonable efforts to correct any Error in the Licensed Software reported by Licensee, in accordance with the priority level actually assigned by Selectron to such Error, as follows:

**1. Priority A Errors.** In the event of a Priority A Error, Selectron shall, within two (2) hours of receiving Licensee’s report, commence verification of the Error. Upon verification, Selectron shall use commercially reasonable efforts to resolve the Error with an Error Correction. Selectron shall use commercially reasonable efforts to provide a workaround for the Error within twenty-four (24) hours of receiving Licensee’s report of such Error, and an Error Correction within forty-eight (48) hours of receiving Licensee’s report. Selectron shall provide Licensee with periodic reports (no less frequently than once every eight (8) hours) on the status of the Error Correction.

**2. Priority B Errors.** In the event of a Priority B Error, Selectron shall, within six (6) hours of receiving Licensee's report, commence verification of the Error. Upon verification, Selectron shall use commercially reasonable efforts to resolve the Error with an Error Correction. Selectron shall use commercially reasonable efforts to provide a workaround for the Error within forty-eight (48) hours of receiving Licensee's report of such Error, and an Error Correction within six (6) business days of receiving Licensee's report. Selectron shall provide Licensee with periodic reports (no less frequently than once every twelve (12) hours) on the status of the Error Correction.

**3. Priority C Errors.** In the event of a Priority C Error, Selectron shall, within two (2) business days of receiving Licensee's report, commence verification of the Error. Upon verification, Selectron shall use commercially reasonable efforts to resolve the Error with an Error Correction. Selectron shall use commercially reasonable efforts to provide a workaround for the Error within six (6) business days of receiving Licensee's report of such Error, and an Error Correction within three (3) weeks of receiving Licensee's report. Selectron shall provide Licensee with periodic reports on the status of the Error Correction.

## EXHIBIT D

### SELECTRON TECHNOLOGIES, INC. END USER LICENSE AGREEMENT

This End User License Agreement (this “**EULA**”) is part of a Master Services and Hosting Agreement (the “**Master Agreement**”) between Selectron Technologies, Inc., an Oregon corporation (“**Selectron**”, “**we**”, “**our**”, or “**us**”) and the person or entity identified in the Master Agreement as the Licensee purchasing Services from us (“**Licensee**”). This EULA governs use by Licensee and all natural persons to whom Licensee provides access to the Licensed Software (each, an “**Authorized User**”). In this EULA, unless the context clearly indicates otherwise, all references to “**you**,” or “**your**” means both the Licensee and the Authorized User. All capitalized terms used but not defined in this EULA have the meanings given to them in the Master Agreement.

SELECTRON PROVIDES THE LICENSED SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS EULA AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, SELECTRON WILL NOT AND DOES NOT LICENSE THE LICENSED SOFTWARE TO YOU, AND YOU MUST NOT USE OR ACCESS THE SOFTWARE.

**1. License Grant.** Subject to your strict compliance with this EULA, Selectron hereby grants you a non-exclusive, non-transferable, non-sublicensable, limited license to use the Licensed Software solely in accordance with the Documentation, the Master Agreement, and this EULA, for Licensee's internal business purposes. The foregoing license will terminate immediately on the earlier to occur of:

- (a) the expiration or earlier termination of the Master Agreement between Selectron and Licensee; or
- (b) your ceasing to be authorized by Licensee to use the Licensed Software for any or no reason.

**2. Scope of License.** Subject to and conditioned upon Licensee's timely payment of the fees set forth in the Master Agreement and your strict compliance with all terms and conditions set forth in this EULA and the Master Agreement, you have a limited right and license to:

- (a) Use and access the Licensed Software in accordance with this EULA and the Documentation, solely for Licensee's internal business purposes.
- (b) Download, display, and use the Documentation, solely in support of Licensee's use and access of the Licensed Software in accordance herewith.
- (c) Download, display, copy, use, and create derivative works of reports and structured data generated using the Licensed Software, solely for Licensee's internal business purposes.

**3. Copies.** All copies of the Licensed Software and Documentation made by you:

- (a) Will be the exclusive property of Selectron;
- (b) Will be subject to the terms and conditions of the Master Agreement and this EULA; and



(c) Must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

**4. Use Restrictions.** You shall not, directly or indirectly:

(a) Use the Licensed Software beyond the scope of the license granted in the Master Agreement and Section 2 of this EULA;

(b) Copy all or any portion of the Licensed Software, except as expressly permitted in Section 2 of this EULA;

(c) Decompile, disassemble, decode, or otherwise reverse engineer the Licensed Software, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Licensed Software or any portion thereof;

(d) Modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Licensed Software or any part thereof;

(e) Provide any other person, including any subcontractor, independent contractor, affiliate, service provider, or other employee of Licensee, with access to or use of the Licensed Software, except as expressly permitted by the Master Agreement or this EULA;

(f) Distribute, disclose, market, rent, lease, lend, sell, timeshare, sublicense, assign, distribute, pledge, publish, transfer or otherwise make available the Licensed Software or any features or functionality of the Licensed Software, to any third party for any reason, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service, except as expressly permitted by the Master Agreement or this EULA;

(g) Use the Licensed Software for the commercial or other benefit of a third party;

(h) Permit the Licensed Software to be used for or in connection with any facility management, service bureau, or time-sharing purposes, services, or arrangements, or otherwise used for processing data or other information on behalf of any third party;

(i) Remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices, legends, symbols, or labels appearing on or in the Licensed Software, including any copy thereof;

(j) Perform, or release the results of, benchmark tests or other comparisons of the Licensed Software with other software or materials;

(k) Incorporate the Licensed Software or any portion thereof into any other materials, products, or services, except as expressly permitted by the Master Agreement or this EULA;

(l) Use the Licensed Software for any purpose other than in accordance with the terms and conditions of this EULA and the Master Agreement.

(m) Use the Licensed Software in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including (i) power generation systems; (ii) aircraft navigation or communication systems, air traffic control systems or any other transport management systems; (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications or

any police, fire or other safety response systems; (iv) military or aerospace applications, weapons systems or environments;

(n) Use the Licensee Data or the Licensed Software in any way that is fraudulent, misleading, or in violation of any applicable laws or regulations (including federal, state, local, and international laws and regulations), including but not limited to export or import control laws, information privacy laws, and laws governing the transmission of commercial electronic messages; or

(o) Use the Licensed Software for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to Selectron's commercial disadvantage.

**5. Collection and Use of Information.** Selectron may, directly or indirectly through the services of others, including by automated means and by means of providing maintenance and support services, collect and store information regarding your use of the Licensed Software, its performance, the equipment through which the Licensed Software accessed and used, such as dates and times of use by each Authorized User, activities conducted using the Licensed Software, the type of web browser used to access the Licensed Software, the operating system/platform you are using, your IP address, and your CPU speed. You agree that the Selectron may use such information for any purpose related to the Licensed Software, including but not limited to improving the performance of the Licensed Software, developing Updates, and verifying compliance with the terms of this Agreement and enforcing Selectron's rights, including all intellectual property rights in and to the Licensed Software.

**6. Intellectual Property Rights.** You acknowledge that the Licensed Software is provided under license, and not sold, to you. You do not acquire any ownership interest in the Licensed Software under this EULA or the Master Agreement, or any other rights to the Licensed Software other than to use the Licensed Software in accordance with the license granted under this EULA and the Master Agreement, subject to all terms, conditions and restrictions contained therein and herein. Selectron reserves and shall retain its entire right, title and interest in and to the Licensed Software and all intellectual property rights arising out of or relating to the Licensed Software, subject to the licenses expressly granted in the Master Agreement and this EULA. You shall use commercially reasonable efforts to safeguard all Licensed Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access.

**7. Login Credentials.** You, the Authorized User, shall not share or disclose your log-in credentials with or to any other individual or entity, even if such other individual is also an Authorized User. If you discover or suspect that log-in credentials of any Authorized User have been accessed or used by anyone other than the individual to whom such log-in credentials were originally granted, you will promptly notify Selectron, and Selectron shall promptly reset or provide Licensee with a means of resetting the password associated with such log-in credentials.

**8. Export Regulation.** The Licensed Software may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the Licensed Software to, or make the Licensed Software accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Licensed Software available outside the US.

**9. Governing Law.** This EULA shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon.