



SYSTEMS AGREEMENT

This Systems Agreement is effective as of _____ (the "Effective Date") and entered into by and between NuPark, LLC, a Texas limited liability company ("NuPark"), and the City of West Lafayette ("Customer").

NuPark is in the business of providing, and Customer desires to obtain from NuPark, certain parking-related software and hardware, maintenance support, and related services. This Agreement establishes the master terms and conditions that will apply to the initial transaction described herein and all subsequent transactions which NuPark and Customer may enter into pursuant to this Agreement. In consideration of the mutual promises and covenants contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. CERTAIN DEFINITIONS. For purposes of this Agreement, the following terms shall have the meaning set forth below:

1.1 "Agreement" means this Systems Agreement and all attachments, exhibits and schedules hereto, including any written addenda, amendments or Subsequent Purchase Orders subsequently entered into by the parties.

1.2 "Confidential Information" means that information of either party ("Disclosing Party") which is disclosed to the other party ("Receiving Party") pursuant or in relation to this Agreement (a) in written form and marked "Confidential" or "Proprietary;" (b) if disclosed verbally, which the Disclosing Party indicates is confidential at the time of disclosure and sends a written summary of such information to the Receiving Party within thirty (30) calendar days of disclosure marked "Confidential" or "Proprietary;" and (c) in addition to the foregoing, which a reasonable businessperson would regard as confidential under the circumstances of disclosure and/or in view of the nature of the information. Notwithstanding the foregoing, Confidential Information includes, without limitation, this Agreement, the NuPark System and all components thereof, the Intellectual Property, and all non-public know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, customer lists, financial information, pricing information, marketing information, product plans, and such other information as should be considered and treated as confidential considering the nature of such information.

1.3 "Customer" has the meaning contained in the first paragraph above and includes any entity directly or indirectly controlling, controlled by, or under common control with Customer including, without limitation, any subsidiary, affiliate, or parent of Customer on the Effective Date of this Agreement. For purposes of this definition, "control" means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all of the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority, as of the Effective Date or hereafter during the term of this Agreement; provided, however, that such entity will be considered a subsidiary, affiliate or parent only for the time during which such control exists.

1.4 "Documentation" means the technical documentation and any end-user instructions including all updates and versions thereof associated with the Licensed Software and Licensed Hardware, whether in the form of electronic or printed materials, magnetic media, or machine-readable format.

1.5 "Error" means the material non-conformance of the Licensed Software with the Documentation.

1.6 "Initial Purchase Order" means the products, software, and services initially ordered by Customer under this Agreement.

1.7 "Intellectual Property" means all tangible and intangible property of NuPark or its third party vendors provided to Customer pursuant to this Agreement that is embodied in or used in connection with the NuPark System, and which is protected or is protectable under copyright, patent, trade secret, service mark, trademark, or other intellectual property laws and/or regulations.



1.8 “Licensed Hardware” means the NuPark hardware and any Third Party Hardware as more particularly set forth in the Initial Purchase Order and any Subsequent Purchase Order.

1.9 “Licensed Software” means the machine-readable, compiled object code format of NuPark software and any Third Party Software as more particularly set forth in the Initial Purchase Order and any Subsequent Purchase Order.

1.10 “NuPark System” means collectively the Licensed Software, Licensed Hardware, Documentation, and any Third Party Products licensed or sold under this Agreement by NuPark to Customer.

1.11 “Subsequent Purchase Order” means an order for products, software, or services placed by Customer after the Initial Purchase Order.

1.12 “Third Party Hardware” means the hardware (and any related software embedded in or distributed with the hardware by the manufacturer of such hardware) manufactured by third parties and resold and/or sublicensed by NuPark to Customer.

1.13 “Third Party Products” means Third Party Hardware and Third Party Software.

1.14 “Third Party Software” means all software, in machine-readable, compiled object code format only, owned by third parties, sublicensed by NuPark to Customer and integrated into or interfaced by NuPark into the NuPark System, as set forth in the Initial Purchase Order and/or any Subsequent Purchase Order.

2. LICENSE; SERVICES.

2.1 License Grant. Subject to the terms and conditions of this Agreement and all Third Party Software licenses, including, without limitation, the payment of all applicable License Fees, NuPark hereby grants Customer a non-exclusive, nontransferable, nonassignable license to use the NuPark System during the Term or any Renewal Term for Customer’s own internal data processing operations in accordance with the terms of, and subject to the restrictions contained in, this Agreement. NuPark additionally hereby grants Customer the right to (a) make such copies of the Documentation as are reasonably necessary for Customer’s internal use of the NuPark System and (b) make such copies of the Licensed Software as are reasonably required for testing, back-up disaster recovery, and archival purposes.

2.2 License Restrictions. As a condition on the foregoing license set forth in Section 2.1, Customer shall not (a) decompile, disassemble, interpret, reverse engineer, translate, or otherwise determine or attempt to determine any source code, algorithms, or underlying ideas of the Licensed Software or any portion thereof; (b) remove or modify any NuPark or third party markings, identification, copyright, or other notices from the NuPark System; (c) sublicense, provide, lease, lend, pledge, use for timesharing or service bureau purposes, or allow others to use the NuPark System to or for the benefit of third parties; (d) modify, change, incorporate into other software, create any databases other than as permitted herein, or create a derivative work of any part of the Licensed Software or Documentation; (e) disclose results of any performance information, analysis, or program benchmark tests without NuPark’s prior written consent; (f) make the NuPark System available in any manner to any third party; or (g) install or use the NuPark System in any manner not in accordance with the license grant pursuant to Section 2.1.

2.3 Intellectual Property. Customer acknowledges and agrees that the Intellectual Property is exclusively owned by and reserved to NuPark (or its third party vendors) and NuPark (or such third party vendors) will retain all right, title, and interest in the Intellectual Property. Customer will neither acquire nor assert any ownership or other proprietary rights in the Intellectual Property or in any derivation, adaptation, or variation thereof (regardless of who creates the derivation, adaptation, or variation).

2.4 No Other Licenses. Except as specifically granted in Section 2.1, no license or other right is granted, either directly or indirectly, by implication, estoppels, or otherwise, to Customer. All other rights are expressly reserved to NuPark or its third party vendors, as applicable.

2.5 Third Party Products.



2.5.1 Third Party Software. This Agreement may require that Customer use certain Third Party Software. Customer agrees to be bound to all licenses, obligations, restrictions, and limitations required or mandated by any Third Party Software vendors. NuPark will use commercially reasonable efforts to pass through to Customer for Customer's benefit all end-user software warranties that the Third Party Software vendor provides directly to NuPark.

2.5.2 Third Party Hardware. Customer acknowledges and agrees that Third Party Hardware purchased and/or sublicensed by Customer under this Agreement has been purchased by NuPark from various manufacturers for resale and/or sublicense, as applicable, to Customer. Excluding warranty of title to any Third Party Hardware, all other Third Party Hardware warranties, including, without limitation, warranties with respect to materials, workmanship, capability, and intellectual property rights are made by such manufacturers and not by NuPark. NuPark will use commercially reasonable efforts to pass through to Customer for Customer's benefit all end-user hardware warranties that the Third Party Hardware vendor provides directly to NuPark. Customer will look solely to such vendors or manufacturers for all remedies under such warranties.

2.6 Maintenance Services.

2.6.1 Maintenance Services Defined. NuPark agrees to provide Customer with certain maintenance services for the NuPark System during the Term or any Renewal Term, provided Customer has paid the applicable License Fees to NuPark in accordance with this Agreement. "Maintenance Services" means that NuPark will offer support to the Customer's designated technical support contact concerning the installation and use of (a) the then-current release and the then-immediately prior release of the Licensed Software and (b) the Licensed Hardware. Support is provided by telephone and electronic mail during NuPark's then-current support hours and consists of the following: (a) answering questions pertaining to NuPark System functionality; (b) commercially reasonable efforts to research and correct Errors; and (c) responding to questions and issues related to Licensed Software updates and enhancements. To the extent that NuPark releases an updated or enhanced version of the Licensed Software during the Term or any Renewal Term, NuPark will also provide such updated or enhanced version to Customer as part of the Maintenance Services, provided that NuPark will be under no obligation to issue any updates or enhancements. Upon receipt, any updates or enhancements will be deemed Licensed Software. Customer acknowledges that Customer's license to such updates or enhancements extends only to updated and enhanced versions of features and functionality existing in the Licensed Software licensed by Customer, notwithstanding that new products with new features and functionality may be bundled with such updates or enhancements. Customer is responsible for the registration, support, maintenance, update, and upgrade of any Third Party Products.

2.6.2 Customer Cooperation. Customer acknowledges that NuPark's performance of the Maintenance Services may be dependent on Customer providing certain information, assistance, or access to Customer's operating systems. Accordingly, Customer agrees that any failure by NuPark to provide the Maintenance Services which is caused by Customer's failure to provide such information, assistance, or access to Customer's operating systems as reasonably requested by NuPark will not constitute a breach of NuPark's obligation to perform the Maintenance Services.

2.6.3 Customer Service Support Levels. NuPark agrees to comply with the Customer Service Support Levels set forth below.



Customer Service Support Levels	
Priority	Required Response
High: <ul style="list-style-type: none"> ➤ NuPark System is down ➤ Critical Customer impact 	<ul style="list-style-type: none"> ➤ Return Call within 30 minutes during NuPark’s support hours; 1 hour outside of NuPark’s support hours ➤ Resolution or plan of action in place and implemented within 24 hours
Medium: <ul style="list-style-type: none"> ➤ Typical software bug ➤ NuPark System response time slow ➤ No major Customer impact 	<ul style="list-style-type: none"> ➤ Return call within 4-8 hours during NuPark’s support hours ➤ Resolution or plan of action in place and implemented within 72 hours
Low: <ul style="list-style-type: none"> ➤ Cosmetic changes required ➤ No Customer impact 	<ul style="list-style-type: none"> ➤ Return call within 48 hours ➤ NuPark will use commercially reasonable efforts to resolve in future update

2.6.4 Exceptions. NuPark will have no obligation to perform Maintenance Services to the extent due to any one or more of the following: (a) Customer’s abuse or misapplication of the NuPark System; (b) use of the NuPark System other than as specified in the Documentation or as permitted herein; (c) use of the NuPark System in conjunction with software or hardware that is incompatible with, or otherwise has a detrimental effect on the operation of, the NuPark System; (d) Customer’s failure to promptly implement any updates or to properly or timely update its Third Party Products as required by NuPark or applicable third party vendor; (e) alteration, damage, or modification to or of the NuPark System; (f) Customer’s failure to timely pay the applicable License Fees to NuPark or to otherwise comply with the terms of this Agreement; (g) improper operator handling or use; or (h) the cancellation, completion, expiration, or termination of this Agreement. If Customer transfers the NuPark System to a hardware and/or software platform which is not supported by NuPark at the time of such transfer, NuPark will continue to provide to Customer any updates issued as part of the Maintenance Services which operate on the original supported platform, but NuPark shall have no further obligation to attempt to fix Errors which occur when the NuPark System is run on any platform other than the supported platform.

2.7 Hosting Services.

2.7.1 Hosting Services. NuPark will provide hosting services for the NuPark System (the “Hosting Services”) during the Term and any Renewal Term if Hosting Services are included in the Initial Purchase Order or any Subsequent Purchase Order, provided Customer has paid the applicable Hosting Services Fees to NuPark in accordance with this Agreement.

2.7.2 Access. If Customer elects to obtain Hosting Services from NuPark, NuPark will provide Customer access to the NuPark System through the Hosting Services. Customer may access the Hosting Services using Customer’s remote access system. NuPark will use commercially reasonable efforts to provide the Hosting Services in a manner sufficient to allow access to the NuPark System through the Internet twenty-four (24) hours per day, seven (7) days per week, except for emergency or routine maintenance or for other outages beyond the control of NuPark, including, without limitation, outages attributable to failure of the Customer’s Internet service provider or Customer’s remote access system. Customer, at Customer’s sole cost and expense, is solely responsible for providing and maintaining Customer’s remote access system and providing all necessary Internet connectivity. Customer will control the issuance of user identification and passwords for the use of the NuPark System by Customer’s employees and agents and will be responsible for maintaining the confidentiality of all such passwords. Customer acknowledges and agrees that Customer is responsible for all liabilities incurred as a result of the use of



any password assigned to Customer and that any actions occurring under Customer's password will be deemed to have been performed by Customer.

2.7.3 Maintenance of Hosting Services. NuPark will use commercially reasonable efforts to maintain the Hosting Services, including installing any updated or enhanced version of the Licensed Software NuPark releases. NuPark reserves the right at any time to modify the hours of access, methods of operation, and procedures related to access to, and use of, the Hosting Services.

2.7.4 Ownership. Customer acknowledges that the Hosted Services are offered as an on-line hosted solution and that Customer has no right to obtain a copy of the underlying software itself except as otherwise expressly permitted under this Agreement. All copies, improvements, updates, modifications, or enhancements of the Hosted Services shall remain the property of NuPark (including any of the foregoing which incorporate Customer's suggestions, ideas, or feedback). All rights related to the Hosting Services not expressly granted to Customer are reserved.

2.7.5 Performance. NUPARK WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE THE HOSTING SERVICES ON AN ERROR-FREE AND CONTINUOUS BASIS. HOWEVER, NUPARK DOES NOT REPRESENT, WARRANT, OR GUARANTEE, AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION, WARRANTY, OR GUARANTEE, THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE HOSTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CUSTOMER ACKNOWLEDGES AND AGREES THAT ACCESS TO THE HOSTED SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND THAT NUPARK IS NOT RESPONSIBLE FOR ANY DELAYS OR DAMAGES RESULTING THEREFROM.

2.8 Professional Services. Any services to be performed by NuPark other than the Maintenance Services and the Hosting Services are limited to those services specifically set forth in the Initial Purchase Order and any Subsequent Purchase Order or otherwise agreed to in writing between the parties (collectively, the "Professional Services"). If, during the Term or any Renewal Term, Customer requests Professional Services, the parties will cooperate to identify and agree in writing upon the scope of the Professional Services to be provided and the applicable schedule for the performance of such Professional Services.

2.9 Audit. Customer is responsible for implementing reasonable means to monitor its compliance with the terms of this Agreement. Upon not less than ten (10) calendar days' notice to Customer, NuPark may audit Customer's use of the NuPark System. Customer agrees to cooperate with NuPark's audit and to provide NuPark with reasonable assistance and access to information, including, without limitation, Customer's books and records related to Customer's use of the NuPark System. NuPark may furnish Customer with an audit questionnaire, and Customer agrees to fully and accurately complete such questionnaire and return it to NuPark within ten (10) calendar days of receipt. NuPark's use of an audit questionnaire will not limit NuPark's ability to conduct any on-site audit(s) as provided above. If a review of Customer's records indicates (a) a discrepancy of five percent (5%) or more of any amount payable hereunder or (b) any use of the NuPark System not permitted hereunder, without limiting any other remedy available to NuPark, Customer agrees to pay NuPark immediately upon demand (y) for the full out-of-pocket costs of the audit and (z) any discovered underpayments.

3. CUSTOMER'S OBLIGATIONS.

3.1 Customer's Premises. For any services to be performed by NuPark on Customer's premises, Customer will provide for NuPark's personnel's use, at no charge to NuPark, reasonable workspace and access to the appropriate Customer computing resources and environment, including mutually agreed upon office equipment and materials needed to complete the services. Customer will arrange for all necessary security badges and IT system log-in/passwords to be provided to NuPark's personnel as may be required by Customer's policies and procedures.

3.2 Customer's Responsibilities. Any tasks that are not specifically assigned to NuPark will remain Customer's responsibility to perform and will remain under Customer's supervision, management, and control, even



if NuPark assists Customer in performing such tasks. NuPark will not be responsible for any delays caused by delays or nonperformance of project tasks which Customer is responsible to perform.

3.3 Right of Access by NuPark. Customer will provide all necessary passwords and protocols to permit NuPark to access the NuPark System on Customer's system by electronic means for purposes of providing Maintenance Services and determining whether the NuPark System is being used in accordance with the terms and conditions of this Agreement.

3.4 Customer Assistance. To assist NuPark in providing the Maintenance Services, Customer will execute diagnostic routines in accordance with written instructions provided by NuPark and inform NuPark of the results of such tests. Customer will cause appropriate technical personnel from its staff to be available for consultation and advice regarding the nature of any problems and the results and acceptability of any proposed or attempted solution. Customer will maintain the NuPark System by installing any bug fixes, updates, and other workarounds provided by NuPark. Customer acknowledges and agrees that the failure or refusal of Customer to do so may affect NuPark's ability to provide the Maintenance Services.

4. FEES; PAYMENT.

4.1 License Fees. In consideration for the licenses granted to Customer under this Agreement, Customer shall pay to NuPark the annual license fees for the NuPark System as set forth in the Initial Purchase Order and any Subsequent Purchase Order (collectively, the "License Fees"). The License Fees include fees for the Maintenance Services and NuPark's standard installation and standard training services for the NuPark System. License Fees for the first year of the Term are due and payable upon execution of this Agreement.

4.2 Annual License Fees. After the 3-year contract Term, year 4 will be considered optional as per the quote submitted. Beyond the optional year 4, the annual License Fees shall be calculated each year thereafter during the Term and any Renewal Term according to the applicable License Fees set forth in the Initial Purchase Order and any Subsequent Purchase Order. After the fourth year of the Term, the annual License Fees shall be due and payable in advance in full every year on the anniversary of the Effective Date during the Term and any Renewal Term.

4.3 Subsequent License Fees. License Fees for any Licensed Software or Licensed Hardware licensed after the Effective Date shall be set forth in the applicable Subsequent Purchase Order and will be invoiced by NuPark as set forth therein. Thereafter, such License Fees shall be calculated and shall be due and payable in accordance with Section 4.2.

4.4 Hosting Services Fees. Customer shall pay to NuPark the fees related to any Hosting Services as set forth in the Initial Purchase Order and any Subsequent Purchase Order (collectively, the "Hosting Services Fees"). The Hosting Services Fees for the first year of the Term shall be due and payable in advance in full on the Effective Date. Thereafter, such Hosting Services Fees shall be calculated and shall be due and payable in the same manner as the License Fees under Section 4.2 and Section 4.3.

4.5 Professional Services Fees. Customer shall pay to NuPark the fees related to any Professional Services as set forth in the Initial Purchase Order and any Subsequent Purchase Order (collectively, the "Professional Services Fees"). The initial Professional Services Fees are set forth in the Initial Purchase Order and are due and payable upon execution of this Agreement. Thereafter, any Professional Services Fees shall be due and payable in accordance with Section 4.9. Customer agrees to pay NuPark for any requested Professional Services not specifically described in the Initial Purchase Order or any Subsequent Purchase Order on a time and materials basis calculated using NuPark's rates in effect at the time NuPark agrees to perform such Professional Services plus any Incurred Expenses (defined below).

4.6 Third Party Products Fees. Customer shall pay to NuPark all fees related to Third Party Products supplied to Customer under this Agreement, including, without limitation, all such fees set forth in the Initial Purchase Order or any Subsequent Purchase Order (collectively, the "Third Party Product Fees"). Any fees for Third Party Products provided through NuPark are subject to change without prior notice based on the fee that NuPark is charged by such vendors for such products.



4.7 Incurred Expenses. Expenses (a) specifically set forth in the Initial Purchase Order or any Subsequent Purchase Order or (b) otherwise reasonably incurred by or on behalf of NuPark or its personnel in performing NuPark's obligations under this Agreement (collectively, the "Incurred Expenses") shall be due and payable as set forth in the Initial Purchase Order or any Subsequent Purchase Order or otherwise within thirty (30) days of Customer's receipt of NuPark's invoice for any such Incurred Expenses.

4.8 Taxes. Customer agrees to pay all taxes levied by a duly constituted taxing authority against or upon the products and services provided pursuant to this Agreement, or arising out of this Agreement (excluding, however, taxes based on NuPark's income) regardless of whether such taxes become due or payable at the time of delivery or use of the NuPark System or subsequent thereto. Customer agrees to pay any tax for which it is responsible hereunder which may be levied on or assessed against Customer directly, and, if any such tax is paid by NuPark, to reimburse NuPark therefor, upon receipt of proof of payment by NuPark. Customer agrees to indemnify, defend, and hold NuPark harmless with respect to all taxes or duties which any federal, state, or local taxing authority requires NuPark to pay on behalf of Customer.

4.9 Payment; Late Fees. All License Fees, Hosting Services Fees, Professional Services Fees, Third Party Product Fees, Incurred Expenses, and any other undisputed payments due to NuPark hereunder including, without limitation, all payments due to NuPark for any additional services or products requested by Customer are due and payable either in accordance with this Agreement or within thirty (30) days of Customer's receipt of NuPark's invoice, as applicable. Any amounts not paid in accordance with this Agreement or within thirty (30) calendar days of the date of Customer's receipt of NuPark's invoice, as applicable, shall bear interest at the rate of one and one-half percent (1.5%) per month from the due date or, if lower, the maximum rate permissible by law. All amounts payable to NuPark hereunder are payable in full in United States Dollars without deduction or set off and shall be in addition to all tax obligations of Customer.

4.10 Shipment and Delivery. NuPark will deliver the Third Party Products FOB shipping point for delivery to the installation site designated by Customer. Customer agrees to pay all reasonable delivery charges for the Third Party Products. Delivery schedules may not be canceled, postponed, or changed without NuPark's prior written consent. Unless otherwise expressly stated, shipments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to timely pay NuPark any monies due or owing NuPark shall excuse NuPark from making further deliveries. Title to and risk of loss in the Third Party Products shall pass to Customer upon delivery of the Third Party Products to the shipping point.

5. **TERM AND TERMINATION.**

5.1 Term. This Agreement and the licenses granted under this Agreement become effective as of the Effective Date and, unless sooner terminated pursuant to Section 5.2 below, this Agreement shall continue in effect for a period of thirty six (36) months from the Effective Date (the "Term"). Upon expiration of the Term, this Agreement shall automatically renew for an additional successive twelve (12) month (One year) term (the "Renewal Term(s)") from the expiration date of the Term or the prior Renewal Term on the terms and conditions set forth in this Agreement, unless either party notifies the other in writing not less than ninety (90) calendar days prior to the expiration date of the Term or any Renewal Term of its intent not to renew this Agreement.

5.2. Termination. The following termination rights are in addition to any termination rights provided elsewhere in this Agreement and are without prejudice to any other right or remedy available to NuPark or Customer at law or in equity:

5.2.1 Nonpayment. Notwithstanding any other provision herein, NuPark may terminate this Agreement and all licenses granted hereunder upon notice to Customer in the event that Customer fails to make full payment when due of any amount required to be paid by Customer under this Agreement within ten (10) calendar days of NuPark's written notice of such failure to pay.

5.2.2 Other Material Breach. In addition to any other rights of termination set forth herein, this Agreement may be terminated by either party upon sixty (60) calendar days' prior written notice to the other party in



the event of a breach of a material provision of this Agreement, provided that during the thirty (30) day period, the breaching party fails to cure such breach.

5.2.3 Termination for Bankruptcy. NuPark and Customer will each have the right, at its option, to terminate this Agreement by prior written notice to the other party in the event of the other party's: (a) assignment for the benefit of creditors; (b) admitted insolvency; (c) dissolution or loss of charter; (d) being adjudged bankrupt or insolvent by a court of competent jurisdiction; (e) having an appointment of a trustee or receiver of its assets or any substantial part thereof; (f) filing of a voluntary petition under any bankruptcy or other similar law providing for its reorganization, dissolution or liquidation; or (g) consent to the appointment of a receiver or a trustee for itself or its assets or any substantial part thereof.

5.3 Monies Non-Refundable. Notwithstanding the provisions of Sections 5.1 and 5.2, in the event of the cancellation, completion, expiration or termination of this Agreement, all monies paid or due or owing to NuPark by Customer up to such cancellation, completion, expiration, or termination shall be deemed non-refundable.

5.4 Effect of Termination. Upon expiration or termination of this Agreement for any reason, (a) any licenses granted to Customer and all rights of Customer in and to the NuPark System will immediately terminate; (b) Customer shall immediately cease using the NuPark System and Hosting Services; and (c) Customer shall return to NuPark any Licensed Hardware which Customer has not obtained title to as of such expiration or termination.

5.5 Remedies. Expiration or termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall it relieve Customer of its obligation to pay all monies due or owing to NuPark that accrued under this Agreement.

6. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS.

6.1 NuPark Representations

6.1.1 Licensed Software. NuPark has full power and authority with respect to the Licensed Software to license the Licensed Software to Customer as provided herein without the consent of any other person, or, in the event such consent is required, NuPark has obtained said consent. NuPark states that unmodified Licensed Software will operate in accordance with the Documentation. Under this statement, NuPark will correct any Errors in the unmodified Licensed Software at no extra charge to Customer.

6.1.2 Maintenance Services. NuPark states that the Maintenance Services will be provided to Customer in a timely and professional manner consistent with software industry standards for such services and in accordance with the Customer Service Support Levels set forth above.

6.1.3 Professional Services. NuPark states that the Professional Services (a) will be provided to Customer in a timely and professional manner consistent with software industry standards for these services and (b) will conform to the written specification of the Professional Services to be mutually agreed upon by the parties.

6.1.4 Authority. NuPark represents and warrants that (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (b) this Agreement shall be the legal, valid, and binding obligation of NuPark, enforceable against it in accordance with the terms hereof; and (c) the execution and performance of this Agreement will not violate any federal, state, or local statute, rule, or regulation or any other contractual obligation of NuPark.

6.2 Customer Warranties. Customer represents and warrants that (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (b) this Agreement shall be the legal, valid, and binding obligation of Customer, enforceable against it in accordance with the terms hereof; and (c) the execution and performance of this Agreement will not violate any federal, state, or local statute, rule, or regulation or any other contractual obligation of Customer.

6.3 DISCLAIMERS.



6.3.1 GENERAL. THE LIMITED WARRANTIES SET FORTH IN SECTION 6.1 OF THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY NUPARK. NUPARK EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NUPARK DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS THAT THE NUPARK SYSTEM WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE NUPARK SYSTEM AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT EVERY DEFECT IN THE NUPARK SYSTEM WILL BE CORRECTED.

6.3.2 THIRD PARTY SOFTWARE DISCLAIMER. NUPARK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE THIRD PARTY SOFTWARE INCLUDING, WITHOUT LIMITATION, QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE ARE HEREBY EXPRESSLY DISCLAIMED. THIRD PARTY SOFTWARE PROVIDED UNDER THIS AGREEMENT IS EXPRESSLY PROVIDED "AS IS."

6.3.3 THIRD PARTY HARDWARE DISCLAIMER. NUPARK MAKES NO WARRANTIES OR REPRESENTATIONS (OTHER THAN WARRANTY OF TITLE) WITH RESPECT TO ANY THIRD PARTY HARDWARE, EXPRESS OR IMPLIED, AND SUCH WARRANTY OF TITLE IS MADE EXPRESSLY IN LIEU OF ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS TO CUSTOMER INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR REPRESENTATIONS OF QUALITY, CAPABILITIES, OPERATION, PERFORMANCE, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THIRD PARTY HARDWARE ARE HEREBY EXPRESSLY DISCLAIMED. THIRD PARTY HARDWARE PROVIDED UNDER THIS AGREEMENT IS EXPRESSLY PROVIDED "AS IS."

6.4 EXCLUSIONS. Notwithstanding any other provisions of this Agreement to the contrary, the limited warranties provided in Section 6.1 shall not apply to nonconformities, Errors, or defects of any goods or services provided by NuPark pursuant to this Agreement or any amendments thereto due to any of the following: (a) misuse of the NuPark System; (b) modification of the Licensed Software by Customer; (c) failure by Customer to utilize compatible computer and networking hardware and software; (d) failure by Customer to install updated or enhanced versions of the Licensed Software provided by NuPark; or (e) interaction with software or firmware not provided by NuPark.

7. INDEMNIFICATION.

7.1 Indemnification by NuPark. NuPark agrees to indemnify, defend, and hold harmless Customer and its officers, directors, employees, distributors, agents, successors, and assigns against, and pay final judgment awarded against such parties from, any third party claims which allege that the NuPark System (other than and excluding all Third Party Products) or the use thereof infringes upon, misappropriates, or violates any valid United States patents, copyrights, or trade secret rights of persons or entities who are not parties to this Agreement; provided, however, that NuPark's indemnification obligations are contingent upon the conditions that (a) Customer promptly notifies NuPark in writing no later than sixty (60) days after Customer's receipt of any notice or claim of such alleged infringement or misappropriation involving the NuPark System of which it becomes aware; (b) Customer permits NuPark to control the defense, settlement, adjustment, or compromise of any such claim; (c) the claim does not result from any unauthorized modification or use of the NuPark System; (d) the claim does not result from the combination of the NuPark System with software or equipment not provided by NuPark; and (e) the claim does not result from Customer-specified customization work that is made to the NuPark System pursuant to specifications provided by Customer. Customer may employ counsel at its own expense (provided that if such counsel is necessary because NuPark does not assume control, NuPark will bear such expense), to assist it with



respect to any such claim. Customer shall have no authority to settle any claim subject to this Section 7.1 on behalf of NuPark, and NuPark will not be obligated to indemnify Customer or its officers, directors, employees, distributors, agents, successors, or assigns for settlements entered into without NuPark's prior written consent.

7.2 Injunction. If, by reason of an infringement claim covered by Section 7.1 of this Agreement, Customer will be prevented or is likely to be prevented by legal means from using the NuPark System, or if, in NuPark's opinion, such claim is likely to occur, NuPark may, at its sole option and expense: (a) procure for Customer the right to continue to use the NuPark System or infringing part thereof; (b) modify or amend the NuPark System or infringing part thereof, or replace the NuPark System or infringing part thereof with other software or parts having substantially the same or better capabilities; or, (c) if, in NuPark's opinion, neither of the foregoing sub-section (a) or sub-section (b) is commercially practicable, terminate this Agreement and repay Customer a portion, if any, of the License Fees actually paid by Customer for the NuPark System equal to the total amount paid by Customer less one-sixtieth (1/60) thereof for each month or portion thereof of the Term or then-current Renewal Term that this Agreement has been in effect. NuPark and Customer shall then be released from any further obligation to the other under this Agreement, except for the obligations of confidentiality and indemnification provided for above and such other obligations that survive cancellation, completion, expiration, or termination of this Agreement as set forth herein. THIS SECTION 7 STATES NUPARK'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO CLAIMS THAT THE NUPARK SYSTEM OR ANY RIGHTS THEREIN INFRINGE OR MISAPPROPRIATE THE RIGHTS OF ANY THIRD PARTY.

7.3 Mutual Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party and its officers, directors, employees, distributors, agents, licensors, successors, and assigns from and against any and all loss, damage, settlement, or expense (including reasonable attorneys' fees) incurred, resulting from, or arising out of the indemnifying party's negligent activities or omissions under this Agreement, whether actual or alleged; provided that the indemnified party (a) promptly notifies the indemnifying party in writing of any notice of which it becomes aware; and (b) permits the indemnifying party to control the defense, settlement, adjustment, or compromise of any such claim. The indemnified party may employ counsel, at its own expense (provided that if such counsel is necessary because the indemnifying party does not assume control, the indemnifying party shall bear such expense), to assist it with respect to any such claim. The indemnified party shall have no authority to settle any claim subject to this Section 7.3 on behalf of the indemnifying party.

8. LIMITATION OF LIABILITY.

8.1 IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF ALL FEES ACTUALLY PAID BY CUSTOMER TO NUPARK PURSUANT TO THIS AGREEMENT DURING THE PRIOR TWELVE (12) MONTH PERIOD ENDING ON THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COST OF COVER, PUNITIVE, OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, OR ANTICIPATED PROFITS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (A) TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT; OR (B) IN THE EVENT OF A BREACH OF THE PARTIES' CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT.

8.2 NUPARK AND CUSTOMER EACH ACKNOWLEDGE THAT THE PROVISIONS OF THIS AGREEMENT WERE NEGOTIATED TO REFLECT AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THEM OF ALL RISKS (BOTH KNOWN AND UNKNOWN) ASSOCIATED WITH THE TRANSACTIONS CONTEMPLATED HEREUNDER. THE LIMITATIONS AND DISCLAIMERS RELATED TO WARRANTIES AND LIABILITY CONTAINED IN THIS AGREEMENT ARE INTENDED TO LIMIT THE CIRCUMSTANCES AND EXTENT OF LIABILITY. THE PROVISIONS OF THIS SECTION 8 SHALL BE ENFORCEABLE INDEPENDENT OF AND SEVERABLE FROM ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.



9. CONFIDENTIALITY; TRADE SECRETS.

9.1 Obligations. Each party will maintain in strict confidence all Confidential Information of the Disclosing Party. The Receiving Party will not disclose or grant use of the Disclosing Party's Confidential Information to any third party except to the Receiving Party's employees and other representatives who have a need to know such Confidential Information or as expressly authorized by the Disclosing Party in writing. The Receiving Party will not use the Disclosing Party's Confidential Information except as authorized by this Agreement. The Receiving Party will use at least the same standard of care to protect the Confidential Information of the Disclosing Party as it uses to protect its own confidential information of a similar nature, but in no event with less than reasonable care. Each party has entered into, and will continue to enter into, a written agreement with each of its employees and other representatives to treat third party confidential information at a minimum in accordance with the provisions of this Agreement. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Unless otherwise set forth herein, upon the expiration or termination of this Agreement for any reason, or upon the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party (or, at the Disclosing Party's option, destroy) all of the Disclosing Party's Confidential Information and shall promptly certify in writing that it has done so. The Receiving Party remains liable, and agrees to indemnify and hold the Disclosing Party harmless, for any unauthorized disclosures of Confidential Information by its employees, officers, directors, or other principals, agents, counsel, subcontractors, or consultants.

9.2 Exceptions. The foregoing obligations of confidentiality shall not apply to any information that the Receiving Party can show is or was: (a) already known to the Receiving Party at the time of disclosure without obligation of confidentiality; (b) independently developed by the Receiving Party without use of or access to the Confidential Information of the Disclosing Party; (c) approved for disclosure by the Disclosing Party beforehand and in writing; (d) in the public domain without breach of this Agreement; or (e) lawfully received by the Receiving Party from a third party without obligation of confidentiality.

9.3 No Adequate Remedy. In the event of a breach of this Section, the parties agree that the Disclosing Party may not have an adequate remedy at law, in money, or damages and, accordingly, shall, in addition to any other available legal or equitable remedies, be entitled to seek an injunction against such breach. Any such relief shall be in addition to and not in lieu of any other relief to which the Disclosing Party may be entitled at law or in equity, including reasonable attorneys' fees.

9.4 Permitted Disclosures. Nothing in this Section shall be construed to prohibit either party from disclosing the Confidential Information of the other party to the extent that such disclosure is required by applicable law or order of a court or other governmental agency; provided, however, that the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement and shall cooperate with the Disclosing Party to minimize the scope of any such disclosure and to obtain a protective or similar order.

9.5 Trade Secrets. Customer hereby acknowledges that the NuPark System and its components, whether provided by NuPark or its third party vendors or licensors, constitute trade secrets of NuPark and/or its third party vendors or licensors, and as such are protected by civil and criminal law, are very valuable to NuPark and/or its third party vendors or licensors, and that their use must be carefully and continuously controlled. Customer shall use the same standard of care (which in no event will be less than reasonable care) it uses to protect its own most confidential information to ensure the confidentiality of the NuPark System and its components and shall prohibit the unauthorized access to or use or duplication of any of the NuPark System and its components. Customer shall keep all machine-readable Licensed Software in a secure place which is as secure as Customer provides for its most confidential materials. Customer agrees to notify NuPark immediately of the unauthorized possession, use, or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use, or knowledge. Customer will promptly furnish NuPark full details of such possession, use, or knowledge and will cooperate fully with NuPark in any litigation against third parties reasonably deemed necessary by NuPark to protect its proprietary rights. Customer's compliance with this Section shall not be construed in any way as a waiver of NuPark's and/or its third party vendors' or licensors' right to recover damages or obtain other relief against Customer for its negligent or intentional harm to NuPark's and/or its third party vendors' or licensors' proprietary rights or for breach of contractual rights. If Customer attempts or allows others to attempt to use, copy, duplicate, transcribe, or convey the items supplied by NuPark and/or its third party vendors or



licensors pursuant to this Agreement in a manner contrary to the terms of this Agreement or in derogation of NuPark's and/or its third party vendors' or licensors' proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, NuPark and/or its third party vendors or licensors shall have, in addition to any other remedies available at law or equity, the right to injunctive relief enjoining such actions, Customer hereby acknowledging that irreparable harm will occur to NuPark and/or its third party vendors or licensors in such event and that other remedies are inadequate.

10. DISPUTE RESOLUTION.

10.1 Negotiation. If a dispute arises between or among NuPark and Customer directly or indirectly arising out of or concerning the meaning or interpretation of this Agreement or the terms or performance of this Agreement (collectively, a "Dispute"), NuPark and Customer shall first attempt to settle such Dispute through discussion and negotiation.

10.2 Binding Arbitration. NuPark or Customer may at any time submit any Dispute to binding arbitration pursuant to the rules of the American Arbitration Association. Arbitration will be the exclusive method for resolving Disputes that are not resolved by discussion or negotiation, in lieu of any proceeding in state or federal court; provided, however, claims for injunctive relief to protect NuPark's Intellectual Property rights or either party's Confidential Information, or to enforce the agreement not to solicit employees, may be brought in a court of competent jurisdiction at any time. Arbitration will be binding on the parties, and the decision thereof will be enforceable by state or federal court of competent jurisdiction. The arbitrator may award attorneys' fees and costs as part of the award. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, THE PARTIES HEREBY KNOWINGLY, EXPRESSLY, AND VOLUNTARILY GIVE UP THEIR RIGHTS TO SEEK REDRESS IN A COURT OF LAW FOR ANY CLAIMS SUBJECT TO ARBITRATION UNDER THIS AGREEMENT.

10.3 VENUE; JURISDICTION. ANY ACTION OR PROCEEDING, INCLUDING, BUT NOT LIMITED TO, ANY ARBITRATION OR LITIGATION, DIRECTLY OR INDIRECTLY ARISING OUT OF A DISPUTE WILL BE SETTLED IN THE STATE OF INDIANA, UNITED STATES OF AMERICA, AND THE PARTIES EXPRESSLY SUBMIT TO AND CONSENT THAT THE COURTS AND AUTHORITIES OF THE STATE OF INDIANA WILL HAVE EXCLUSIVE JURISDICTION OVER ANY SUCH ARBITRATION OR LITIGATION. THE PARTIES HEREBY CONSENT TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY LITIGATION.

10.4 Governing Law. This Agreement, and any Disputes arising hereunder, shall be governed, interpreted, construed, and enforced in all respects in accordance with the laws of the State of Indiana, excluding its conflict of laws rules.

10.5 Attorneys' Fees. If any action or proceeding, including, but not limited to, arbitration or litigation, is commenced between NuPark and Customer concerning this Agreement, then the party prevailing in such action or proceeding will be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorneys' fees in such action or proceeding which may be determined by the arbitrator or court in such action or proceeding or in a separate action brought for that purpose.

11. NON-SOLICITATION.

11.1 Non-Solicitation. Unless agreed to in writing in advance, neither party will, during the Term and any Renewal Term and for a period of one (1) year thereafter, recruit, solicit, offer work to, or hire any of the other party's employees or agents with whom such party has had direct contact in connection with this Agreement, unless one year has passed since that person was last employed or engaged by the other party. General solicitation, such as, by way of example only, placing advertisements in newspapers and trade publications, do not constitute solicitation. Either party may hire any person who responds to such general solicitation without violating this Section.

12. GENERAL PROVISIONS.

12.1 Complete Agreement. This Agreement is intended as the complete, final, and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof and supersedes all other prior



or contemporaneous agreements or understandings, whether written or oral, between them relating to the subject matter hereof. No amendment to, or modification of, this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. Each party expressly acknowledges that there are no warranties, representations, covenants, or understandings of any kind, manner, or description whatsoever by either party to the other except as expressly set forth in this Agreement.

12.2 No Waiver. Failure by either party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any rights or remedies under this Agreement will not be construed or deemed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and will remain in full force and effect. Any waiver by either party of its rights under this Agreement must be in writing and signed by a duly authorized representative of the waiving party.

12.3 Assignment. This Agreement shall inure to the benefit of, and be binding upon, any successor to NuPark whether by merger or operation of law. Except for this limited right of assignment, neither party shall assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement and any rights, interests, or benefits shall be fully binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns. Any attempted assignment in violation of the provisions of this Section shall be void and ineffective.

12.4 Compliance With Law. Each party agrees that all of its obligations contained in this Agreement and any action taken by it pursuant to this Agreement shall be performed in accordance with all applicable federal, state, local, and foreign laws, statutes, rules, regulations, and ordinances, including all export restrictions. Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the NuPark System or any component thereof to any destination, company, or person restricted or prohibited by U.S. Export Administration regulations.

12.5 Construction. The language of all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties. Headings of paragraphs herein are for convenience of reference only and are without substantive significance.

12.6 Severability. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held illegal, invalid, or unenforceable by a court of competent jurisdiction (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

12.7 Relationship of Parties. The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Further, neither party, by virtue of this Agreement, will have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.

12.8 No Third Party Beneficiaries. This Agreement is made for the benefit of NuPark and Customer and not for the benefit of any third parties.

12.9 Notices. All notices or other communications required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given: (a) when hand delivered; (b) on the third (3rd) business day after the day of deposit in the United States mail when sent by certified mail, postage prepaid and return receipt requested; (c) on the next business day after the day of deposit with reputable overnight delivery service; or (d) when sent and received by facsimile transmission as indicated by a printed notice generated at the time of transmission. Such notices shall be sent to the address or facsimile number set forth below, or at such other addresses or facsimile numbers as may hereafter be furnished in writing by either party to the other



party specifically as the party's replacement address for notice under this Agreement. The foregoing shall apply regardless of whether such notice is accepted or unclaimed.

If to NuPark:	If to Customer:
NuPark, LLC 912 Petaluma Dr Cedar Park, TX 78613 E-Mail: <u>kevin@nupark.com</u> Attn: <u>Kevin Uhlenhaker</u>	_____ _____ _____ E-Mail: _____ Attn: _____

12.10 Effect of Electronic Communications. The parties may conduct communications with respect to this Agreement by e-mail or similar electronic means, but such electronic communications do not constitute "notice" as contemplated by this Agreement or in any manner amend the terms of the Agreement. Nor shall the use of the phrase "in writing" or the word "written" be construed to include e-mails or other such electronic communications except to the extent that this executed Agreement, any amendment thereto, or any Subsequent Purchase Order is sent as a transmittal of an attachment between the parties or their representatives in .pdf or similar format.

12.11 Force Majeure. Excluding Customer's payment obligations, if the performance of this Agreement or of any obligation hereunder is interfered with by reason of any circumstances beyond the reasonable control of the party affected, including, without limitation, fire, explosion, power failure, acts of God, war, revolution, civil commotion, acts of public enemies, any law, order, regulation, ordinance, or requirement of any government or legal body, or any representative of any such government or legal body, or labor unrest, including, without limitation, strikes, slowdowns, picketing, or boycotts, then the party affected shall be excused from such performance on a day-to-day basis to the extent of such interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so interfered with); provided that the party so affected shall use reasonable efforts to remove such causes of nonperformance.

12.12 Press Releases. Customer agrees that NuPark may, and Customer hereby authorizes NuPark to, reference and use Customer's name in press releases or news releases and/or other marketing collateral. If NuPark desires to use a quote from Customer personnel, NuPark shall first obtain Customer's consent to using such quote in any press or news release.

12.13 Survival of Obligations. All rights and obligations of the parties under this Agreement, including, without limitation, those contained in the indemnity and confidentiality provisions herein, which by their nature would continue beyond the termination or expiration of this Agreement, shall survive termination or expiration of this Agreement and shall remain in full force and effect between the parties.

12.14 Counterparts. This Agreement may be executed in several counterparts, each of which when executed and delivered shall be deemed an original and each of which alone and all of which together shall constitute one and the same instrument. Facsimile signatures (or signatures in a .pdf or similar copy of the original) shall be treated as original signatures for the purpose of enforcing this Agreement and/or any amendment or Subsequent Purchase Order. Any signature delivered by a party by facsimile transmission or electronic delivery shall be deemed to be an original signature hereto. In pleading or proving this Agreement, it will not be necessary to produce or account for more than one such counterpart.

[SIGNATURE PAGE FOLLOWS]



SIGNATURE PAGE TO SYSTEMS AGREEMENT

IN WITNESS WHEREOF, each party hereto, intending to be legally bound hereby, has caused its duly authorized representative to execute this Agreement and bind such party effective as of the Effective Date.

CUSTOMER:
City of West Lafayette

NUPARK:
NUPARK, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



ATTACHMENT "A"

INVESTING IN IRAN

Additional Contract Clause Attachment

No Investment in Iran. As required by IC 5-22-16.5-13, the Contractor hereby certifies that the Contractor is not engaged in investment activities in Iran.

NuPark LLC

Signed: _____

Printed Name: _____

Title: _____

Date: _____



ATTACHMENT "B"

**CITY OF WEST LAFAYETTE
NON-COLLUSION AFFIRMATION**

The undersigned offeror or agent, duly swears, under penalties for perjury, that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

NuPark LLC

Signed: _____

Printed Name: _____

Title: _____

Date: _____



ATTACHMENT "C"

E-Verify PROGRAM AFFIRMATION

NuPark shall comply with E-Verify Program as follows:

a. Pursuant to IC 22-5-1.7, NuPark shall enroll in and verify the work eligibility status of all newly hired employees of NuPark through the E-Verify Program ("Program"). NuPark is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

b. NuPark and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that NuPark or its subcontractors subsequently learns is an unauthorized alien. If NuPark violates this Section, the Customer shall require NuPark to remedy the violation not later than thirty (30) business days after the Customer notifies NuPark. If NuPark fails to remedy the violation within the thirty (30) business day period, the Customer shall terminate the contract for breach of contract. If the Customer terminates the contract, NuPark shall, in addition to any other contractual remedies, be liable to the Customer for actual damages. There is a rebuttable presumption that NuPark did not knowingly employ an unauthorized alien if NuPark verified the work eligibility status of the employee through the Program.

c. If NuPark employs or contracts with an unauthorized alien but the Customer determines that terminating the contract would be detrimental to the public interest or public property, the Customer may allow the contract to remain in effect until the Customer procures a new contractor.

d. NuPark shall, prior to performing any work, require each subcontractor to certify to NuPark that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. NuPark shall maintain on file a certification from each subcontractor throughout the duration of the Project. If NuPark determines that a subcontractor is in violation of this Section, NuPark may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by NuPark or the subcontractor.

e. By its signature below, NuPark swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the Customer that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

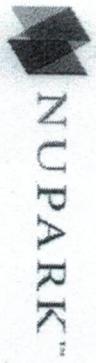
NuPark LLC

Signed: _____

Printed Name: _____

Title: _____

Date: _____



Quote

NuPark
 912 Petaluma Dr
 Cedar Park, TX 78613

Date 07/01/15
 Quote # WL62415v3
 Valid Until 07/31/15

Customer
 City of West Lafayette

Location
 West Lafayette, IN

Line Item Qty Price Year 1 Year 2 Year 3 Year 4*

1 **Hosted uParkCity Subscription**-Includes uParkCity Back Office Software, Unlimited Seat Licenses, Implementation, Travel, Project Management, Integration, Support, Hosting, Upgrades
 1 NA \$ 49,750.00 \$ 13,500.00 \$ 14,175.00 \$ 14,883.75

2 **Hosted uParkCity eCommerce**-Includes: Citation Payment and Permit Sales (per transaction, end user paid convenience fee)
 Varies \$ 2.00 Varies Varies Varies

3 **PlateScout LPR Software**- In vehicle LPR software for vehicle identification, vehicle alerts, and payment verification Unlimited Mobile Units
 1 NA Included Included Included

4 **Consumer Parking App** One Time (iOS & Android)
 1 NA \$ 4,500.00

5 **Rugged Handheld Enforcement Unit**- Includes 7" Panasonic Rugged Tablet, and 3 Year Warranty
 4 \$ 2,700.00 \$ 10,800.00 \$ - \$ -

6 **Genetec Advanced Replacement Warranty**- Covers Mobile LPR Hardware and Embedded Software**
 1 \$ 3,500.00 Included Included Included

7 **Handheld Buyback**- Buyback of MC65 Handheld Units
 4 \$ (500.00) -\$ 2,000.00 \$ - \$ -

Total \$63,050.00 \$13,500.00 \$14,175.00 \$ 14,883.00
 3 year total \$ 90,725.00

Terms:
 25% of 3 year contract price due at contract signing, 25% of 3 year contract price due at go live date.
 50% of 3 year contract price due net 30 of go live date
 *Yearly subscription for option years increases 5% each year. Due on anniversary of "go live" date.