



901-B TEXAS STREET • DENTON, TEXAS 76209 • (940) 349-7100 • FAX (940) 349-7302
MATERIALS MANAGEMENT DIVISION

September 16, 2014

Jeffrey A. Severs
Exceleron Software, LLC
5440 Harvest Hill Road, Suite 233
Dallas, TX 75230

Ref: RFP 5346 MYUSAGE SOFTWARE ACCESS AGREEMENT

As of September 9, 2014 the City of Denton approved the above referenced agreement to your company, Exceleron Software, LLC.

Enclosed, please find the signed original agreement for your records.

Thank you for your interest in the City of Denton.

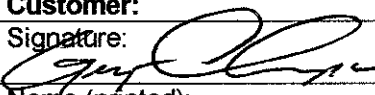
Regards,


Jody Word

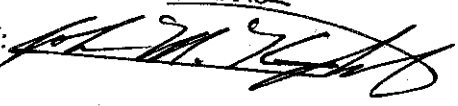
cc: 5346 - MYUSAGE SOFTWARE ACCESS AGREEMENT

MYUSAGE SOFTWARE ACCESS AGREEMENT

This MyUsage Software Access Agreement ("**Agreement**"), dated as of the Effective Date shown below, is entered into by and between Exceleron Software, LLC., a Texas corporation, with an address of 5440 Harvest Hill Road, Suite 233, Dallas, TX 75230 ("**Exceleron**"), and Customer identified below. This Agreement consists of this cover page (the "**Cover Page**") and the terms and conditions on the attached Attachments A and B.

Customer Name	City of Denton, Texas		
Contact Name & Title	Jody Word, Buyer		
Street Address	901B Texas Street		
City, State and ZIP	Denton, TX. 76209		
Telephone	940-349-7100		
Fax	940-293-1837		
E-mail Address	dentonpurchasing@cityofdenton.com		
Effective Date	Upon signing	Initial Term (Commencing after completion of the Pilot Period)	12 mos. after the completion of the Pilot Period
FEES			
Configuration and Training Fee	\$15,000.00 due on the Effective Date.		
Notification and IVR Fees	Customer shall pay the following charges for generating and sending and/or receiving notifications: \$.05 for each toll call \$.04 per text message Emails are free		
Monthly Fees	Customer shall pay the following monthly fees commencing on the Go Live Date and continuing during the Term: \$0.20 per Participating Member per day (the " Fees ").		
	Commencing upon the first day following completion of the Pilot Period and continuing monthly during the Term Customer shall pay the applicable Monthly Fees based on the following schedule:		
	Month following Completion of the Pilot Period	Monthly Minimum Fees (the " Monthly Minimum Fees ")	
	Month 1 – End of Term	\$3,000.00	
Payment	The above fees and charges are payable as provided in the attached <u>Attachment A</u> .		
SIGNATURES			
In witness whereof, Exceleron and Customer have executed this Agreement by their duly authorized officers as of the Effective Date.			
Exceleron Software, LLC		Customer:	
Signature: 		Signature: 	
Name (printed): Jeffrey A. Sovers		Name (printed): George C. Campbell	
Title: COO		Title: City Manager	
Date: 9/9/14		Date: 09/09/14	

APPROVED AS TO FORM:
CITY ATTORNEY
CITY OF DENTON, TEXAS

BY: 

Attachment A TERMS AND CONDITIONS

1. Definitions

1.1 **"Participating Members"** or "Subscribers" means a customer of the Customer who participates in the Customer's alternative prepaid program.

1.2 **"MyUsage Prepaid Software"** means that certain Exceleron software called MyUsage Prepaid or Prepaid Account Management System.

1.3 **"Confidential Information"** means this Agreement and all its attachments, the MyUsage Software, documentation, information, data, drawings, specifications, and any other information supplied by one party to the other and which should reasonably be considered confidential. Confidential Information will not include information that is publicly available, becomes publicly available through no fault of the other party, is already in the other party's possession without a confidentiality obligation, is obtained by the other party from a third party without restrictions on disclosure, or is independently developed by the other party without reference to the Confidential Information.

1.4 **"Customer Data"** means all data and information (whether or not Confidential Information) entered into the System by Customer.

1.5 **"Effective Date"** is defined on the Cover Page.

1.6 **"Go Live Date"** means the first day that the MyUsage Software is used by Customer for productive use (e.g. first time Customer Data is entered into the system by the Customer).

1.7 **"Initial Term"** is defined on the Cover Page.

1.8 **"Pilot Period"** means the period of time between the Go Live Date and sixty (60) days from the Go Live Date.

1.9 **"System"** means Exceleron's computer systems that are used to host the MyUsage Software.

2. MyUsage Prepaid Software Access

2.1 Exceleron hereby grants to Customer a non-exclusive, nontransferable, non-sublicensable license to use the MyUsage Software through the System during the Term (as defined below) solely for Customer's internal business purpose related to prepaid electricity service.

2.2 Customer must: (a) provide for its own access to the Internet and pay any service fees associated with such access, and (b) provide all equipment necessary to

make such connection to the Internet, including a computer, modem and specified browser and plug-in software.

2.3 Exceleron will retain sole and exclusive ownership of all right, title and interest in and to the MyUsage Software and System and all copies thereof.

2.4 Customer Data shall be and remain the property of Customer. Upon Customer's request, or upon the termination or expiration of this Agreement, such Customer Data shall be promptly returned to Customer by Exceleron in a form then maintained by Exceleron or, if Customer so elects, shall be destroyed.

2.5 Exceleron shall upon receipt of the authorized purchase order and dually executed contract, work with Customer to schedule an implementation kick off meeting within ten (10) business days. Exceleron shall diligently work with Customer to implement the Software, and shall use commercially reasonable efforts to implement the Software within one-hundred and eighty (180) days, after receipt of the authorized purchase order and dually executed contract, provided however such timeframe shall be extended for any delay caused by Customer. Customer shall use commercially reasonable effort to perform the responsibilities that are agreed to by the Parties in the implementation kick off meeting.

3. Service Level and Support

3.1 Exceleron will use commercially reasonable efforts to make the System available for Customer's access 24 hours per day, seven (7) days a week (**"Operating Hours"**). Except in the case of emergencies, Exceleron will provide Customer with at least twenty-four (24) hours prior notice of downtime required during Operating Hours and will use commercially reasonable efforts to accommodate Customer's schedule for such downtime.

3.2 The MyUsage Software and System will operate in material conformance to the specifications set forth in Attachment B. As Customer's sole and exclusive remedy, Exceleron will use commercially reasonable efforts to fix any non-conformities. Customer agrees that Exceleron may, in its reasonable commercial judgment, amend Attachment B from time to time to further detail the MyUsage Software and System. Amendments to Attachment B are effective upon Customer's receipt of the revised Attachment B. However, if: (a) the amendment would materially and adversely affect Customer, (b) Customer provides Exceleron with a written notice describing its objection to the amendment in reasonable detail within five (5) business days of the effective date of the amendment, and (c) Exceleron does

not agree to waive the amendment as to Customer within five (5) business days of Customer's notice, then Customer may terminate this Agreement without liability.

3.3 Exceleron will provide Customer with those error corrections and modifications to the MyUsage Software that Exceleron provides without cost to its other customers that access the MyUsage Software through the System.

3.4 Exceleron will provide telephone support during Exceleron's normal business hours (8 am – 5 pm, CST, Monday thru Friday) to permit Customer to report problems and seek reasonable assistance in the use of the MyUsage Software. Exceleron shall provide the following toll-free telephone number for technical assistance during normal hours of operation: 800-511-1554.

3.5 Exceleron will use commercially reasonable efforts to resolve any outages during business hours within four (4) hours and will dedicate resources to resolving any outage until such outage is resolved. Notwithstanding the foregoing, Exceleron will not be in default of this Agreement, or be liable in any way, to the extent the System is unavailable wholly or partly due to: (i) Customer's failure to perform its obligations under this Agreement that affects the performance of the System; (ii) force majeure events set forth in Section 12.9; (iii) the performance of Customer's third party telecommunications network provider(s); (iv) changes made at the request of Customer; (v) unforeseen capacity increases based on changes in Customer's business processes for which Exceleron has not received at least thirty (30) days prior written notice from Customer; and (vi) Customer's software or hardware.

Fraudulent statements by the Exceleron on any Offer, or in any report or deliverable required to be submitted by the Exceleron to Customer shall be grounds for the termination of the Contract for cause by Customer and may result in Legal action.

4. Other Services

4.1 Exceleron will provide Customer with two (2) business days of training on the use and operation of the System. The class will be held in Dallas, Texas at a mutually agreed upon date and time. Training will be "train the trainer" training and may accommodate up to three (3) individuals. Any additional training will be performed according to mutually agreed terms and conditions.

5. Fees and Payment Procedures

5.1 Customer shall pay Exceleron the fees in accordance with the fee structure set forth on the Cover Page and as otherwise provided in this Agreement. All amounts will be due and payable within thirty (30) days

after the date of invoice. Any amounts owing that are not paid when due will accrue interest from the due date, in accordance with the provisions of Texas Government Code 2251 (Prompt Payment Act).

5.2 All amounts shown in this Agreement are in United States dollars and are net of all sales, use, property and related taxes..

Customer is exempt from Federal Excise and State Sales Tax. Customer qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Exceleron performing work under this contract for Customer may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. Customer shall furnish a tax exemption certificate upon request.

5.3 In the event that Customer has not timely paid fees due under this Agreement or Customer is otherwise in breach of this Agreement, Customer acknowledges that Exceleron may suspend or deny Customer's access to the MyUsage Software and System.

5.4 PRICING

The pricing set forth on the Cover Page has been Customer established by offer from Exceleron and acceptance by Customer, through a negotiation in accordance with the provisions of Texas Local Government Code 252.

Total Contract Amount

Pricing shall be per the Cover Page. (Contract Pricing)

Price Adjustments

Price adjustments will not be allowed for this project unless a change in scope is approved that increases or decreases the amount of work required.

Requests or proposals for changes in scope must be submitted in writing with documentation that provides justification for the change and supporting evidence that describes the basis for the cost change.

Upon receipt of such request, Customer reserves the right to either: accept the proposed change as competitive with the general market price at the time and issue appropriate authorizations or reject the increases within 30 calendar days after receipt of a properly submitted request. No work shall be undertaken on a proposed change until authorized by Customer in the form of a Purchase Order change and/or other documentation appropriate to amending the contract.

The request can be sent by e-mail to:
purchasing@cityofdenton.com

Or mail to:
901 B Texas Street, Denton, Texas 76209
City of Denton
City of Denton Purchasing
Attn: Purchasing Manager
(940) 349-7100
901B Texas Street
Denton, Texas 76209

Customer reserves the right to accept, reject, or negotiate any proposed price changes.

6. Term and Termination

6.1 Unless this Agreement is terminated earlier in accordance with the terms set forth in this Section, the term of a Service (the "**Initial Term**") shall commence on the Effective Date and continue for twelve (12) months following the last day of the Pilot Period. Following the Initial Term, this contract shall renew for automatic successive one year terms (each, a "**Renewal Term**"), not to exceed two (2) additional renewal terms, unless either Party gives written notice of termination at least thirty (30) days prior to the end of the Initial Term or the Renewal Term. "**Term**" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term. At the sole option of Customer, the contract may be further extended as needed, not to exceed a total of six (6) months.

6.2 Either party may terminate this Agreement at the end of the Initial Term or a Renewal Term by providing the other party with at least thirty (30) days written notice prior to the date of termination.

6.3 A party may terminate this Agreement upon written notice to the other party if such other party breaches a material term, condition or provision of this Agreement unless the breach, if capable of being cured, is cured within thirty (30) days after the non-breaching party gives the breaching party written notice of such breach, or as Texas statutes are amended to prohibit or substantially change the operation of the program/services.

Either party shall have the right to remedy or cure the cause for termination or breach within ten (10) calendar days (or within such other time period as the Customer and Exceleron shall mutually agree), which agreement shall not be unreasonably withheld or delayed) after written notice from the appropriate party setting forth in reasonable detail the events of the cause for termination or breach.

6.4 A party may terminate this Agreement upon written notice to the other party if such other party (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as

they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes, (iv) or the governing body of Customer does not appropriate funding for this agreement.

6.5 Notwithstanding Section 6.3, Exceleron may terminate this Agreement immediately upon Customer's breach of the license restrictions in Section 2.1. Customer may terminate this Agreement immediately upon Exceleron's material breach of State, Federal, or Local laws.

Upon receipt of a notice of termination for any reason, Exceleron shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. Customer will immediately cease all use of and access of the System and shall pay the Exceleron, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the term hereof. If Customer terminates this Agreement for convenience (not for breach) during the Initial Term or a Renewal Term, the parties recognize that the harm caused by a breach of this Agreement is incapable or difficult of estimation. Accordingly, those Monthly Minimum Fees that would otherwise become due under this Agreement during the remaining Term during the actual period of use prior to termination date, will be accelerated and become immediately due and payable. The parties agree that such amounts are a reasonable forecast of the amount necessary to render just compensation. Nothing in this provision is intended to entitle Exceleron to collect unearned interest or to receive an interest rate greater than the rate allowed by law. Notwithstanding the foregoing, during the Pilot Period Customer may terminate this Agreement for any reason and without any liability except for the fees accrued prior to termination by providing written notice to Exceleron prior to the completion of the Pilot Period.

6.7 PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relive either party of any liability that accrued prior to such termination. Upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

Exceleron shall (i) immediately cease to provide services, including but not limited to work in connection with the installation activities and services in connection with the Program, (ii) shall deliver within 30 days, to the Customer any and all Proprietary Property of the Customer provided to Exceleron pursuant to this Agreement, (iii) promptly deliver to the Customer a final report regarding the collection of data and payment activity in such format and for such periods as the Customer may reasonably request, and which final

report Exceleron shall update or supplement from time to time when and if additional data or information becomes available, (iv) promptly deliver to Customer a final invoice stating all fees and charges properly owed by Customer to Exceleron for work performed. Exceleron will transfer the data and relevant information to Customer by a mutually agreed upon method.

Customer shall immediately cease using the the Exceleron System or using any other Intellectual Property of Exceleron, promptly deliver to Exceleron any and all Proprietary Property of Exceleron provided to the Customer pursuant to this Agreement, and promptly pay Exceleron, to the extent of funds Appropriated or otherwise legally available for such purposes, for all good delivered and services performed and obligations incurred prior to the date of termination in accordance with the term hereof.

7. Warranties

Authority. Exceleron hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. Customer hereby warrants and represents that it has all the right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.

Professional Services. Exceleron hereby warrants and represents that any and all services provided by Exceleron pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the implementation and support of the Exceleron System, subject to applicable law. Customer hereby warrants and represents that any and all services provided by Customer pursuant to this Agreement shall be performed in a professional and workmanlike manner.

7.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, EXCELERON MAKES NO WARRANTIES, WITH, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE MYUSAGE PREPAID SOFTWARE, THE SYSTEM OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. EXCELERON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. AND NONINFRINGEMENT EXCELERON SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SYSTEM MALFUNCTION IN A TIMELY MANNER.

7.2 Each party represents, warrants, and covenants that it shall comply with all federal, state and local laws and rules.

8. Limitation of Liability

8.1 EXCEPT WITH RESPECT TO BREACHES OF SECTIONS 2.1, 7.2, 9, AND 10, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 EXCEPT WITH RESPECT TO BREACHES OF SECTIONS 2.1, 7.2, 9, AND 10, IN NO EVENT WILL EITHER PARTY'S AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT OF ALL FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO EXCELERON UNDER THIS AGREEMENT FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE CAUSE OF ACTION AROSE, PROVIDED HOWEVER, THE LIMITATION ON DAMAGES EXPRESSED IN THE PRECEDING SENTENCE SHALL NOT APPLY TO DAMAGES CAUSED BY THE WILLFUL OR WANTON CONDUCT OF THE PARTY CREATING THE DAMAGES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. Indemnification

Patent Rights

Exceleron agrees to indemnify and hold harmless Customer from any claim involving U.S. patent right infringement or U.S. copyrights on services or software provided.

9.1 Exceleron will, at its expense, defend, indemnify and hold Customer harmless from and against all claims, losses and damages related to or arising out of an allegation brought against Customer that the MyUsage Software as used through the System infringes any U.S. patent, copyright, trade secret or other proprietary right of any third party. Customer shall give such assistance and information as Exceleron may reasonably require to oppose such claims. Exceleron shall have no obligation for any claims arising out of a combination or use of the MyUsage Software as used through the System with non-Exceleron programs, products or data, if such combination or use is the cause of the alleged infringement.

In the event that Service Provider is enjoined from delivering either preliminary or permanently, or continuing to license to Customer, the Services and such injunction is not dissolved within thirty (30) days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the use of the Services, then Service Provider shall, at its expense use commercially reasonable efforts to: (a) obtain for Customer the right to continue using such Services; or (b) replace or modify such Services so that it does not infringe upon or misappropriate such proprietary right and is free to be delivered to and used by Customer.

If Exceleron determines that none of these alternatives is reasonably available, Exceleron may terminate this Agreement and refund to Customer any Fees paid in advance for the time following termination. This shall not limit the obligation of right and parties of 9.1.

9.2 Customer acknowledges that (i) Customer has the sole discretion whether to provide electricity service to its customers, (ii) Customer has the sole discretion and authority to disconnect electricity service, and (iii) Customer shall not rely upon Exceleron to determine whether to connect or disconnect electricity service. Accordingly, CUSTOMER WILL, AT ITS EXPENSE, DEFEND, INDEMNIFY AND HOLD EXCELERON HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES AND DAMAGES, INCLUDING DEATH, RELATED TO OR ARISING OUT OF AN ALLEGATION BROUGHT AGAINST EXCELERON ARISING OUT OF OR RELATED TO THE MYUSAGE SOFTWARE, THE SYSTEM OR THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, ANY CLAIMS AS A RESULT OF A BREACH BY CUSTOMER OF THIS AGREEMENT OR ANY OTHER AGREEMENTS AND ANY CLAIMS BY CUSTOMER'S CUSTOMERS WITH RESPECT TO CUSTOMER'S ELECTRIC SERVICE PROVIDER OBLIGATIONS), REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF EXCELERON EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF EXCELERON. Exceleron shall give such assistance and information as Customer may reasonably require to oppose such claims.

INDEMNIFICATION BY CUSTOMER: To the extent allowed by law and without waiving any rights, defenses, or immunities provided to it by the Texas Tort Claims Act or other applicable law including, without limitation, the defense of governmental or immunity, the Customer hereby agrees to defend and indemnify Exceleron and its affiliates, shareholder or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert

with them, or any of them against, and to protect, save and keep harmless the Exceleron parties from, and to pay on behalf of or reimburse the Exceleron parties as and when incurred for, any and all losses which may be imposed on or incurred by any Exceleron Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Customer contained in this Agreement, (b) the negligence and/or omissions of Customer, its employees, officers or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Exceleron Party, (c) any claim, action or demand not caused by Exceleron's failure to perform its obligations under this Agreement, or (d) any claim, action or demand challenging the Customer's use of the Exceleron System or any portion thereof.

Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.

9.3 At Customer's written request, Exceleron may record certain customer support calls for quality assurance purposes. Exceleron is solely responsible for complying with all legal and regulatory requirements related to the recording such calls, including but not limited to obtaining any necessary waivers or providing customers with the appropriate notifications.

In addition, Customer is responsible for notifying Exceleron of any legal or regulatory requirements associated with recording such calls. Customer will, at its expense, defend, indemnify and hold Exceleron harmless from and against all claims, losses, fines and damages brought against Exceleron arising out of or related to Exceleron's recording of customer support calls.

9.4 At Customer's written request and subject to any regulatory restrictions, Exceleron will display Customer's name on the "caller id" display for Customer's Participating Members. Exceleron is solely responsible for complying with all legal and regulatory requirements related to the display of the caller id, including but not limited to obtaining any necessary waivers or providing customers with the appropriate notifications. In addition, Customer will notify Exceleron of any known legal or regulatory requirements associated with the display of Customer's name on "caller id". Customer will, at its expense, defend, indemnify and hold Exceleron harmless from and against all claims, losses, fines and damages brought against Exceleron arising out of or related to Exceleron's display of Customer's name on caller id.

10. Confidential Information

10.1 During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

In all instances, both parties agree that Customer is a local government entity subject to compliance with Texas Government Code 552, commonly known as the "Open Records Act". Both parties agree that records generated by a government entity, including those records held by the government entity's contractors may not be confidential, and subjected to open records requests for information. Exceleron agrees to ensure that all records requested by Customer shall be delivered to Customer, to effectively comply with Texas statutory requirements.

10.2 Exceleron may list Customer's name in Exceleron's materials and may otherwise inform third parties that Customer is a customer that uses the MyUsage Software and System.

10.3 In the event of actual or threatened breach of the provisions of Section 10.1, the Disclosing Party may have no adequate remedy at law and will be entitled to seek immediate and injunctive and other equitable relief.

11. Assignment

11.1 Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by the Parties, without providing prior written notice to the other Party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

12. Miscellaneous

12.1 Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight courier, in each case properly posted and fully prepaid to the appropriate address set forth herein. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight courier service.

Notices to Exceleron:

Exceleron Software
5440 Harvest Hill Road, Suite 233,
Dallas, TX 75230
Attn: Jeff Severs

Notices to City of Denton:

City of Denton, Texas
215 East McKinney Street
Denton, Texas 76201
Attn: George C. Campbell, City Manager
Ph#940-349-8200

12.2 WAIVER. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

12.3 COMPLIANCE WITH LAWS. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

12.4 ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, with respect to said subject matter.

12.6 CHANGES. This Agreement may not be amended, except by a writing signed by both parties.

The Contractor shall notify the City of Denton, with a 30-day notice, prior to any proposed change in the requirements, specifications, or services provided throughout the term of this contract. Notice of a change shall be submitted in writing to dentonpurchasing@cityofdenton.com, with the contract number in the subject line, for review. Requirements, Specifications, or Services found to have changed without the required written 30-day notification to the City, shall be considered at the contractor's expense, and shall be a cause for termination of the contract.

CHANGE ORDERS. The Customer may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Exceleron, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Exceleron's receipt of a Change Order Notice, Exceleron shall deliver a written statement describing the cost, if any (the "Change Order Proposal"). The Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the

Customer. Following the Customer's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes. **All Change Orders shall be in compliance with the provisions of Texas Local Government Code 252.048.**

12.7 No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

12.8 This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

12.9 Except for the obligations to make payments hereunder, each party shall be relieved of the obligations hereunder to the extent that performance is delayed or prevented by any cause beyond its reasonable control, including, without limitation, acts of God, public enemies, war, civil disorder, communications failures, failures of third parties, fire, flood, explosion, labor disputes or strikes or any acts or orders of any governmental authority, failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

12.10 All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

12.11 APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its choice of laws provisions. Exclusive venue for any dispute between the parties arising out of or related to this Agreement shall be with the state or federal courts in Dallas/Denton, Texas. Each party consents to the jurisdiction of such courts in any dispute arising out of or related to this Agreement.

12.12 FORCE MAJEURE. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the

public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Exceleron, and unusually severe weather. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

12.13. INSURANCE. During the Term, Exceleron shall procure and maintain at Exceleron's sole cost and expense the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by Exceleron, and each of Exceleron's subExcelerons, agents, representatives and employees:

- Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate;
- Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Exceleron;
- Professional Liability (Errors and Omissions) Insurance. Exceleron will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
- Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of (insert name), and Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.

With respect to the Commercial General Liability Insurance the following additional provisions shall apply:

- The Customer Parties shall be named as additional insured with respect to the Commercial General Liability insurance; and

- The insurance coverage procured by Exceleron and described above shall be the primary insurance with respect to the Customer Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the Customer Parties shall be in excess, and not in contribution to, such insurance; and
- Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Customer Parties, and such insurance policies shall state the such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.

With respect to the insurance described in the foregoing Section of this Exhibit E, if any of the Exceleron Parties are notified by any insurer that any insurance coverage will be cancelled, Exceleron shall immediately provide 30 days written notice thereof to the Customer and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer of the date and nature of such correction. If Exceleron, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the Customer shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from Exceleron for such breach, or (ii) purchase such required insurance, and without further notice to Exceleron, deduct from any amounts due to Exceleron pursuant to this Agreement, any premium costs advanced by the Customer for such insurance. If the premium costs advanced by the Customer for such insurance exceed any amounts due to Exceleron pursuant to this Agreement, Exceleron shall promptly remit such excess amount to the Customer upon receipt of written notice thereof.

Exceleron shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer prior to Exceleron commencing any work pursuant to the terms of this Agreement.

12.14 ADDING NEW PRODUCTS OR SERVICES TO THE CONTRACT AFTER AWARD.

Following the Contract award, ADDITIONAL services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. A formal

written request may be sent to successful Exceleron to provide a proposal on the additional services and shall submit proposal to Customer as instructed. All submitted prices are subject to negotiation in accordance with Texas Government Code 2254. Customer may accept or reject the proposal, and may issue a separate solicitation for the services requested, after rejecting some, or all, of the proposal. The services covered under this provision shall conform to the statement of work, specifications, and requirements as outlined in the request. Contract changes shall be made in accordance with Local Government Code 252.048.

12.15 AUDIT RIGHTS. Each of parties hereto shall have the right to audit to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess. [Need to discuss the need for this section since the only charge is a per subscriber charge and that is determined by the City of Denton]

12.16 RECORDS RETENTION: The Exceleron shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Exceleron shall retain all such records for a period of four (4) years after the expiration of the Contract, or until Customer Attorney, Attorney General of Texas or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Supplier shall grant access to all books, records and documents pertinent to the Contract to Customer, the Attorney General of Texas, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

12.17 GRATUITIES: Customer may, by written notice to the Exceleron, cancel the Contract without liability if it is determined by Customer that gratuities were offered or given by the Exceleron or any agent or representative of the Exceleron to any officer or employee of Customer

with a view toward securing the Contract or securing favorable treatment with the respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is cancelled by Customer pursuant to this provision, Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Exceleron in providing such gratuities.

12.18. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of Customer who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Exceleron shall render the Contract voidable by Customer. The Supplier shall complete and submit Customer's Conflict of Interest Questionnaire.

12.19 NO WAIVER OF SOVEREIGN IMMUNITY: The parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by Customer of any immunities from suit or from liability that Customer may have by operation of law.

12.20 FORCE MAJEURE: Customer, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Customer. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify Customer Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

12.21 NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term

of the Contract will not be construed as a waiver of any continuing or succeeding breach.

12.22 RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify Customer

Procurement Manager in writing of any such damage within one (1) calendar day.

12.23 RIGHT TO INFORMATION: Customer reserves the right to use any and all information presented in any response to this solicitation, whether amended or not, except as prohibited by law. Selection or rejection of the submittal does not affect this right.

Attachment B

Specifications and Functionality

Introduction

A. Purpose

This Attachment defines specific functional and performance requirements of the MyUsage Prepaid Software (also referred to as "MyUsage" herein). Any capitalized terms not defined in this Attachment B shall have the meaning set forth in the Agreement.

B. Scope

MyUsage is a web-based system that provides customers with the necessary tools to offer their customers and/or subscribers a prepaid alternative to traditional billing options. Participating Subscribers will have the ability to prepay for electricity, monitor their consumption, credit balance and receive notification of pending disconnections. Payments will be posted to the System as they are made available by Customer. Daily usage charges are calculated based on rates established and maintained by Customer. During the enrollment process, Participating Subscribers will provide the Customer with contact information to be used during the notification process.

General Description

A. Product Functions

Accounts will be created in MyUsage as Participating Subscribers are enrolled in Customer's prepaid program. An initial payment (as determined by the Customer) will be posted to the account and displayed as service credits. Usage is monitored daily and the calculated cost for such usage is deducted from the Participating Subscriber's current balance. Participating Subscriber's can keep abreast of their balance through receipt of notifications for which they select the method and frequency during account creation. An order is created to disconnect the service when the service credit balance reaches zero. If a payment is received prior to the actual disconnection being completed, the order is automatically cancelled in MyUsage; therefore, disconnection can be avoided provided the Customer utilizes the "Order Status" feature of MyUsage as opposed to a disconnection process outside of MyUsage. If the subscriber has already been disconnected, a reconnect order will be generated. Additional fees or charges will also be applied when applicable such as disconnect charges or reconnect charges. Participating Subscribers will have 7/24 access to their account via the internet or an IVR.

B. User Capabilities and Objectives

1. Create new prepaid accounts
2. Post payments to accounts and display updated account balance
3. Determine unused credit and estimated number of days of unused service
4. Perform account maintenance (update contact information, address changes etc.)
5. Access pending disconnect and reconnect orders and view their status
6. Insert notes or events on accounts unless business practice dictates insertion of notes or events into CIS only

Functional Requirements

A. Create a new account

1. **Description:** Customer's customer service representative, hereafter referred to as a CSR, will enter a new subscriber name, address, location information and meter information into MyUsage to establish a new account. Participating Subscriber account information may already exist in current billing system. If access and connectivity is possible, this information will be pre-populated.

B. Process a payment

1. **Description:** Payments posted to Customer's billing system will be collected on a scheduled interval and posted to MyUsage electronically if access and connectivity to the cooperative's billing system is possible. The CSR also has the ability to post subscriber payments to MyUsage account. This may be accomplished manually and/or automatically depending upon the cooperative's payment processing vendor(s) and available integration. Payments posted in MyUsage will be reported to Customer's CIS system.

C. Account Maintenance

1. Description:

- a. The CSR is able to access a Participating Subscriber's record in MyUsage in a timely manner and answer questions relative to information contained in MyUsage.
- b. Participating Subscriber information is organized for quick access.
- c. The account information page allows the CSR to change specific subscriber information (i.e. billing information, contact information etc.).
- d. Billing and payment information, agent location information, order history and current order statuses are available to the CSR for the desired Participating Subscriber.
- e. Additional functionality such as payment processing, notes or events and agent lookups are also available features of MyUsage.

D. Acquisition of Usage Data

1. **Description:** Usage data will be acquired from the Customer's AMR database. Access to client side application to query the desired data and transmit such data to the MyUsage application is required.

E. Calculate Usage Debits

1. **Description:** Usage charges will be calculated nightly as new usage is received and inserted into MyUsage to debit the Participating Subscriber balance.
2. **Monitoring:** Each meter will be monitored to ensure that a usage record is received and processed each night. Accounts for which usage was not received will be displayed in an Exceptions Report.

F. PCA (Power Charge Adjustment) True-up

1. **Description:** The PCA, which is used by the rating engine, will initially be entered as an estimate and subsequently updated by Customer. Upon the actual PCA being made available, the appropriate adjustment(s) and/or change(s) will be made. (This portion is applicable only to those Customers utilizing PCA.)

G. Calculate taxes

1. **Description:** Applicable taxes will be calculated and applied to the Participating Subscribers account.

H. Web Service Interface to Disconnect/Reconnect

1. **Description:** Provide a process that will interface with remote disconnect/reconnect collars if available.
 - a. A disconnection order will be generated based upon Participating Subscribers account no longer being in good standing as defined by Customer. Disconnect orders may be viewed through a dynamic orders list which provides easy access to individual accounts. Depending upon the disconnection method utilized by Customer, disconnections may occur automatically or manually. If an automatic process is desired, this setting must be controlled by and deployed by Customer Exceleron, with assistance by the Customer.
 - b. A reconnection order will be generated based upon sufficient payment being applied to Participating Subscribers account to bring account into good standing as established by the cooperative. Reconnect orders may be viewed through a dynamic orders list which provides easy access to individual accounts. Depending upon the reconnection method utilized by the cooperative, reconnections may occur automatically or manually. If an automatic process is desired, this setting must be controlled by and deployed by Customer Exceleron, with assistance by the Customer.

I. Create Notification Events

1. **Description:** A list of Participating Subscribers to be notified will be generated based on defined criteria. This list will be used by the notification process to communicate with the Participating Subscriber based upon the Participating Subscribers selection of method and frequency or based upon the cooperative's mandate of specific notification types and/or frequency.

J. Notification Server

1. **Description:** The MyUsage notification server permits Participating Subscribers to receive selected notifications in the form designated and at the time designated. Notification settings can be accessed both through MyUsage and MyUsage Prepaid.com by CSRs and Participating Subscribers. Such notifications also trigger events on individual accounts for tracking purposes. Notification methods available include Interactive Voice Response (IVR), SMS text message, pager and email.

K. IVR Inbound Subscriber Services

1. **Description:** Subscribers will have the ability to call an access number to obtain information pertaining to their usage and current balance. The ability to make a payment via the IVR will also be provided.

L. Online Bill View (MyUsage Prepaid.com)

1. **Description:** Subscribers will have access to usage information to include current and limited historical. Payment processing will also be permitted through online bill view (MyUsage Prepaid.com).

Interface Requirements

A. User Interface

1. GUI - User Service representatives access MyUsage with a web browser. No additional software is required on the user's workstation.
 - a. All MyUsage functions are accessible via the Main Menu. Access requires a valid user name and password and levels of access are restricted by various permission levels.
 - b. Navigation is accomplished using standard links and drop down boxes.

B. Interactive Agent (IA)

1. Exceleron will make the Interactive Agent available to the cooperative via ftp.
2. Customer will ensure that the IA is properly installed on a computer that has uninterrupted internet access.
3. Customer will ensure that the appropriate access to both the CIS and AMR database is provided including a read only user-id and password and that all necessary network connections are available.

C. MyUsage.com

1. Exceleron will provide all Participating Subscribers internet access to MyUsage.com.
2. Access to MyUsage.com requires a user name and password that is established during account setup in MyUsage.
3. Customer will have the ability to disable individual account access via the MyUsage interface.