

**PLEASE CAREFULLY READ THE FOLLOWING AGREEMENT.**

**LICENSEE WILL NOT BE GRANTED ACCESS TO OR USE OF THIS APPLICATION (AS DEFINED BELOW) UNLESS AND UNTIL LICENSEE FIRST READS, ACKNOWLEDGES, AND AGREES TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS IN THIS AGREEMENT BY CLICKING ON THE "I ACCEPT" BUTTON.**

**IF LICENSEE DOES NOT AGREE TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE SHOULD CLICK ON THE "I DO NOT ACCEPT" BUTTON AT THE BOTTOM OF THIS SCREEN. IF LICENSEE CLICKS ON THE "I DO NOT ACCEPT" BUTTON, THE ACCESS PROCESS WILL STOP AND LICENSEE WILL BE DENIED ANY ACCESS TO OR USE OF THE APPLICATION.**

**1. Definitions.**

(a) "Access Point" means the component of the VERICS™ wireless network that handles communications between the CheckPoint (as defined herein) and the Service Provider's data center.

(b) "Application" means the then-current object-code only version of Service Provider's VERICS™ wireless lamp monitoring system software ("Software"), as such Software is hosted at <https://verics.telemics.com> (including any successor or replacement URL, "Site"). The term "Application" also includes all other software supplied to Licensee by Service Provider for use with the Application, and all Derivative Works, enhancements, Upgrades, Updates, or other modifications to such Application, or such other software. Service Provider may, at any time and in its sole discretion, modify, revise or

otherwise change the software, in whole or in part, without notice or liability to Licensee.

(c) "Checkpoint" means the component of the VERICS™ wireless network that monitors an individual luminaire.

(d) "Confidential Information" means any information, data and/or materials (whether or not labeled or otherwise identified as confidential), in any form or medium, that is of value to its owner and treated as confidential, including without limitation, the terms and conditions of this Agreement, Licensee Data and any other data, information or materials exchanged by the parties under this Agreement or otherwise.

(e) "Derivative Works" means revisions, improve-ments, alterations, adaptations, modifications, enhance-ments, translations, abridgments, or

any other works derived, in whole or in part, from the Application.

(f) "Documentation" means all Licensee and training manuals, all other information, in print or electronic form, delivered by Service Provider for use with the Application, and all revisions to those manuals and information.

(g) "Licensee" means the entity and individuals authorized by Service Provider to access and use the Application, including the representative who is duly authorized to bind such entity and individuals to the terms and conditions of this Agreement.

(h) "Proprietary Rights" means all U.S. and foreign copyrights, patents, trademarks, service marks, trade secrets, Confidential Information, and any other intellectual property or other proprietary rights or interests in or available for the Application, Documentation and any other materials, information or services provided pursuant to this Agreement. Without limiting the foregoing or Service Provider's rights, the Application and its source code, object code and related Documentation, and Escrow Materials (as defined herein) shall be considered and treated as trade secrets.

(i) "Updates" means new versions of the Application that improve functionality and bear higher "Version" decimals.

(j) "Upgrades" means new releases of the Application that generally expand the capability of the Application and bear higher "Version" integers.

(k) "Use" means that Licensee may only for Licensee's own internal business purposes view and input information into the Application using Licensee's Internet browser, download such information to a personal computer for convenience and later reference, and may print a copy of such information for convenience and later reference. "Use" is further limited by the additional restrictions imposed by this Agreement and does not extend to (i) any parent, subsidiary, affiliated entity or unaffiliated third party (other than an end-user described in Section 2(d) hereof); (ii) using the Application in the operation of a service bureau, application service provider or similar business (except as permitted in Section 2(d) hereof); (iii) providing Licensee's log-in or password to any third party, or (iv) using the Application after termination of the License. The Application and Service Provider's system may be used only for the transmission of the operational data associated with the wireless monitoring and control of street lights and for no other purpose without the prior written consent of Service Provider. The term "Use" as defined herein shall apply to each end-user described in Section 2(d) hereof by substituting the term "end-user" for each use of the term "Licensee".

Unless the context requires otherwise, other capitalized terms in

this Agreement shall have the meanings assigned to them below.

## 2. Intellectual Propety; License.

(a) Ownership. The Application and Documentation, and all Derivative Works related thereto, including all Proprietary Rights contained in all of the foregoing, are the sole and exclusive property of Service Provider and are protected by U.S. and international intellectual property and other laws and treaties. Licensee's access to and Use of the Application and Documentation is a license and is not a sale. Licensee's failure to comply with any of the terms and conditions of this Agreement shall be sufficient cause for Service Provider to immediately terminate this Agreement and the License granted hereby. Licensee shall not use any of Service Provider's trademarks, service marks, trade names or any other identifier of business source (collectively, including all goodwill associated therewith, "Marks") for any purpose without first obtaining Service Provider's written consent in each instance of proposed use. If Service Provider gives such consent, Licensee acknowledges and agrees that such consent shall cease immediately upon any termination, expiration or cancellation of this Agreement. Licensee shall at all times comply with Service Provider's quality control guidelines relating to the Marks and all use of the Marks by Licensee shall inure to the sole and exclusive benefit of Service Provider.

(b) License Grant. Subject to Licensee's compliance with the terms

and conditions of this Agreement, Service Provider grants to Licensee a revocable, nonexclusive, nontransferable license, with limited right to sublicense, to access and Use the Application and Documentation only via the Site ("License"). The License extends only to the Application in Object Code form only. Licensee is granted no rights to the Application's or any other software's source code.

### (c) Additional Restrictions.

(i) IDs/Passwords. Access to and Use of the Application shall be via the Site, and only by means of Licensee's unique login ID and password. Licensee is solely responsible for maintaining the secrecy and security of Licensee's login ID and password. **LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE SHALL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THE APPLICATION BY ANY INDIVIDUAL OR ENTITY USING THE LOGIN ID AND PASSWORD ISSUED TO LICENSEE HEREUNDER WHETHER OR NOT SUCH ACCESS TO AND USE OF THE APPLICATION IS AUTHORIZED BY LICENSEE, INCLUDING WITHOUT LIMITATION, ALL COMMUNICATIONS AND TRANSMISSIONS, AND ALL OBLIGATIONS (INCLUDING WITHOUT LIMITATION, FINANCIAL OBLIGATIONS) THAT MAY RESULT FROM SUCH ACCESS OR USE.**

(ii) Display and Transmission of Data.

(A) Licensee shall be solely responsible for creating, converting, verifying and updating all data elements required to be supplied by Licensee for use of the Application ("Input"). Data and other information generated by use of the Application is "Output." Input and Output are referred to collectively as "Licensee's Data." Licensee shall be solely responsible for the accuracy of its Input and the means by which Licensee's Data is transmitted to or from the Site. Service Provider shall have no responsibility or liability for Input until it is received at the Site in the condition necessary for use in the Application, and Service Provider shall have no responsibility or liability for Output after it is transmitted from the Site in the condition created by operation of the Application. Service Provider agrees to preserve the confidentiality of Licensee's Data, and to use commercially reasonable means to safeguard Licensee's Data while Licensee's Data resides on the Site.

(B) Subject to the following license, Licensee is the owner of Licensee's Data. Licensee grants to Service Provider, an irrevocable and nonexclusive license to use the Licensee's Data for performing its obligations hereunder, including without limitation, the preparation of reports, compilations, analyses, promotional materials and such other derivative works as Service Provider may from time to time require, provided Service Provider complies

with the confidentiality obligations in Section 4 hereof.

(C) Licensee and each end-user contemplated in Section 2(d) hereof shall not, directly or indirectly: (i) copy, sell, rent, reproduce (except as permitted in Section 2(d) hereof), distribute, display, perform, download, post, frame or transmit in any form or by any means or allow any third party (other than an end-user described in Section 2(d) hereof) to access or use the Application; (ii) modify, create Derivative Works from, reverse engineer, disassemble or decompile the Application, or any part thereof or otherwise attempt to obtain access to any of Service Provider's source code, algorithms or other trade secrets; (iii) transmit any data that contains software viruses, harmful or deleterious computer code, files or programs, or any other data that may damage, misappropriate or interfere with the Application; (iv) transmit any data that infringes the intellectual property or other rights of any third party; (v) transmit any data that is libelous, defamatory, threatening, obscene or could give rise to civil or criminal liability under U.S. or international law; (vi) interfere with or disrupt servers or networks connected to the Application, or violate any regulations, policies or procedures associated with such networks; and (vii) remove the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Application.

(C) Licensee shall adhere to U.S. export laws and regulations, and

shall not export or re-export the Application, any software, technical data or products received from Service Provider to any prohibited country or person unless properly authorized by the U.S. government.

**(d) Sublicense. Licensee may sublicense the Application to its authorized customers pursuant to the terms and conditions of this Agreement and provided Licensee requires each end-user to execute a sublicense agreement in electronic or printed format in the form attached hereto as Schedule 2(d) ("End-User License Agreement"). Licensee shall ensure that each end-user executes and delivers the End User License Agreement to Licensee prior to Licensee's granting such end-user access to or Use of the Application. Licensee shall not negotiate the terms of the End-User License Agreement with any prospective end-user or agree to any conflicting, different or additional terms from those set forth in the End-User License Agreement without Service Provider's prior written consent, which may be withheld or delayed in**

**Service Provider's sole discretion. Licensee acknowledges and agrees that Service Provider is an intended third-party beneficiary of each End-User License Agreement and is entitled, in its sole discretion and under its unilateral control, to bring action against any end-user to enforce Service Provider's rights under each End-User License Agreement.**

(e) Copies. Licensee shall not make any copies of the Software or Documentation, or any other software or information supplied by Service Provider for use with the Application. If Licensee violates this provision and makes such copies, all such copies made by Licensee are and shall remain the sole and exclusive property of Service Provider.

(f) Transfer. Licensee may not sell, assign or otherwise transfer in any manner to any third party any of Licensee's rights under this Agreement or the License granted hereby, nor may Licensee license, publish, display, distribute, or otherwise transfer to a third party the Application the Documentation, or any copy thereof, in whole or in part, without Service Provider's prior written consent, which may be withheld or delayed in Service Provider's sole discretion.

(g) Source Code Escrow.

(i) Within 60 days of Service Provider's activation of Licensee's access to the Application, Service Provider shall deposit a copy of the source code of the Software (the "Escrow Materials") with DSI Technology Escrow Services, Inc. or an alternative source code escrow agent to be agreed upon by the parties ("Escrow Agent"). Upon Licensee's written request, Service Provider shall add Licensee as a beneficiary of service Provider's escrow agreement with Escrow Agent. Once added as a beneficiary of such agreement, Licensee may confirm that the deposit of the Escrow Materials has been completed, but Licensee may not review the Escrow Materials. Once added as a beneficiary, if (i) a bankruptcy judgment finding Service Provider bankrupt is not appealed within ninety (90) days; or (ii) Service Provider ceases to continue to do business in the ordinary course, then Licensee may, upon verification of the occurrence of either (i) or (ii), above, under a procedure set forth in the escrow agreement, obtain a copy of the Escrow Materials from the Escrow Agent.

(ii) Licensee agrees that it shall bear any and all costs and expenses associated with either party's performance under this provision, including but not limited to all Escrow Agent fees. Subject to the terms of this Agreement and the escrow agreement, Service Provider hereby grants to Licensee the right to use the Escrow Materials, in the event the Escrow Materials are so released to Company, solely for Licensee's internal

maintenance of the Software for performance in accordance with the Documentation. Licensee shall have no right to distribute or disclose the Escrow Materials, and the Escrow Materials shall be deemed Confidential Information under this Agreement.

### **3. Access to Application.**

(a) Equipment. Except for the Access Points, Licensee is otherwise responsible for obtaining and maintaining at Licensee's sole expense all software, hardware, peripheral devices and communications equipment and services necessary to access and Use the Application. Licensee's access to and Use of the Application may be interrupted due to equipment modification, system upgrades, repairs, routine maintenance and similar activities that Service Provider deems, in its sole discretion, necessary ("Downtime"). Licensee's sole and exclusive remedy and Service Provider's sole and exclusive liability for any Downtime other than routine maintenance shall be a pro-rata refund of the fees set forth in Section 6. Service Provider shall have no liability to Licensee for Downtime attributable to routine maintenance.

(b) Licensee's Right to Acquire Access Points. At any time during the term of this Agreement, Licensee shall have the right to purchase from Service Provider for \$500.00 per Access Point all of the Access Points then in use by Service Provider relating to Licensee's operations. Subject to the U.S. Bankruptcy Code,

as amended, if during the term of this Agreement, Service Provider ceases to do business in the ordinary course, Licensee shall have the right to purchase from Service Provider at \$500.00 per Access Point such individual Access Points as Licensee may then desire. Each of the parties acknowledges and agrees that the foregoing values are deemed to be fair market values for the Access Points.

(c) Force Majeure. Service Provider will use commercially reasonable efforts to make the Site and the Application available for use 24 hours a day, 7 days a week. **LICENSEE, HOWEVER, ACKNOWLEDGES AND AGREES THAT IT WILL ACCESS AND USE THE APPLICATION VIA THE INTERNET, THAT SUCH MEANS OF ACCESS AND USE ARE INHERENTLY INSECURE, AND THAT SUCH ACCESS AND USE IS OFTEN SUSCEPTIBLE TO DISRUPTIONS FROM TIME TO TIME. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT SERVICE PROVIDER SHALL NOT BE LIABLE TO LICENSEE FOR ANY INTERRUPTIONS OR DELAYS IN THE TRANSMISSION OF DATA TO OR FROM THE APPLICATION OR ANY FAILURES OR DELAYS TO ACCESS OR USE THE APPLICATION THAT ARE BEYOND SERVICE PROVIDER'S CONTROL (EACH, A "FORCE MAJEURE EVENT"). A FORCE MAJEURE EVENT INCLUDES, BUT IS NOT LIMITED TO, ACTS OF GOD, POWER AND/OR TELECOMMUNICATION FAILURES OR INTERRUPTIONS, STRIKES, LABOR DISPUTES, WAR,**

## **TERRORISM OR GOVERNMENTAL ACTION.**

### **4. Confidential Information.**

(a) Restriction on Use/Disclosure. The parties shall not use, copy, disclose or permit any unauthorized person access to, any Confidential Information of the other party, except as is permitted in this Agreement or as the other party may otherwise agree in writing.

(b) Protection Measures. Each party shall take reasonable measures, consistent with those taken to protect its own Confidential Information, but in no event less than commercially reasonable steps, to protect the other's Confidential Information.

(c) Exceptions. Confidential Information shall not include any information, data or material that: (i) was generally known to the public at the time of its receipt by the receiving party or has become generally known to the public other than by a breach of this Agreement; (ii) was already known by the receiving party prior to its disclosure, without obligation to keep it confidential, at the time of its receipt, as evidenced by prior documentation thereof; (iii) is developed independently by the receiving party without use of the other party's Confidential Information; (iv) is received by the receiving party in good faith from a third party lawfully in possession thereof without obligation to keep such information confidential and without requiring the

receiving party to keep the information confidential; or (v) is required to be disclosed by applicable statute or regulation, or by judicial or administrative process, provided that the receiving party will use reasonable efforts to notify the other party of such requirements so as to provide such party the opportunity to obtain such protective orders or other relief as the compelling court or other entity may grant.

**5. Training and Support.** Initial training and consulting on Use of the Application shall be available at no charge to Licensee. Additional training and consulting shall be at Licensee's sole expense, at Service Provider's rates then in effect ("Standard Support Rates"). Service Provider will support the Application according to its standard support policy ("Standard Support") described in Schedule 4 attached hereto and posted on the Site, which is subject to change from time to time in Service Provider's sole discretion. Support beyond Standard Support shall be available, at Licensee's expense, at Service Provider's support rates then in effect.

## **6. Fees; Taxes.**

(a) Fees. In consideration of the License and for the services provided to Licensee hereunder, Licensee shall pay Service Provider the fees quoted to Service Provider in written or electronic form ("Fees"). In addition to Standard Support Fees, if Licensee desires Service Provider to perform any consulting services, such as customization of the Application to

meet Licensee's specific business needs ("Consulting Services"), Licensee shall pay Service Provider at Service Provider's then-current hourly consulting rates (including associated expenses, "Consulting Services Rates"). The scope of the Consulting Services shall be described in written statements of work mutually agreed to by the parties and signed by their respective authorized representatives (each, a "Statement of Work"). Each Statement of Work shall form an integral part of this Agreement. If there is a conflict between the provisions of this Agreement and any Statement of Work, the provisions of this Agreement shall prevail.

(b) Taxes. In addition to the Fees, Standard Support Rates and Consulting Services Rates, Licensee shall pay all sales, use, value-added and/or other taxes (federal, state or otherwise), however designated, that are levied or imposed by reason of the transactions contemplated by this Agreement.

(c) Payment. All amounts due to Service Provider by Licensee and not paid within 30 days of the due date shall bear interest at the highest rate allowed by applicable law from the date due until paid. Failure of Licensee to pay any amounts when due shall constitute sufficient cause for Service Provider to terminate this Agreement and the License granted hereby.

## **7. Limited Warranty; Disclaimers.**

(a) Limited Warranty. Service Provider warrants to Licensee only that the Application will substantially

comply with the specifications and descriptions contained in the Documentation.

(b) Exclusions. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE APPLICATION AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND SERVICE PROVIDER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, QUIET ENJOYMENT, DATA ACCURACY AND SYSTEM INTEGRATION.

#### 8. Limitation of Liability; Causes of Action.

(a) LIMITATION OF LIABILITY. SERVICE PROVIDER SHALL NOT BE LIABLE TO LICENSEE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS REVENUES, BUSINESS, DATA OR OTHER INTANGIBLES) RELATED TO THIS AGREEMENT OR RESULTING FROM LICENSEE'S USE OR INABILITY TO USE THE APPLICATION, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN

IF SERVICE PROVIDER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL SERVICE PROVIDER'S LIABILITY TO LICENSEE EXCEED THE AMOUNTS PAID BY LICENSEE TO SERVICE PROVIDER UNDER THIS AGREEMENT. SERVICE PROVIDER DOES NOT WARRANT THAT THE FUNCTIONS OR DATA CONTAINED IN THE APPLICATION WILL MEET ANY REQUIREMENTS OR NEEDS THAT CUSTOMER (OR ITS CLIENTS) MAY HAVE, OR THAT THE APPLICATION WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT THE APPLICATION IS COMPATIBLE WITH ANY PARTICULAR SOFTWARE OR PLATFORM.

(b) CAUSES OF ACTION. NO ACTION UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY AGAINST THE OTHER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

#### 9. Indemnification.

(a) Service Provider. Service Provider shall indemnify, defend and hold harmless Licensee, its parent, subsidiaries and affiliates, and each of their respective officers, directors, shareholders, members, employees, agents and representatives against any and all actions, suits, proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' and experts' fees) arising from or resulting by reason of an

infringement of any US copyright or patent by the Application. Licensee agrees to notify Service Provider of any such claim promptly in writing and to allow Service Provider to control the proceedings if Service Provider elects to do so, at Service Provider's sole expense. Licensee agrees to cooperate fully with Service Provider during all such proceedings. In the event of such infringement, Service Provider may replace, in whole or in part, the Application with a substantially compatible and functionally equivalent application or modify the Application to avoid the infringement.

(b) Licensee. Licensee shall indemnify, defend and hold harmless Service Provider, and its parent, subsidiaries and affiliates, and each of their respective officers, directors, shareholders, members, employees, agents and representatives against any and all actions, suits, proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' and experts' fees) arising from or resulting by reason of Licensee's access to or use of the Application and any alleged breach of this Agreement or any obligation arising hereunder.

## 10. Term and Termination

(a) Term. Unless sooner terminated as set forth herein, this Agreement shall begin as of the Effective Date and remain in effect for one-year thereafter and shall automatically renew for successive one-year terms.

(b) Termination. Either party may terminate this Agreement and the license granted herein if the other party is in default, meaning that the other party: (i) is in material breach of any provision of this Agreement; (ii) terminates or suspends its business, (iii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state law, (iv) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (v) has wound up or liquidated, voluntarily or otherwise (each, a "Default").

(c) Notice and Cure. Upon a Default, the nondefaulting party shall deliver to the defaulting party a written Notice of Default that identifies the Default in detail. If the Default remains uncured for 15 days in the case of payments of the License Fee, or 30 days in all other cases, the nondefaulting party may terminate this Agreement and the license granted herein by delivering to the defaulting party a Notice of Termination identifying the effective date of the termination, which shall not be less than 15 days after the Notice of Default in the case of payments of the License Fee, or not less than 30 days after the Notice of Default in all other cases.

(d) Procedure and Effect of Termination. Upon any termination, cancellation or expiration of this Agreement and/or the License granted hereby, Licensee shall immediately discontinue all access to and use of the Application and Documentation.

Subject to Licensee's right to purchase the Access Points, within ten (10) days after such termination, cancellation or expiration, Licensee shall return to Service Provider, at Licensee's expense, the Access Points, Application and Documentation, and all copies thereof, or permanently delete or destroy all copies of the Application and Documentation, and deliver to Service Provider a certification, in writing signed by an officer of Licensee, that the Application has been returned, permanently deleted or destroyed, all copies deleted or destroyed, and that their use is discontinued. Termination, cancellation or expiration of this Agreement and the License granted hereby shall not relieve Licensee of its obligations to pay all License Fees incurred prior to the date of termination, cancellation or expiration, or to observe any obligations which survive any termination, cancellation or expiration of this Agreement.

(e) Survival. The following provisions shall survive any termination, cancellation or expiration of this Agreement: Sections 1, 2(a), (c), (d), (e), (f), and (g), 3(b), 4, 6, 7, 8, 9, 10(d) and (e), and 11(e), (f), (g), (h) and (i).

## 11. General Provisions

(a) Notices. All notices under this Agreement may be made by written or electronic means.

(b) Complete Agreement. The parties agree that this Agreement and the exhibits and schedules attached

hereto are the complete and exclusive statement of the agreement between the parties with respect to the subject matter of this Agreement. This Agreement supersedes and merges all prior and contemporaneous proposals, understandings and all other agreements, regardless of form, between the parties relating to the subject matter of this Agreement.

(c) Amendment. This Agreement may not be modified, altered or amended, or any of its terms and conditions waived, except by a record that is signed or authenticated by authorized representatives of each party.

(d) Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

(e) Severability. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

(f) Remedies; Injunctive Relief. All rights and remedies granted herein are cumulative and not alternative and are in addition to all other rights and remedies available at law or equity. Licensee acknowledges and agrees that the remedies at law for breach of any term in this Agreement may be inadequate and that Service Provider

shall be entitled, in addition to any remedies at law, to seek equitable relief for any breach or potential breach of this Agreement.

(g) Governing Law; Venue. This Agreement and performance hereunder shall be governed by and construed according to the laws of the Commonwealth of Kentucky, without regard to conflicts of laws or provisions. Licensee consents to the exclusive jurisdiction and venue of the state and federal courts in Louisville, Kentucky for all disputes arising out of this Agreement or in any way related

to Licensee's access to or Use of the Application.

(h) Dispute Resolution Costs. In any proceeding to resolve a dispute under this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief granted, all costs reasonably incurred by the prevailing party in the proceeding, including without limitation, court costs, witness fees and reasonable attorney's fees.

(i) Reservation of Rights. Service Provider reserves to itself any and all rights not expressly granted herein.

**IF LICENSEE HAS READ AND ACKNOWLEDGES, AND AGREES TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS IN THIS AGREEMENT LICENSEE SHOULD CLICK ON THE "I ACCEPT" BUTTON. THE ACCESS PROCESS WILL CONTINUE AND LICENSEE WILL BE ALLOWED TO ACCESS AND USE THE APPLICATION.**

**IF LICENSEE HAS READ AND DOES NOT AGREE TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE SHOULD CLICK ON THE "I DO NOT ACCEPT" BUTTON. THE ACCESS PROCESS WILL STOP AND LICENSEE WILL NOT BE ALLOWED TO ACCESS OR USE THE APPLICATION.**

**THE INDIVIDUAL AGREEING TO OR REJECTING THE TERMS AND CONDITIONS OF THIS AGREEMENT REPRESENTS AND WARRANTS TO SERVICE PROVIDER THAT HE OR SHE IS AT LEAST 18 YEARS OF AGE AND POSSESSES THE LEGAL RIGHT AND ABILITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY OR ORGANIZATION THAT SUCH INDIVIDUAL REPRESENTS.**

**I ACCEPT**

**I DO NOT ACCEPT**

**Schedule 2(d)  
to  
Service Provider Hosted Application Services Agreement**

*END-USER LICENSE AGREEMENT*

This End-User License Agreement (the "Agreement") is between \_\_\_\_\_ ("Licensor") and its authorized customer designated below:

Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The term "Customer" means the organization listed above and each of its employees authorized to access and use the Application (as defined below) (each, a "User").

Number of Users:

\_\_\_\_\_  
\_\_\_\_\_

Password  
Coordinator: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Site(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Effective Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**1. Scope of Agreement**

This Agreement governs the Customer's access to and use of \_\_\_\_\_ an Internet-based electronic cataloging system ("Application"), which Licensor has licensed from Telemics, Inc. ("Service Provider") and is sublicensing to Customer pursuant to the terms and conditions set forth herein. In addition to the terms and conditions of this Agreement, Customer agrees to comply with all of Licensor's guidelines, policies and procedures from time to time applicable to the Application all of which are hereby incorporated into and made a part of this Agreement. Customer's access to and use of the Application is also subject to any general terms and conditions applicable to the use of the Site(s) designated above.

## **2. Ownership**

Service Provider is the sole and exclusive licensor and owner of the Application, and Licensor, as a licensee of Service Provider, has rights to sublicense the Application to Customer. Licensee's access to and use of the Application is a license and not a sale. Except as otherwise provided for in this Agreement, Service Provider retains all rights, title and interest in and to such Application and its accompanying documentation, and all derivative works thereto, and to the trademarks, service marks, trade names and other identifiers of business source associated with the Application, documentation and derivative works (collectively, "Marks"). Other than the limited license granted to Customer in Section 4 hereof, Customer does not have and shall not acquire any rights, title and/or interest in or to the Application, documentation, derivative works, or Marks.

## **3. Access to and Use of Application; Training Requirement**

(a) Access to and use of the Application is provided only to Customer. Access to and use of the Application by Customer's agents, consultants, contractors or other third parties is not permitted without Licensor's prior written consent. Customer is solely responsible for acquiring, installing and maintaining all software, hardware and services necessary to connect to and use the Internet.

(b) Customer shall not be granted access to or use of the Application unless each of its employees authorized to access and use the Application has first participated in such training as Licensor and/or Service Provider may require.

## **4. Grant of License; Restrictions on Use**

(a) Subject to Customer's compliance with the terms and conditions of this Agreement, Licensor grants to Customer a limited, revocable, non-exclusive and non-transferable license (without right to sublicense) to access and use the Application in object code only. Such access and use shall occur only through the Site(s) designated above.

(b) Customer shall not (i) reproduce, distribute, display, perform, sell, lease or transmit the Application (in whole or in part) in any form or by any means; (ii) allow third parties to access or use the Application (except as permitted by Section 3); (iii) translate, modify, reverse-engineer, disassemble, or decompile the Application or create derivative works from the Application or otherwise attempt to discover the Application's source code, trade secrets, or underlying algorithms; (iv) use the Application for timesharing or service bureau purposes or otherwise for the benefit of third parties (except as permitted by Section 3); (v) transmit any data that contains software viruses or other harmful or deleterious computer code, files or programs, or any other data that may damage, misappropriate or interfere with the Application; (vi) interfere with or disrupt servers or networks connected to the Application or fail to comply with the guidelines, policies or procedures of such networks; (vii) place or install the Application or any portion thereof on any electronic media; (viii) remove the copyright, trademark/service mark, trade secret or other proprietary protection legends or notices that appear on, in or as part of the Application.

(c) Customer shall promptly notify Licensor and otherwise cooperate with Licensor in preventing any unauthorized use of the Application by any third party.

(d) Customer shall adhere to U.S. export control laws and regulations and shall not export or re-export the Application or any software, technical data or products received from Licensor and/or Service Provider to any prohibited country or person unless properly authorized by the U.S. Government.

(e) The Application is a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as each of such terms is used in 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4 as applicable. The Commercial Computer Software and Commercial Computer Software Documentation are licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to all other end users pursuant to this Agreement.

## **5. Password and ID**

(a) Customer shall be assigned a password(s) and ID(s) to access and use the Application. If Customer requires more than one password and ID, Customer shall appoint a Password Coordinator (designated above) to administer the distribution of passwords and IDs to Users. Each User who uses any of such passwords and IDs will be deemed to be authorized to access and use the Application and neither Licensor nor Service Provider shall have any obligation to investigate the authorization or source of any such access or use. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS AND USE OF THE APPLICATION BY USERS AND ANYONE USING THE PASSWORD(S) AND ID(S) WHETHER OR NOT SUCH ACCESS AND USE IS ACTUALLY AUTHORIZED BY CUSTOMER, INCLUDING WITHOUT LIMITATION, ALL COMMUNICATIONS AND TRANSMISSIONS, AND ALL OBLIGATIONS (INCLUDING

WITHOUT LIMITATION FINANCIAL OBLIGATIONS) THAT MAY RESULT FROM SUCH ACCESS OR USE.

(b) Customer is solely responsible for protecting the security and confidentiality of all password(s) and ID(s). Customer shall immediately notify Licensor of any unauthorized use of any password(s) or ID(s), or any other breach or threatened breach of the Application's security.

## **6. Fees; Payment**

Customer shall pay to Licensor a service fee for access to and use of the Application as set forth on Exhibit A attached hereto. Customer shall make full payment to Licensor for each such invoice within thirty (30) days of such invoice's date. Customer shall pay to Licensor for each late or unpaid invoice interest at the maximum rate permitted by applicable law and all expenses associated with the collection of payment.

## **7. Disclaimer of Warranties**

(a) ACCESS TO AND USE OF THE APPLICATION IS PROVIDED TO CUSTOMER BY LICENSOR AND SERVICE PROVIDER, AND BOTH PARTIES ARE PROVIDING SUCH ACCESS AND USE ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR AND SERVICE PROVIDER EACH DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT OR DATA SECURITY. NEITHER LICENSOR NOR SERVICE PROVIDER WARRANTS THAT THE FUNCTIONS OR DATA CONTAINED IN THE APPLICATION WILL MEET ANY REQUIREMENTS OR NEEDS THAT CUSTOMER MAY HAVE, OR THAT THE APPLICATION WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT THE APPLICATION IS COMPATIBLE WITH ANY PARTICULAR SOFTWARE OR PLATFORM.

(b) CUSTOMER UNDERSTANDS AND AGREES THAT USE OF OR CONNECTION TO THE INTERNET IS INHERENTLY INSECURE AND THAT CONNECTION TO THE INTERNET PROVIDES OPPORTUNITIES FOR UNAUTHORIZED ACCESS BY A THIRD PARTY TO CUSTOMER'S, LICENSOR'S AND/OR SERVICE PROVIDER'S COMPUTER SYSTEMS, NETWORKS, AND ANY AND ALL INFORMATION STORED THEREIN. NEITHER LICENSOR NOR SERVICE PROVIDER GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, OR NON-CORRUPTION OF ANY CUSTOMER INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. NEITHER LICENSOR NOR SERVICE PROVIDER SHALL BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S CONNECTION TO OR USE OF THE INTERNET, AND NEITHER LICENSOR NOR SERVICE PROVIDER SHALL BE RESPONSIBLE FOR ANY ACCESS TO OR USE OF THE APPLICATION BY CUSTOMER THAT VIOLATES ANY LAW, RULE, OR REGULATION.

## **8. Limitation of Liability**

IN NO EVENT SHALL LICENSOR, SERVICE PROVIDER, OR THEIR RESPECTIVE PARENT, SUBSIDIARIES OR AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES RESULTING FROM ACCESS TO OR USE OF THE APPLICATION OR AN INABILITY TO ACCESS OR USE THE APPLICATION, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, EVEN IF LICENSOR AND/OR SERVICE PROVIDER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AND SERVICE PROVIDER'S AGGREGATE LIABILITY WITH RESPECT TO THE APPLICATION SHALL NOT EXCEED THE AMOUNT OF ANY FEES, IF ANY, ACTUALLY PAID BY CUSTOMER TO LICENSOR IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY DAMAGES REGARDLESS OF THE FORM OF ACTION AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

## **9. Indemnification**

Customer shall indemnify, defend and hold harmless Licensor and Service Provider, and their respective parent, subsidiaries and affiliates, and each of their respective officers, directors, shareholders, members, employees, agents and representatives against any and all actions, suits, proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' and experts' fees) arising from or resulting by reason of Customer's access to or use of the Application, including without limitation, any alleged breach of this Agreement or any obligation arising hereunder.

## **10. Termination; Effect of Termination**

(a) This Agreement is effective until it is terminated by Licensor or Service Provider in accordance with this section. Licensor or Service Provider may terminate this Agreement and the license granted to Customer herein, without notice, for no reason, or for any reason, including without limitation, Licensor's or Service Provider's belief, in their respective sole discretion, that Customer has violated or threatens to violate any of the terms or conditions of this Agreement. Licensor's and Service Provider's right to terminate this Agreement and the license granted to Customer herein is absolute and unconditional, and is in addition to such parties' other legal and equitable remedies (including without limitation, injunctive relief). Each party acknowledges and agrees that the Application is proprietary in nature and that a breach or threatened breach of this Agreement may cause Licensor and/or Service Provider irreparable harm that cannot be adequately compensated for by means of monetary damages and that Licensor and/or Service Provider may each be entitled to specific performance or injunctive relief, or both, in addition to any damages that such parties may be legally entitled to recover, together with reasonable expenses of any form of dispute resolution, including without limitation, attorneys' fees.

(b) Upon termination of this Agreement, Customer's license shall immediately terminate, Customer's access to and use of the Application shall cease, and Customer shall immediately pay to Licensor all outstanding fees then owed to Licensor for access to or use of the Application. Any termination of this Agreement shall not affect Licensor's or Service Provider's respective rights arising before the date of termination. The provisions of Sections 2, 3(a), 4(b), 4(c), 6 through 14 shall survive the termination, expiration or cancellation of this Agreement.

## **11. Assignment**

Customer shall not assign or otherwise transfer this Agreement or assign, delegate or otherwise transfer any of Customer's rights, interests or obligations under this Agreement and any such assignment, delegation or other transfer shall be void. This Agreement shall inure to the benefit of Licensor's and Service Provider's respective successors, assigns and licensees.

## **12. Third Party Beneficiary.**

Customer acknowledges and agrees that Service Provider is an intended third party beneficiary of this Agreement, and that Service Provider may, at its option, seek enforcement of any provision of this Agreement directly against Customer. Customer further acknowledges and agrees that Customer has no contractual rights against Service Provider under this Agreement.

## **13. Confidentiality.**

Customer acknowledges and agrees that all information, data and materials, including without limitation the terms and conditions of this Agreement regardless of form or medium, that is disclosed to or learned by Customer in the performance of this Agreement (collectively, "Confidential Information") shall not be disclosed to any third party or used in any manner without first obtaining Service Provider's consent. Customer shall maintain the confidence of the Confidential Information to the same extent and in at least the same manner as Customer protects its own confidential and proprietary information, but no less than a reasonable standard of care.

## **14. General**

This Agreement shall be construed, interpreted and governed by the laws of the State of \_\_\_\_\_ without regard to its conflicts of law provisions. The exclusive forum for any disputes arising out of or relating to this Agreement shall be an appropriate federal or state court sitting in \_\_\_\_\_. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. Any waiver or modification of this Agreement shall only be effective if it is signed or authenticated by authorized representatives of both parties hereto. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be interpreted to reasonably effect the intention of the parties.

Each party represents and warrants to the other party that the undersigned individuals are duly authorized to execute this Agreement on behalf of their respective organizations.

**LICENSOR:**

**CUSTOMER:**

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

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

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

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

**Schedule 4**  
**to**  
**Service Provider Hosted Application Services Agreement**  
***Maintenance & Support***

Telemics features an automated customer support and help desk system. Issues and problems are submitted through two primary methods: (1) automatically through the monitoring system of the Telemics Network Operations Center (NOC) and (2) via customer input to the help desk page on their Verics™ website. The trouble ticket system automatically differentiates major and minor alarms which are then submitted for assignment to a technician in the NOC. The customer contact will receive an analysis of the problem and estimate for resolution within 8 hours for Major alarms and within the next business day for Minor alarms (outlined below).

Telemics web services are hosted by a world-class Internet data center featuring earthquake-resistant construction, extensive security systems, a dry-chemical fire-suppressant system, a controlled temperature and humidity environment, and a 24x7x365 Network Operations Center. The center features multiple OC-3 Internet connections, multiple metropolitan OC-48 SONET rings and multiple electrical power

feeds with additional backup power generation. Maintenance intervals will be communicated to customers prior to any scheduled web service disruption.

Definition	Condition	Action
Major alarm	<ul style="list-style-type: none"> <li>▪ Customer website out of service</li> <li>▪ AccessPoint out of service</li> </ul>	<p><b>Customer:</b></p> <ol style="list-style-type: none"> <li>1. access the help desk on the Verics™ website and submits the appropriate trouble ticket</li> <li>2. e-mail Telemics at support@telemics.com</li> </ol> <p><b>Telemics:</b> within eight (8) hours during normal working hours* and within twenty-four (24) hours during the weekends and holidays of notification, the pre-determined on-site customer contact will be notified with an analysis of the problem and an estimate for resolution.</p>
Minor alarm	<ul style="list-style-type: none"> <li>▪ Error messages occur when accessing the Customer Website</li> <li>▪ Error messages occur when accessing any of the 'Tools' on the Customer Website</li> <li>▪ Inaccurate information is displayed on a website screen or report</li> <li>▪ One or more CheckPoints report non-communicating on the Customer Website</li> <li>▪ Customer documents inaccurate diagnostic reporting for one or more light fixtures.</li> </ul>	<p><b>Customer:</b></p> <ol style="list-style-type: none"> <li>1. access the help desk on the Verics™ website and submits the appropriate trouble ticket</li> <li>2. e-mail Telemics at support@telemics.com</li> </ol> <p><b>Telemics:</b> within one business day, the pre-determined on-site customer contact will be notified with an analysis of the problem and an estimate for resolution.</p> <p>If an AccessPoint or CheckPoint is determined inoperable by the Telemics NOC, the customer will complete a <i>Return Merchandise Authorization form (see directions under Helpdesk section of Customer Website)</i> and ship back to Telemics for warranty replacement consideration.</p>

## **Misc. Contractual Requirements**

Customer must provide a continuous power source to the Telemics AccessPoint(s) and CheckPoint(s) .

Customer is responsible for providing information when installing or replacing units for database integrity.

Telemics normal working hours are Monday – Friday, 8:30 a.m. – 5:00 p.m. EST. Automated status failure alerts (alarms) are generated according to programmable intervals – select “help” option on Verics™ website for further definition.