

MADISON COUNTY FISCAL COURT
MADISON COUNTY, KY
RESOLUTION 2021-57

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COUNTY CLERK: KENNY BARGER
DEPUTY CLERK: LANDRY LUXON
COUNTY: MADISON COUNTY
BOOK: RES2 PAGES: 309 - 309

A RESOLUTION TO APPROVE ENTERING INTO A MAINTENANCE AGREEMENT WITH
DIGITAL ALERT SYSTEMS FOR THE COUNTY'S IPAWS SYSTEMS

WHEREAS, the Madison County CSEP Program maintains the capability to alert the public utilizing the Integrated Public Alert and Warning System (IPAWS); and

WHEREAS, the Madison County CSEP Program recently upgraded the devices that allow for these activations; and

WHEREAS, the Madison County CSEP Program vendor, Digital Alert Systems, is offering a maintenance contract with these upgrades; and

WHEREAS, the Madison County CSEP Program team believes it is in the best interest for the program and the County to enter into the maintenance agreement and requests the Fiscal Court's approval to enter into this Agreement with Digital Alert Systems; which is attached hereto this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL COURT DOES HEREBY APPROVE TO ENTER INTO THE AGREEMENT AND AUTHORIZES THE JUDGE EXECUTIVE TO EXECUTE SAME ON BEHALF OF THE COUNTY TO GO INTO EFFECT UPON THE SIGNATURE OF ALL PARTIES.

Motion made by Tom Botkin, seconded by John Tudor.

Vote:	Yes	No
Judge Reagan Taylor	<u>X</u>	
Magistrate Paul Reynolds	<u>X</u>	
Magistrate John Tudor	<u>X</u>	
Magistrate Roger Barger	<u>X</u>	
Magistrate Tom Botkin	<u>X</u>	

Signed:
Reagan Taylor
Reagan Taylor
Madison County Judge Executive

Attested:
Kenny Barger
Kenny Barger
Madison County Clerk



AGREEMENT NUMBER:
4007918

Software Assurance Plan

This Software Assurance Plan (the "Agreement") is between Digital Alert Systems, Inc ("DAS") with offices at 100 Housel Avenue, Lyndonville, New York 14098 and

Madison County EMA

 ("Customer") with offices at

560 S. Keeneland Drive Richmond, KY 40475
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1. **DEFINITIONS:**
- "EFFECTIVE DATE":** Means the date when this Agreement will become effective. The Effective Date is the date when this Agreement is fully executed
- "DEVICES UNDER CONTRACT" or "DUC":** Refers to units listed in *Appendix A: Serial Numbers of Devices under Software Assurance Plan*.
2. **LICENSE TO SOFTWARE; DAS RESPONSIBILITIES:** Beginning on Effective Date and during the Term:
- a. DAS will, subject to the terms and conditions of this Agreement, grant Customer with a non-exclusive, non-transferable license to use all released versions of DASDEC/One-Net operating code ("Software") for the sole purpose of supporting the functionality of each DUC.
 - b. DAS will notify Customer via email, telephone, or website (www.digitalalertsystems.com) posting of any new DUC-related Software releases with instructions on how to download and install the updates.
 - c. Should a DUC-related Software update require a new license, DAS will provide Customer with the proper key(s) for DUC.
 - d. DAS will provide Customer a 5% discount on any repair cost – parts and labor for a DUC
 - e. DAS will provide Customer a 5% list price discount on additional license keys/options for a DUC
3. **CUSTOMER RESPONSIBILTIES:** Customer is encouraged, but not required, to install the Software and/or license key on the DUC.
- a. Customer agrees that the releases of Software upgrades are at the discretion of DAS. Customer shall follow the DAS internal quality standards.
 - b. Customer acknowledges DAS has sole discretion to depreciate or include Software features in any release.
 - c. Customer agrees to use the Software for the sole purpose of supporting the functionality of each DUC, and shall abide by other use restrictions set forth in this Agreement.
4. **FEE:** The cost for the Software and DAS's support services under this Agreement is \$200.00 per year per DUC.
5. **PAYMENT TERMS:** Payment shall be due from Customer as shall be separately agreed to in writing by and between DAS and Customer. There are three acceptable ways to enact payment: a) credit card, b) company purchase order (with credit approval), c) company check. Single or combinations of methods are acceptable. All funds shall be payable to Digital Alert Systems | 100 Housel Ave. | Lyndonville, NY 14098. For credit card purchases, contact customer service department at 585-765-1155 for payment processing.
6. **TERM:** This Agreement shall start on the Effective Date. This Agreement shall be effective for a period of one (1) year from the Effective Date (the "Initial Term") and shall automatically renew for consecutive one (1) year periods (each a "Renewal Term") unless either party provides written notice of termination within sixty (60) days prior to the anniversary of (a) the Effective Date in the case of the Initial Term and (b) then then-current Renewal Term in

the case of Renewal Terms. The Initial Term and all Renewal Terms of this Agreement shall be collectively referred to as the "Term".

7. **TERMINATION:** DAS may terminate this Agreement (a) immediately and without notice to Customer for non-payment by Customer in accordance with payment terms separately agreed to in writing by DAS and the Customer, or (b) if Customer is in default of any of the terms and conditions of this Agreement (other than payment) and fails to correct such default within ten (10) business days after written notice thereof from DAS. Upon termination of this Agreement, DAS shall have no further obligation to provide any Software to Customer, and Customer shall, at its own cost and within five (5) business days of termination, return all Software in its possession to DAS at the address for DAS provided above.
8. **PROPRIETARY RIGHTS:** Customer acknowledges and agrees the Software is intended to support Customer's DUC and that adding or deleting DUCs will require a modification of this Agreement and Appendix A with associated DUCs added or subtracted within the plan. Customer acknowledges that DAS holds title to the Software and is the owner of the copyright to the Software, and that said Software may NOT be copied, duplicated, reversed engineered or recreated in any form. Customer agrees and acknowledges that the Software, and any enhancements, improvements, or modifications thereto and/or derivatives thereof ("Derivative Works"), remain in title and ownership as valuable and proprietary information and property of DAS who is the author of same and has the exclusive right to protect the same as copyrighted and to license such materials to any third party. To the extent Customer or its agents conceive or create Derivative Works of the Software, Customer acknowledges that such Derivative Works shall be solely and exclusively owned by DAS.
9. **MODIFICATIONS EXCLUDED:** DAS shall not be obligated to provide support services pursuant to this Agreement with respect to any modification of the DUC-related Software or equipment used by the Customer, including but not limited to Derivative Works.
10. **NO WARRANTIES:** THE SOFTWARE AND SERVICES PROVIDED BY DAS HEREUNDER ARE PROVIDED ON AN "AS IS", "WHERE IS", BASIS, "WITH ALL FAULTS" KNOWN AND UNKNOWN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DAS EXPLICITLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF FUNCTION, USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.
11. **NO CONSEQUENTIAL DAMAGES:** EXCEPT WITH RESPECT TO ANY LIABILITY FOR BREACH OF CONFIDENTIALITY OBLIGATIONS AS PROVIDED HEREUNDER, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY, ITS PRINCIPALS, MEMBERS, OFFICERS, EMPLOYEES, AFFILIATES, CONTRACTORS, SUBSIDIARIES, OR PARENT ORGANIZATION, BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OF THE SOFTWARE OR DAS' SERVICES HEREUNDER OR RELATING TO ANY BREACH OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER MONETARY LOSS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
12. **LIMITATION OF LIABILITY:** DAS total liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, will not exceed the total amount of fees paid by Customer to DAS during the six (6) month period prior to the event giving rise to the claim.

13. **INTELLECTUAL PROPERTY:** Customer acknowledges and agrees that DAS retains ownership of the Software and regards it as its proprietary information and as confidential trade secrets of great value. Customer agrees not to provide or to otherwise make available in any form the Software, or any portion thereof, to any person other than employees of the Customer without the prior written consent of DAS. Customer further agrees to treat the Software with at least the same degree of care with which Customer treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the Software. Customer further agrees to use the Software only for the intended purpose of supporting DUS and Customer further agrees to not reverse engineer or copy the Software, or transfer or license the Software or its rights thereto to any other person or organization.
14. **NOTICES:** All notices in connection with this Agreement shall be in writing and may be given by certified, registered, or first class mail or personally delivered at the address set forth on above. For purposes of this Agreement, a notice shall be deemed effective upon personal delivery to the party or if by mail five days after proper deposit in a mail box.
15. **SUCCESSORS:** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.
16. **SEVERABILITY:** In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.
17. **NON-ASSIGNMENT:** This Agreement and the licenses granted by it may not be assigned, sublicensed, or otherwise transferred by Customer without the prior written consent of DAS.
18. **AMENDMENTS:** This Agreement shall be amended only by written modification executed by both parties.
19. **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the domestic laws of the State of New York without giving effect to its conflict of laws provisions.
20. **ENTIRE AGREEMENT:** This Agreement together with any attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

CUSTOMER ACKNOWLEDGES THEY HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER REPRESENTS TO DAS THEY UNDERSTAND THOSE TERMS AND CONDITIONS AND AGREES TO BE BOUND BY THEM.

[Signatures on following page.]

The undersigned have executed the Agreement as of the dates set forth below.

DIGITAL ALERT SYSTEMS, INC.		<Customer>	
By:		By:	
Name:	Anne Wakeman	Name:	Dustin Heiser
Title:	COO	Title:	Director
Tel:	585-765-1155	Tel:	859-624-4787
Fax:	585-765-9330	Fax:	
Email:	sales@digitalalertsistemas.com	Email:	dustin.heiser@madisoncountky.us

Date Signed:

Date Signed:

[Signature Page – Software Assurance Plan Agreement]

Appendix A: Serial Numbers of Devices under Software Assurance Plan

Serial Number 8745, 8746 & 8766
