

**Village of Buffalo Grove
DACRA MUNICIPAL ENFORCEMENT SYSTEM
Software License Agreement**

Subject to the Terms and Conditions attached hereto, DACRA Adjudication Systems, LLC D/B/A DACRA Tech, LLC, (“DACRA”), 10275 W. Higgins Rd, Suite 490, Rosemont, IL 60018, hereby agrees to allow the Village of Buffalo Grove, an Illinois municipality (the “Municipality”), 46 Raupp Boulevard, Buffalo Grove, IL 60089 to access the DACRA Tech Municipal Enforcement System under the following terms and conditions, (the “Agreement”).

1. Monthly Usage Fee—Price Locked During Initial Term:

In exchange for the licensed use of DACRA software and service, as defined in this Agreement, Municipality will be billed a Monthly Subscription Fee calculated by totaling the fee for all citations issued that month. The tiered fee is based on annual citation volume and is subject to a monthly minimum of \$1,500.00:

<i>NWCDS Tiered Pricing Model</i>	<i>Per Ticket Fee</i>
Tier 1 Adjudication Citations -First 10K Issued Annually	\$3.00
Tier 2 Adjudication Citations -Second 10K Issued Annually	\$2.50
Tier 3 Adjudication Citations -Above 20K Issued Annually	\$2.00
Warning Tickets/Tow Receipts	\$0.50

Notwithstanding anything herein to the contrary, bug fixes or necessary updates to the current functionality of the system are included in the Monthly Usage Fee. Additional user modules are subject to mutually agreed upon fees. As utilized herein, the term “Annually” shall refer to the number of Citations issued in a calendar year.

2. Annual State Ticketing Fee

As an NWCDS member the annual \$5,000 fee for services related to state ticketing set-up, training, and support is covered per the master NWCDS agreement between NWCDS and DACRA. In the event that the NWCDS agreement is no longer in place, the pricing of this Agreement will be adjusted upward solely to reflect an additional annual fee of \$5,000. Notwithstanding the foregoing, DACRA shall provide 90-days written notice of the NWCDS agreement termination before any pricing adjustment to this Agreement shall be effective.

3. Credit for Annual Software Maintenance Fee - 2020:

In recognition of the Annual Software Maintenance Fee paid to DACRA per invoice no 2020-147 covering the period January 1, 2020 to December 31, 2020, Municipality shall receive a credit in the amount of \$761.46 for each month of the 2020 calendar year not utilized and covered under this agreement.

4. Hardware:

All hardware, connectivity, maintenance and usage costs related to the DACRA hosted service is the responsibility of DACRA.

All hardware, connectivity, maintenance and usage costs for hardware directly used by the Municipality (laptops, PCs, printers, network) is the responsibility of the Municipality.

5. DACRA Interface:

The DACRA interface with New World Logos interface purchased under your prior agreement will be included at no additional charge.

The DACRA interface with Motorola, provided as part of the NWCDS agreement, is included at no additional charge.

6. Term:

The Initial Term of this Agreement shall be two (2) years and shall commence on November 1, 2020. After the Initial Term, upon mutual written agreement of the parties hereto not less than 90-days prior to the end of the relevant term, this Agreement shall be renewed in successive periods of one (1) year each. (The Initial Term and any successive renewal term(s) shall be collectively referred to as the "Term"). All terms and conditions shall remain in full force an effect during the entire Term, except after the Initial Term of this Agreement, the Monthly Usage Fee [Minimum Monthly Fee and each Per Ticket Fee type] shall increase to the then prevailing market rates for the services covered under this agreement for each renewal period.

7. Incorporation of Software License Agreement Terms and Conditions.

This Agreement incorporates those additional Software License Agreement Terms and Conditions set forth following the mutual execution page as if set forth herein in this Agreement in their entirety.

Village of Buffalo Grove:

By: 

Print Name: DAVE BRAGG

Title: Village Manager

Date: 10-27-2020

DACRA Tech, LLC:

By: 

Print Name: Robert Schur

Title: Chief Executive Officer

Date: October 24, 2020

DACRA MUNICIPAL ENFORCEMENT SYSTEM
Software License Agreement Terms and Conditions

A. Agreement Definitions

“Municipality” and “You” and “Your” refers to the governmental entity that has executed DACRA’s Municipal Enforcement Software License Agreement (the “Pricing Agreement”) that accompanies and incorporates these Software License Agreement Terms and Conditions (the Pricing Agreement and these Software License Agreement Terms and Conditions are collectively referred to as the “Agreement”). Software as a service consists of system administration, system management, and system monitoring activities that DACRA performs for its Adjudication System (collectively, the “**Services**”). The term “Program Documentation” refers to materials provided by DACRA as part of the Services. The term “Adjudication System” refers to the software products owned or distributed by DACRA to which DACRA grants You access as part of the Services. The term “Users” shall mean those individuals authorized by You or on Your behalf to use the Services.

B. Rights Granted

Upon DACRA’s acceptance of Your order and mutual execution of the Agreement, and for the duration of the Term of this Agreement, You have the nonexclusive, non-assignable, royalty free, worldwide limited license (the “**License**”) to use the Services during the Term solely for Your municipality’s ordinance and code compliance purposes and subject to the terms of the Agreement (the “Purpose”). You may allow Your Users to use the Services solely for this Purpose and You are responsible for Your Users’ compliance with the Agreement. You acknowledge that DACRA has no delivery obligation and will not ship copies of the software that runs DACRA’s Adjudication System to You as part of the Services. You agree that You do not acquire under the Agreement any right to use the Adjudication System beyond the scope or the duration of the Term of this Agreement. Upon the end of the Term, Your right and License to access and/or use the Services shall terminate.

C. Third-Party Agreements

It may be necessary for You to enter into additional contracts at Your expense, with third-party vendors in order to use and/or maximize some of DACRA’s features such as the Municipality’s online payment processor or the Municipality’s collection agency. DACRA has no control and is not liable with respect to the services provided to You by third-party vendors and any price increases from such third-party vendors shall be Your responsibility.

D. Your Data

You retain all ownership in and to Your Data. The term “Your Data” refers to the all citation and hearing data collected on behalf of You with respect to the Services. As part of DACRA’s Services, reciprocal access to Your Data is provided to authorized DACRA users in other municipalities, in return for allowing Your authorized Users to access similar data in such participating municipalities. You may opt out of this reciprocal data sharing arrangement at any time during the Term by providing written notice to DACRA. Upon termination of the Agreement, and upon Your written request, DACRA will provide You an electronic copy of Your Data within sixty days after the effective date of termination.

E. DACRA's Intellectual Property

DACRA or its licensors retain all ownership and Intellectual Property Rights to the Services and to its Adjudication System. DACRA retains all ownership and Intellectual Property Rights to anything (including without limitation software and written product) delivered under the Agreement, including any future developments thereof, regardless of whether You, or any of Your employees or agents, had any input or in any way assisted in any such new development. You may not:

- Allow access to the Services available in any manner to any third-party or for any purpose not authorized by this Agreement unless such access is expressly permitted in writing by DACRA;
- Copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, any of the Program Materials, except for the use of Your authorized Users; and,
- Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs).

As utilized herein, the phrase “**Intellectual Property Rights**” shall include, without limitation, all patent, trademark, trade secret and copyrights relating in whole or in part to the Services and whether such right arises by registration with the United States Patent & Trademark Office (the “USPTO”, through the United States Library of Congress, with any state or municipal body and/or arising by common law or statute, including without limitation the Illinois Trade Secrets Act, 765 ILCS 1065 et seq or The Defend Trade Secrets Act of 2016.

Further Assurances. You further agree at any time in the future and upon request by DACRA, to execute any further documentation as may be reasonably necessary to effectuate the intent of the parties to this Agreement in accordance with the terms of this paragraph E including, without limitation, any Assignment to DACRA or waiver by You of Intellectual Property Rights.

F. Pricing and Billing

The Monthly Usage Fee pricing set forth in the Pricing Agreement will remain fixed during the Initial Term. After the expiration of the Initial Term, DACRA reserves the right, in its sole discretion, to modify the Monthly Usage Fee pricing by providing You a minimum of 120 days advanced written notice before such price change goes into effect. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that DACRA must pay based on the Services, except for taxes based on DACRA's income. For any partial month during the Term, the Monthly Usage Fee (including the minimum fee) shall be prorated based on the number of days that the Services were provided for such month. DACRA may audit Your use of the Services. You agree to cooperate with DACRA's audit and provide reasonable assistance and access to information. All payments shall be made in accordance with the Illinois Local Government prompt Payment Act (50 ILCS 505/1-9).

G. Termination

DACRA may immediately suspend Your License and Your password, account, and access to or

use of the Services (i) if You fail to pay any sums due DACRA under the Agreement within thirty (30) days after written notice from DACRA of the payment default, or (ii) if You violate any other provision of this Agreement and you do not cure said default within thirty days after written notice from DACRA. Regardless of the reason for the termination of this Agreement, you agree to pay all fees due DACRA which accrue or are incurred prior to the termination of the Agreement.

H. Limitation of Liability

DACRA DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT DACRA WILL CORRECT ALL SERVICE ERRORS. YOU ACKNOWLEDGE THAT DACRA DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. DACRA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. IN THE EVENT THERE IS A SERVICE INTERRUPTION WHICH LASTS MORE THAN 24 HOURS DUE TO THE FAULT OF DACRA, DACRA WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY USAGE FEE FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO DACRA, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND DACRA'S SOLE LIABILITY, FOR ANY BREACHES OF THIS AGREEMENT. TO THE EXTENT NOT PROHIBITED BY LAW, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS. DACRA'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES, OR THE AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE GREATER OF: (A) THE TOTAL AMOUNTS ACTUALLY PAID TO DACRA FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM; OR (B) SUCH AMOUNT OF CLAIMED DAMAGES THAT ARE ACTUALLY ALLOCATED (AS REASONABLY DETERMINED BY DACRA AND/OR ITS INSURANCE CARRIER), AND THAT ARE COVERED AND PAID BY THE INSURANCE CARRIER PROVIDING INSURANCE TO DACRA UNDER THE TERMS OF A POLICY OF INSURANCE CARRIED BY DACRA AS REQUIRED UNDER THE TERMS OF THE AGREEMENT, (THE "LIMITATION OF LIABILITY"). ANY DAMAGE AWARDED IN YOUR FAVOR AGAINST DACRA SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY. PRIOR TO TAKING ANY LEGAL ACTION ARISING UNDER IN WHOLE OR PART UNDER THE TERMS OF THE AGREEMENT, YOU HEREBY AGREE TO PROVIDE DACRA WITH NOT LESS THAN 60 DAYS ADVANCE WRITTEN NOTICE AND AGREE TO MAKE BEST EFFORTS TO RESOLVE SAID DISPUTE OR CLAIM PRIOR TO FILING FORMAL LEGAL ACTION IN THE CONTEXT OF ARBITRATION OR OTHERWISE.

I. Other

1. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the parties, nor shall either party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other.

2. Upon the full execution of this Agreement, all prior agreements, if any, shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Agreement.
3. DACRA may assign this Agreement by providing written notice of the assignee who will assume DACRA's obligations under this Agreement. You may not assign this Agreement without DACRA's prior written consent.
4. You shall obtain at Your sole expense any rights and consents from third-parties necessary for DACRA and its subcontractors to perform the Services under the Agreement.
5. The Agreement is governed by the substantive and procedural laws of Illinois. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, Illinois before one arbitrator. The arbitration shall be administered by JAMS in accordance with JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.
6. Except for actions for nonpayment or breach of DACRA's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.
7. Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.
8. You agree that DACRA may identify You as a recipient of Services in sales presentations and marketing materials.
9. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument. Copies of this Agreement (as well as any documents related to this Agreement) signed and transmitted by a party by electronic transmission shall be deemed for all purposes as containing the original signature of the transmitting party and legally binding upon such transmitting party.
10. You agree that this Agreement is the complete agreement for the services ordered by You, and that this Agreement supersedes all prior or contemporaneous agreements or

representations, written or oral, regarding such services. This Agreement may not be modified in any way except in writing signed by authorized representatives of You and DACRA.

J. Maintenance and Support

The Services, including all features, must have qualified and available support included to be effective. DACRA shall provide the following maintenance and support as a component of the Services using guidelines, structures, and materials meeting the following criteria:

1. **Training.** As part of the start-up and implementation phase of the delivered Services, all users will be trained on the use of the Services through a combination of in-person and/or webinars and recorded training video sessions for all users not able to participate in the initial training sessions.
2. **Support.** DACRA shall provide access to live support to a designation user of municipality available via e-mail or phone during DACRA's normal business hours. The DACRA support team will be fluent in the functionality of the system. Responses to critical issues shall be as defined in Service SLA section as outlined below in paragraph K. of this Agreement.

Exclusions. DACRA updates the Service on an as needed basis from time-to-time to implement bug fixes, if any, and enhanced functionality to the existing Service such as additional reporting and enhanced user interface. Notwithstanding the forgoing, all provision and maintenance of hardware and software, including but not limited to laptop computers, desktop computers, printers, modems & routers and software to operate the hardware such as operating systems, and browsers [Google Chrome, Microsoft Edge, IOS] necessary to run the Service, are the sole cost and responsibility of Municipality.

K. Service SLA

DACRA, as part of its commitment to the continuity of the Services, shall maintain the following service level that details the minimum customer support standards to be followed for issues, both major and minor, as well as, any modifications made to the Service from time-to-time. As part of the Service, DACRA will create an alert email distribution group for use by the Municipality to send notification of issues as they arise. Municipality may also contact DACRA via phone.

DACRA will respond to Municipality initiated issues in accordance with the following levels:

MAJOR - The Service is down or precludes the Municipality from successful operation of the total system and requires immediate attention (the "Downtime") (for example, the Municipality is unable to connect, via an approved internet browser, to the Service).

MINOR - A minor issue exists with the Service, but the majority of the functions are still usable, and some circumvention may be required to provide service (for example, subcommand gives an incorrect response). Also includes minor issues or questions that do not affect the Service function (for example, the text of a message is worded poorly or misspelled).

Response Timelines: DACRA shall acknowledge and make reasonable efforts to respond to Municipality notification in material compliance with the following general guidelines and performance objectives:

MAJOR – Issue notification via alert email or by phone will be acknowledged and responded to within one (1) hour if notification is received during DACRA’s normal business hours. For any major issues that occur during DACRA’s non-normal business hours, the customer shall e-mail urgent@dacratech.com and DACRA will respond to the notification within three (3) hours.

MINOR - Issue notification via alert email or by phone will be acknowledged and responded to within eight (8) hours if notification is received during normal DACRA business hours. If received after normal DACRA business hours, the notification will be responded to within eight (8) hours after the start of the normal DACRA business hours.

Uptime: DACRA shall make reasonable efforts to maintain the Services such that the Services will be operational and accessible by the Municipality’s users a minimum of 99% of the time, not including maintenance which will be scheduled with Municipality in advance and will be kept to an absolute minimum. In the event that the Services are unavailable less than 99% of the time as a result of the failure by DACRA to adhere to its obligations under this Agreement, (said percentage excepting and not including downtime for scheduled maintenance or factors outside the reasonable control of DACRA), then in such instance, the Municipality shall receive the following Service Discounts (the “Service Discounts”) as its sole and absolute remedy relating thereto with the mutual understanding that this Agreement shall continue in full force and effect: 97% - 99% uptime in any given month - 10% discount of the monthly fee; 95% - 96.99% uptime, not including scheduled maintenance - 20% discount of the monthly fee; 90% - 94.99% uptime, not including scheduled maintenance - 30% discount of the monthly fee; 80% - 89.99 % uptime, not including scheduled maintenance - 50% discount of the monthly fee; less than 79.99% uptime, not including scheduled maintenance - 100% discount of the monthly fee.

Notwithstanding the foregoing, the following are not counted as Downtime for the purpose of calculating of this Service SLA: Service unavailability caused by scheduled maintenance of the Service (DACRA will endeavor to provide five days’ advance notice of service-affecting scheduled maintenance); or, unavailability caused by events outside of the direct control of DACRA, including but not limited to any force majeure event, the failure or unavailability of Municipality’s systems, the Internet or any failure thereof, and the failure of any other technology or equipment used to connect to or access the service by the Municipality.

To receive a Service Discount for a particular calendar month, Municipality must submit a claim by email to the DACRA support team within 30 days of the end of the month during which the Service did not meet this Service SLA, and include the following information: a) requester name and contact information, b) details of the notification to DACRA of the Downtime, and c) information supporting the claim of Downtime, including date, time, and a description of the incident and affected service.

L. Insurance Requirements

1. DACRA shall maintain during the entire term of the Contract, the following insurance coverages:
 - a. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be \$2,000,000 per project.
 - b. Professional Liability: \$1,000,000 single limit for errors and omissions, professional / malpractice liability.
 - c. Worker's Compensation and Employers' Liability: Worker's Compensation limits of \$1,000,000 and as Employers' Liability limits of \$500,000 per accident or as required by Illinois law.
 - d. Umbrella Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.