

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN
AGREEMENT WITH DIALOGIC COMMUNICATIONS
CORPORATION DBA PLANTCML FOR REVERSE 911
SOFTWARE LICENSING, SUPPORT, AND HOSTING
SERVICES, AND DECLARING AN EMERGENCY.**

WHEREAS, Reverse 911 services are utilized to notify residents of emergency situations, including situations involving weather events, public health notifications, and evacuations; and

WHEREAS, the Village must obtain Reverse 911 software licensing, support, and hosting services in order to provide Reverse 911 emergency notification services; and

WHEREAS, this Council desires to authorize an agreement with Dialogic Communications Corporation dba PlantCML for reverse 911 software licensing, support, and hosting services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. That the Mayor be and is hereby authorized and directed to enter into an Agreement with Dialogic Communications Corporation, dba PlantCML, 730 Cool Springs Blvd., Suite 300, Franklin, Tennessee, 37067, for radio Reverse 911 software licensing, support, and hosting services. A draft of the agreement is appended hereto and incorporated herein by reference, provided that such agreement shall be amended as determined necessary by the Director of Law to protect the interests of the Village of Chagrin Falls. The Mayor may execute such further documentation and perform such additional actions as may be necessary to accomplish the purposes of the Agreement.

SECTION 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of this Village and for the further reason that this Ordinance must be immediately effective so that the Village may provide Reverse 911 services necessary to notify residents of emergency situations and for the further reason that the Village's existing facilities for providing Reverse 911 services are terminating pursuant to a previous contract; wherefore, provided it receives the requisite number of affirmative votes of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be

ORDINANCE NO.: 2011- 08
INTRODUCED BY: MRS. LUTZ

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in force after the earliest period allowed by law.

PASSED: February 14, 2011



Council President

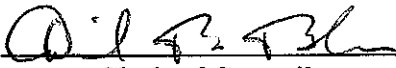
Submitted to the Mayor for
his approval on this
15 day of February, 2011

Approved by the Mayor
February 15, 2011



Mayor

I hereby certify that Ordinance No. 2011-08 was duly enacted on the 14 day of February, 2011, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.



Clerk of Council

LICENSE, SUPPORT AND SHARED HOSTING AGREEMENT

This License, Support and Shared Hosting Agreement ("Agreement") is entered into by and between Dialogic Communications Corporation, dba PlantCML, a Tennessee corporation ("PlantCML"), located at 730 Cool Springs Blvd., Suite 300, Franklin, Tennessee 37067, and the Village of Chagrin Falls, Ohio ("Licensee" or "Village"), located at 21 W Washington St, Chagrin Falls, OH 44022. Both PlantCML and Licensee may alternatively be referred to as a "Party" and collectively as the "Parties".

1 Definitions.

1.1 "Acceptance Period" means the period of time commencing on the Effective Date and ending on the fourteenth (14th) calendar day thereafter, during which time Licensee may test the shared hosted solution to determine that it functions as warranted herein.

1.2 "Documentation" means written and/or on-line material provided by PlantCML to assist Licensee in the use of the System.

1.3 "Equipment" means any third party products other than software provided by PlantCML hereunder.

1.4 "Hosting Services" means the Hosting Services described herein. Hosting Services includes technical support, which is described in the Technical Services Center Support Plan ("Support Services") attached as Schedule B. Hosting Services are included as part of the license fee.

1.5 "Initial Service Term" means the period of time commencing on the online date for Hosting Services ("Effective Date") and ending three (3) years after such date.

1.6 "Service Level Agreement" or "SLA" means the period of uptime commitment reflected in Section 5.1 herein, as well as the response times indicated for support inquires, as set forth in Schedule B.

1.7 "Software" means the PlantCML software programs and any updates, modifications and corrections thereto provided by PlantCML to Licensee hereunder.

1.8 "System" means the Equipment and Software provided hereunder.

1.9 "Third Party Software" means the third party software, if any, provided hereunder.

2 Payment and Taxes.

2.1 **Licensee's Purchase.** In consideration of the fees described herein, PlantCML shall provide Licensee with the Software, Third Party Software, and the Hosting Services all as described herein and as governed by the terms and conditions of this Agreement and attached Schedules.

2.2 **Software.** Licensee will pay to PlantCML all Software License fees within thirty (30) days of the date of invoice in accordance with Schedule A.

2.3 **Hosting Services.** For the Initial Service Term, Licensee will pay PlantCML the amount set forth in Schedule A Hosting Services. Payment shall be made within thirty (30) days of receipt of an undisputed invoice from PlantCML. Following the Initial Service Term, Licensee rights granted hereunder and Hosting Services may be renewed at Licensee's option by payment of the renewal fee indicated in Schedule A before expiration of the then in effect term. PlantCML shall invoice Licensee for the renewal term approximately sixty (60) calendar days prior to the then in effect term.

2.4 A block of Thirty Thousand (30,000) minutes shall be provided by PlantCML each year of the Initial Service Term at no additional cost. Activations are measured by total seconds recorded, divided by sixty (60) and rounded up or down to the nearest minute. For every minute thereafter, Licensee shall pay the price per minute recorded, as invoiced by PlantCML, based on whether the call is domestic or international calculated at the current rate. Payment is due within thirty (30) days of PlantCML's invoice.

2.5 Licensee is a tax exempt entity and will provide evidence of tax exemption to PlantCML upon request. Licensee claims exemption from sales and use taxes imposed by the United States and the State of Ohio with respect to the purchase of tangible personal property and selected services. All shipping and insurance charges for products shipped between PlantCML and Licensee under this Agreement will be paid by Licensee, with insurance and shipping pre-paid by PlantCML.

3 Access and Use of the System.

3.1 **Access:** Licensee and PlantCML shall agree upon, prior to Licensee's use of the System, the offices and personnel authorized to access the System and such personnel shall be identified in advance by Licensee. Licensee may modify the persons who are authorized to access the System by providing advance written notice to PlantCML.

3.2 **Concurrent Users:** Licensee may authorize access for the number of simultaneous, concurrent users of the web interface software at any given time. Passwords provided for web access may be used only by authorized personnel. Neither Licensee nor its authorized personnel shall knowingly divulge, sublicense, assign or transfer to any third party passwords established for access to the System.

3.3 **Support Inquiries:** Only those individuals with specialized training and authority may request support assistance for the System. Additional information is set forth in Schedule B.

4 Training and Support Services; Licensee Data.

4.1 **Training.** Training, if purchased by Licensee, is set forth in Schedule A.

4.2 Subject to the terms and conditions of this Agreement and provided that Licensee pays all applicable fees related to the license and Hosting Services, PlantCML shall provide Licensee with support described in this Agreement and as more particularly described in PlantCML's Technical Service Center Support Plan attached hereto as Schedule B, and incorporated herein by reference.

4.3 **Licensee Data.** Licensee shall have responsibility for the accuracy or functionality of any data it places into the System ("Licensee Data") and for adherence to any privacy act or regulation regarding such Licensee Data it selects and stores onto the System. Regarding any self registration portal tool purchased or licensed by Licensee through or with PlantCML, Licensee shall assume all duties, obligations and compliance with any applicable law regarding its use, including but not limited to the gathering, storage and dissemination of such Licensee Data. Licensee also shall be solely responsible for communicating any applicable notices or terms of use to its registrants. These duties and obligations are non-delegable by Licensee to PlantCML.

5 Warranty.

5.1 **Hosting Warranty.** PlantCML warrants that during the Initial Service Term and any renewal term, for ninety-nine percent (99.99%) of the time, measured monthly, the System or its redundant backup shall be capable of making automated computerized telephone communications to contacts within the contact database ("Uptime Commitment"), excluding downtime for scheduled maintenance (not to exceed five (5) hours per month for the primary system and 5 hours per month for the backup system) or Licensee inability to connect with the Hosting Services due to Internet or telecommunications problems outside of the control of PlantCML. If Licensee claims that PlantCML has not met its Uptime Commitment during any calendar month within which this Agreement is in effect, it shall provide PlantCML with written notice and evidence to alert PlantCML that such Uptime Commitment was not met, after which PlantCML shall have an opportunity to cure in accordance with Paragraph 13.2.1 or to demonstrate that it did, in fact, meet the Uptime Commitment level. PlantCML shall refund to Licensee a prorated portion of all fees paid during the month in which the Uptime Commitment was not met. In the event the Uptime Commitment is not met for three (3) months during the Initial Service Term or any renewal term, Licensee may terminate this Agreement on the ground of material breach.

5.2 **Software Warranty.** PlantCML warrants for the Initial Service Term and any renewal term that the PlantCML Software shall perform in material accordance with the Documentation current as of the Effective Date. ANY AND ALL THIRD PARTY SOFTWARE IS PROVIDED "AS IS" AND WITH ALL FAULTS.

5.2.1 During the Initial Service Term and any renewal term, PlantCML will provide such assistance as it deems reasonably necessary to cause the PlantCML Software to perform materially in accordance with the then current Documentation provided that Licensee's use is in accordance with this Agreement and the Documentation.

5.2.2 Licensee may notify PlantCML of Software errors or defects it believes to exist, and if PlantCML is able to confirm that such error or defect exists through independent testing, PlantCML will use commercially reasonable efforts to correct such error or defect.

5.2.3 OTHER THAN THE ABILITY TO TERMINATE FOR MATERIAL BREACH AS SET FORTH HEREIN, LICENSEE'S EXCLUSIVE REMEDY, AND PlantCML'S ENTIRE LIABILITY IN CONTRACT, TORT OR OTHERWISE FOR BREACH OF ANY OF THE ABOVE WARRANTIES WILL BE TO USE ITS COMMERCIALY REASONABLE EFFORTS TO PROVIDE A CORRECTION OR WORK AROUND FOR ANY MATERIAL NONCONFORMITY WHICH IS (i) REPORTED TO PlantCML BY LICENSEE WHILE PlantCML IS OBLIGATED TO PERFORM SUPPORT SERVICES AND (ii) REPRODUCIBLE BY PlantCML IN THE EXECUTION ENVIRONMENT.

5.3 **Limited Warranty.** IF THE PlantCML SYSTEM IS USED IN EMERGENCY SITUATIONS, THEN THE SYSTEM IS INTENDED TO ONLY INCREASE THE NOTICE WHICH WILL BE GIVEN. THERE IS AND CAN NOT BE ANY GUARANTEE THAT ALL PERSONS INTENDED TO BE CONTACTED WILL BE CONTACTED. PlantCML ACCEPTS NO RESPONSIBILITY FOR ANY

FAILURE OF THE PlantCML SYSTEM TO CONTACT ANY PERSON OR PERSONS AND IS NOT RESPONSIBLE FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY FAILURE TO CONTACT ANYONE.

5.4 **Disclaimer of Warranties.** THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES. PlantCML DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PlantCML DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

5.5 The warranties in this Section 5 will not apply to any defects or problems caused in whole or part by (i) defects in any equipment, (ii) failure of any portion of equipment to function in accordance with manufacturer's specifications, (iii) modifications or enhancements made to the Software by anyone other than PlantCML, (iv) any software, hardware, firmware, peripheral or communication devices used with the Software not provided by or approved of in writing by PlantCML, (v) failure of Licensee or any third party to follow PlantCML's most current instructions for proper use of the Software, (vi) negligence of Licensee or any third party, or (vii) failure to install and use the updates, modifications and corrections provided by PlantCML. If Licensee falls within any of the foregoing exceptions and requests PlantCML to provide support services for such defect or problem, Licensee will pay PlantCML for services at PlantCML's then current hourly rate.

6 License Grant.

6.1 **Scope.** PlantCML hereby grants to Licensee, and Licensee accepts, a non-exclusive, non-transferable license to use the object code version of the Software and the Documentation for its internal business purposes in accordance with this Agreement. Licensee may use the Software only on the equipment or substitute equipment approved in writing by PlantCML. Licensee may make one copy of the Software for backup purposes only but shall include therein all proprietary marks and notices included in the original. Licensee may not otherwise copy or permit the copying of any part of the Software or Documentation.

6.2 **Restrictions on Use.** Licensee may not knowingly, directly or indirectly, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) copy (except for archival purposes), rent, lease, resell, sublicense, distribute, assign, or otherwise transfer rights to the Software, except as otherwise provided herein; (iv) use or allow the transfer, transmission, export, or re-export of the Software in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; or (v) remove any proprietary notices or labels on the Software.

6.3 **Updates and Upgrades.** Updated or upgraded versions of the Software may be created or issued by PlantCML from time to time. If the Software is updated or upgraded, Licensee is bound by the terms of this License and may only use that updated or upgraded Software in accordance with this License. PlantCML may, at its sole discretion, require the installation of software updates or upgrades to maintain any applicable warranty.

6.4 **Intellectual Property, Trademark and Copyright.** PlantCML retains ownership of the Software, any portions or copies thereof, and all rights therein. PlantCML reserves all rights not expressly granted to Licensee. This License does not grant Licensee any rights in connection with any trademarks or service marks of PlantCML, its suppliers or licensors. All right, title, interest and copyrights in and to the Software and the accompanying Documentation and any copies of the Software are owned by PlantCML, its suppliers or licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This License grants Licensee no rights to use such content.

6.5 **U.S. Government Restricted Rights.** The Software and associated Equipment and Documentation are provided with RESTRICTED RIGHTS. With respect to any acquisition of the Software by or for any unit or agency of the United States Government ("Government"), the Software shall be classified as "commercial computer software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement ("DFARS"). The Software was developed entirely at private expense and no part of the Software was first produced in the performance of a Government contract. If the Software is supplied for use by DoD, the Software is delivered subject to the terms of this LICENSE and either (i) in accordance with DFARS 227.7202-1(a) and 227.7202-3(a) or (ii) with restricted rights in accordance with DFARS 252-227-7013 (Oct. 1988), as applicable. If the Software is supplied for use by Government agency other than DoD, the Software is restricted computer software delivered subject to the terms of this LICENSE and (i) FAR 12.212; (ii) FAR 52.227-19; or (iii) FAR 52.227-14, as applicable.

6.6 **Beta Release or Pre-Release Versions.** In the event the licensed software or any software module is a beta release or pre-release version, the terms of this Section 6.6 and Agreement shall apply in their entirety. The license to

use the licensed software shall expire on the date set forth in the applicable Beta Site Agreement signed by licensee or, in the absence of such agreement, 120 days after installation or 120 days from the date on which the software or module was first made available or presented to you. The licensed software may contain more or less features than the commercial release of the software that PlantCML ultimately intends to distribute. While PlantCML intends to distribute a commercial release of the licensed software, PlantCML reserves the right at any time not to release a commercial release of the licensed software or to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the commercial release. You agree that the beta release or pre-release versions are not suitable for production use and may contain errors affecting their proper operation. In the event the beta or pre-release licensed software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "total amount paid to PlantCML" shall be deemed to be PlantCML's list price for the licensed software or software module, or other amount as expressly stated in any Beta Site Agreement signed by you and PlantCML.

6.7 Demonstration Software. In the event the licensed software has been provided as a demonstration copy of the licensed software, whether for a fee or at no charge, the terms of this Section 6.7 and this Agreement shall apply in their entirety. Your license to use the licensed software shall expire 120 days after installation or 120 days from the date on which the demonstration software was first made available or presented to you. In the event the demonstration copy of the licensed software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "total amount paid to PlantCML" shall be deemed to be PlantCML's list price for the licensed software or module.

7 Limitation of Liability. EXCEPT FOR A BREACH OF THE DUTY OF CONFIDENTIALITY OR AN INDEMNIFIED CLAIM HEREUNDER AS PROVIDED FOR IN SECTION 10, IN NO EVENT WILL PlantCML BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE HOSTING SERVICES, EQUIPMENT, SOFTWARE, AND/OR THIRD PARTY SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF PlantCML HAS BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF THE DUTY OF CONFIDENTIALITY OR AN INDEMNIFIED CLAIM HEREUNDER AS PROVIDED FOR IN SECTION 10, PlantCML'S TOTAL LIABILITY TO LICENSEE HEREUNDER, IF ANY, WILL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO PlantCML HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8 Confidentiality. A party receiving Information (defined below) of the other will not disclose such Information other than to persons in its organization who have a need to know and who will be required to comply with this Section 8. The party receiving Information will not use such Information for a purpose inconsistent with the terms of this Agreement. "Information" means the Software, Documentation and all information and intellectual property related thereto (including, but not limited to all databases provided to Licensee by PlantCML whether created by PlantCML or its third party licensors such as, without limitation, the mapping product databases) as well as information related to the business of PlantCML or Licensee. Information will not include: (i) information publicly known prior to disclosure; (ii) information coming into the lawful possession of the recipient without any confidentiality obligation; and (iii) information required to be disclosed pursuant to regulatory action or court order, provided adequate prior written notice of any request to disclose is given to the party whose information is to be disclosed. Each party will exercise at least the same degree of care to safeguard the confidentiality of the other's Information as it does to safeguard its own proprietary confidential information, but not less than a reasonable degree of care. PlantCML acknowledges that Licensee is a public office for purposes of the Ohio Public Records Act (Ohio Revised Code Chapter 149. PlantCML claims that all matters defined as Confidential Information herein are exempted from disclosure pursuant to Ohio Revised Code Chapter 149.43(A)(1)(m) and potentially pursuant to Chapter 3701.072, and related provisions to the extent Licensee intends to utilize the PlantCML solution for emergency notifications and emergency preparedness. In the event that Licensee receives a request from a third party for disclosure of such information, Licensee will consider the grounds for exclusion set forth herein by PlantCML and where possible will use reasonable best efforts to notify PlantCML before disclosure is made.

9 Ownership. The Software and Documentation are PlantCML's exclusive property and PlantCML believes that Software and Documentation constitute a valuable trade secret of PlantCML. Licensee will take reasonable steps to protect the trade secret of the Software and Documentation. Ownership of all copies is retained by PlantCML. Licensee may not disclose or make available to third parties the Software or Documentation or any portion thereof. PlantCML shall own all right, title and interest in and to all corrections, modifications, enhancements, programs, and work product conceived, created or developed, alone or with Licensee or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein and based thereon. Except and to the extent expressly provided herein, PlantCML does not grant to Licensee any right or license, express or implied, in or to the Software and Documentation or any of the foregoing.

10 Indemnification.

10.1 **Infringement Indemnification.** With the exception of any third party software, hardware or equipment that may be provided under this Agreement, PlantCML agrees to hold Licensee harmless from liability to third parties resulting from infringement of any United States patent or copyright or trade secret by the PlantCML software purchased hereunder and PlantCML further agrees to pay all damages and costs, including reasonable legal fees, which may be assessed against Licensee under any such claim or action. PlantCML shall be released from the foregoing obligation unless Licensee provides PlantCML with (i) reasonably prompt written notice from the date Licensee first becomes aware of such a claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement thereof; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Without limiting the foregoing, if a final injunction is, or PlantCML believes, in its sole discretion, is likely to be, entered prohibiting the use of the software by Licensee as contemplated herein, PlantCML will, at its sole option and expense, either (a) procure for Licensee the right to use the infringing software as provided herein or (b) replace the infringing software with noninfringing, functionally equivalent products, or (c) suitably modify the infringing software so that it is not infringing; or (d) in the event (a), (b) and (c) are not commercially reasonable, terminate the license, accept return of the infringing software and refund to Licensee an equitable portion of the license fee paid therefor. Except as specified above, PlantCML will not be liable for any costs or expenses incurred without its prior written authorization. Notwithstanding the foregoing, PlantCML assumes no liability for infringement claims with respect to software (i) not supplied by PlantCML, (ii) made in whole or in part in accordance to Licensee's specifications, (iii) that is modified after delivery by PlantCML, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Licensee's use of the software is not strictly in accordance with this Agreement. **THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PlantCML AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE.**

10.2 **General Indemnification.** PlantCML agrees to indemnify, save, hold harmless and at Licensee's request, defend Licensee from any and all costs and expenses, damages, liabilities, claims and losses occurring or resulting to Licensee in connection with any bodily injuries or damages incurred as a result of Licensee's negligence while traveling to or from Licensee's premises or while performing services on Licensee's premises.

11 **Injunctive Relief.** Each party acknowledges that a violation or threatened violation by it of Section 8 or 9 hereof could result in damage that is largely intangible but nonetheless real and that is incapable of complete remedy by award of damages. Thus, such violation or threatened violation will give the injured party the right to seek a court-ordered injunction to specifically enforce such covenant or obligation.

12 **Term.** This Agreement will commence upon the Effective Date and shall end three (3) years after such date. During the Initial Service Term, this Agreement shall not be terminable by Licensee, except in instances of material breach (described below). Immediately following the Initial Service Term, this Agreement shall automatically renew for additional one (1) year terms ("Renewal Term") in accordance with Paragraph 2.3, above.

13 Termination.

13.1 PlantCML may terminate this Agreement if:

13.1.1 Licensee fails to timely pay any amounts due under this Agreement and fails to make such payments within ten (10) days of notice from PlantCML;

13.1.2 Licensee commits any material breach of this Agreement and fails to remedy such breach within ten (10) days of notice from PlantCML; or

13.1.3 Licensee becomes the subject of a petition in bankruptcy; is or becomes insolvent; or admits a general inability to pay its debts as they become due.

13.2 Licensee may terminate this Agreement:

13.2.1 During the Acceptance Period, if the System does not operate as warranted hereunder, without obligation for any payments due hereunder;

13.2.2 After the Acceptance Period, if PLANTCML commits any material breach of this Agreement other than a breach of Paragraph 5.1, and PlantCML fails to remedy such breach within thirty (30) days of written notice from Licensee. For material breach regarding Paragraph 5.1, PLANTCML shall have seven (7) calendar days to remedy such breach, calculated from the date on which PLANTCML receives written notice from Licensee.

13.2.3 If PlantCML becomes the subject of a petition in bankruptcy; is or becomes insolvent; or admits a general inability to pay its debts as they become due.

13.3 In the event there is a non-appropriation of funds for Licensee to continue use of the System, in accordance with Paragraph 29 herein. However, in the event partial appropriation is made, the parties agree to negotiate in good faith to amend this Agreement through adjustment of the level of services and resulting price within the parameters of Licensee's funding capabilities.

13.4 Upon termination or expiration of this Agreement, Licensee shall be prohibited from further use of the services, Software and Documentation and shall promptly return copies of the Software and Documentation in its possession, if any, to PLANTCML. All amounts owed to PLANTCML, including but not limited to amounts due for setup services provided by PLANTCML, shall be immediately due and payable, and PLANTCML will cease performance of all obligations hereunder without liability to Licensee. Sections 2, 7, 8, 9, 11, 13.4, 14 and 1 will survive termination or expiration. Upon termination, Licensee shall have sixty (60) days to notify PLANTCML if it opts to have Licensee Data returned by PLANTCML at the expense of Licensee. If Licensee does not contact PLANTCML during such timeframe, PLANTCML may destroy the Licensee Data.

14 **Other Remedies.** PlantCML's rights and remedies under this Agreement will be cumulative and in addition to all other rights and remedies available to PlantCML in law and in equity.

15 **Assignment.** Neither this Agreement nor any rights or duties hereunder may be transferred, assigned, sublicensed or otherwise disposed of by Licensee to a third party, by operation of law or otherwise, without PlantCML's prior written consent. Notwithstanding the foregoing, PlantCML may assign its interests to a parent or affiliate company in the event of sale or merger of its assets so long as the acquiring entity agrees to assume all of PlantCML's duties and obligations hereunder.

16 **Partial Invalidity.** If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.

17 **Modification; Waiver.** This Agreement may not be modified or amended except in writing signed by the parties. No term or condition of this Agreement may be waived except in writing signed by the party charged with waiver. A waiver will operate only as to the specific term or condition waived and will not constitute a waiver for the future.

18 **Notice.** All notices and other communications required or contemplated herein will be in writing and delivered either by (i) personal delivery; (ii) expedited messenger service; (iii) postage prepaid return receipt requested certified mail; or (iv) facsimile and confirmed by postage prepaid U.S. certified mail, addressed to the party or parties for whom it is intended, at the addresses first written above or such other address as the intended recipient previously has designated by written notice to the sender.

19 **Third Party Beneficiaries.** None of the provisions of this Agreement is intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.

20 **Independent Contractors.** The relationship of the parties hereunder will be one of independent contractors and not that of a franchise, joint venture or employer. Neither party will have, and neither of them will represent to any other person that it has, any power, right or authority to bind the other, or to assume create, any obligation or responsibility, express or implied, on behalf of the other, except as expressly provided by this Agreement or as otherwise permitted in writing signed by both parties.

21 **Entire Agreement.** This Agreement and its schedules constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede and cancel all prior agreements between the parties, written, oral or implied with respect to the subject matter hereof. The terms of any customer-provided purchase order or invoice concerning any product or service provided hereunder will not serve to replace, modify or supersede the terms of this Agreement. The terms of this Agreement shall prevail for any and all purposes.

22 **Headings.** Headings are included in this Agreement for convenience only and are not to be deemed to be part of this Agreement. The interpretation of this Agreement will not be affected by any heading herein.

23 **Force Majeure.** In the event an act of government, war, fire, flood, act of God, power shortages or blackouts, breakdown of telephone lines and services, failure of the Internet, or other causes beyond the reasonable control of the respective party prevents a party from performing in accordance with the terms of this Agreement, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.

24 Licensee hereby provides its consent to be identified as a customer in sales announcements or other marketing material generated by PlantCML from time to time during the term of this Agreement.

25 **Reasonable and Expected Industry Standards.** PlantCML agrees to provide service required by this agreement in a workmanlike manner and in accordance with all reasonable industry standards for communication of public safety messages.

27. Subcontracting. In the event PlantCML contracts any of the duties or obligations set forth hereunder, PlantCML shall continue to be held responsible for the provision of all such duties and obligations owed to Licensee under this Agreement.

28. Insurance Requirements. PlantCML shall maintain in force during the period of performance one or more policies insurance naming Licensee as an additional insured and containing a requirement that Licensee be notified thirty (30) days in advance of any termination or diminution of coverage by the insurance carrier. Current copies of certificates of insurance showing the essential elements of coverage for each policy required under this provision shall be provided to Licensee prior to the execution of the Agreement and at such other times as Licensee may reasonably require.

Without limiting the generality of the foregoing, PlantCML, while services are performed under the Agreement, shall at a minimum maintain insurance in the following types and amounts: (a) Standard workers' compensation as required by law; and (b) Comprehensive general liability insurance in the minimum amount of One Million U.S. Dollars (US\$1,000,000.00); and (c) Automobile liability insurance insuring owned, non-owned, hired, leased, or borrowed automobiles in the minimum amount of One Million U.S. Dollars (US\$1,000,000.00); and (d) PlantCML shall require that any designee or subcontractor maintain like insurance as listed in (a), (b), and (c) above.

29. Non-Appropriation. PlantCML recognizes that this agreement is at all times subject to the Village's ability to lawfully appropriate the funds necessary to participate in the agreement. If the Village is at any time during the term of this agreement unable to lawfully appropriate the necessary funding required by this Agreement, or any amendment thereto, this Agreement shall terminate as of the date the Village's funding expires without further or continuing Village obligation.

30. Findings for Recovery. Ohio law prohibits any state agency or political subdivision from awarding a contract, in excess of twenty-five thousand dollars (\$25,000.00), for goods, services, or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. Persons or entities contracting with a political subdivision, including the Village of Chagrin Falls, must certify that an unresolved finding for recovery has not been issued against the persons or entities. PlantCML agrees to complete the attached Findings For Recovery Certification.

Dialogic Communications Corporation

By:

Title:

Date:

Emma R. Jones
Regal Counsel - Head of NSS
3.4.11

Licensee or Village
Village of Chagrin Falls, Ohio

By:

Title: Mayor of Village of Chagrin Falls, Ohio

Date:

Thomas Brick
Tom Brick, Mayor
3/14/11

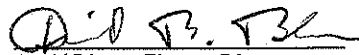
Approved as to form:

Stephen L. Byron
Stephen L. Byron, Law Director

FINANCIAL CERTIFICATION

I, David Bloom, Finance Director of the Village of Chagrin Falls, Ohio hereby certify that the funds necessary to pay the obligation of the foregoing contract in this fiscal year have been appropriated and are unencumbered and are either in the treasury or in the process of collection.

3/14, 2011



David Bloom, Finance Director
Village of Chagrin Falls, Ohio

Schedule A

1. Software - License Fees, Hosting and Support

Licensee shall pay to PlantCML an amount equal \$31,500 for three (3) years Initial Service Term, payable in three annual installments of \$10,500.00 each for Software License, Hosting and Support Services provided hereunder. Such amount shall be paid within thirty (30) days of the date of PlantCML's invoice. The functionality included in the system is reflected in the proposal dated December 21, 2010 and incorporated herein by this reference. In the event to purchase additional enhancements, additional fees may apply.

2. Services

a. *Set Up Fee*

Included in License Fees above.

b. *Training Fees*

Included in License Fees above.

3. Renewal Term

Following the Initial Service Term, the Software License, Hosting and Support services shall automatically renew at the rate indicated in Item #1, above, in accordance with the parties' Agreement upon payment by Licensee.

Schedule B

Technical Services Center - Support Plan for Hosted Shared Systems

Dialogic Communications Corporation ("PlantCML") offers PlantCML Software support to purchasers ("Licensee" or "Customer") of its application Software, in accordance with the terms and conditions of this Technical Services Center Support Plan ("Support Plan"), which is made a part of and incorporated by reference into the License and Support Agreement entered into by Customer and PlantCML. Defined terms as set forth in the License and Support Agreement shall have the same meaning in this Support Plan. This Support Plan does not apply to system software or any other third party software.

I. Support Services Provided

PlantCML's Technical Service Center ("TSC") serves as the coordinator of all Customer support provided pursuant to the parties' Agreement and this Support Plan. A description of PlantCML's services is provided herein.

II. Conditions of the Support Plan

In order to keep the Support Plan active, the Customer is required to:

Pay all applicable Hosting Fees; and comply with all terms and conditions of this Support Plan and the License and Support Agreement.

III. Definitions

TSC Technical Services Center
TSS Technical Services Specialist
TSA Technical Services Analyst

IV. Support Services

A. Supported Products

The TSC will only support Software approved and installed by PlantCML. The TSC will not resolve requests associated with software other than that provided by PlantCML; the requests will, however, be logged into the database. Pursuant to this Support Plan, PlantCML, as coordinated by its Technical Service Center, will provide issue resolution and updates to supported Software as further described below.

B. Issue Resolution

The TSC works with Customers to resolve issues related to supported Software that does not perform materially in accordance with the then current Documentation for such Software. This service is designed to support the Customer's technician who is adequately trained in the product about which they are calling and listed as an approved Customer Contact with PlantCML TSC. To be adequately trained the Customer's technician must have received training directly through a PlantCML training program or have been trained by a Customer Technician that has received training directly through PlantCML. A trained Customer's technician is responsible for attempting to troubleshoot issues prior to calling TSC. If the Customer's technician is not adequately trained, based on the description above, in the product about which he or she is calling, and thus not listed as an approved Customer Contact, PlantCML TSC personnel will attempt to contact an approved Customer contact for problem resolution.

For security purposes, only Customer contacts that are listed with TSC will receive support unless a listed contact provides approval to do so. In the event of an emergency TSC may make a special allowance if TSC personnel are unable to reach one of the listed contacts for verification.

To better facilitate high first call resolution, the TSC will utilize remote control software. This will allow the TSC to connect to the Customer's system via a dial-up connection and "take control" of the system to perform troubleshooting and/or resolution services. The TSS/TSA will at all times advise the Customer of their intention to access the system, and upon completion will advise the Customer that they have left the system, relaying to them what steps were taken to resolve an issue. The TSC will maintain a database of all calls received from the Customer, the steps taken to resolve and the resolution. The database will show dates when a call was received and dates of all contacts related to call.

TSC will work with the Customer to identify errors or defects in the Software, and if the TSC is unable to confirm that such error or defect exists through independent testing, it will then escalate the issue to PlantCML's R&D Department. The TSC will remain as the Customer contact and will work with the R&D Department to provide updated information to the Customer through resolution of the issue.

C. Software Updates

At its sole expense, PlantCML will provide application Software updates. Application Software updates are defined as minor enhancements to the already purchased product feature / functionality set. A product change is classified as minor, in the discretion of PlantCML, based upon the impact of the change to the core functionality of the product. Notice of all Software updates available during the term of the Support Plan will be posted under the "latest Updates and Patches" section for each product on the PlantCML Support Website located at <http://supportdccusa.com> (login required). Application Software program updates will roll into the existing Support Plan, thereby not extending the term of the Support Plan. Any change in the two numbers following the decimal point within the product version number constitutes an application software program update (for example a change from product version 1.10 to 1.20, or 2.11 to 2.12, or 3.20 to 3.30, etc. will represent an application software program update).

D. Hardware Support

PlantCML's TSC will track hardware issues related to the system during the Initial Warranty and Support Period and, if a hardware warranty is purchased from PlantCML, PlantCML will contact the appropriate vendor for warranty repairs. For subsequent years, the Customer has the option to extend its warranty directly with the hardware vendor. The PlantCML TSC will continue to work with the Customer to diagnose and make recommendations on hardware issues.

V. Contacting the PlantCML Technical Services Center

A. Hours of Operation

Normal Business Hours (NBH): Monday through Friday, excluding holidays, from 8:00AM to 5:00PM, Central Time. Support Call Levels apply to NBH calls.

After Hours Emergency: Defined as any time other than Normal Business Hours.

B. During Normal Business Hours: Customers may call a dedicated ACD at 615.794.2307. If all TSC personnel are busy assisting other customers, the call will go to voice mail

1. If a Routine Call occurs during Normal Business Hours, as defined below, the caller should leave a message with their name, company name and ID, telephone number and a brief description of the reason for the call. Routine calls received during Normal Business Hours will be returned within four (4) hours; however, Routine Calls received with less than four hours remaining during Normal Business Hours may be returned the following business day. Routine Calls left after Normal Business Hours will be returned within four (4) hours of the start of the following business day.

2. If an Emergency Call occurs during Normal Business Hours, as defined below, after calling the TSC at 615.794.2307, the caller may hit 00 for the operator and a TSC manager will be paged to assist. If the caller is asked to leave a message, the caller should include their name, company name and ID, telephone number and a brief description of the reason for the call. Emergency Calls received during Normal Business Hours will be returned within thirty (30) minutes.

C. After Hours Emergency: If the Customer is experiencing an emergency (as defined below) after Normal Business Hours, they should call the TSC at 615.794.2307. The call will be routed to an answering service where the Customer should leave a clear message with their name, company name and ID, telephone number and a brief description of the reason for the call. The on-call TSS will be paged and will return the call within one (1) hour of receipt of the page.

D. E-mail Requests: The TSC will respond to e-mail requests within eight (8) business hours. **Note:** Emergency or very important requests should always be communicated to the TSC via telephone. E-mail can sometimes be unreliable and the TSC has no control over the timely delivery of requests. E-mail service level commitments are based on the time the requests actually reach the TSC.

VI. Response Time, Resolution Time and Call Levels

A. Response Time is the period of time that it takes the TSC to call back the Customer when a voice mail has been left or to provide an update on the call ticket. Response times are only implemented when the call is not resolved on the first call. Response Time does not mean Resolution Time.

B. Resolution Time is the period of time it takes to solve a problem. The resolution time is different for each situation and cannot be determined until the appropriate TSC personnel have evaluated the problem and is able to determine an approximate resolution time.

C. Call Levels are priority levels assigned to the Customer's request based on the request urgency. Varying Response Times and Resolution Times apply depending on the priority level assigned by PlantCML. The following definitions apply to this section:

1. Emergency Call -

- Server Applications will not start.
- Site is experiencing an actual emergency and the system will not send out notifications to one or more device types.
- Site initiates activation, attempts to stop it, and experiences difficulty doing so.

* If it is determined by PlantCML that the system failure is due to software or hardware loaded without coordination or approval by PlantCML or other acts induced by the end user, resources will be allocated as available to assist, but response time is not guaranteed. These issues will be handled on a Routine Call basis (see below).

2. Routine Call -

- Reports are not functioning properly.
- Testing system and needs help making adjustments.
- Assistance with modifying roster members or groups.
- Assistance with speech recording done by Site.
- Assistance creating template scenarios.
- Partial hardware failure or required troubleshooting necessary to detect suspected hardware problems

3. Services that require advanced scheduling

- Installation of software or hardware updates or addition.
- Modifications to the system to accommodate telephony changes.
- PlantCML provided speech recording.
- GIS Updates.

VII. Call Procedures & Escalation

The Technical Service Center will maintain call ownership throughout the entire request process. The TSC will address incoming calls as follows.

1. Capture the Request:
 - a. The TSS/TSA will capture all requests by phone, e-mail, or voice mail and verify the right to service based on the Customer's name, support contract status and the approved software support list. If the request relates to unsupported software, the Customer will be notified. Otherwise, the analyst will continue with Step 2.
2. Log Request into the Database:
 - a. The TSS/TSA will open a ticket in the call management system. Information included on the ticket will include the Customer's name, location, description of problem, severity of problem, and time of request and person reporting the issue.
3. Troubleshoot the Request:
 - a. The TSS/TSA responsible for resolving the call will acknowledge the open ticket and work with the Customer to resolve the issue.
4. Escalate to Second Level
 - a. The TSS will escalate the request to second level support when the first contact is unable to make progress in the resolution of the issue in a timely manner.
5. Log Resolution into the Database:
 - a. The TSS/TSA will log the resolutions to requests in the call management database
6. Verify Customer Satisfaction:
 - a. The TSS/TSA will follow up and verify that the Customer is satisfied with the resolution.
7. Close the Request or Ticket
 - a. All tickets will be closed after the Customer satisfaction has been verified.

VIII. Customer Responsibilities

- The Customer Site should have at least one system administrator that has attended PlantCML training, either at the Customer Site or at the PlantCML University. The Customer shall provide the administrator's contact information to PlantCML.
- Customer will schedule install of all updates in a timely manner
- Customer will work with TSC staff to maintain an accurate database of contact names.
- Customer will respond to requests for information in a timely manner.
- Payment of all support fees when due. Failure to renew support fees before the expiration of the then in effect support term shall result in the imposition of a reinstatement fee at PlantCML's then current rate before resumption of support services.

IX. Support Limitations

PlantCML's support obligations hereunder will not apply to any PlantCML supported application Software if correction of an error, adjustment, repair, or parts replacement is required because of:

- The operation of the software in a manner other than that currently specified by PlantCML.
- The failure of the Customer to provide suitable qualified and adequately trained operating and maintenance staff.
- Incompatible or faulty Customer equipment.
- Modifications made without PlantCML's written approval to the OS, network, hardware or software environment or software applications.
- Accident, neglect, tampering, misuse, improper / insufficient grounding, failure of electric power, failure of the end user and/or others to provide appropriate environmental conditions, relocation of hardware or software by Customer, or causes other than ordinary use.
- Connection of another machine, device, application or interface to PlantCML-supported equipment (hardware and/or software) by the end user or others.
- Damage or destruction caused by natural or man-made acts or disasters (Force Majeure).

Further, support described herein does not include cosmetic repairs, refurbishment, furnishing consumables, supplies or accessories, making accessory changes or adding additional devices or software applications.

Telephone support and/or field engineering to rectify such unsupported failures as described above may be obtained from PlantCML on a time & materials basis as set forth in the applicable price list. The labor rate charged will be the then current PlantCML labor rate (plus expenses) at the time service is requested.

X. Other Services

Other services not specifically identified as being included in this Support Plan, including but not limited to training, implementation services, and custom development, are not included.

FINDINGS FOR RECOVERY CERTIFICATION

I am aware that Ohio law, under certain circumstances, prohibits a political subdivision from awarding a contract for goods, services or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. I hereby certify that an unresolved finding for recovery has not been issued against Dialogic Communications Corporation dba PlantCML.

Emma L. Forrest

SIGNATURE

Emma L. Forrest

PRINTED NAME

Legal Counsel - Head of NSS

TITLE

3.4.11

DATE