



This Technology License Agreement ("Agreement") is made this 22 day of July, 2010 (the "Effective Date") between Comcate, Inc. ("Comcate"), a California corporation, and the City of Ft. Collins, Colorado, (the "City").

RECITALS

A. Comcate has certain rights, interests and title to technology providing web based customer service tools, more fully described below.

B. Comcate desires to license to City certain of its technology to be used by City in connection with its efforts to improve its delivery of services to the public, and City desires to accept such license.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, the parties agree as follows:

I. Grant of License and Use of Product.

(a) Subject to the terms and conditions set forth herein, Comcate grants to City a limited, revocable, non-exclusive and nontransferable license to use the technology set forth in Exhibit A-1 hereto (the "Technology").

(b) City may not, and may not permit others to:

(i) alter or modify, or create derivative (defined as copied), works from the Technology or the accompanying (defined as on-line help pages) documentation;

(ii) publish, rent, sell, loan, lease, distribute, redistribute, transmit, license, sublicense or otherwise transfer or assign the Technology or the accompanying documentation whether by operation of law or otherwise, with or without consideration, and through any means including without limitation the Internet or other electronic means;

(iii) translate, decipher, reverse assemble, reverse compile or reverse engineer the Technology, or otherwise attempt to discover any source code or underlying Proprietary Information (as that term is defined below);

(iv) publish or provide any results of any tests run, accounts or other information regarding the Technology to any third party without Comcate's prior written consent or permit any third party to perform such tests;

(v) delete, remove or obscure any proprietary notices of Comcate on the Technology or accompanying documentation; or

(vi) develop or support any computer software product which is derived from, or based on, the source code of the Technology. Comcate prohibits any access to its source code by the City, its employees or



contractors. If the City learns that any employee, agent of or contractor to the City has obtained access to the source code of the Technology, the City shall immediately notify Comcate in writing of such event. The City agrees that if such access to the source code of the Technology occurs, the City will not use the information derived from such access in the design development, sale or support of the software products functionally equivalent to the Technology and/or competitive with the Technology during the term of this Agreement and for a period of ninety (90) days following termination hereof.

2. Ownership.

(a) Intellectual Property. Title to, ownership of and intellectual property rights in the Technology, the accompanying documentation, Proprietary Information (as defined below) and all copies thereof shall be and at all times remain with Comcate or its designees, as applicable. All rights not expressly licensed herein are reserved to Comcate. Any corrections, bug fixes, enhancements, updates, modifications (including custom modifications), materials, information, ideas, or concepts to the Technology or accompanying documentation, provided by City or otherwise, shall be owned by Comcate, as applicable. City hereby acknowledges that this Agreement is a license agreement and not an agreement for sale.

(b) Ownership of City's Data. All data and databases are owned by City and all data, including but not limited to all citizen letters, replies, and notes generated by, on behalf of or at the request of City in connection with the use of the Technology (collectively, "City's Data") shall be and remain the sole property of City. Upon termination of this Agreement, Comcate will, at the request of City, return or destroy all of City's Data in the possession of Comcate promptly following such request. Comcate will not use City's data for any purposes without the express written consent of City.

3. Comcate Compensation

(a) Basis of Compensation. For and in consideration of the license and services granted and to be provided by Comcate hereunder, City agrees to pay Comcate, and Comcate agrees to accept from City as full payment the amounts defined in Exhibit A-2.

(b) Method Of Compensation. The City shall promptly review all invoices and notify Comcate of any objection thereto in writing within thirty 30 days from the date of the invoice, and absent such objection, the invoice shall be deemed proper and acceptable, and shall be payable within thirty (30) days of receipt by the City.

4. Technical Support, Maintenance, Enhancements and Updates, Support Services.

(a) Comcate will provide technical support with respect to the use of the Technology.

(b) Comcate will provide implementation services as outlined in Exhibit B



(c) Comcate will provide routine maintenance, trouble shooting and repairs as are necessary to ensure City's access to the Technology and City's Data.

(d) Except to the extent that upgrades of the Technology include new modules or features not previously offered as part of the Technology as of the date hereof, City is entitled to maintenance upgrades of the Technology within the cost of this Agreement.

(e) All support services shall be provided during Comcate's normal business hours (8:00am to 6:00pm PST) telephonically, via e-mail or via remote connection. Comcate will install "help screens" within the Technology to assist the City in utilizing the Technology.

(f) In addition to the license and services provided above which are included within the Annual License Fee, Comcate can provide the following additional services for a cost to be agreed upon by the City and Comcate:

- (i) design customized modifications of the Technology for City applications which require coding;
- (ii) provide on-site training;
- (iii) develop additional modules or products which are not currently part of the Technology and which could be used in conjunction with the Technology, upon request of the City;
- (iv) complete tasks which can be accomplished through designed administrative panels, including such items as adding or editing categories, employee accounts, logos, and the like.

5. City Acknowledgments.

(a) . City agrees that the Technology shall not be used for or in connection with any illegal purpose (including but not limited to intellectual property infringement, fraud or defamation).

6. Comcate Warranties

(a) . Comcate warrants that the Technology will meet the standards, functionality, and capabilities stated in Comcate's response to the City's [RFP, identify by date and number]. In addition, Comcate represents and warrants that it will:

- (i) adhere to industry standard practices to backup, protect and restore City's Data by performing daily backups with data stored in a remote location as set forth in Exhibit C – Physical and Data Security Overview.
- (ii) adhere to industry standard practices to secure access to the hosting Technology and the City's Data as set forth in Exhibit D – Backup and Disaster Recovery Overview.



- (iii) Adhere to industry standard practices to recover the Technology from disaster by maintaining redundant servers in a secure co-location facility and maintain redundant data on multiple servers As set forth in Exhibit D – Backup and Disaster Recovery Overview.
- (iv) Provide at the City’s request, up to two times a year, a letter summarizing Comcate’s security and data recovery procedures.

(b) Comcate warrants the Technology can be accessed by Microsoft Internet Explorer 6.0 and above. The Word merge functionality will be supported on Microsoft Word 2000 and above. The Outlook Module will be supported on Microsoft Outlook 2000 and above.

(c) Comcate is required to uphold performance standards in the areas of Technology uptime, customer support, maintenance activities and recovery activities as set forth in Exhibit E – Customer Support Service Levels.

6. Nondisclosure.

(a) City acknowledges that, in the course of using the Technology pursuant to this Agreement, City may obtain confidential or Proprietary Information relating to the Technology, the accompanying documentation to the Technology or Comcate, including without limitation all technical, know-how and specifications (“Proprietary Information”). For purposes of this Agreement, Proprietary Information includes without limitation, proprietary technical, financial, personnel, marketing, pricing, sales and/or commercial information with respect to the products and services of the Comcate, as well as ideas, concepts, designs, computer programs and inventions and all record bearing media containing or disclosing such Proprietary Information which are disclosed pursuant to this Agreement. Such Proprietary Information shall belong solely to Comcate. Proprietary Information shall not include information that is or becomes publicly known through no wrongful act of City. City shall not use or disclose Proprietary Information to third parties without the prior written consent of Comcate, and City agrees to undertake reasonable measures to prevent disclosure of the Proprietary Information. City agrees to report immediately to Comcate any unauthorized use or disclosure of Proprietary Information of which City has actual knowledge.

(b) Comcate acknowledges that, in the course of supporting and maintaining the Technology for the City, Comcate may obtain information regarding the City or its users of the Technology. Notwithstanding that certain parts of such data may become a public record, Comcate shall not disclose or use any such public information or any of City’s Data (referred to in Section 2 (b) hereof) which accumulates as the result of the City’s use of the Technology to any person or entity without the City’s prior written consent. Comcate agrees to take all appropriate steps to protect the integrity and confidentiality of the City’s Data. If any requests are made to the City under the Colorado Open Records Act regarding the City’s Data or this Agreement, the City



shall provide Comcate notice of such request within three (5) business days following the City's response to such request.

(c) Each party shall protect and safeguard the confidential information of the other party using at least the same degree of care such party uses to protect its own confidential information. Each party agrees that all employees and subcontractors to whom Proprietary Information is disclosed will have signed a confidentiality agreement in form and substance reasonably acceptable to the disclosing party, copies of which will be provided upon request.

7. Warranty Disclaimer. Comcate has no control over the conditions under which City uses the Technology and does not and cannot warrant the results obtained or not obtained by such use.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT, COMCATE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. .

8. Limitation of Remedies and Damages. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL COMCATE OR ITS AFFILIATES, OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS BE RESPONSIBLE OR LIABLE FOR ANY LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE, LOSS OF INFORMATION, LOSS OF DATA, OR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (EVEN IF COMCATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE TECHNOLOGY OR ANY OTHER SUBJECT MATTER OF THIS AGREEMENT. COMCATE SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE TECHNOLOGY OR ANY OTHER PERFORMANCE UNDER THIS AGREEMENT. IN THE EVENT OF COMCATE'S BREACH OF THIS AGREEMENT, CITY IS ENTITLED TO SEEK RECOVERY OF ANY FUNDS PAID TO COMCATE. IN NO EVENT SHALL COMCATE'S LIABILITY EXCEED THE AMOUNT, IF ANY, THAT CITY HAS ACTUALLY PAID TO COMCATE FOR THE RIGHT TO USE THE TECHNOLOGY.

9. Nonassignability. Neither City's rights nor City's obligations arising under this Agreement are assignable or otherwise transferable by City (whether voluntarily or by operation of law) without the express written consent of Comcate, and any such prohibited assignment or transfer shall be void and without effect. If Comcate should so consent in writing, the assignee shall be bound by all of the terms and conditions of this Agreement. With the express written consent of the City, which consent will not be unreasonably withheld, Comcate may assign any or all of its rights or obligations in this Agreement. Subject to the provisions of this Section 10, this Agreement shall inure to the benefit of and



be binding upon each of the parties hereto and their respective permitted successors and assigns.

10. Term: Right of Cancellation. The Initial Use Term of this Agreement shall commence on the date hereof and continue for 365 days. Thirty (30) days prior to the scheduled expiration date, the agreement can be renewed for another 365 days by the City by paying the invoiced Annual License Fees for the coming period. The previous period's current Annual License Fee will be adjusted by no more than 5.0%.

11. Applicable Law and Forum.

(a) This Agreement shall be governed by the laws of the State of Colorado. In any action to enforce this Agreement, the prevailing party will be entitled to costs and attorneys' fees.

(b) Any controversy or claim between or among the parties, including, but not limited to, those arising out of or relating to this Agreement and any claim based on or arising from an alleged tort, shall at the request of any party be negotiated in good faith to determine a resolution. If arbitration is used, the arbitration shall take place in Denver, Colorado and shall be conducted in accordance with the United States Arbitration Act (Title 9, U.S. Code) and under the auspices and rules of the American Arbitration Association then in effect. The results of the arbitration are non-binding. If parties are unable to reach a negotiated resolution, the dispute may be submitted to a court of competent jurisdiction. .

12. Entire Agreement; Amendment. Each party acknowledges that it has read this Agreement and the exhibits attached to this Agreement, understands them, and agrees to be bound by their terms, and further agrees that they are the complete and exclusive statement of the agreement between the parties which supersedes and merges all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.

13. Termination. This Agreement may be terminated by (a) either party in the event of a breach by the other party of a material representation, warranty, or covenant made in this Agreement by the other party and such breach is not cured within thirty (30) days after receipt by the other party of written notice thereof, or (b) by the City without cause upon 15 days written notice to Comcate. In the event that this Agreement is terminated without cause, the City shall not be entitled to any refund or credit of fees paid or payable hereunder, except as may be recovered under paragraph 6 of this agreement . If the termination was a result of Comcate's breach of this Agreement City shall be entitled, in addition to any other remedies available under this Agreement, to a refund of that portion of the Annual License Fee paid for the months that this Agreement is no longer in effect. The following provisions shall survive expiration or termination of this Agreement: Sections 2, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

COMCATE

Powering the Gov to Citizen Communication Link

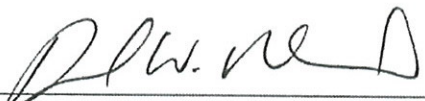
www.comcate.com

21. Force Majeure. Neither party shall be responsible for failure to perform in a timely manner under this Agreement when its failure is due to causes beyond its reasonable control and without its fault or negligence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date shown above.

COMCATE, INC.
"COMCATE"

CITY OF FORT COLLINS
"CITY"

By: 

By: 

Print Name: DAVID W. RICHMOND

Print Name: JOHN STEPHEN

Title: PRESIDENT

Title: Senior Buyer



Upon expiration or termination of this Agreement, (a) City will immediately destroy or erase all copies of the Technology and any Proprietary Information and, upon Comcate's request, promptly confirm destruction of same by signing and returning to Comcate an "affidavit of destruction" acceptable to Comcate and (b) Comcate shall transfer to City all of City's Data in form acceptable to both the City and Comcate.

Without terminating this Agreement, the City may suspend public access to the Technology at any time for any reason, and if it becomes necessary for Comcate to facilitate the temporary suspension of such access, Comcate agrees to facilitate such suspension following receipt of a written request of City to take such action.

14. Taxes. City will pay all federal, state and local sales, personal property, ad valorem and any other taxes (but not including Comcate's income taxes) arising as a result of this Agreement.

15. Relationship of Parties. The parties to this Agreement are independent contractors. No joint venture, agency or partnership, express or implied, is granted under this Agreement. For purposes of this Agreement, neither party is an agent of the other party, and neither party has any express or implied authority to act on behalf of, or make any representations whatsoever on behalf of, the other party.

16. Headings. The headings used in this Agreement are for convenience only and shall not be considered in construing or interpreting this Agreement.

17. Notice. Unless herein provided otherwise, any notices required or permitted under this Agreement shall be sent to Comcate by registered or certified mail or by express, overnight delivery, addressed to 49 Stevenson Street, Suite 525, San Francisco, CA 94105 (or at such other address of which Comcate may from time to time notify City) or by emailing techsupport@comcate.com. City may report any technical problems regarding the Technology to Comcate by calling 415-249-4904 or emailing techsupport@comcate.com; any notices required or permitted under this Agreement shall be sent to City at City Hall, Lon Willis, City of Henderson, 240 Water Street Henderson, NV 89015.

18. Severability. If any provision of this Agreement is invalid 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.

19. Waiver. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. A waiver at one time shall not constitute a subsequent waiver of the same condition, breach, default or occurrence at any other time unless such waiver explicitly so provides. 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.

20. Counterparts. 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.



EXHIBIT A - I

Licensed Technology

“Technology” shall be defined as the web based software and hardware hosted by Comcate. The Licensed Technology, license counts and associated Annual License Fees are as follows:

eFeedbackManager (eFM) Enterprise Edition - eFeedbackManager (eFM) is a customer service software tool which provides comprehensive tracking, routing and analysis of customer communications (email, postal mail, phone, walk-ins) for use by all of the City’s departments. eFM provides web-input for customers via the City’s website. Internally, employees log phone calls and the like.

GIS Module - The GIS module provides address verification, association of property attributes (neighborhoods, CE beats, others) with cases, viewing of activity on maps, and allows the tabular reports of activity by neighborhood. We utilize the City’s existing ESRI GIS software and data to allow the City to optimize its GIS investment.

API Web Service Module - Integrate with applications. The API-Web Services module provides a tool kit that allows for unlimited integrations and sharing of data between eFM and the City’s software.

Citizen Mobile Access Module - Comcate’s Citizen Mobile Access Module keeps staff and Elected Officials informed on the issues of importance to the community with up to date information submitted by citizens from their iPhones. Citizens can point, click and submit and submit photos and notes, then check on the status of their request from their iPhones.

LDAP Module - This is a web based application that is deployed on the City’s web servers and functions as a secure bridge to the City’s LDAP/AD server. The Remote Authentication Module allows employees to securely authenticate without exposing their usernames and passwords to anyone outside the City.



EXHIBIT A - 2

Beyond the features of eFM as they currently exist, we are committed to design and manage customized enhancements or integrations that the City prefers during the period of our contract. Upon request, we can provide cost estimates and completion timelines for such services.

Licensed Programs	Annual License Fees	Implementation Fee (*)			Travel Costs	Total Costs
		Project Mgmt	Training	Custom Forms		
1 Citizen (Customer) Relationship Management	\$12,000	\$20,000			\$3,000	\$35,000
4 GIS Module	\$3,000	Included				\$3,000
5 LDAP	\$2,000		Included			\$2,000
6 API	\$2,000		Included			\$2,000
7 Incentive Discount		(\$10,000)				(\$10,000)
Total	\$19,000	\$10,000			\$3,000	\$32,000
8 Optional Professional Services**		\$12,000				\$12,000
Grand Total	\$19,000	\$22,000			\$3,000	\$44,000

(*) Travel is estimated.

(**) Optional Professional Services can be used to facilitate integrations with agency software or to fund custom enhancements to meet the agencies specific needs. Professional Services will be defined by a written proposal which includes scope of work, timeline and investment and must be pre-approved in writing by the City's authorized agent.

We charge an hourly rate of \$125/ hour for Project Managers and Trainers. Senior Developer rates are slightly higher at \$130 per hour and junior developer's rates are \$90 per hour.

Payment Schedule

The vendor shall provide a proposed schedule for payment for both the software and professional services (e.g., percentage of payment after specific deliverables and milestones

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of the project). The payment schedule is subject to acceptance by Fort Collins.

30% upon signing

30% upon delivery for review

20% upon test acceptance

10% upon completion of basic training

10% upon completion of advanced training and providing public outreach campaign

*separate payment schedule and scope of work will be agreed upon for optional items



Exhibit B

Implementation Program

Comcate’s implementation program is flexible. In some cases clients have asked us, and we have agreed to go through the process on a fast track basis of 1 month to meet the City’s needs. Typically, the implementation process is 2-3 months.

Implementation schedule and milestones for deliverables are as follows:

Phase and Major Tasks	Sub Tasks
Pre-project Needs Assessment	Meet with City to clarify and confirm integrations, customizations and phases of project
Execute Agreement	Review, edit, approve and sign agreement.
Initial Call and Identification of Project Lead at City	Review implementation process Identify project team Schedule kick-off meeting
Kick-Off Meeting and Departmental Review/Needs Assessments	Comcate introduction Review project scope and timeline Demo application Prepare for needs assessments
Configuration of application with violations, municipal codes, etc.	Provide sample lists used by other cities Configure application Review and mimic city website look and feel Configure notices
GIS data management and address verification	Review shape files Finalize architecture for implementation Configure and test address verification Configure and test mapping
Basic Trainings	Training on creation, management of case load, reporting and administration of application
Soft Launch!	Go Live!
Advanced/Follow up training	Separate follow up training sessions
Project Wrap Up	Debriefing with project lead, city management and other appropriate participants

Note: Exact dates and durations will be determined prior to project commencement.



Exhibit C

Physical and Data Security Overview

Comcate's goal is to provide world class infrastructure so that the Technology's security is not compromised. We are continually upgrading and improving our infrastructure to enhance security.

Physical and Data Security

User Authentication and Authorization

All users, whether they are citizens, City employees or local administrators, must have a valid account to access the web site. Access to all citizen and City data is restricted to authorized users only. Citizens are only allowed access to their own accounts, letters and replies.

Physical Security

The Comcate production equipment is co-located in Santa Clara, California at a secure facility. The facility affords 24-hour security with on-site guards stationed behind bullet-proof glass and video camera monitoring throughout the facility. Site access requires a pre-authorized photo id security card and palm print identification. The building has been structurally re-enforced for earthquake protection. All backup electrical generators and air conditioning units are n+1 redundant, meaning that multiple components (N) have at least one independent backup component to ensure system functionality continues in the event of a system failure. The overall system integrity should not be impacted by the failure of any one component

Network and System Security

Comcate servers are protected by firewalls to prevent unauthorized access. System access is limited to secure, encrypted protocols such as SSH and sFTP. All operating systems are maintained at vendor recommended patch levels for security and are hardened by disabling and/or removing any unnecessary users, protocols and processes.

SSL encryption (128-bit) is available for Internet access to the web application.



Exhibit D

Backup and Disaster Recovery Overview

Comcate's goal is to provide world class infrastructure so that the Technology and Data are backed up, protected and is able to be recovered in the event of a disaster. We are continually reviewing improving our infrastructure to enhance backup and disaster recovery procedures.

Notification of Problem

Comcate's technical staff, available at all times, is notified by email and pager if any monitor alarms are triggered on the production servers.

Alarms are configured to monitor both hardware and software systems. Basic system problems such as low disk space are checked daily with alerts sent well before a critical situation is reached.

A heartbeat monitor checks the application every five minutes to ensure that the machine is running, the web application is responding and that the database connections are working correctly.

The heartbeat monitor is run from a separate server that is in turn monitored by another systems.

Based on the alarm condition, Comcate staff will respond with the appropriate action.

Data Redundancy

Comcate maintains redundant servers to support failover without "loss of data". We mirror three types of data; code base, file system data (attachments & forms) and the database.

Comcate uses redundant servers with real-time data mirroring. All application related data is mirrored to failover servers so that if our primary servers were to go down, we can quickly switch production to the failover machines.

Data Back-Up

All application and system data on the servers is backed up to tape on a daily basis. A full backup is run once a week with incremental backups run daily.

To mitigate the effects of a catastrophic disaster to the data center, backup tapes are stored off site at a secure facility.

Daily backups are maintained and copies are saved in secure off-site facilities.



At the City's option Comcate can provide copies of the city's data on a regularly scheduled basis via FTP to ensure that the City will have access.



Exhibit E

Customer Support Service Levels

Comcate’s goal is to provide world class support for its Technology. To ensure customer satisfaction with customer support activities, Comcate is committed to the following service level performance standards.

Technology Uptime

Comcate shall make arrangements for the technology to be accessible by the City's staff and public users 98.0% of the time, not counting scheduled maintenance for users of Comcate’s ASP service during the life of the agreement.

Comcate will notify the City Administrator in writing in the event that uptime drops below 99% during the term of the agreement.

Customer Support

Level	Description	Response Time	Means of Contact
First	Software System Inoperable	Response within 1 hours during normal business hours.	Telephone, email, pager/mobile phone
Second	Significant operating issues but application still operating	Response with 3 hours	Telephone, e-mail
Third	Application not functioning as designed but still operating successfully	Response with 18 hours	Telephone, e-mail
Fourth	Non-critical problems for which a solution is provided	These issues will be addressed as part of the product development cycle	Telephone, e-mail

Support includes the following:

- 1) Trouble-shooting at Comcate’s facilities
- 2) Establishment of an FAQ for customers
- 3) On-line help windows

Maintenance Activities

All maintenance work including but not limited to network upgrades, server upgrades, software upgrades, database upgrades, will be performed during non-business hours

Maintenance work will not exceed 4 hours per month on average over the life of the agreement.