

Date of Agreement: 6/14/2002

Agreement No.: 060502094

**DATA SERVICES AGREEMENT
FOR
CREDITBROWSER™
between
Digital Matrix Systems, Inc.
and
City of Redlands**

This DATA SERVICES AGREEMENT FOR CREDITBROWSER™ (this "Agreement"), made and entered into as of June 18, 2002 (the "Effective Date") by and between Digital Matrix Systems, Inc., a Texas corporation ("DMS") and City of Redlands ("Client").

W I T N E S S E T H:

WHEREAS, Client desires DMS to provide certain on-line credit analysis services through DMS' proprietary web-based product known as CreditBrowser™ (the "Services"), and DMS is willing to provide the Services to Client in accordance with the terms and conditions hereof; and

WHEREAS, in connection with the on-line credit analysis services, Client desires DMS to process certain credit data to (the "Credit Information") obtained from Experian Information Solutions, Inc., CSC Credit Services, Inc. and/or Trans Union Corporation (collectively, the "Credit Bureaus") in order to prepare and provide to Clients normalized or merged Credit Information; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. Services. In accordance with the terms of this Agreement, DMS will provide Client access to its CreditBrowser™ website to enable Client to retrieve Credit Information from the Credit Bureaus and return the Credit Information in a normalized and/or merged credit report format via the Internet. Client hereby authorizes DMS to obtain Credit Information on its behalf using the Credit Bureau codes provided by Client to DMS.

Section 2. Security. Client shall maintain the security of logon identification passwords used by Client and Client's employees and customers to gain access to the CreditBrowser™ website and the Services. Client will implement any password restrictions or procedures requested by DMS from time to time to maintain security of passwords and shall indemnify and hold DMS harmless from and against any loss cost or damage incurred by DMS as result of the unauthorized use of a password provided to Client.

Section 3. Term. The initial term of this Agreement shall be a period of one year, commencing on the Effective Date. Unless earlier terminated pursuant to the terms and conditions hereof, this Agreement shall automatically be extended for successive terms of one year each, unless either party shall give the other party written notice of its election not to extend the term 30 days prior to the conclusion of the then-current term. Notwithstanding the foregoing, DMS may immediately discontinue offering the Services in the event DMS is no longer authorized to resell the Credit Information pursuant to its arrangements with the Credit Bureaus. In such event, DMS shall use its best efforts to continue to provide the Services to Client subject to such delays as are necessary for either (i) DMS to become authorized to resell the Credit Information or (ii) the Client to directly contract with the Credit Bureaus.

Section 4. Conditions of Use of the Services.

(a) As a condition to DMS providing the Services hereunder, Client agrees that Client and its affiliates will use the Credit Information only for a permissible purpose under the federal Fair Credit Reporting Act 15 U.S.C. ' 1681 et seq., as amended ("FCRA").

(b) Client will implement strict security procedures designed to ensure that Client's employees and customers use the Services and the Credit Information in accordance with this Agreement and for no purposes other than as permitted by this Agreement. Client will treat and hold the Services and the Credit Information in strict confidence and will restrict access to the Services and the Credit Information to Client's employees and customers who sign a confidentiality agreement in accordance with Section 14 hereof. Client will inform Client's employees and customers to whom any Credit Information is disclosed of the provisions of this Section 4(b). Client agrees to indemnify DMS for any claims or losses incurred by DMS as a result of the misuse of the Services or the Credit Information by Client or Client's affiliates, employees, agents, subcontractors or customers in violation of this Agreement.

(c) Client acknowledges the proprietary and confidential nature of the CreditBrowser™ website and the Services (including the CPU 2 format for delivering the Credit Information and the process for merging multiple credit reports into one comprehensive report), and that the CreditBrowser™ website and the Services are and will continue to be the exclusive property of DMS and shall be used only as directed by DMS. DMS grants to Client a limited, non-exclusive, non-transferable and non-assignable license to access the CreditBrowser™ website and to use the Services and any other data or information that is proprietary to DMS for purposes authorized by this Agreement. Client will require its employees and customers that have access to the CreditBrowser™ website and the Services to comply with all of the terms and conditions of this Agreement, and if any of such persons breach this Agreement it shall be deemed a breach of this Agreement by Client. Except as provided in this Section 4(c), nothing contained in this Agreement shall be deemed to convey to Client, Client's affiliates, employees, agents, customers or to any other party, any right, title or interest, including any patent, copyright, or other proprietary right, in or to the CreditBrowser™ website, the Services or any other data or information that is proprietary to

DMS. Client will not use or permit its affiliates, employees, agents, subcontractors and clients to use the trademarks, service marks, logos, names or other proprietary designations of DMS without its prior written consent.

(d) During the term of this Agreement, Client agrees to comply with all federal, state and local statutes, regulations and rules applicable to it, including, without limitation the FCRA, with any changes enacted to FCRA during the term of this Agreement, and any state or local laws governing the disclosure of consumer credit information. Without limiting the foregoing, DMS may from time to time notify Client of additional, updated or new requirements relating to such laws, compliance with which will be a condition of DMS' continued provision of the Credit Information to Client. Client agrees to comply with such requirements no later than thirty (30) days after it actually receives notice from DMS and such requirements shall be incorporated into this Agreement by this reference. Client understands and agrees that DMS may require evidence, including a certification, that Client understands and will comply with applicable laws, but in no event shall DMS require such evidence from Client more often than annually.

Section 5. Fees. In consideration for the Services provided hereunder, Client shall pay to DMS the fees set forth on Schedule A. Client agrees to pay DMS within 30 days of the receipt of each DMS invoice. DMS may assess a late charge of 1.5% per month or the highest rate allowed by law, whichever is less, on past due invoices. Client's obligation to pay invoiced amounts is absolute and unconditional and not subject to any offset, defense or counterclaim.

Section 6. Support Services. During the term of this Agreement, DMS will provide to Client the following telephone support during the hours between 8:30 a.m. and 5:30 p.m. Dallas, Texas time on the days Monday through Friday excluding regularly scheduled holidays of DMS:

Section 7. Disclaimer of Warranty. Client acknowledges that the Services provided hereunder entail the possibility of some human and/or machine errors, omissions, delays and losses, including errors in the Credit Information, or delays caused by the Credit Bureaus or Internet delivery of the Services, which may give rise to loss or damage. **ACCORDINGLY, DMS DOES NOT GUARANTEE OR WARRANT THE ACCURACY, TIMELINESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES, THE CREDIT INFORMATION OR THE MEDIA ON OR THROUGH WHICH THE SERVICES OR SUCH CREDIT INFORMATION ARE PROVIDED AND SHALL NOT BE LIABLE TO CLIENT FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED IN WHOLE OR IN PART BY DMS' ACTS OR OMISSIONS, WHETHER NEGLIGENT OR OTHERWISE, IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE SERVICES OR THE CREDIT INFORMATION.** Client shall adopt such procedures as it deems appropriate to limit its exposure with respect to such potential losses and damages, including, without limitation, examination and confirmation of results prior to the use thereof and provisions for identification and correction or errors and omissions.

Section 8. Indemnification. Client will indemnify, and defend and hold DMS and its affiliated entities, officers, directors, employees, contractors and agents harmless from and against any and all liabilities, damages, losses, claims, costs and expenses, including reasonable attorney's fees, which may

be asserted against or incurred by the foregoing parties, arising out of or resulting from (i) access or any unauthorized access to the CreditBrowser™ website, the use of the Services or the disclosure, sale or transfer of or reliance upon the Credit Information; (ii) Client's breach of any of the provisions of this Agreement; or (iii) any violations of the FCRA or other applicable laws due to the acts or omissions of Client.

Section 9. Limitation of Liability. For all claims relating to this Agreement, whether in contract, tort, strict liability, or otherwise, Client's sole and exclusive remedy shall be the recovery of Client's actual, direct damages, not to exceed the total amount of fees paid by Client hereunder. **IN NO EVENT SHALL DMS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RESULTING FROM A DISRUPTION IN CLIENT'S BUSINESS, EVEN IF DMS HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.**

Section 10. Waiver of Consumer Rights. (a) **AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, CLIENT HEREBY VOLUNTARILY WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES/CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS.**

(b) In order to evidence its ability to grant such a waiver, Client represents and warrants to DMS that (i) Client is not in a significantly disparate bargaining position with respect to the transactions contemplated by this Agreement and (ii) Client is represented by legal counsel selected solely by Client in connection with the transactions contemplated by this Agreement, including such waiver, and such attorney was not directly or indirectly identified, suggested or selected by DMS or an agent of DMS.

Section 11. Termination; Remedies. (a) Either party shall be in default if it fails to perform any of its duties or obligations hereunder and does not cure such failure within 30 days after written notice is given to the defaulting party. Upon a default, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party, reserving unto the non-defaulting party all rights and remedies it may have under this Agreement or may otherwise have at law or in equity. Notwithstanding the foregoing, (i) DMS may immediately cease providing the Services or access to the CreditBrowser™ website to Client if DMS believes in its sole judgment that Client has failed to comply with any of its obligations hereunder, including in particular, Section 4(a) and Section 4(d) of this Agreement and (ii) DMS may immediately cease providing the Credit Information to Client if for any reason one or more of the Credit Bureaus ceases to provide the Credit Information to DMS or Client. **DMS SHALL NOT BE LIABLE TO CLIENT FOR ANY COST, EXPENSES OR DAMAGES (DIRECT OR OTHERWISE) INCURRED AS A RESULT OF THE EXERCISE OF ANY AND ALL OF DMS' RIGHTS AND REMEDIES UNDER THIS SECTION 11.**

(b) The provisions of Sections 7, 8, 9, 10, 11, 12, 13 and 14 shall survive any expiration or termination of this Agreement, for any reason or of DMS' obligation to provide the Services hereunder.

Section 12. Taxes and Other Charges. In addition to all amounts payable by Client hereunder, Client will pay amounts equal to all sales, use, personal property and other taxes resulting from this

Agreement or any activities under this Agreement, excluding taxes based on DMS' net income, unless Client furnishes proof of exemption from payment of such taxes in a form reasonably acceptable to DMS. DMS may separately reflect on its invoices to Client the amount of any taxes paid by DMS on Client's behalf, and Client shall pay DMS for such amounts.

Section 13. Noncompetition; Nonsolicitation. (a) Client acknowledges that pursuant to the terms of this Agreement DMS has agreed to provide Client with valuable and proprietary information, including the Confidential Information identified in Section 14 below. Client acknowledges that this proprietary and confidential information is valuable to DMS and, therefore, its protection and maintenance constitutes a legitimate interest to be protected by Client. Therefore, Client agrees that during the term of this Agreement and for a period commencing upon the termination of this Agreement and ending on the second anniversary of such termination, Client will not, directly or indirectly, engage or participate in any business that is in competition in any manner whatsoever with the business of DMS as currently conducted in any state in which DMS is conducting or reasonably expects to conduct or expand its business, which for purposes of this Agreement includes [***the business of providing merged and/or normalized credit bureau reports and customized credit attributes to persons or entities other than consumers.**]

(b) Client shall not during the term of this Agreement and for a period commencing upon the termination of this Agreement and ending upon the second anniversary of such termination, either directly or indirectly, (i) call on, solicit or take away any of the customers of DMS with whom Client became acquainted during Client's association with DMS or (ii) recruit or hire or attempt to recruit or hire, directly or indirectly, any employee, consultant or independent contractor of DMS.

(c) Client represents to DMS that the enforcement of the restrictions contained in this Section 13 would not be unduly burdensome to Client.

(d) Client agrees that a breach or violation of this Section 13 by Client would cause DMS irreparable injury for which it would have no adequate remedy at law, and that DMS will be entitled to preliminary or other injunctive relief issued by any court or arbitration panel of competent jurisdiction, restraining any such breach or violation. Such injunctive relief will be in addition to, and in no way in limitation of any other remedies or rights that DMS may have at law or in equity.

Section 14. Confidentiality. Client understands and agrees that in DMS' performance of its duties hereunder, DMS may communicate to Client certain confidential and proprietary information concerning the business of DMS, and certain know-how, technology, techniques, computer code for software products proprietary to DMS, whether in source code or object code form and related documentation, and provide Client with access to the CreditBrowser™ website, all of which are confidential, proprietary information and trade secrets of DMS (collectively the "Confidential Information"). Client agrees to hold all such Confidential Information, and any other information and/or materials identified by DMS as confidential, for Client's internal credit analysis and decisions or other internal purposes as contemplated by this Agreement and shall not, without specific prior written consent of an authorized officer of DMS, utilize in any manner, communicate or disclose any part thereof to any third party. Client shall require all of its agents and employees to sign a confidentiality agreement satisfactory to DMS and shall vigorously enforce such agreement. Client acknowledges that (i) the

restrictions contained in this Section 14 are reasonable and necessary to protect DMS' legitimate interests, (ii) remedies at law will be inadequate and any violation of these restrictions will cause irreparable damage to DMS within a short period of time, and (iii) DMS will be entitled to injunctive relief against each violation. Client further agrees that all confidentiality commitment hereunder shall survive termination of this Agreement for any reason.

Section 15. General Terms and Conditions. (a) Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes any and all related prior understandings and agreements, oral or written. This Agreement cannot be modified or amended except in writing signed by both parties.

(b) Force Majeure. DMS shall be excused from delays in performing or from its failure to perform hereunder, and such delays or failures shall not constitute breaches of this Agreement, to the extent that such delays or failures result from causes beyond its reasonable control, including but not limited to the acts or omissions of the Credit Bureaus (e.g., one or more of the Credit Bureaus ceases to provide the Credit Information to DMS or Client for any reason), delay and interruptions in sending and receiving Credit Information via the Internet, labor disputes, strikes or other labor or industrial disturbances, acts of God, floods, lightning, shortages of materials, utility or communication failures, earthquakes, casualty, war, riots, insurrections, embargoes, regulations or orders from any governments, or any agency or subdivision thereof; provided that, in order to be excused from delay or failure to perform, DMS must act diligently to remedy the cause of such delay or failure.

(c) No Agency. DMS is providing the Services to Client as an independent contractor. DMS does not undertake by this Agreement or otherwise to perform any obligation of Client, whether by regulation or contract. In no way is DMS to be construed as the agent or acting as the agent of Client in any respect, all other provisions of this Agreement notwithstanding.

(d) Governing Law. **THE VALIDITY, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT, AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

(e) Dispute Resolution. With the exception of any action taken under Section 4, 13 and 14 of this Agreement, the parties shall resolve any dispute arising out of or relating to this Agreement in binding arbitration conducted in accordance with the then pertaining rules for commercial arbitration of the American Arbitration Association by a single arbitrator selected by the American Arbitration Association or an arbitrator agreed upon by the parties. Any such arbitration shall be held in Dallas, Texas unless the parties otherwise agree. The parties shall be entitled to conduct reasonable discovery, in accordance with the Texas Rules of Civil Procedure and applicable case law, prior to the arbitration hearing, and the Texas Rules of Evidence shall be applicable to the arbitration proceeding. The decision of the arbitrators shall be final and binding on DMS and Client and may be entered and enforced in any court of competent jurisdiction by either party.

(f) Severability. This Agreement shall be deemed to be severable and, if any provision of this Agreement shall be finally determined to be void, illegal or unenforceable, then it is the parties' desire and

intention that such provision be deemed automatically adjusted to the minimum extent necessary to conform to applicable requirements of validity, legality and enforceability and, as so adjusted, be deemed a provision of this Agreement as if it were originally included herein; provided, however, if such provision cannot be adjusted without substantially and materially altering the rights and duties hereunder and fundamentally depriving one party of the benefit of the bargain (taken as a whole) contemplated by this Agreement, then the parties will seek to reform this Agreement through the procedure outlined in Section 15(e) above so as to restore, as nearly as possible, the parties' respective rights, duties, and bargain. In any case, the remaining provisions of this Agreement shall remain in effect.

(g) No Waiver. No delay or omission by either party hereto to exercise any right or power occurring upon any non-compliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained. Unless otherwise stated, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

(h) Notices. Under this Agreement, if one party is required or permitted to give notice to the other, such notice shall be deemed given if mailed by registered or certified first class mail, postage paid with return receipt requested, or if sent by telefacsimile, with receipt confirmed, and addressed as follows (or as subsequently noticed to the other party):

Digital Matrix Systems, Inc.
15301 Spectrum Drive, 2nd Floor
Addison, TX 75001-6466
ATTN: Mr. David McGough
Telephone: (972) 341-0000
Fax: (972) 341-0020

Address

City of Redlands
P.O. Box 3005
Redlands, CA 92373
ATTN: Brenda Sutton
Telephone: 909-798-7622
Fax:

(i) Binding Effect; No Assignment. This Agreement shall inure to the benefit of and be binding upon and enforceable against each party and its successors and assigns. Client may not sell, assign, convey, sublicense or transfer this Agreement or its rights or obligations hereunder through merger, acquisition, sale of all or substantially all of Client's assets, or otherwise without the prior written consent of DMS. Any assignment, transfer, conveyance or sublicense in violation of this paragraph shall be null and void.

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

DIGITAL MATRIX SYSTEMS

By: 

Name: David A. McGough

Title: President and CEO

City of Redlands

Attest:

By: 
Karl N. ("Kasey") Haws, Mayor


Lorrie Poyzer, City Clerk

SCHEDULE A
DATA PROCESSING AGREEMENT
(As of 6/18/2002)

LICENSEE: City of Redlands

The schedule below is hereby made part of the License Agreement No. 060502094 dated 6/18/2002.

Description	Maximum No. of Concurrent Users	Term of License Effective Date	License Fees in U.S. \$	
			Monthly Transactions <65	Initial Fee
Monthly Minimum Fee	No Limit	6/18/2002	Paid in Advance	\$300.00
Transaction Fee/ Normalized Reports One Bureau*		6/18/2002	\$0.38 per report	
Transaction Fee/ Normalized Reports Two/Three Bureau Merge*		6/18/2002	\$2.50 per report	

*Above transaction fees do not include the cost of the credit report from CSC, Equifax, Experian or Trans Union
The pricing reflected in the Schedule A is valid for 60 days from the date of agreement

Please note: Any combination of the above services in excess of \$25.00 will be billed at the standard pricing as described (Initial here)

Accepted by:

Digital Matrix Systems, Inc.

By:

Name: David McGough

Title: President and CEO

Date: 6/18/02

Accepted by:

Licensee: City of Redlands

By:

Name: Karl N. "Kasey" Haws

Title: Mayor

Date: June 18, 2002

Attest:

Lorrie Poyzer, City Clerk