

# CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK, COUNCIL/PUBLIC SERVICES DIVISION, INDEX SECTION

FROM: *Emergency Preparedness Dept*

QUESTIONS CALL: *Anna Burton AGM*

CONTRACT NO.: *2139280528 C-107266*

CONTRACTOR NAME: *NCY*

TERM OF CONTRACT: *N/A* THRU:

TOTAL AMOUNT: *0*

PURPOSE OF CONTRACT: *Public Dissemination of  
Emergency Related Information*

# NC4 SERVICE AGREEMENT

## LEGAL TERMS AND CONDITIONS – U.S.

AS DEFINED BELOW, IF YOU MEET THE REQUIREMENTS FOR “MEMBER”, NC4 WILL PROVIDE THE “SERVICE” TO YOU PURSUANT TO THESE LEGAL TERMS AND CONDITIONS (“AGREEMENT”), WHICH YOU ACCEPT BY ACCESS OR USE OF THE SERVICE AND REPRESENT THAT YOU ARE AUTHORIZED TO DO SO.

### 1. DEFINITIONS.

- “NC4” means NC4 Inc., a Delaware Corporation, and the provider and licensor of the Service.
- “Acceptance” means NC4’s electronic or paper notice of acceptance or an Order Form, including notification of Member status.
- “Agency” means any City department (including but not limited to the Los Angeles Police Department, Los Angeles Fire Department, Los Angeles Department of Transportation, etc.) that enters into a separate Agency Agreement with NC4 pursuant to this Agreement.
- “Agency Agreement” means a separate written Agreement between City and NC4 regarding a particular Agency’s submission, in the Agency’s sole discretion, of Content to NC4, and NC4’s commitments and obligations to the City and the Agency. Each Agency Agreement is subordinate to this Agreement, unless otherwise provided in the Agency Agreement.
- “City” means the City of Los Angeles, a municipal corporation.
- “Content” means: (a) information submitted by City, at its sole discretion, to NC4 online forums, exercises, or training sessions that are either “private forums” (only accessible by Members and Member subgroups) and/or “public forums” (accessible by non-Members), and (b) information submitted by NC4 and other Members and third parties in such private and public forums. NC4 only controls Content that it has authored. Members and third parties are responsible for any Content they submit or use, including documents or sites to which the Service links or refers. NC4 reserves the right to limit the amount or type of Content submitted by City.
- “Crisis and Continuity Management” means the administration of responses and efforts to normalize operations during or following natural and man-made disasters, such as earthquake, flood, fire, hurricane, tornado, terrorism, riots, and similar states of emergency.
- “Fees” means any amounts listed in the Order Form for the Service, which may be based on specific usage levels or waived for trials.
- “Intellectual Property Rights” means patents, letter patent, patent applications, copyrights, trade secrets and/or similar rights, trademarks, and rights of publicity, and similar rights, either owned by NC4, Members, or third party non-members.
- “Member” means any government, commercial or non-profit entity that is a citizen of, and located in, the U.S. (respectively, “Government Member”, “Commercial Member” and “Non-Profit Organization (“NGO”) Member”) authorized by NC4 in its sole discretion to use the Service solely for its internal use and benefit. NC4 may require proof of membership qualification, such as employment verification, citizenship, photo identification or other credentials. Upon receipt of the Order Form and any required proof, NC4 will provide written notice of Acceptance. Only upon such Acceptance may a Member access and use the Service. Member includes the City of Los Angeles.
- “Named User” means a City employee who is authorized in the Order Form or otherwise to use the Service, and unless stated differently in the Order Form, is a single individual assigned a unique PIN.
- “Order Form” means NC4 electronic or paper documents that City may submit to establish Membership or to add or change Service, subject to NC4’s written Acceptance. Order Forms may include supplemental or different terms for Service offerings, such as Statements of Work or Software licenses, and are incorporated by reference in this Agreement.
- “PIN” means a confidential password given by NC4 to City solely for its Named Users and other City-designated employees to access and use the Service.
- “Proprietary Information” means information disclosed under this Agreement as follows: (A) “City Proprietary Information” - Any confidential and proprietary information City may disclose to NC4 solely for NC4’s internal administration, such as City’s employee contact or financial information (excluding all Content); and (B) “NC4 Proprietary Information” - NC4’s, and/or Members and other third party Intellectual Property that constitutes NC4’s and its licensors confidential and proprietary information, such as Software, PINs, and

technical data about the Service (excluding all Content), plus any employee contact or financial information that NC4 may disclose to City solely for City’s internal administration.

- “Service” means NC4’s proprietary Crisis and Continuity Management offerings, as stated in the Order Form, including without limitation, online forums; simulated exercises; classes; teleseminars; emergency status alerts; hardware, and any NC4-authored Content, plus any proprietary and confidential Software and PINs.
- “Software” means the object code of NC4’s proprietary computer programs, including but not limited to, incident management and client software, which City may use via the NC4 web site or install and use on City’s computer system, as stated in the Order Form.

2. FEES. Fees shall be the due at the amount and dates stated in the Order Form (excluding royalty free trials or pilots), and if no due date is stated, upon Acceptance. City will receive no credit for use of the Service at lower than specified usage levels, unless NC4 agrees in writing. Any payment not made by credit card or other electronic means is due within 30 days of invoice.

### 3. LICENSE GRANTS.

A. NC4. During the Term, NC4 grants to City the following limited, non-exclusive, internal-use licenses at the Fees stated, provided that City complies with NC4, third parties’ and other Members’ copyright, privacy and use policies and all prohibitions against reproducing the Content unless authorized in writing, and NC4 retains all rights, title, and ownership to the Service, unless otherwise identified or agreed in writing:

- (i) to access and use the Service solely for City’s Crisis and Continuity Management; and
- (ii) to publish, access, use and reproduce the Content, only as necessary for using the Service.

B. City. Commencing upon City’s Submission of the Order Form, City grants to NC4 the following limited, non-exclusive, royalty-free licenses to City Content, subject to any Intellectual Property Rights notices included in such Content:

- (i) to access, use, distribute, reproduce, modify, adapt, and display to other Members the Content (in whole or in part) submitted by City, in its sole discretion, in NC4 private forums, which license terminates automatically when City or NC4 removes such Content, provided that NC4 may maintain City’s Content for archival and backup purposes only.
- (ii) a perpetual, irrevocable license to use, distribute, reproduce, modify, adapt, sublicense, translate, publish, publicly perform and display or incorporate Content (in whole or in part) submitted by City, in its sole discretion, in NC4 public forums into any other works in any format or medium now known or later developed, unless otherwise agreed in writing by both parties.
- (iii) Notwithstanding the foregoing, if City mistakenly submits Content, City shall have the right to notify NC4 of the erroneous submission, at which time the license to said Content shall be terminated automatically and said Content shall be removed, provided that NC4 may maintain said Content for archival and backup purposes only.

### 4. CONDITIONS OF USE. City shall:

- A. comply with this Agreement and the copyright, privacy and use policies posted from time to time on the NC4 web site, to the extent they are not inconsistent with this Agreement;
- B. ascertain the accuracy, reliability and quality of City Content in the NC4 Service, including any linked sites, and abide by the copyright, privacy and use policies posted on third party web sites;
- C. be solely responsible for City Content;
- D. not disclose government classified information via the Service;
- E. use the Service solely for City’s Crisis and Continuity Management;

F. not sell, license or otherwise provide the Service to any third parties, directly or indirectly;

G. not publish or disseminate Content obtained from the NC4 Service to any third parties, directly or indirectly, including the media, provided that Government Members (including City) may publish or disseminate Content as reasonably necessary to protect health and safety;

H. keep PINS confidential, use PINS only as authorized, securely exit the Service at the end of each session, and immediately notify NC4 of any unauthorized PIN use or security breach; and

I. obtain and maintain the means to access the Service, including telecommunications and the equipment, testing, configuration, security, and any support required for City's environment, such as reliability, recoverability, performance, throughput, and availability.

NC4 shall make City's Content electronically available for use by City on City's own public information website, ECI (Essential City Information), UPDATE LA, or other similar public information website. Due to the critical and time sensitive nature of the City Content that may be submitted to NC4, NC4 shall electronically provide a designated City contact all City Content in an ASCII delimited format. The format will be given to the designated City contact and changes to this format require a 30-day notification to the designated City contact. The City Content should consist solely of City's Content, excluding any and all references to NC4. The electronic file is to be transmitted to the designated City contact within one hour of original receipt by NC4. In the event there are graphical elements submitted by City to NC4, NC4 will in turn provide said graphics to the designated City contact in the same one-hour timeframe.

#### 5. INTELLECTUAL PROPERTY RIGHTS.

A. **NC4.** City acknowledges that the Service is NC4's or its licensors' exclusive property, and NC4 and its licensors hold all rights, title and interest in the Intellectual Property Rights to the Service. City shall not: (i) alter, manufacture, or duplicate the Service, except as authorized by Section 3; (ii) attempt to decompile, disassemble, or reverse engineer the Service or attempt to obtain its source code or design information; (iii) remove any Intellectual Property Right notices in or on the Service; and (iv) violate any marking rules regarding the Service.

B. **City.** NC4 acknowledges that Content submitted by City is City's or its licensors' exclusive property, and City and its licensors hold all rights, title and interest in such Intellectual Property Rights. NC4 shall not: (i) alter, manufacture, or duplicate the Content, except as authorized by Section 3; nor (ii) remove any Intellectual Property Right notices in or on the Content.

#### 6. PROPRIETARY INFORMATION.

A. **Obligations.** City and NC4 shall hold each other's Proprietary Information strictly confidential and not disclose it to any third parties without the other's prior written approval. NC4 and City may not have adequate remedies at law and may seek injunctive or other equitable relief to restrain unauthorized use or disclosure.

B. **Exclusions.** NC4- and City- Proprietary Information excludes information: (i) in the public domain without breach of this Agreement; (ii) known by the recipient without breach of this Agreement; (iii) independently developed by the recipient without use of the other's Proprietary Information; and (iv) all Content. Any confidentiality rights or obligations regarding Content will be the subject of a separate written agreement. Either party may preserve or disclose Proprietary Information if required by law, pursuant to court order, or in good faith belief that preservation or disclosure is reasonably necessary to protect health and safety, provided that the receiving party (i.e., NC4 or City) provides advance notice and sufficient opportunity for the other party (i.e., City or NC4) to seek a protective order.

#### 7. WARRANTIES & LIMITATION OF WARRANTY.

A. **City warrants:** (a) it is authorized to enter into this Agreement, including without limitation, providing City Content without consent of any third party, and (b) information submitted to qualify for NC4's membership criteria or publish via the Service is accurate and complete.

B. **NC4 warrants:** (i) it is authorized to enter into this Agreement, and has sufficient right, title, and interest to provide the Service; (ii) the CD ROM or disc on which any Software is provided will be free from defects in materials and workmanship under normal use during the Term, and if defective, NC4 will repair, replace, or refund a prorated portion of Fees; and (iii) that any Software provided will perform as specified in the documentation for such Software. **DISCLAIMER. EXCEPT AS STATED ABOVE, NC4 PROVIDES THE SERVICE "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO**

**WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NC4 DOES NOT WARRANT THAT THE SERVICE WILL MEET CITY'S REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE. NC4 MAKES NO WARRANTIES REGARDING CONTENT, SOFTWARE OR SERVICES PROVIDED BY OTHER MEMBERS OR THIRD PARTIES.**

#### 8. INDEMNIFICATION.

A. **City:** City shall defend, indemnify or settle any third party claim based on: (i) City's submission of Content in violation of a third party's Intellectual Property Rights.

B. **NC4:** NC4 shall defend, indemnify, and hold harmless City or at NC4's option, settle any third party claim that the Service, excluding all Content, violates a third party Intellectual Property Rights. Other than this indemnification, City's sole remedy for such claim shall be replacement or refund of Fees paid.

C. **Procedures.** A party seeking indemnification must provide prompt notice of the claim, the right to control and direct the defense and settlement of such claim, and reasonable good faith cooperation.

9. **TERM AND TERMINATION.** The term of this Agreement is one year from the effective date of this Agreement. Either party may terminate this Agreement without cause on 90 days prior written notice. The City may, at its sole discretion, extend the initial term of this Agreement under the same terms and conditions for up to two (2) successive one (1)-year periods upon written notice to NC4 prior to the ending date of the initial term or any extension thereof. NC4 may terminate this Agreement immediately without further obligation if City breaches this Agreement or, if in NC4's sole discretion, City's active status poses a risk to NC4, or any Member or other third party. Upon expiration or termination: (i) all City's rights shall cease; (ii) City shall immediately return to NC4 all copies of the Proprietary Information and purge all copies from electronic media; and (iii) Sections 5, 6, 7, 8, 9, 10, 11, and 12 shall continue in effect.

10. **THIRD PARTY CONTENT AND CODE.** The Service may include Content and Software licensed to NC4 by third parties ("TP"). If TP Software is made available via the Service, NC4 grants to City only the right to access the Software as stated in the Order Form.

11. **GENERAL. A. Governing Law.** This Agreement is governed and interpreted by the substantive laws of California, and excludes the United Nations Convention for Contracts for the International Sale of Goods. **B. Compliance with Laws.** City shall comply with applicable laws, including laws regulating Content. **C. Audit Rights.** NC4 or its authorized representatives may audit City's records regarding use of the Service. City may audit NC4's records regarding NC4's use of City's Content. **D. Entirety of Agreement.** This Agreement, together with any attachments, appendices, and any Agency Agreements, is the parties' complete understanding and supersedes any prior oral or written proposal, communication, or agreement on this subject. This Agreement may only be amended in writing, effective after signed by both parties. **E. Export and Use Restrictions.** City acknowledges that the Service originates in the U.S. and agrees: (i) not to export or re-export the foregoing outside the U.S. or to persons or entities to whom exports are prohibited; and (ii) to comply with laws on export, re-export, import and use. **F. Purchase Orders.** City agrees to automatically include the following in any purchase order to NC4: "The terms of this Agreement supercede any conflicting conditions of this purchase order." **G. Force Majeure.** Neither party shall be in default nor liable for delay or non-compliance with this Agreement due to natural or man-made disasters such as earthquake, flood, fire, hurricane, tornado, acts of terrorism, riots, and similar events, provided the affected party attempts to mitigate the consequences and promptly notifies the other party.

12. **STANDARD PROVISIONS - CITY OF LOS ANGELES CONTRACTS.** NC4 agrees to comply with the provisions outlined in the City of Los Angeles' Standard Provisions for City Contracts (Rev. 10/03), incorporated herein by reference as if fully set forth herein, and attached hereto as Appendix A. In the event of an inconsistency between any of the provisions of this Agreement and/or attachments, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Paragraphs set forth in this Agreement;
- (b) Paragraphs set forth in any Agency Agreement;
- (c) Standard Provisions for City Contracts, Rev. 10/03.

**YOU ACKNOWLEDGE YOU UNDERSTAND THIS AGREEMENT AND AGREE ON BEHALF OF YOURSELF AND CITY TO BE BOUND BY ITS TERMS.**

**ACCEPTED BY LICENSEE:**  
City of Los Angeles

By: [Signature]  
Name: [Signature]  
Title: General Manager  
Date: 6/16/04

**ACCEPTED BY LICENSOR**  
NC4 Inc.  
100 North Sepulveda Blvd  
El Segundo, California 90245

By: [Signature]  
Name: James Montagnino  
Title: General Manager  
Date: 6-16-04

APPROVED AS TO FORM:  
Rockard Delgadillo, City Attorney

By: [Signature]  
EDUARDO JOSE  
Date: 9/2/04

ATTESTED:  
J. Michael Carey, City Clerk

By: [Signature]  
Name: Judi R. Clarke  
Date: 9-3-04



C-107266

**PLEASE PRINT AND RETAIN A COPY OF THIS AGREEMENT AND ALL ORDER FORMS FOR YOUR RECORDS.**