

EMPIRIC SOLUTIONS, INC.
COMPASS MANAGEMENT SERVICE AGREEMENT

This Agreement is made and entered into this 1st day of January 2009, (hereinafter referred to as "Effective Date") by and between EMPIRIC SOLUTIONS, INC., a Michigan corporation, of 932 Spring Street, Ste 202, P.O. Box 58, Petoskey, Michigan 49770-0058 (hereinafter referred to as "ESI") and OTSEGO COUNTY, a Michigan county government of 225 West Main Street, Gaylord, Michigan 49735 (hereinafter referred to as "Client").

WITNESSETH THAT:

WHEREAS, Client desires to engage ESI to provide the Services; and

WHEREAS, ESI is interested in providing such Services; and

WHEREAS, Client and ESI mutually desire to set forth the terms applicable to such Services.

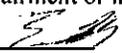
NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

TERM

1. The term of Agreement shall commence on the Effective Date hereof and shall continue for a period of twelve (12) months (hereinafter referred to as "Term"). Agreement with all terms and conditions set forth herein shall at the end of Term not automatically renew. Agreement may be terminated prior to end of Term without penalty upon written consent by both parties. Either party may terminate this agreement without penalty by providing the other party written notice of the intent to terminate no less than 90 days prior to the effective date of termination.

SERVICES

2. ESI shall provide Client with technology management services. ESI will provide onsite and remote technology support staff and perform network monitoring to receive advanced notification of issues related to network operational status. In general terms, ESI will provide Client with labor, expertise, and technology services sufficient to maintain the Client's technology in an effort to reduce downtime, maintain network performance and provide a technology infrastructure sufficient for the Client's daily operations. Details of Services are contained in Exhibit "A" Services - Compass Management (hereinafter referred to as "Services").
3. Unless otherwise specified in this Agreement, all equipment and software required to provide Services, whether at ESI's premises or at Client's premises and whether owned by ESI ("ESI's Technology") or Client, shall be configured and managed by ESI during the Term of Agreement. Any of ESI's Technology which is located at Client's premises during the Term of Agreement shall be returned within 15 days of the end of Term or any termination of agreement or ESI may invoice Client for the reasonable then current value of ESI's Technology.
4. ESI shall not be responsible for monitoring, supporting or maintaining technology purchased, installed or modified by Client or any third party unless ESI is involved in the technology's purchase, installation or modification to insure compatibility with Services. Furthermore, Client shall make reasonable efforts to involve ESI in all technology related decisions which directly or indirectly affect Services. Failure to involve ESI in decisions which affect Services may be considered breach of this agreement.
5. ESI shall not be responsible for any incidental costs incurred by Client as a result of Services. ESI does not guarantee continuous or uninterrupted service. Routine maintenance and periodic system repairs, upgrades, and reconfigurations, public emergency or necessity, force majeure, restrictions imposed by law, acts of God, labor disputes, and other situations, including mechanical or electronic breakdowns may result in temporary impairment or interruption of Services.

ESI Initials: 

Client Initials: 

6. ESI shall not be responsible for monitoring, supporting or maintaining technology which is not compatible with Services.

COMPENSATION

7. ESI will invoice Client two fees for Services:

Base Management Fee: **\$3180/month†**

Client requested fixed cost fees to be itemized as follows:

Fixed Cost – 51% Otsego County

Fixed Cost – 49% Otsego Court

Hourly Fee: **\$100/hour ***

After Hours Response: Two hours minimum charge.**

† ESI reserves the right to adjust the Base Management Fee prior to the end of the Term in the event there are substantial Client approved technology changes including but not limited to: increasing or decreasing quantity of servers, replacing servers, substantial change in number of desktop systems, new or substantial changes in existing software, and new or substantial changes in physical department locations which require infrastructure changes. ESI must notify Client of new Base Management Fee before Client approved upgrades are implemented. ESI will not be permitted to adjust fees for technology changes performed by ESI without Client approval.

*ESI's standard hourly fee is \$140/hour. However, ESI provides a discounted Hourly Fee to Compass Management clients.

** ESI's normal business hours are Monday through Friday, 08:30 to 17:00 Eastern Time, excluding ESI holidays.

8. During the Term, Client will pay the Base Management Fee by the first day of each Month in advance of the Month in which Services are provided.
9. ESI shall provide, and Client agrees to pay, monthly invoices for the Base Management Fee, Hourly Work, and materials consumed while supporting Services. Invoices shall include a reasonable description of all accumulated charges including department codes for Hourly Work. Client agrees to pay to ESI, all federal, state, and local taxes that may be imposed on Services.
10. Client agrees to pay ESI according to the Net 30 terms stated on each invoice. ESI may assess a late fee of 1.5 percent per month on past due balances. Any balance greater than 30 days past due may result in suspension of Services. In the event that ESI shall hire legal counsel to collect (or attempt to collect) any amount due under Agreement, Client shall be required to reimburse ESI for reasonable attorney fees and costs of collection.
11. If Agreement is breached by Client, ESI shall stop providing Services and ESI shall be entitled to immediate payment for all Hourly Work.

ESI Initials: ES

Client Initials: JD

CONFIDENTIALITY AND NON-COMPETITION

12. Both parties acknowledge that, in order for ESI to provide Services, ESI will have access to private, confidential and non-public Client information. ESI agrees that it will not, during or at any time after ESI ceases to provide services, use for itself or others, or disclose or divulge to others, private, confidential and non-public Client information, or any other proprietary Client information without the express written permission of Client, except as required by law or court order or as necessary to provide Services under Agreement or information which is now, or becomes in the future, public knowledge other than through acts or omissions of ESI.
13. Both parties acknowledge that, in order for Client to receive Services, Client will have access to private, confidential and non-public ESI information consisting of but not necessarily limited to: methods, processes, formulae, systems, techniques, inventions, machines, computer programs, unlisted telephone numbers, ESI passwords, encryption codes, and password change schedules. Client agrees that it will not, during or at any time after Client ceases to receive services, use for itself or others, or disclose or divulge to others, private, confidential and non-public information, or any other proprietary ESI information without the express written permission of ESI, except as required by law or court order or information which is now, or becomes in the future, public knowledge other than through acts or omissions of Client.
14. Client acknowledges that upon discontinuance of services from ESI, Client shall return to ESI all documents and property of ESI, including but not necessarily limited to: drawings, reports, manuals, correspondence, computer software, computer hardware, and all other materials and all copies thereof relating in any way to ESI's confidential business practices, or in any way obtained by Client during the course of receiving services from ESI. Client further agrees that they shall not retain copies, notes or abstracts of the foregoing.
15. ESI acknowledges that upon discontinuance of services to Client, ESI shall return to Client all documents and property of Client, including but not necessarily limited to: drawings, reports, manuals, correspondence, computer software, computer hardware, and all other materials and all copies thereof relating in any way to Client's confidential business practices, or in any way obtained by ESI during the course of providing services to Client. ESI further agrees that they shall not retain copies, notes or abstracts of the foregoing.
16. ESI will be entitled to obtain an injunction to prevent threatened or continued violation of Section 14 and 15, but failure to enforce these Sections will not be deemed a waiver of this Agreement.
17. ESI may list Client in ESI promotional materials and on ESI's web site and shall be free to engage in an agreement with, and provide services to, any other client.
18. Client shall not attempt to solicit for employment (or hire) or contract services directly from any employee of ESI during the term of Agreement (or for 6 months thereafter) without the express written consent of ESI. ESI shall not attempt to solicit for employment (or hire) or contract services from any employee of Client during the term of Agreement (or for 6 months thereafter) without the express written consent of Client.

CONDITIONS OF USE

19. ESI reserves the right to monitor Client's use of Services for the purpose of ensuring security of ESI's systems, managing resources of ESI's network, and compliance with terms of Agreement.
20. Client acknowledges that ESI's staff is authorized for unsupervised access to Client facilities and systems for the purposes of providing Services.
21. ESI acknowledges that ESI's use of Client technology is limited to providing Services to Client and accessing ESI systems for business purposes.
22. ESI will follow strict hiring guidelines to help ensure ESI staff are ethical and trustworthy. ESI will keep employee fingerprints on file.

ESI Initials: ESI

Client Initials: JD

ACCEPTABLE USE

23. Client agrees not to knowingly engage in any activity that would constitute a threat to the security or performance of ESI's systems or services.
24. Client acknowledges their sole responsibility to maintain proper software licenses for all software installed on Client's systems. ESI will notify Client of any detected software license violations and provide technical assistance to Client in their efforts to correct any violation. Client acknowledges that failure to comply with software licenses may result in the immediate termination of Services provided by ESI.
25. Client may not transfer or sublease any Service, or portion thereof, provided under Agreement unless stipulated otherwise in attachments hereto.

WARRANTY

26. Client agrees that there are no express or implied warranties relating to delivery of Services, nor warranties of merchantability or fitness for any particular purpose of those Services, nor any warranty extended to equipment associated with those Services unless stipulated otherwise herein or in attachments hereto. In the event of any breach of warranty stipulated in attachments hereto, damages shall be limited to the price paid by Client to ESI for those specific Services.

EXCLUSIONS

27. ESI shall not be responsible for loss or recovery of any Client data, loss of profits, loss of business or goodwill, loss of use of data, interruption of business, or for any special or incidental damages, whether for breach of warranty, breach of contract, tort, negligence, failure to perform, or otherwise, even if ESI has been advised of the possibility of such loss or damage unless ESI is found grossly negligent in providing Services.

MISCELLANEOUS

28. Neither party may assign its rights and responsibilities under Agreement without the written consent of the other party.
29. The waiver of any breach or default under Agreement shall not constitute the waiver of any subsequent breach or default.
30. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the Agreement or the intent of any provision thereof.
31. Client represents to ESI that the Client's Representative executing Agreement on behalf of Client is duly authorized to do so, and that Agreement will be a valid and binding obligation of Client upon acceptance by ESI. Agreement shall not be binding upon ESI until it has been duly executed by ESI's Representative and Initial Payment is received by ESI.
32. Client shall indemnify ESI, its affiliates, officers, directors, licensees and licensors from any and all claims and expenses, including, without limitation, reasonable attorney's fees, arising from Client's breach of any provision of Agreement.
33. ESI shall indemnify Client, its boards, officials, employees, and agents from any and all claims and expenses, including, without limitation, reasonable attorney's fees, arising from ESI's breach of any provision of Agreement.

ESI Initials: ESP

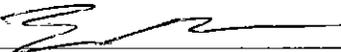
Client Initials: JB

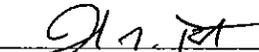
- 34. Michigan law shall control in the interpretation of Agreement. In the event that any of the provisions of this Agreement are found by a court or legal authority of competent jurisdiction to be illegal or invalid, said provisions shall be limited or eliminated to the minimum extent possible so that this Agreement shall otherwise remain in full force and effect.
- 35. The terms and conditions of Agreement shall prevail notwithstanding any inconsistent terms and conditions that may be contained in any purchase order or other document submitted by Client to ESI.
- 36. Neither party to Agreement shall be responsible to the other party or any third party for failure to fulfill or delay in fulfilling its obligations under Agreement due to causes beyond reasonable control.

IN WITNESS WHEREOF, the parties hereto have hereunto caused Agreement to be signed and delivered by their duly authorized agents, all as of the Effective Date stated above.

ESI: Empiric Solutions, Inc.

Client: Otsego County

X.  _____

X.  _____

By: Eric D. Seelye

By: John M Burt

Title: President

Title: County Administrator

Date: 10-NOV-2008

Date: 9-25-08

ESI Initials: _____

Client Initials: 

EXHIBIT "A"
SERVICES - COMPASS MANAGEMENT

In 1998, Empiric Solutions, Inc. began developing and testing a unique service called "Compass Management". With most clients facing increased technology dependency and the ensuing increased support costs, proactive management became fundamental for success. After several years of development, Compass Management emerged as an affordable solution, providing stability, security, scalability, and reliability. Consisting of four levels or "compass points", each point builds upon the previous. North provides basic services for small businesses while West provides for fully customized solutions. Compass Management aims at eliminating emergencies, minimizing downtime, decreasing problem resolution time, reducing costs, managing assets, and optimizing network performance. Utilizing a sophisticated array of technology and a focused, proactive business model, Compass Management enables highly efficient network support and effectively bridges the gap between cost and technology dependency. From basic technology management to complex monitoring and tracking solutions, the following is an overview of services provided through Compass Management.

Hourly Fee Services

ESI offers a discounted hourly fee for Compass Management clients (see Compensation section). Some tasks may be invoiced on an hourly basis ("Hourly Work") and unless otherwise noted, hourly fees apply to labor associated with each service. Hourly Work is typically less regular in nature and therefore will be logged and billed on detailed monthly invoice. This work may stem from approved upgrades requested by departments, driven by industry technology changes, notifications from remote network monitoring, or increased workload requiring Network Administrators to perform Network Technician tasks in order to meet deadlines. Due to the sophistication of the Client's network and the dynamic nature of supporting the network, Client authorizes ESI to perform Hourly Work in a self-directed and self-managed manner, provided the work is reasonable, in the best interest of the Client, and consistent with ESI billing practices. It is expected that the Client and ESI will work cooperatively to minimize excessive Hourly Work.

Network Administration Services

ESI designs, installs, and maintains mission critical systems such as servers, switches, routers, firewalls and security, working closely with clients to establish technology plans, define goals, and ensure goals are compatible with client budgets. ESI Administrators are highly proficient in: LAN/WAN Design, DNS, DHCP, TCP/IP, all Windows flavors, AS/400 operations, Cisco Management and Design, Firewall Management, Content Filtering, VPN, Encryption, Security, and CJIS/MSP Security.

Strategic Planning Meetings – Included in Base Management Fee except as noted herein

ESI will participate in department or strategic planning meetings. Hourly fees will be waived for up to three meetings per month. Meetings shall not exceed two hours in length. ESI encourages regular communication with Client, building relationships and ensuring technology goals and challenges are addressed. These meetings present an opportunity for departments to discuss ideas, technology challenges, and receive preliminary designs to help them plan technology upgrades in their respective departments, insuring compatibility with overall network design.

24/7 Remote Network Monitoring – Included in Base Management Fee except as noted herein

ESI's remote network monitoring is a proven system that automatically monitors Client network health and status. ESI will perform tests on critical network systems at regular intervals according to Client and system requirements. Failed tests will be classified as warnings or alerts and appropriate notifications sent to ESI staff. After-hours notifications will only be sent if Client has selected an after-hours response option. Creation of tests and responses to notifications may be classified as Hourly Work. ESI is continually adding new tests as improved testing methods become available. While monitoring may not eliminate network downtime, it drastically reduces that downtime. ESI will make reasonable efforts to insure adequate monitoring and notifications are in place to alert of known and suspected vulnerabilities. Additional fees may also apply for after-hours response to detected issues.

Backup Monitoring and Remediation – Included in Base Management Fee except as noted herein

ESI will perform daily analysis of backup system performance and reliability, monitor backup systems, receive notification of errors and performs regular onsite inspections. Maintenance which is beyond regular remediation may be

ESI Initials: 

Client Initials: 

classified as Hourly Work. For example, if a new software/hardware solution is implemented requiring a restructuring of the backup system, this labor may be considered Hourly Work.

Network Technician Services – Included in Base Management Fee except as noted herein

ESI will provide Client with onsite Network Technician(s) whose responsibilities include addressing typical daily issues related to desktop, user, printer and basic network server issues. The Network Technician(s) will be readily available ensuring Client has rapid access to the support they need. Additionally, the Network Technician(s) provide ESI's Network Administrators with daily activity reports and provide a front-line view of the Client's technology needs.

Network Technician(s) will provide onsite and remote technology related support for the following types of technology systems:

- Desktop/Laptop computers
- Locally attached printers
- Desktop software applications
- Backup tapes (Changing, cleaning and reviewing logs)
- Network user accounts (Add/Delete/Modify)
- Network printers (physical installation only – see below)

Network Technician(s) will not be responsible for the following types of systems:*

- Network Server setup or maintenance (Except monitoring backup systems)
- Network infrastructure and security (e.g. Cabling, Managed Hubs/Switches/Routers/Firewalls)
- Server side configuration of network printers

Network Technician(s) may also perform any other task as assigned by Network Administrators. Work performed which is outside the scope of the above assigned duties or beyond 120 hours per month may be classified as Hourly Work. If Client has selected an after-hours response option, Network Technician(s) may be assigned to handle after-hours responses. Client may be billed for after-hours work according to the hourly rates specified in this Agreement.

** These systems require more highly trained personnel and will be handled on a time and material basis by qualified ESI staff or through a separate agreement with other contractors.*

LEIN/LGNET Services:

ESI will manage the LEIN/LGNET systems which provide services to Otsego, Crawford, and Kalkaska Court Sheriff and County personnel. ESI is the primary point of contact for the LGNET PoP located at Gaylord 225 West Main Street. Since this LGNET connection is utilized by additional agencies, Hourly Work performed specifically for non-Client agencies will be invoiced directly to those respective agencies and will not be included on Client invoices.

Biometric Authentication Systems Management:

ESI will manage the Court Biometric Network Authentication System.

Network Documentation

ESI will maintain network documentation as part of its regular work on client networks. Accurate and thorough network documentation (physical and logical) is imperative and provides a reference for network upgrades, problem avoidance, and disaster recovery.

Purchase Management

In order to maintain a non-biased perspective, ESI does NOT sell hardware or software.

ESI will act as a purchasing coordinator to obtain quotes and manage technology purchases. Client may be required to issue purchase orders or provide final approval on credit card purchases initiated by ESI. ESI's purchase management service will help ensure correct products are acquired, applicable discounts are utilized (i.e. Non-Profit, Governmental or Educational pricing), and punctual deliveries are made to proper locations. In addition, ESI will coordinate staff and equipment arrival, allowing for expedited installations.

ESI Initials: ESI

Client Initials: JB

Software Assessment & Evaluation

ESI, with client input, will maintain a list of approved software applications by which software licensing is more easily tracked, network stability is increased, and software violations eliminated. ESI recommends all software applications go through a two part approval process before purchasing:

1. Technology Approval: Is the software compatible with the existing systems? Are there "hidden" costs associated with the software (e.g. backup considerations or increased Internet bandwidth requirements?)
2. Administrative Approval: The software should be approved by non-technology personnel to ensure it meets Client needs and goals.

Hardware Assessment & Evaluation

ESI, with client input, will maintain a list of approved hardware standards by which network stability and security is increased, inventories are more easily tracked, compatibility issues are eliminated, and network efficiency is maintained. ESI recommends all hardware go through a two part approval process before purchasing.

1. Technology Approval: Is the hardware compatible with the existing systems? Are there "hidden" costs associated with the hardware (e.g. additional network jacks, consumable costs, maintenance costs)
2. Administrative Approval: The hardware should be approved by non-technology personnel to ensure it meets Client needs and goals.

24/7 Response

Included: Not Included: ESI will respond to after-hours emergencies as detected through monitoring or Client request. Additional fees and service minimums may apply (See Compensation section).

Network Inspection

Regular physical inspection of network systems is also necessary to ensure a reliable network operating environment. While many of these inspections will be performed by Network Technician(s) some inspections must be performed by Network Administrators.

Miscellaneous

ESI staff will perform and/or coordinate with third party vendors/contractors to ensure Client technology is properly maintained, upgraded, and performing reasonably for Client.

Methods

Real-Time Remote Management

ESI has developed a highly layered, secure, remote access and management system, allowing ESI staff to monitor, diagnose, and resolve issues from basically anywhere in the world. Remote Management is also utilized within the Client's onsite network, reducing response times and travel between buildings. Whether utilized by onsite staff or a remote network administrator, ESI's remote management system provides rapid response to Client needs.

Security Assessment

ESI performs every technology management task with an underlying security assessment. Each upgrade, modification, and adjustment is cross-referenced with Client specific security requirements. The 46th Circuit Trial Court has strict security requirements in order to remain compliant with CJIS, MSP and LEIN regulations. ESI is well versed in these regulations and will continue to work with State security officers to keep the Client's network in compliance.

Technical Support/Helpdesk Services

ESI provides reliable methods to *request* support, which is equally important to *providing* support. ESI has a structured Helpdesk and issue tracking system by which requests are promptly and accurately completed. Clients may submit help requests by email, web, phone, or in-person. Additionally, phone calls are answered by a real-person during normal working hours and, during off-hours, forwarded to an on-call Network Administrator. Critical issues are usually addressed immediately and all tasks are cataloged and addressed in a timely manner based on severity of the request.

- Limitations may apply due to compatibility. Client may need to purchase additional products to fully benefit from each service item.
- Unless an after-hours response option is selected, labor associated with Services shall be provided during ESI's normal business hours (M-F 08:30 to 17:00, excluding ESI holidays)

ESI Initials: ESAD

Client Initials: JD

EXHIBIT "B"
DEFINITIONS

When used in Agreement, the capitalized terms listed in shall have the following meanings:

"Client's Representative" – individual identified by Client on Agreement to be responsible for receiving all notices under Agreement and for all administrative matters such as invoices, payments, and amendments.

"ESI's Representative" – individual identified by ESI on Agreement to be responsible for receiving all notices under Agreement.

"Server" – A computer which provides some service for other computers connected to it via a network. The most common examples are a file server which has a local disk and services requests from remote clients to read and write files on that disk, a web server which provides http/web access to information via a web browser such as Internet Explorer, and an email server which handles the sending and receiving of email on behalf of other computers on a network.

"Base Management Fee" – The base fee to provide Services. This fee is based on the sophistication of the Client network and may change if there are changes to the Client network.

Notes

Limitations may apply due to compatibility. Client may need to purchase additional products to fully benefit from each service item.

Unless an after-hours response option is selected, labor associated with Services shall be provided during ESI's normal business hours (M-F 08:30 to 17:00 Eastern Time, excluding ESI holidays).

ESI Holidays are:

- Two Days at New Years
- 1/2 Day Good Friday
- Memorial Day
- July 4th
- Labor Day
- Thanksgiving
- Friday after Thanksgiving
- Two Days at Christmas

ESI Initials: ESI

Client Initials: JA

**EXHIBIT "C"
REPRESENTATIVES**

The following designated Representatives shall be responsible for receiving all notices under Agreement and for all administrative matters such as invoices, payments, and amendments or other authoritative communications. Client may change the name of (and all information pertaining to) Client's Representative and ESI may change the name of (and all information pertaining to) ESI's Representative upon written notice being given to the other party.

Client's Representative shall be:

Name: John Burt
Company: Otsego County
Address: 225 W. main street
Gaylord, MI 49725
Phone: 989-731-7527
FAX: 989-731-7529
E-Mail: Jburt@OtsegoCountyMI.gov

ESI's Representative shall be:

Name: Eric D. Seelye
Company: Empiric Solutions, Inc.
Address: 932 Sprint Street, Ste 202
PO Box 58
Petoskey, MI 49770-0058
Phone: 231.348.1035
FAX: 231.348.1044
E-Mail: seelye@empiricsolutions.com

EMERGENCY CONTACTS

In the event ESI needs to contact the Client during an after-hours emergency situation the client requests at least one of the following persons to be contacted by ESI. Client may change the following contact information upon written notice being given to ESI.

Client Emergency Contacts shall be:

Please provide: Full name, phone 1, phone 2, and email address, preferred times of day (e.g. 8am to 11pm)

Primary: John Burt, 989-731-5287, 989-370-9485 (any)

Alternate 1: Rachel Frisch, 989-614-6974

Alternate 2: Dale Fulcher, 989-370-0179, 989-703-1893

ESI Initials: ESD

Client Initials: JB