



# DAUPLER + CHENEY, WA

— TERM: 3 YEARS

## REFERENCE #

50156809-94839430

## TO

**Steve Marx**  
Light Department Director  
City of Davenport

## CONTACT

509-498-9227  
smarx@cityofcheney.org

City of Cheney  
112 Anderson Road  
Cheney, WA 99004

## DATE

April 25, 2022

## PREPARED BY

**Paul Knight**  
Vice President,  
Client Success  
Daupler

## CONTACT

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## PRODUCTS & SERVICES

Item & Description	Quantity	Price	Total
<b>Response Management Module</b> Call Escalation Functionality, Functionality, Team formation Functionality, Problem Response Form Automation, Arrival/Departure Documentation, All Customer Interaction Documentation, Customer Communication Functionality, AI/classifier technology	1	\$8,000	\$8,000 Paid annually
<b>Call Answering Module</b> Call Answering - After hours, weekend, and holiday usage - Flat fee; no variable rate or upcharge for high volume months.	1	Included	Included
		<b>Subtotal</b>	\$8,000
		<b>Annual Total</b>	<b>\$8,000</b>

*\*Annual recurring costs are subject to a 10% technology uplift.*

*The undersigned agree to the attached Terms and Conditions and agree to the execution as of the date signed, the Effective Date:*

**Daupler, Inc.**

**Name:**

**Title:**

**Date:**

**Signature:**

**City of Cheney**

**Name:** Chris Grover

**Title:** Mayor

**Date:**

**Signature:**

## Attachment A

### Daupler, Inc. - Standard Terms and Conditions

Please read these Standard Terms and Conditions (this "Agreement") carefully before using the Daupler web-based Incident Response Management System and its services ("Services") located at [www.daupler.com](http://www.daupler.com) (the "Website"). By accessing or using the Website or the Services, you agree to be bound by this Agreement and all of its terms without change. This Agreement is between Daupler, Inc ("Daupler"), you the user ("User"), and, if you are using Services on behalf of a company or organization, such company or organization will also be considered a party to this Agreement and "User". You represent that you have the authority to bind your company to this Agreement.

#### 1. Services.

Subject to User's compliance with all of the terms and conditions of this Agreement, Daupler (i) will use commercially reasonable efforts to provide the Services to User and (ii) hereby grants User a non-exclusive, non-transferable, non-sublicensable right and license to access the Services in accordance with any documentation published on the Website. The Services will be delivered using Daupler's proprietary software, processes, user interfaces, know-how, techniques, designs, ideas, concepts, and other tangible or intangible technical material or information "Daupler Technology").

Daupler will provide error correction, workarounds and new releases in accordance with its normal practices. User may request support through Daupler's third party call answering service made available on the Website and any other support services provided in the documentation.

Each User will have unique access codes to be used to access the Services. User is responsible for maintaining (including the confidentiality of) the access codes and will be solely liable for all activities that occur under such codes or arising from User's instruction in connection with the disclosure of the codes. User shall immediately notify Daupler of any unauthorized use of any such access codes. **USER AGREES THAT ACCESS CODES MAY NOT BE SHARED AND MAY ONLY BE USED BY ONE AUTHORIZED USER.**

#### 2. Payment of Fees.

User shall pay Daupler the annual fee for the Services published on the Website. Applicable monthly fees and any time and materials fees are due on the 15th day of each calendar month. To the extent applicable and utilized, User will pay Daupler for consulting, integration or other professional services. User shall make all payments in accordance with the terms set forth on the Website and herein. Fees paid hereunder are non-refundable.

Daupler may suspend User's access to the Services if User is more than 10 business days late on a payment. User shall pay a late fee on any amount that is not paid when due that shall be calculated at an interest rate of 1.5% per month on any such outstanding balance, or the maximum permitted by law, whichever is less, from the date due, plus all expenses of collection. User will be billed, and payments will be made, in U.S. dollars. All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. User shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Daupler's net income.

#### 3. Term and Termination.

This Agreement is effective January 1, 2022 and shall continue for a period of three years, or as determined otherwise and agreed upon by Daupler and User. This Agreement will automatically renew

for additional one year periods unless either party provides the other party with notice of its intent not to renew within 90 days of the end of the then-current term.

Either party may terminate this Agreement upon 30 days notice if the other party breaches any material term of these Terms and fails to cure such breach within 30 business days after notice of such breach. Material breach by the User includes any breach of User's payment obligations or unauthorized use by User of the Daupler Technology or Services.

Upon termination of this Agreement for any reason, any amounts owed to Daupler under this Agreement before such termination or expiration will be immediately due and payable, all licensed rights granted will immediately cease to exist, and User must promptly discontinue all use of the Daupler Technology and erase all copies of the Daupler Technology.

#### 4. Permitted Uses, Restrictions.

User is solely responsible for (a) providing and maintaining the hardware and software necessary to access and use the Services and (b) making available such personnel and information as may be reasonably required, and taking such other actions as Daupler may reasonably request to provide the Services.

User shall use the Services in compliance with all applicable laws, statutes, ordinances and regulations. User shall obtain any necessary licenses, certificates, permits, approvals or other authorizations required by all laws, statutes, ordinances and regulations applicable to User's use of the Services.

User shall not use the Services for purposes other than as set forth in the Agreement. In furtherance thereof, User will not (a) resell the Services or any data received in connection therewith or otherwise disclose, disseminate, reproduce or publish any portion of the Services in any manner or permit the same; (b) use the Services to create derivative products or other derivative works; (c) modify, translate, alter, disassemble, decompile, manipulate or reverse engineer any portion of the Services; (d) except for authorized Users, permit any third party to use the Services; (e) create Internet "links" to or from the Services, or "frame" or "mirror" any content forming part of the Services, other than on its authorized Users' own intranets or otherwise for its own internal business purposes; (f) send spam or other duplicative or unsolicited messages in violation of applicable laws; (g) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates third party privacy rights; (h) send through, store in or otherwise introduce to the Services, through its use or otherwise, a computer virus; (i) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (j) attempt to gain unauthorized access to the Services or its related systems or networks.

#### 5. Ownership.

As between the parties, Daupler alone (and its licensors, where applicable) own all right, title, and interest, in and to the Services, Daupler Technology, or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by User or any other party relating to the Services, which are hereby assigned to Daupler. User represents and warrants that User owns or has the right to use all customer data used by the Services ("User Data") and that the use of the User Data in connection with the Services does not violate any third party rights.

Daupler acknowledges that as between the parties, User owns all right, title and interest in and to the User Data, provided, however, that User grants Daupler the right to use any and all User Data in blinded

or aggregated form for the purpose of data analysis, compilation, interpretation, study, reporting, publishing, improvement of the Services, product and service development, and other such purposes.

Except as expressly set forth herein, Daupler alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services and Daupler Technology or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by User or any other party relating to the Services, which are hereby assigned to Daupler. User will not copy, distribute, reproduce, or use any of the foregoing except as expressly permitted under this Agreement. All rights not expressly granted to User are reserved by Daupler and its licensors.

#### 6. Confidentiality.

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business ("Confidential Information" of the Disclosing Party).

The Receiving Party agrees: (i) not to divulge to any third person any such Confidential Information, (ii) to give access to such Confidential Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order.

Daupler acknowledges that, subject to the exceptions listed in this Section 5, User Data is User's Confidential Information. User acknowledges that Daupler does not wish to receive any Confidential Information from User that is not necessary for Daupler to perform its obligations under this Agreement and will limit its disclosures accordingly.

The parties will have the right to disclose the existence but not the terms and conditions (including without limitation pricing) of this Agreement, unless such disclosure is approved in writing by both parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

#### 7. Indemnification.

Daupler shall indemnify and hold User and its officers, directors, employees, attorneys, and agents ("Indemnitees") harmless from and against any and all costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) each to the extent paid to an unaffiliated third party to the extent arising out of or in connection with such third-party's claim alleging that the Daupler Technology directly infringes a U.S. copyright. Notwithstanding the foregoing, Daupler will have no obligation with respect to any infringement claim based upon any modification of the Daupler Technology

by User or any use of the Daupler Technology (i) not in accordance with the documentation; or (ii) in combination with other products, equipment, software, or data not supplied by Daupler.

User shall indemnify, defend and hold Daupler, its licensors and each such party's Indemnitees harmless from and against any and all costs, damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs) each to the extent paid to an unaffiliated third party arising from or in connection with such third-party's claims, demands, or allegations (i) that User violated this Agreement (ii) arising from or relating to the use of the Services or the results thereof, except claims covered by Daupler's indemnity, above.

As a condition to a party's indemnification obligations hereunder, the other party shall give the indemnifying party sole control of the defense and settlement of the claim, prompt notice of a claim, and, at the indemnifying party's expense and request, all available information and reasonable assistance in relation to such defense and settlement efforts. Neither party may compromise or settle a third-party claim that adversely affects the other party without the other party's prior written consent, which consent shall not be unreasonably withheld.

#### 8. Warranties and Warranty Disclaimer.

Daupler represents and warrants that the Services will be provided in a professional and workmanlike manner. In the event Daupler breaches such warranty, User may, as its sole remedy, request that Daupler promptly correct any such failure of Services at no additional charge.

Except as otherwise provided herein, Daupler provides the Services to User without warranties, express or implied. Daupler and its licensors do not represent or warrant that (a) the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system, or data, (b) the Services will meet requirements or expectations, (c) any results or stored User Data will be accurate or reliable, (d) errors or defects will be corrected, (e) the Services or the server(s) that make the Services available are free of viruses or other harmful components; (f) the Services or results will meet any regulatory approvals or requirements. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Daupler and its licensors.

#### 9. Limitation of Liability.

In no event shall Daupler's aggregate liability arising from or relating to this Agreement exceed the amounts actually paid by and payable by User in the twelve (12) month period immediately preceding the event giving rise to such liability. Except for a party's obligations arising under Section 6 or a party's breach of its obligations under Section 7, in no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind other than as a result of Daupler's negligence, gross negligence or willful misconduct (including direct or indirect damages for loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this agreement, including but not limited to the use or inability to use the Services, or for any content obtained from or through the Services, any interruption, inaccuracy, error or omission in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

#### 10. General Provisions.

The parties acknowledge that this is a business relationship based on the express provisions of this Agreement and no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by this Agreement.

User shall not assign or transfer this Agreement or any rights or obligations under this Agreement without Daupler's prior written consent. A change in control constitutes an assignment under this Agreement. Any unauthorized assignment or transfer shall be void and constitutes ground for immediate termination of this Agreement by Daupler. This Agreement binds and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

If any provision, or part thereof, of this Agreement becomes or is declared invalid, illegal or unenforceable in any respect under any law, such provision, or part thereof, shall be null and void, and deemed deleted from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

Any waiver is only valid to the extent expressly set forth in writing. No waiver by either party of any right under this Agreement shall constitute a subsequent or continuing waiver of such right or any other rights under this Agreement.

User acknowledges that the Services are a valuable commercial product, the development of which involved the expenditure of substantial time and money. Any violation of the licenses granted hereunder, confidentiality obligations or infringement or misappropriation of Daupler's intellectual property rights shall be deemed a material breach of the Agreement, for which Daupler may not have adequate remedy in money or damages, and Daupler shall be entitled to injunctive relief, in addition to (and not in lieu of) such further relief as may be granted by a court of competent jurisdiction, without the requirement of posting a bond or providing an undertaking.

Except for User's obligation to pay the fees for Services provided, neither party shall be liable for any failure or delay in its performance due to circumstances beyond its reasonable control (including, but not limited to, act of terrorism, war (declared or not declared), sabotage, insurrection, riot, act of civil disobedience, act of any government, accident, fire, explosion, flood, storm, earthquake, volcanic eruption, nuclear event, any act of God, labor disputes, failure or delay of shippers, or unavailability of components or equipment); provided that it notifies the other party as soon as practicable and uses commercially reasonable efforts to resume performance.

This Agreement is governed by and construed in accordance with the laws of the State of Kansas, without giving effect to its principles of conflicts of law. Any litigation arising out of this Agreement shall be brought by either party in a court of competent jurisdiction located in Johnson County, Kansas, and each party hereby waives any defenses it may have before such courts based on a lack of personal jurisdiction or inconvenient forum. Each party hereby expressly and irrevocably waives the right to a jury trial. The prevailing party shall be awarded its reasonable attorneys' fees and costs in any proceeding arising out of or related to this Agreement.

This Agreement is the complete agreement between the parties and supersedes any prior or contemporaneous oral or written communications between the parties concerning the subject matter of this. There are no conditions, understandings, agreements, representations or warranties, express or implied, which are not specified herein. This Agreement may only be modified by a written document expressly stated for such purpose and executed by the parties. The terms and conditions of this Agreement shall control and supersede any end user license agreements, terms of use, click-through or

shrinkwrap terms, purchase order terms, invoice terms, or other similar documents, in any format, including terms located on User's website or provided with its ordering documents, whether signed before or after this Agreement. Such other terms shall be void to the extent they relate to the subject matter contemplated by this Agreement.

The following sections shall survive the expiration or termination of this Agreement: 2 (Payment of Fees); 3 (Term and Termination); 4 (Permitted Uses; Restrictions); 5 (Ownership); 6 (Confidentiality); 7 (Indemnification); 8 (Warranties; Warranty Disclaimer); 9 (Limitation of Liability); and 10 (General Provisions).