

AN ORDINANCE AMENDING ORDINANCE 17-22 APPROVING AN AGREEMENT BETWEEN THE CITY OF TWIN OAKS AND SIRENGPS, INC. FOR MASS COMMUNICATION SERVICES

WHEREAS, on May 17, 2017, by Ordinance 17-22 the Board of Aldermen approved an agreement with SirenGPS, Inc., for the certain communication services; and

WHEREAS, that Agreement, before it was executed has been modified by the parties and the Board now wishes to amend the prior Ordinance 17-22 to substitute the Agreement attached hereto as the approved and authorized agreement for execution;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby amends Ordinance 17-22 by substituting Exhibit A hereto (the "Substitute Agreement") for Exhibit 1 thereto and restates its authorization for the Mayor to execute the Substitute Agreement on behalf of the City of Twin Oaks with SirenGPS, Inc. The Substitute Agreement shall be in substantially the form of the contract, marked "Exhibit A" attached hereto and incorporated herein by reference.

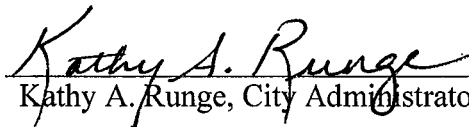
Section 2. This Ordinance shall be in full force and effect on and after its passage and approval by the Mayor.

PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 2nd DAY OF AUGUST 2017.



Russ Fortune, Mayor

Attest:



Kathy A. Runge, City Administrator/Clerk

Exhibit A

SIRENGPS SERVICE AGREEMENT

This Service Agreement (The Agreement) is entered into by and between **Twin Oaks Missouri** – a municipality authorized under the statutes of the State of Missouri. (“Service Recipient”, “Client” or “Community”) and SirenGPS, Inc. a company registered in the State of Delaware, with its principal place of business at 9272 Olive Boulevard, St. Louis, MO 63132 (“SirenGPS”), collectively the “Parties”.

Whereas:

- a) SirenGPS has developed a proprietary, web-based emergency management and community communication solutions product; and
- b) Service Recipient is an enterprise that also engages or wishes to engage SirenGPS services; and
- c) SirenGPS and Service Recipient agree that the SirenGPS Service Offering(s) will be made available to Service Recipient for use by Service Recipient and Service Recipient’s community of Users;

Now, therefore, in consideration of the mutual promises herein, the Parties covenant, declare and agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings. Other defined terms shall have the meanings set forth herein.

- 1.1. **“Effective Date”** shall mean the date that the Service Recipient is granted access to the Service Offering set out in EXHIBIT A.
- 1.2. **“Online Management Console”** (OMC) means the browser and mobile interfaces that allow Service Recipient to manage the Service Offering.
- 1.3. **“Service Offering(s)”** shall mean the services identified in EXHIBIT A attached hereto and constituting an integral part hereof, provided by SirenGPS through its back-end, hosted infrastructure to Service Recipient and its Users, all as set forth in this Agreement and any SirenGPS provided technical manuals.
- 1.4. **“User”** means an individual gaining access to a Service Offering from Service Recipient.

2. GRANT OF RIGHTS AND ADDITIONAL TERMS

- 2.1 Subject to the terms and conditions of this Agreement, SirenGPS hereby grants Service Recipient during the term of this Agreement a right to provide access to Service Offerings to Users, and Service Recipient commits to providing the Service Offerings to said Users.
- 2.2 Service Recipient shall be responsible for ensuring that at the end of the term of this Agreement, all rights of access to the Service Offerings shall cease immediately.
- 2.3 The Parties agree that the **“Terms of Service”** (TOS) attached hereto as EXHIBIT B are binding on the Parties and constitute an integral and inseparable part of this Agreement. It is understood that these Terms of Service also appear in the web-based set-up and/or usage pages of the Service Offerings, and that SirenGPS may from time to time amend the Terms of Service at its discretion; however, unless otherwise agreed in writing by the parties, the attached Terms of Service shall continue to govern, irrespective of any click through acceptance process associated with such web-based pages. To the extent that there may be a conflict between the terms in the main body to this Agreement and the Terms of Service, the terms of the main body of the Agreement shall govern.

3. SET-UP AND TRAINING

- 3.1 Within 5 business days following the Effective Date, SirenGPS shall deliver to Service Recipient log-in credentials to enable Service Recipient to access and configure the Service Offering(s) to Service Recipient’s requirements. SirenGPS shall provide reasonable set-up support during the configuration and training process, provided, however, that Service Recipient shall remain

ultimately responsible for the configuration of the Service Offering(s) and the manner in which they are provided to Users. Service Recipient undertakes to perform the configuration within 14 days following receipt of access to the service.

- 3.2 Within 14 days following the Effective Date, the Parties shall discuss and coordinate the logistics of any training that may be required by Service Recipient. Training shall be as set forth in the Proposal attached as EXHIBIT E to this Agreement. SirenGPS may provide the training through Internet communication tools. Service Recipient shall make its technical support and IT personnel available for such training session(s) as necessary.
- 3.3 Set-up and training shall be scheduled for mutually agreeable times following the Effective Date.
- 3.4 Where recipient engages in a pilot program prior, or as a condition to acceptance of services, the timing of availability and training shall be defined in the proposal for services.

4. SERVICE OFFERING PROMOTION

- 4.1 The Parties represent that they enter into this Agreement with the intent to provide Community's citizens (Users) with a service that allows the Community to push information to its users on a timely basis and to promote the expanding use of the Service Offerings by Users in a reasonable manner. Service Recipient will perform its duties hereunder in a diligent and businesslike manner and refrain from any activity or action that may damage the reputation of SirenGPS or the Service Offerings.
- 4.2 Service Recipient agrees not to make any representations or warranties concerning Service Offerings unless such representations and/or warranties are in complete conformity with the content of SirenGPS marketing and sales literature supplied or made available by SirenGPS to Service Recipient.
- 4.3 Service Recipient represents that it is unaware of any laws or regulations that may be applicable to Service Recipient's use of the Service Offering, but that if it becomes aware of any such laws or regulations that it will, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, any filings, registrations, licenses, permits and authorizations that may apply to Service Recipient related to tasks performed using the Service Offerings.
- 4.4 Without SirenGPS approval, Service Recipient shall not remove, delete or in any manner alter the intellectual property rights notices of SirenGPS and SirenGPS's suppliers, if any, appearing on the Service Offerings. Service Recipient shall place the SirenGPS logo under the "partners" or similar page on its website, and SirenGPS shall do likewise vis-à-vis Service Recipient's logo. The Parties shall issue a joint press release within sixty days after the Effective Date. SirenGPS is entitled to list Service Recipient as a new customer in relevant marketing materials, subject to Recipient's approval of the use of its name, trademarks or logos and compliance with Recipient's trademark usage guidelines. Any other usage of either party's name, logos or trademarks in material to be disseminated to third parties requires the advance written approval of the owner of such intellectual property.

5. MAINTENANCE AND SUPPORT

- 5.1 Service Recipient shall provide instructions to its Users regarding how they will use the Service Offerings. Service Recipient's support will include, but not necessarily be limited to answering questions that pertain to the Service Recipient's use of the service, diagnosing basic participation problems, and using reasonable efforts to provide solutions. For technical issues, Service Recipient shall refer Users to SirenGPS customer support.
- 5.2 Service Recipient will designate at least one, but no more than two of its employees as its technical contact people, to whom SirenGPS will provide technical support for Service Offering(s) at its discretion, by web site, email, telephone, or fax.

- 5.3 SirenGPS is only obliged to support the current version of each Service Offering. Each upgrade to a version, or new version, will be implemented for Users by Service Recipient seamlessly through SirenGPS's web-based infrastructure, and SirenGPS commits that they will be at least as functional as the prior version provided to Service Recipient. Such implementations shall be performed by Service Recipient within 14 days from receiving SirenGPS's written request and instructions. The failure to timely implement an upgrade request may cause degradation in a Service Offering, to which SirenGPS disclaims all responsibility and liability. Updates will be implemented system wide through existing update channels. SirenGPS anticipates little or no special attention from Service Recipient for updates.
 - 5.4 SirenGPS shall make all reasonable changes to the Service Offering(s) necessary to correct program or documentation errors.
 - 5.5 Subject to Section 5.2 and in accordance with EXHIBIT D attached hereto and constituting an integral part hereof, SirenGPS will provide reasonable telephone support to Service Recipient during SirenGPS's normal business hours (Monday through Friday, 9.00 am to 6.00 pm Central Time). For technical assistance in using the system in an emergency, Service Recipient may contact the primary customer support contact at any time.
6. PAYMENTS, TAXES, INTEREST
- 6.1 In consideration of the rights granted to Service Recipient under this Agreement, Service Recipient shall pay SirenGPS fees on the terms and conditions set forth in EXHIBIT C attached hereto and constituting an integral part hereof. Payments shall be sent in United States Dollars to SirenGPS at the address designated by SirenGPS and in the manner set forth in EXHIBIT C.
 - 6.2 Although the Parties are unaware of any applicable sales, use, value-added, withholding and other taxes and duties, all amounts payable hereunder to SirenGPS will be exclusive (i.e. net) of all sales, use, value-added, withholding and other taxes and duties, which are for Service Recipient's account. In the event SirenGPS pays any such amounts (other than its own income or capital taxes) and has not collected those amounts previously from Service Recipient, Service Recipient shall reimburse SirenGPS and they shall be added to the invoiced amounts as separate charges.
 - 6.3 Interest shall accrue on any delinquent amounts owed by Service Recipient to SirenGPS at a rate of one and one half (1.5%) per month.
7. REPORTS AND AUDITS
- 7.1 Within twenty days after the end of each month, SirenGPS will deliver to Service Recipient or make available through the Online Management Console a report which will provide all information reasonably required by Service Recipient for computation and/or confirmation of the payments, if any, due or credited to SirenGPS for such month.
 - 7.2 The usage reports generated by SirenGPS's web-based infrastructure shall take precedence as prima facie evidence of the details contained therein. To the extent that such reports indicate that SirenGPS has been underpaid, Service Recipient shall immediately pay to SirenGPS the amount underpaid.
8. CONFIDENTIALITY AND NON-DISCLOSURE
- 8.1 Confidential Information. To the extent permissible, the terms of this Agreement are confidential and may only be disclosed by a party to the extent required by law, in response to a valid subpoena, or court order or discovery request under the authority of a court of competent jurisdiction without the written permission of the party that owns the information. This limitation shall not apply to the extent that its application would conflict with disclosure required under public agency Sunshine Law or similar law or regulatory requirement.
 - 8.2 Information provided by one party or its users to the other party shall be treated as confidential and proprietary to the disclosing party and shall not be disclosed by receiving party to any other

party; provided, however, that each party may disclose this Agreement or its terms; (a) as required by a court or other governmental body, or as otherwise required by law, provided it makes a reasonable effort to notify the disclosing party in advance, (b) in confidence, to its legal counsel, accountants, banks, and current and prospective financing sources and their advisors, or in connection with an actual or proposed merger or acquisition, or (c) as needed in connection with the enforcement of its rights under this Agreement. The receiving party shall only provide the confidential information of the other party to those of its employees, advisors or consultants who have a need to know such information in performing the receiving party's duties under this Agreement.

9. TERM AND TERMINATION

- 9.1 The initial term of this Agreement shall be twelve months from the Effective Date.
- 9.2 Community, at its sole option, may renew this Agreement for two (2) additional twelve (12) month period under the payment terms set forth in Exhibit C and for additional twelve (12) month periods by giving SirenGPS notice thereof in writing prior to the end of the current period. Thereafter, this Agreement may be renewed at the same or different payment terms, with the same or different service parameters, provided that both parties agree to renew the agreement in writing and including the terms of any such renewal that are different from this Agreement in that writing.
- 9.2 Service Recipient may terminate this Agreement with sixty (60) day notice to SirenGPS and pay a pro-rata portion of its obligation.
- 9.3 Either party may terminate this Agreement at any time if (a) a receiver is appointed for the other party, (b) the other party makes an assignment for the benefit of its creditors, (c) proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law, (d) the other party liquidates or dissolves or attempts to do so, (e) the other party assigns or purports to assign this Agreement in breach of its provisions, or (f) the other party commits any other breach of a material obligation hereunder which it fails to cure within 20 days of written notice or immediately if it is by its nature incurable. Furthermore, should Service Recipient fail to pay any fee in a timely manner, SirenGPS is entitled to shut down a related Service Offering to Service Recipient and/or Users. Prior to doing so, by way of written notice SirenGPS shall provide Service Recipient with a 7-day grace period to remedy the non-payment.
- 9.4 Termination of this Agreement will not relieve either party from fulfilling its obligations which survive termination. Upon termination of this Agreement for any reason: (a) Service Recipient shall immediately cease offering the Service Offerings to Users and cease using the Service Offerings, and shall deliver to SirenGPS any SirenGPS proprietary material, any unused sales literature and other written information and all other materials supplied by SirenGPS pursuant to this Agreement; and (b) Service Recipient shall immediately cease to identify itself as a customer of SirenGPS or otherwise affiliated in any manner with SirenGPS, cease all display, advertising and use of all SirenGPS names, trademarks, logos and designations and shall not thereafter use, advertise or display any name, mark or logo which is, in whole or part, similar to or confusing with any such SirenGPS designation.
- 9.5 Service Recipient agrees that in case of expiration or termination of this Agreement, all of Service Recipient's, SirenGPS' and Users' rights arising out of this agreement shall cease as of the date of such expiration or termination. Upon the termination or expiration of this Agreement for any reason, SirenGPS will return or destroy all of Service Recipient's confidential information from all of its records and systems in any form, format or medium. This obligation shall not extend to information associated with Users that does not originate with or through Service Recipient, and shall not apply to information or records that do not constitute personally identifiable information of a specific User or constitute Service Recipient intellectual property. SirenGPS shall have no obligation to return or destroy information or records which it is obligated by law to retain.

10. GENERAL PROVISIONS

- 10.1 This Agreement does not create an employer-employee relationship between SirenGPS and Service Recipient, nor any agency, joint venture or partnership. Neither SirenGPS nor Service Recipient shall have any authority to act for or to bind one another in any way to warrant or to execute agreements on behalf of one another, or to represent that it is in any way responsible for the acts or omissions of the other party to this agreement. Service Recipient and SirenGPS shall be independent contractors only.
- 10.2 In the event of a dispute between Service Recipient and a third party related to SirenGPS use of intellectual property, SirenGPS agrees to defend and indemnify Service Recipient.
- 10.3 All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, i) within five days from the date they were mailed, by registered mail prepaid, or courier, to the president or general counsel of a party at the above noted addresses, or at such other address as may be given in writing in the future by either party to the other or ii) within one day from the date they were faxed to the president/CEO or general counsel of a party, provided a confirmation of receipt of such fax was received by the sending party, or (iii) within one day of emailing such communication to the president/CEO or general counsel of the party upon confirmation that such has been received.
- 10.4 This Agreement and the attached EXHIBITs are intended to be the sole and complete agreement between the parties hereto, and supersede all previous agreements, representations, understandings, negotiations or proposals. All schedules, EXHIBITs and addenda are an integral part of this Agreement. This Agreement may not be altered, amended or modified, except in writing, signed by duly authorized representatives of the parties hereto.
- 10.5 Neither party to this Agreement shall be held responsible for the performance of any obligations under this Agreement to the extent that such performance is hindered or prevented by any circumstances of Force Majeure which are deemed to include war, terrorism, riot, flood, earthquake or other natural catastrophes or national or local government regulations, in each case which is beyond the control of such party, and provided the party frustrated notifies the other party without delay in writing at the beginning and end of any such circumstances. The party frustrated shall use every endeavour to minimize the hindrance or prevention of such fulfillment. Upon the ending of such circumstance, the frustrated party shall without delay resume the fulfillment of its obligations including any obligations, the performance of which were interrupted thereby. Should an event of Force Majeure continue for at least thirty days, the non-frustrated party shall be entitled to terminate this Agreement upon five days' advance written notice.

X _____ Date: _____
SirenGPS, Inc.

X _____ Date: _____
City of Twin Oaks

EXHIBIT A
SIRENGPS SERVICE OFFERINGS

Siren 911 Enhanced Emergency Calling Services
Siren Alert Community Communication Services

The Effective Date for SirenGPS Services under this Agreement is July 1, 2017.

SirenGPS is providing Siren 911 and Siren Alert for twelve months at an annual price of \$1,500.00.

This price shall not increase for two annual renewals provided service is continuous.

34,000 SMS Segments and 2,750 voice minutes are included in the annual price of services. Use of communication services that exceed this amount will be billed on a pass-through basis.

The current rate per SMS segment of 160 characters is \$0.0075, and the current rate for Voice Minutes is \$0.015 per minute. These rates are subject to change. In the event of an increase we will provide notice to the Service Recipient.

EXHIBIT B TERMS OF SERVICE

Please refer to the Terms of Services (TOS) as set forth on our website at <http://www.sirengps.com/terms> and which may, from time to time be updated. In the event that SirenGPS changes its TOS, it shall provide written notice to Service Recipient. All mobile use is governed by the SirenGPS TOS.

EXHIBIT C

FEES AND PAYMENT TERMS

A. Software as a Service:

Access Fee:

In consideration of the availability of the Service Offering(s) for usage by Service Recipient and/or Users under this Agreement, Service Recipient shall pay SirenGPS flat usage fee(s) as follows:

\$1,500 USD annually.

Third Party Fees:

SirenGPS includes delivery of messages to its mobile application for free.

Certain third-party communications are included on an annual basis as part of the annual license fee.

Payment for delivery of SMS, voice and email, in excess of what is included in EXHIBIT A, if applicable, will be billed at standard rates. Rates are subject to change upon notification to Service Recipient.

B. Payments

- Flat fees shall be paid by Service Recipient to SirenGPS within fourteen business days of the Effective Date.
- Additional fees incurred in any month shall be paid by Service Recipient within thirty days of the applicable invoice date; however, in no event shall the payment be due more than 30 days following the end of the calendar month during which they were earned or incurred.
- Payments may be made by wire transfer or business check.

Please Remit to: SirenGPS, Inc.

Wire Transfer Instructions

Bank: **Triad Bank**
ABA Routing: **08019162**
Account Name: **SirenGPS, Inc.**
Account Number: **01116335**

Make all checks payable to SirenGPS, Inc.
9272 Olive Boulevard
Saint Louis, MO 63132

EXHIBIT D

SUPPORT AND MAINTENANCE

1. OVERVIEW

Subject to the payment of all fees in accordance with this Agreement, SirenGPS will maintain and support its services and applications in a consistent and clear manner, pursuant to the below. For purposes of this EXHIBIT D, “services and applications” means SirenGPS’s web-based infrastructure availability and Service Offerings’ operation and, except as otherwise expressly detailed below, it is not intended to include any minimum standards for third party response times, message deliveries, third party map interface quality, Internet or communication provider performance or a guaranty of any other third party’s performance associated with the Service Offerings. Additionally, while the Service Offerings are intended to assist in providing proper communication during a crisis, SirenGPS cannot take and does not assume any responsibility for the effectiveness of Service Offerings when and if triggered during such a crisis or at any other time. SirenGPS shall maintain its web based Service Offerings to function as designed, intended and represented and will maintain the product to Sigma 6 standard for availability. Any input or suggestions provided by SirenGPS during Service Offering(s)’ set-up shall not be construed as advice or a guaranty of success. Service Recipient remains ultimately responsible for the management of its User Community and the settings of the Service Offerings that it has chosen. This EXHIBIT D is only intended to set forth the support and maintenance obligations of SirenGPS vis-à-vis its back-end infrastructure that is intended to enable proper communication when and if necessary.

SirenGPS will make any changes to its applications accurately, under a controlled procedure and in a confined development and testing environment specifically maintained for this purpose. SirenGPS will take the necessary steps and procedures to ensure that deployment of new changes will not change the level of service to Service Recipient or Users. SirenGPS monitors both the frequency and the nature of service problems and takes action to implement changes to reduce or eliminate recurring problems.

Except with respect to end-user software customer service, SirenGPS is to work only with Service Recipient and not with Users directly. If a User should contact SirenGPS directly, s/he will be referred back to Service Recipient.

2. PROCEDURES & SERVICE LEVELS

2.1 Problem Reporting Procedure

Service Recipient may report problems to the SirenGPS Technical Support group by email and phone.

	Email		Support hours
Standard support	Paul Rauner paul.rauner@sirengps.com	773.960.8590	9:00 am and 6:00 pm Central Time during normal business, non- holiday days
Emergency support [Excludes application related support]	Galina Bour galina.bour@sirengps.com Please add "EMERGENCY" to the Subject of the message.	314.686.0926 Please leave a clear message with your contact details, and a support representative will contact you within 30 minutes.	24/7 basis for those matters determined to be urgent, as noted in the table below.

All requests for service should include the Service Recipient name, a description of the problem, email address and telephone number of the Service Recipient contact person.

Service Recipient is to provide as much information about the problem as possible. A Technical Support Specialist will contact Service Recipient by either a return e-mail or a return phone call - or as otherwise requested by Service Recipient - and will confirm that SirenGPS has received and logged the problem and the Service Recipient Technical Representative contact information.

The SirenGPS Technical Support Specialist will work with the Service Recipient Technical Representative to resolve the problem, to the extent that it is determined in good faith that the problem is beyond the remedial capabilities of Service Recipient. If the problem cannot be resolved in a short period of time by phone or email, the Technical Support Specialist will keep Service Recipient informed as to the progress.

When the problem has been resolved, the Service Recipient will be notified by email and the call closed on SirenGPS's records.

2.2 Call Priority Commitments

The following are the SirenGPS response commitments for answering calls and evaluating priority:

SirenGPS Priority	SirenGPS Definition	Guideline	Response Time	Resolution Time
1	Critical	Major server or applications failure with system unavailable.	Within 2 hours	within 4 hours
2	Major	Medium function or service affected with restricted availability and some User impact.	Within 2 – 4 hours	within 2 working days
3	Minor	Minor function or service affected with minor impact and system still available/functional.	Within 1 working day.	within 7 working days
4	Low	Low priority background task. System and functionality are available.	Within 1 working day	By agreement

Note: "Response Time" is defined as the initial investigation of the problem and the gathering of any necessary data. It is the initiation of the resolution and not necessarily the time it takes to fix the problem.

2.3 Scheduled maintenance:

Regular: SirenGPS may perform scheduled maintenance to its infrastructure, with SirenGPS notifying Service Recipient by contacting:

Name and email _____ Cell phone _____

Scheduled maintenance is infrequent and typically does not affect the availability of the web-based infrastructure. Scheduled maintenance will be no greater than an average of 4 hours per month to a maximum of 48 hours per year, and will not exceed 7 hours in any calendar month.

Urgent Maintenance: SirenGPS may perform urgent maintenance at its detection center. SirenGPS will endeavor to notify Service Recipient 24 hours prior to urgent maintenance at the email address set forth above. Urgent maintenance will not exceed 4 hours per calendar month and will be calculated as part of the scheduled maintenance.

2.4 Problem Escalation Procedure

Problem escalation formally defines the procedure, which is in place to identify high priority issues and make senior people aware so that additional resources, if necessary, can be used to help resolve an urgent problem. This is for use on those occasions where a problem is significantly affecting Users’ enjoyment of or access to SirenGPS services and the current action being taken does not appear to be producing a resolution quickly enough.

The table below identifies those people who will be contacted if a call has not been resolved by the elapsed time shown (elapsed time being time beyond that committed to by SirenGPS in the table above):

SirenGPS Priority	SirenGPS Definition	Guideline	Escalation
1	Critical	Major server or applications failure with system unavailable.	1 hr: SirenGPS Tech Support Mgr and IT Team 2 hrs: VP/CTO
2	Major	Medium function or service affected with restricted availability and some User impact.	2 hrs: SirenGPS Tech Support Mgr and IT Team 4 hrs: VP/CTO
3	Minor	Minor function or service affected with minor impact and system still available.	2 days: SirenGPS Tech Support Mgr and IT Team 5 days: VP/CTO
4	Low	Low priority background task.	Not Applicable

If there is a dispute as to whether a matter is “urgent” or “very urgent”, then the parties shall escalate the matter to the respective CEOs/Presidents of each company.