

SERVICES AGREEMENT

The following "Services Agreement" governs your use of the software and services provided by Crocodile Solutions Inc ("CSI"). This is a legal agreement between you and CSI and incorporates the attached Exhibits. By registering your use of the Service (as defined below), you are accepting to be bound to the terms of this User License Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

In addition to any other terms defined in this Agreement, the following terms will have the following meanings:

- 1.1 **"Authorized Users"** means those employees of Client who are authorized by Client to use the Services, for whom subscriptions to a Service have been purchased hereunder, and who have been supplied user identifications and passwords by Client (or by Company at Client's request).
- 1.2 **"Client Data"** shall mean all data and information relating to Client's clients processed through the Services.
- 1.3 **"Documentation"** means the operating, training and reference manuals relating to the use and operation of the Services, and any enhancements, updates or versions related thereto, whether in printed form, electronic form, available within or through the Services, posted on Company's website, available on-line or in any other format otherwise made available by Company to Client.
- 1.4 **"Fees"** means the total fees due and payable by Client to Company for access to the Services, the amount of which is set forth on **Schedule A**, attached hereto and incorporated herein by reference.
- 1.5 **"Services"** means the online, web-based applications and platform provided by Company via designated websites as specifically described in **Schedule A** and any related Documentation, along with any other consulting services expressly described in **Schedule A**, including support, training and professional services.
- 1.6 **"Site"** means the facility or physical location or locations specified on **Schedule A** at which Company will, if applicable, perform the Services identified in **Schedule A**.

2. ACCESS.

- 2.1 **Access Rights.** Subject to the terms and conditions of this Agreement, subject to Client's payment of the Fees to Company, Company hereby grants to Client a non-exclusive, limited, revocable, non-transferable, non-sub licensable right, during the term of this Agreement, to allow the number of Authorized Users designated in **Schedule A** to access and use the Services in the intended manner and solely for Client's internal business purposes. The access right granted herein extends to Authorized Users, provided, however, that Client shall remain responsible for the use of the Services by each Authorized User, including each Authorized User's compliance with the restrictions on use set forth in Section 2.2, each Authorized User's accurately inputting any Client Data.
- 2.2 **Use Restrictions.** In no event shall Client: (i) access or use the Services in excess of the aggregate number of Authorized Users designated in **Schedule A**, unless Client notifies Company in advance and pays Company the applicable additional Fees, (ii) reverse-engineer, disassemble, or decompile the Services or otherwise attempt to obtain or perceive the source code from which any software component of the Services is compiled or interpreted, and Client acknowledges that nothing in this Agreement will be construed to grant Client any right to obtain or use such source code; (iii) give, sell, rent, lease, timeshare, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Services to any third party, including, but not limited to Client's affiliates or any third-party service providers or independent contractors, except in accordance with the last sentence of this Section 2.2; (iv) remove any proprietary notices, labels or marks on the Services or Documentation; (v) modify, translate, patch, or attempt to alter the Services, or any part thereof, or create any derivative works of the Services; (vi) use the Services in connection with a service bureau; or (vii) publicly disparage the business practices of Company or quality of the Services. At no time during the term of this Agreement or thereafter shall Client challenge the ownership of Company to the Services or the validity of Company's intellectual property rights in the Services. Contractors, consultants, agents and third-parties shall not be "Authorized Users" unless expressly consented to in advance by Company, which consent may be withheld in Company's discretion or, if granted, conditioned on their agreeing in writing to abide by the terms of this Agreement regarding use of the Services.
- 2.3 **Reservation of Rights.** Company reserves all rights in and to the Services, including all ownership interests in and to the Services. Except as expressly set forth in Section 2.1, no express or implied license or right of any kind is granted to Client.
- 2.4 **Compliance.** At Company's request, Client shall (i) certify that the Services are being used pursuant to the provisions of this Agreement; and (ii) identify by name and quantity the Authorized Users then-currently accessing and using the Services. No more than one individual at a time may be the Authorized User. Meaning, account sharing is not permitted. Client is required to ensure that its Authorized Users maintain their log-in credentials to access the Services in strict confidence.
- 2.5 **Right to Use Client Data.** Client hereby grants to Company a non-exclusive, non-transferable license to process, use, upload, display, copy and store Client Data for the term of this Agreement solely for the purpose of delivering the Services pursuant to this Agreement, including maintaining, and improving the Services. If Client advises Company that Client is subject to the California Consumer Privacy Protection Act or any other special privacy laws, the parties will memorialize any applicable requirements bearing on use of the Client Data in **Schedule C** hereto. Client agrees that it shall have sole responsibility and

liability for: (i) acquiring any and all third-party consents or authorization(s) necessary for use of Client Data as contemplated by this Agreement; (ii) the completeness and accuracy of all of Client Data and other materials provided to Company by or on behalf of Client pursuant to this Agreement; and (iii) ensuring that Client Data does not violate the privacy rights of any individual identifiable from the Client Data and does not infringe or violate any patents, copyrights, trademarks or other intellectual property rights, or misappropriate the trade secret, of any third party. To the extent not restricted by applicable laws, Company reserves the right to use the Client Data and statistical information derived therefrom on a de-identified basis (that does not identify individuals within the Client Data) for Company's business purposes. If Client requests that Company transfer any portion of the Client Data to a third party, Company reserves the right to require that Client sign Company's then-current release or transfer form authorizing the transfer.

3. FEES AND PAYMENTS.

- 3.1 Payments.** Client shall pay to Company the Fees as specified in the Payment Schedule on **Schedule A**. Unless otherwise set forth in this Agreement or any Schedule, all Fees shall be due and payable in advance within thirty (30) days of the invoice date. Client shall make all payments required hereunder *through ACH electronic funds transfer* or as otherwise permitted by Company, which may include payment by credit card or check, to be confirmed in Company's invoice. Upon execution of this Agreement, Client shall provide Company, in writing, with all necessary account information, required for Company to process such payments. If Client's account contains insufficient funds to make any payment hereunder, or transactions initiated by or on behalf of Company to collect payments hereunder are rejected for any reason, and the Client has not cured this deficiency within 5 days, then the Company shall have the right, at its election, to either suspend the Services or terminate this Agreement in accordance with Section 13.2(b) hereto or consider Client's account overdue in accordance with Section 3.2 below and charge Client applicable interest. If the Client fails to make a payment according to the terms of this Agreement, then the total of the remaining payments due within the term of this agreement shall become due and payable immediately upon Company's written demand to Client.
- 3.2 Overdue Accounts.** If any Fee due hereunder is not received by Company, in whole or in part, within thirty (30) days of the invoice date, or as otherwise specified in Section 3.1 above, a late fee shall be charged by Company on overdue accounts at the rate of one and one-half percent (1½%) per month, or the maximum amount of interest allowed by law, commencing on the date payment was due.
- 3.3 Taxes.** In addition to any other payments, including Fees, due to Company hereunder, Client shall pay, and indemnify and hold Company harmless from, any sales, use, excise, import or export, value added or similar tax or duty not based on Company's income, including any penalties and interest, as well as any costs associated with the collection or withholding thereof; and all governmental permit fees, license fees and customs and similar fees levied upon the delivery by Company of the Services, which Company may incur in respect of this Agreement.

4. OWNERSHIP RIGHTS.

- 4.1** Client hereby acknowledges and agrees that Company owns all right, title and interest in and to its Confidential Information, the Services, Documentation, and all intellectual property and proprietary rights therein, including, without limitation, patents, copyrights, trademarks, service marks, trade secrets, and confidential and proprietary rights therein, and all goodwill associated therewith. Client also acknowledges that the Services and Documentation contain confidential and proprietary information and trade secrets belonging to Company. Nothing in this Agreement authorizes Client to access any source code of Company.
- 4.2** Company hereby acknowledges and agrees that Client exclusively owns all rights, title and interest in and to Client's Confidential Information, the Client Data, and Client's intellectual property.
- 4.3** Client acknowledges and agrees that Company owns all right, title and interest in and to all modifications, enhancements, improvements, derivative works, new applications, data, programs or other information of possible technical or commercial importance relating to Company's business based on or involving the Services, whether made by Client, third parties or Company ("Developments"). Client will report to Company all Developments for the purpose of permitting Company to ascertain and to perfect its rights in such Developments. Company shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other proprietary rights in, to and arising from such Developments. Client agrees to assign and does hereby assign, to Company all Developments that are made or conceived by Client. Client agrees to assist Company, and Company's expense, in every necessary way to obtain or enforce any patents, copyrights or any proprietary rights relating to the Developments and to execute all papers and applications necessary to vest in Company full legal title in such Developments and Client agrees to continue this assistance after the termination of this Agreement. To the Developments assigned to Company pursuant to this section are necessary to use the "Services, they shall be part of the Services, and shall be subject to the terms and conditions of this Agreement.
- 4.4** Client acknowledges that: (i) any unauthorized reproduction, preparation of derivative works based on, distribution, performance, display, making, using, offer for sale, or sale of the Services or Documentation; or (ii) any use or disclosure of Company's Confidential Information (as defined below) or Trade Secrets (as defined below), or any rights embodied therein, by Client, or its employees, agents, or representatives, including its Authorized Users, will result in irreparable harm to Company for which remedies other than injunctive relief may be inadequate, and that Company shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such unauthorized acts, in addition to other appropriate remedies, without the need of posting a bond.

5. SERVICE LEVEL AGREEMENT

As part of Client's benefits under this Agreement, Client will receive the support services described in **Schedule B**, attached hereto and incorporated herein by reference.

6. CLIENT RESPONSIBILITIES

- 6.1 Generally.** In addition to the obligations of Client as otherwise specified in this Agreement, Client shall be solely responsible for the following:
- a. Procuring, maintaining and supporting all Client computer hardware, peripherals, device drivers, third-party operating systems, cabling, cabling services and other products and services which may be required to access or use the Services;
 - b. The compatibility of Client's computer hardware, peripherals, device drivers, third-party operating systems, and other third party software with the Services;
 - c. Authorized Users' compliance with the terms of this Agreement;
 - d. The results obtained from use and operation of the Services, provided, however, nothing contained in this subsection (d) shall affect the limited warranties contained in Section 8;
 - e. Providing and maintaining the appropriate operating environment for Client's hardware and peripherals, and maintaining back-up and disaster recovery procedures and facilities;
 - f. Using commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notifying Company promptly of any such unauthorized access of use of which Company becomes aware;
 - g. The accuracy, quality, integrity and legality of all Client Data; and
 - h. All data entry and loading.
- 6.2 Site Access.** Company shall be permitted reasonable access to Client's Site during Client's working hours to perform its obligations under this Agreement and audit Client's use of the Services in compliance with this Agreement. Company shall comply with all security and safety policies applicable to visitors to Client's Site, to the extent that Client provides such policies to Company in writing prior to Company's access to Client's Site.
- 6.3 Designated Contacts.** A maximum of three (3), identified Authorized Users may contact Company to request Support Services on behalf of Client. Client shall identify such Authorized Users to Company in writing within five (5) days after the Effective Date, and such Authorized Users may be changed only upon Company's receipt of an updated written notification identifying the deletion or addition of such Authorized Users for such purposes, subject at all time to the three- (3-) user maximum.
- 6.4 Third-Party Rights.** Client represents and warrants that Client shall obtain all rights and licenses from third parties necessary or appropriate for Company to perform the Services hereunder.

7. CONFIDENTIALITY

- 7.1 Confidential Information and Trade Secrets.** By virtue of this Agreement the parties may have access to the other party's Confidential Information and/or Trade Secrets.
- a. **Confidential Information.** As used herein, the term "Confidential Information" shall include without limitation, any proprietary and non-public information of either party, or any affiliate of either party, without regard to form, including, without limitation, (i) all past, current and planned product and/or hardware specifications, data, know-how, methods of doing business, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, past, current and planned product designs, customer lists, past, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures, documentation, and any other information associated with either party's business, however documented; (ii) all confidential information of third-parties associated with either party's business; (iii) all notes, analysis, compilations, studies, summaries and other materials prepared by or for either party, associated with either party's business, and containing or based, in whole or in part, on any information included in the foregoing; and (iv) any documents marked "confidential" or "proprietary;" together with any other items which, by their nature are generally considered proprietary and confidential (regardless of whether such information is specifically labeled as such). Company acknowledges that the Client Data is Confidential Information of Client. Client acknowledges the terms of this Agreement are Confidential information of Company.
 - b. **Trade Secrets.** As used herein, the term "Trade Secrets" shall mean any information of either party, or any affiliate of either party, without regard to form, that constitutes a Trade Secret under applicable law. Client acknowledges that the source code underlying the Services constitutes a Trade Secret of Company.
 - c. **Exceptions.** The terms "Confidential Information" and "Trade Secret" shall not include any information that is (i) publicly known or becomes publicly known through no breach of this Agreement by the receiving party or on the receiving party's behalf, (ii) rightfully received from a third party without an obligation of confidentiality owed to the disclosing party, (iii) approved by the disclosing party for disclosure, or (iv) required to be disclosed pursuant to a requirement of a governmental agency or court, so long as the receiving party promptly provides the disclosing party with notice of such requirement and an opportunity to preserve the confidential or proprietary nature of such required disclosure prior to any such disclosure, and

reasonably cooperates with the disclosing party at the disclosing party's request and expense to resist such order or to obtain a protective order.

7.2 Non-Disclosure.

- a. **Confidential Information and Trade Secrets and Client Data.** During the term of this Agreement and thereafter, each party shall keep secret and treat as confidential each item of the other party's Confidential Information and Trade Secrets (whether such Confidential Information or Trade Secrets were disclosed to either party before or during the term of this Agreement). Neither party shall permit the disclosure of the other party's Confidential Information to any third party for a period of three (3) years from the date this Agreement terminates. Neither party shall permit the disclosure of the other party's Trade Secrets to any person or entity whatsoever for as long as such Trade Secret meets the definition of a Trade Secret under applicable law. Neither party shall use, or permit the use of, the other party's Confidential Information or Trade Secrets for any purpose other than in connection with the performance of their obligations under this Agreement. Each party shall take all reasonable, necessary and appropriate efforts to safeguard the other party's Confidential Information and Trade Secrets from disclosure to any person other than as permitted by this Agreement. Both parties acknowledge and agree that the other party considers its Confidential Information and Trade Secrets to be valuable, and confidential. The originals and all copies of either party's Confidential Information or Trade Secrets, regardless of the medium in which they are stored, shall be promptly returned to the disclosing party in good order upon completion or termination of this Agreement or at any other time upon the request of the disclosing party.
- b. **Legends.** Client shall prohibit its Authorized Users from removing any copyright, trademark service mark, patent, or other proprietary legend or restrictive notice (collectively, the "Proprietary Legends") contained or included in any materials (including the Documentation) provided by Company to Client hereunder. Client shall include such Proprietary Legends, and shall cause its employees, agents, contractors and Authorized Users to include such Proprietary Legends, in any reproduction of the Documentation or other materials that Client is permitted to make pursuant to the terms of this Agreement. To this end, Client shall not permit Client's Authorized Users to reproduce or copy any such materials except as expressly authorized hereunder.
- c. **Irreparable Harm.** Both parties agree that the breach or threatened breach of any duty in this Section 7 is likely to result in substantial and immediate irreparable harm to the Party whose Confidential Information or Trade Secrets are impermissibly disclosed and such harm shall be inadequately remedied by monetary damages and that an injured party is entitled to seek injunctive relief for any such breach or threatened breach, in addition to any other remedy to which the party is otherwise entitled.
- d. **Unauthorized Access.** Company shall have no liability for, and Client shall indemnify Company against, any injury or loss arising or resulting from disclosure or loss of Client Data or Client Information caused by or related to unauthorized entry or access to Client's equipment or systems.

8. COMPANY REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

8.1 Warranty and Exclusive Remedy. Company represents and warrants that the Services will perform / be performed in accordance with the Documentation and terms of this Agreement. Company shall maintain its network and systems security in a commercially reasonable manner consistent with prevailing industry standards. Client's exclusive remedy under this Section 8.1 will be for Company to re-perform or correct any defective Services, so long as such defective Services are identified to Company in writing with reasonable particularity within thirty (30) days after such Services are performed or made available to Client. Such re-performance or correction shall be Client's sole remedy for breach of the limited warranty under this Section 8.1.

8.2 Warranty Exclusions and Limitations.

- a. **EXCEPT AS SET FORTH IN SECTION 8.1, THE SERVICES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. COMPANY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE, EFFORT, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. COMPANY DOES NOT WARRANT THAT CLIENT'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, THAT THE SERVICES WILL OPERATE IN COMBINATION WITH ANY OTHER SOFTWARE OR OTHER THAN SERVICES PROVIDED BY COMPANY UNDER THIS AGREEMENT, AND COMPANY DOES NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY CLIENT'S USE OF THE SERVICES.**
- b. **Unintended Use of Services.** Company is not responsible for problems caused by: (a) use of the Services except as expressly authorized hereunder; (b) changes in, or modifications to, minimum system requirements or the operating characteristics of any computer hardware, software or data used to access the Services which were not previously authorized in writing by Company; (c) use of the Services with data or software of third parties or with hardware which is incompatible with the Services; or (d) any accident, physical, electrical or magnetic stress, unauthorized alterations, failure of electric power, environmental controls, or causes beyond Company's control.

9. CLIENT REPRESENTATIONS AND WARRANTIES.

Client represents and warrants that the Client Data will: (i) not infringe any patents, copyrights, trademarks or other intellectual property rights, or misappropriate the trade secrets, of any third party; (ii) not violate any rights of publicity or privacy of any third party, (iii) not violate any applicable law, statute, ordinance or regulation, and (iv) not contain any viruses, trojan horses, worms,

malicious code or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate the Services, or any system, data or personal information.

10. LIMITATION OF LIABILITY

- 10.1** Company's liability to Client, or to any third party, however caused, and whether arising under contract, tort (including negligence) or any other theory of liability, shall in any event exceed the Fees paid (inclusive of Fees payable hereunder but not yet paid) by Client to Company during the 12 months immediately preceding the date on which such liability arose, and in no event shall Company be liable to the other for costs of procurement of substitute goods or services. Neither party shall be liable to the other party for any special, consequential, incidental or indirect damages, however caused or based on any theory of liability, arising out of this agreement, whether or not such party has been advised of the possibility of such damage, and notwithstanding any failure of essential purpose of any limited remedy.
- 10.2** Client acknowledges and agrees that: (a) the limitations on liability set forth in Section 10.1 are essential terms without which Company would not enter into this Agreement with Client, (b) the pricing of the Services is directly related to Company's ability to rely upon the limitations on liability set forth herein; and (c) congestion over the Internet and data delay, as well as the capabilities and robustness of Client's own equipment and network servers may slow the upload and download rate of data to the Services, as well as the accessibility of the Services to Client.

11. COMPLIANCE WITH LAWS

- 11.1 Compliance with Laws.** Client shall defend, indemnify, and hold Company harmless from and against any and all loss, expense or liability (including reasonable attorneys' fees) awarded against, or incurred by Company, as a consequence of Client's failure to comply with any applicable laws or regulations. The foregoing indemnity obligation shall survive termination of this Agreement for any reason.
- 11.2 Export.** In the event that this Agreement provides for the exporting of, or allows for access to, any of the Services or Documentation outside the United States, Client shall be solely responsible for compliance with all applicable United States export laws, rules, and regulations. Client agrees to keep such books and records and to take other actions as may be required by such applicable laws, rules, and regulations, and to comply with any applicable United States export laws, rules, and regulations. Without limiting the generality of the foregoing, none of the Services, Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, by the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Departments' list of Specially Designated Nations or the U.S. Department of Commerce's Table of Denials. Client warrants that it is not located in or using the Services in, under the control of, or a national or resident of any such country nor appears on any such list.

12. INDEMNIFICATION

- 12.1 Client Indemnification.** Client shall indemnify, defend and hold harmless Company, its employees, directors, shareholders, officers, agents, employees, subcontractors, successors and assigns from and against any and all losses arising from or in connection with any and all third-party claims, demands, suits, actions, judgments, damages, costs, losses, expenses (including reasonable attorneys' fees and costs), and other liabilities (collectively "Losses") arising from or in connection with: (i) Company's authorized use of the Client Data; (ii) any breach of a representation, warranty or obligation of this Agreement; or (iii) Client's negligence or willful misconduct. Client's obligations under this Section 12.1 are expressly conditioned on (a) Company giving Client prompt written notice of any claims, demand, or suit threatened or instituted against it; (b) Company providing Client (at Client's expense) with all information and assistance necessary to defend or settle such liability or claim; (c) Client having control of the defense and all related settlement negotiations; and (d) Company taking no action that may prejudice Client's ability to defend the claim; provided, however, that Client will not enter into any settlement involving third-party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by Company or that adversely affects Company's rights or interests, without Company's prior written consent.
- 12.2 Company Indemnification.** Company shall defend, indemnify and hold harmless Client, employees, directors, shareholders, officers, agents, employees, subcontractors, successors and assigns from and against any and all Losses arising from or in connection with: (i) Company's negligence or willful misconduct; or (ii) Company's authorized use of the Services. Company's obligations under this Section 12.2 are expressly conditioned on (a) Client giving Company prompt written notice of any claims, demand, or suit threatened or instituted against it; (b) Client providing Company (at Company's expense) with all information and assistance necessary to defend or settle such liability or claim; (c) Company having control of the defense and all related settlement negotiations; and (d) Client taking no action that may prejudice Company's ability to defend the claim; provided, however, that Company will not enter into any settlement involving third-party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by Client or that adversely affects Client's rights or interests, without Client's prior written consent.
- 12.3 Infringement Remedy.** In the event use of the Services becomes, or in Company's reasonable opinion are likely to become, the subject of a claim of intellectual property infringement, Company may, at its option and expense: (a) obtain the continuing right to use the Services; or (b) modify the Services or replace them with a functional equivalent so that the Services no longer infringe; or if neither (a) nor (b) is reasonably practicable, (c) terminate this Agreement with respect to the allegedly infringing Services and refund any pre-paid portion of the Fees. THIS SECTION 12.3 STATES COMPANY'S ENTIRE LIABILITY AND OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, FOR INFRINGEMENT CLAIMS.

13. TERM AND TERMINATION.

- 13.1 Term.** The term of this Agreement shall commence on the Effective Date and, unless otherwise terminated in accordance with Section 13.2 below, shall continue for an initial term of **one (1)** year (the "Initial Term") unless earlier terminated under Section 13.2. Thereafter, this Agreement shall automatically renew for successive **one (1)** year renewal terms (each a "Renewal Term"), unless earlier terminated under Section 13.2 or unless either party notifies the other party at least ninety (90) days prior to the end of the Initial Term or then-current Renewal Term, as the case may be, of its intent to terminate this Agreement upon the expiration of the Initial Term or then-current Renewal Term, as applicable. The Initial Term and any Renewal Terms are collectively referred to as the "term" in this Agreement.
- 13.2 Termination.** This Agreement may be terminated as follows:
- Company may terminate this Agreement immediately upon written notice to Client in the event that Client breaches the provisions of Section 2.2 or 7.2;
 - Either party may terminate this Agreement in the event that the other party materially breaches this Agreement (except a breach by Client of the provisions of Section 2.2 or 7.2 of this Agreement) and fails to cure such breach within thirty (30) days after the notifying party has given the breaching party written notice specifying such breach; or
 - Company may terminate this Agreement immediately in the event that Client makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws.
- 13.3 Post-Termination Obligations.** Upon termination of this Agreement for any reason, all rights granted by Company to Client hereunder shall immediately cease, and Client shall immediately return to Company all Company property in Client's possession, if applicable, including, but not limited to, all copies of the Documentation and all embodiments of Company's Confidential Information and Trade Secrets. Upon return of such materials, Client shall provide Company with a signed written statement certifying that Client has returned all of Company's property to Company and that Client has complied with this Section 13.3. Upon written request from Client, Company will return to Client all embodiments of Client's Confidential Information that Company may have in its possession. Termination of this Agreement shall not relieve Client's obligations under this Agreement with respect to the payment of all Fees or other fees identified hereunder and that have accrued or that Client has agreed to pay, prior to the effective date of such termination. The obligations of this Section 13.3 shall survive the expiration or termination of this Agreement for any reason.
- 13.4 Return of Client Data.** Upon any request by Client made within 30 days after the effective date of termination of this Agreement for any reason, Company, shall return or otherwise make available to Client for download a file of Client Data in back-up file format. After such period, Company shall have no obligation to maintain or provide any Client Data and shall thereafter, unless legally prohibited, have no obligation to retain any Client Data.

14. GENERAL PROVISIONS.

- 14.1 Relationship of Parties.** Company and Client are independent principals. This Agreement shall not be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize either party to enter into any commitment or agreement binding on the other party.
- 14.2 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement.
- 14.3 Assignment.** This Agreement and all rights and obligations related thereto may not be assigned in whole or in part by Client without the prior written consent of Company.
- 14.4 Force Majeure.** Except with respect to Client's payment obligations hereunder, neither Company nor Client shall be liable for failure to perform any of its respective obligations hereunder if such failure is caused by an event outside its reasonable control (each, a "Force Majeure Event"), including but not limited to, an act of God, war, natural disaster, fire, flood, terrorism, strike or other labor difficulty, act of government authority, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or services from usual sources, or any cause beyond its reasonable control. If there is a performance delay due to any such cause, the date of delivery or time for completion shall be extended by a time period reasonably necessary to overcome the delay's effect.
- 14.5 No Waiver.** No delay or failure in exercising any right hereunder, and no partial or single exercise thereof, shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute consent to any prior or subsequent breach.
- 14.6 Severability.** If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- 14.7 Notices.** All notices required to be given hereunder shall be given in writing and shall be delivered either by hand, by certified mail with proper postage affixed thereto, or by facsimile (with confirmation copy sent by registered mail) addressed to the contact address in the first paragraph of this Agreement or such other address as may be designated by the parties from time-to-time in accordance with this Section 14.7. All such notices shall be deemed received by the other party upon the earlier of actual receipt or actual delivery.
- 14.8 Governing Law.** This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of North Carolina applicable to agreements entered into and performed within such State, without reference to the

conflicts of laws rules of such State. Client hereby consents to the personal jurisdiction and venue of the Courts of the State of North Carolina in Forsyth County and/or the United States District Court for the Middle District of North Carolina for the resolution of all disputes concerning the subject matter of this Agreement.

- 14.9 Entire Agreement.** This Agreement, the Schedule(s) and the Addendum attached hereto: (i) represent the entire understanding between the parties hereto with respect to the subject matter set forth herein, (ii) supersede all negotiations, agreements, contracts, commitments and understandings, both oral and written between Company and Client, and (iii) do not operate as an acceptance of, and shall prevail over, any conflicting provisions of any purchase order or any other instrument provided to Company by Client, which conflicting provisions shall be null and void. No modifications, additions, or amendments to, or waivers under, this Agreement shall be effective unless made in writing and executed by a duly authorized representative of each party. For avoidance of doubt, no terms of any purchase order or other ordering document submitted by Client shall affect or modify this Agreement. In the event of any conflict between the terms of the Agreement and the terms of the Addendum, the terms of the Addendum shall control.
- 14.10 Survival of Terms.** Upon termination or expiration of this Agreement, the following provisions of this Agreement shall continue and survive in full force and effect: Sections 1, 2.5 (last sentence), 3.3, 4, 7, 8, 9, 10, 12, 13.3, 13.4 and 14, as well as the Addendum hereto.
- 14.11 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. For the purposes of this Agreement, a scanned, facsimile or other like electronic signature shall be deemed an original.
- 14.12 Publicity and Press Releases.** Company shall be entitled to include Client's name, trademarks and logo in its marketing materials and communications, along with a general description of the products and services which are the subject of this Agreement. Company shall not otherwise use the name, trademarks or logos of Client for marketing without the prior written consent of Client. The parties agree and acknowledge that, on or about the Effective Date, Company may issue a press release announcing, or otherwise publicizing, Client's use of the Services; provided, however that subsequent press releases mentioning Client shall be subject to Client's prior written consent.

Schedule A
Services and Pricing

One Time Charges (Includes: Set-Up)

Item	Description	Qty	Unit Price	Line Total
1.	Remote Training (45 minutes)*	1	\$165	N/C
1a.	Additional Remote Training (Hourly Rate)*		\$165	
2.	Set-up of Hosted Solution & Testing	1	\$395	\$395
3.	Pre-Implementation / Project Management (Daily)		\$X,000	\$
4.	Custom Programming Rate (Hourly Rate)		\$175	\$
5.	DS WINGS Web Access Set-Up and Remote Training (Day Rate)		\$1995	\$
6.	DS WINGS Workflow / Job Manager Training in [<<City>>, <<State>> – 2 Employee Limit (3 Days)		\$1,995	\$
7.	Interface & Configuration (Hourly Time & Material)	6	\$175	\$
8.	Conversion from Third-Party Application (Estimated)		\$495	
Total for Services				\$395

Recurring Monthly Charges

Item	Description	Qty	Unit Price	Line Total
1.	Authorized User Fee* (\$69 per month) billed monthly *Fee required per Authorized User	1	\$69	\$69
2.	DS WINGS Import / Export Tool Monthly Hosted Charge (List \$ Monthly)		\$	\$
3.	DS WINGS Web Access Monthly Hosted Charge		\$	N/C
4.	Dedicated Server in Hosted Environment – Monthly		\$	N/C
5.	DS WINGS Monthly Hosted Charge (List \$X,X00 Monthly)		\$	\$
6.	The total amount due for Fees for Authorized Users under the terms of this Agreement			\$
Your Monthly Recurring Charges				\$69.00_

Description of items in schedule A.

1. Standard introductory training for **DS WINGS** software. Training provided remotely via the internet.
 2. Professional services to set-up and test new company database.
 3. Professional service charge to analyze and define project details, resulting in the functional design specification.
 4. Custom programming hourly rate for contract period.
 5. Set-up and training for **DS WINGS** Web Access Services. Training provided remotely via the internet.
 9. Monthly access charge per Authorized User of the **DS WINGS** software.
 10. Monthly charge for usage of the **DS WINGS** [description] tool. This tool is used to bring data into and out of the **DS WINGS** database.
 11. Monthly charge for usage of the **DS WINGS** Web Access software.
 12. Monthly charge for dedicated database to be exclusive for Client.
 13. Monthly charge for usage of the **DS WINGS** software.
- ♦ **TERMS:** The following reflects the payment terms as of the Effective Date.
 - 1] \$395 for professional services due at contract execution.
 - 2] First month of recurring costs at \$69.00 paid at acceptance .
 - ♦ Monthly recurring charges are \$69.00, based upon Schedule A pricing.
 - ♦ No conversion, loan servicing system or custom client interface included with the quote.
 - ♦ Site for database and software is Rackspace, or such other colocation or hosting facility as Company shall notify Client.

[End of Schedule A]

Schedule B

Service Level Agreement

Company shall provide the following support services as part of the Services:

1. Company offers telephone and email support for questions about use of the Services during its regular business hours. When received by Company, Company will investigate incidents in the Services which prevent the Services from substantially functioning in material compliance with the Documentation or which involve a problem with the Services rendering the Services unusable or which adversely affects Client use, but that can be mitigated by means of an available work-around ("Incidents"). Company and Client will confer regarding what may be a reasonable and appropriate resolution, including but not limited to resolution in the ordinary course of Company's maintenance work with temporary fixes, patches and corrective releases supplied to Company's Clients generally. If Incidents result from: (i) malfunctions of equipment or other software of Client, (ii) improper Client operator procedure or misuse of the Services by Client, or (iii) Client requests with respect to the Services, then (a) Company shall be deemed not to be responsible to address such Incidents or in non-conformance with the Documentation, and (b) Company, in its sole discretion, may decline to make any changes or elect to use commercially reasonable efforts to correct the Incidents as an additional service to Customer at its then-current rates.
2. Periodically, Company will restrict Client's access to some or all of the Services in order to perform maintenance on the Services (including the implementation of bug fixes and upgrades to software and / or hardware). Regularly scheduled maintenance may be performed between the hours of 12:00 a.m. - 4:00 a.m. EST Sunday; provided, however, that the maintenance window may change from time to time and as published to all clients on the system login screen. However, Company reserves the right to conduct unscheduled maintenance without prior notice when necessary on the Services.
3. Company will maintain daily backups of the Client Database and will mirror such Client Data in real-time to Company's backup database servers.
4. If Client is current in paying its Fees, Client will have rights to access the most currently developed fixes and new releases of the Services.
5. Company will make Available to Client the Services 98% of the time, excluding federal holidays, Force Majeure Events and maintenance windows, and where, "Available" refers to Client's ability to access an instance of the Services on the appropriate hosted server; provided, however, that unavailability caused by Company's data center or caused by Client hardware, software, third-party software or Client Data are excluded from the calculation of availability:

"Availability Percentage" shall be calculated as follows:
$$x = \frac{(n - y) * 100}{n}$$

Where "x" is the Availability Percentage, "n" is the total number of hours in a given calendar month, and "y" is the total number of hours service is not Available (as defined above) in a given calendar month – subject to the exclusions described above. The calculation of "x" shall be prorated in any month in which Services commence on any day other than the first day of the month.

[End of Schedule B]

Schedule C

Privacy Addendum

Client represents Client is is not subject to the CCPA described below:

To the extent that Client is subject to the California Consumer Privacy Protection Act (the "CCPA"), such that Company is a "service provider" to Client under the CCPA, the parties agree that the following terms apply:

To the extent there is "personal information" (as defined under the CCPA) included within the Client Data, Company is prohibited from retaining, using, or disclosing such personal information within the Client Data except to the extent set out in Section 2.5 of the Agreement (in connection with providing the Services) and as necessary to return the Client Data to Client as set forth in Section 13.4 of the Agreement, or as otherwise allowed under the CCPA. For clarity, de-identified data shall not be considered "personal information" for purposes of the CCPA.

[End of Schedule C]

Addendum
(Limited Free Trial Offer)

The following additional terms apply to those who have chosen to take advantage of our 10 day free trial period for the DS Wings portion of the Services (the "Trial"). The period of the Trial is from the date of entering your information in the "Free Trail" section and providing us with your credit card information and 10 days following that date.

Capitalized terms used and not defined in this Addendum shall have the meanings given to them in the Agreement to which this Addendum forms part. All terms relating to use of the Services under the Agreement shall apply during the Trial.

Section 1: General. As a condition to start the Trial, Client shall provide Company with a valid credit card for payment of the applicable Fees that would apply following the completion of the Trial. With the Trial, Client has the right to terminate the Agreement within the first 10 days of the effective date as described in Section 3 of this Addendum below. If Client has not given Company written notice to terminate as described below, Company will charge the credit card that Client provided upon sign up to bill all applicable Fees due under the Agreement at such time (all one-time charges and the initial month of monthly recurring charges), and thereafter, charges may be paid monthly in advance by deduction from your account under Client's ACH authorization form. No such charges will be due in the event of termination during the Trial. If Client failed to provide Company with its ACH information, Company will charge Client's credit card for an annual one year subscription (all recurring monthly Fees due in advance). The payment terms of the Agreement otherwise apply following the Trial.

Section 2: Term. The Effective Date of the Agreement shall mean the day that the Trial commenced, and the Agreement shall apply to the Trial, provided that the Initial Term described in Section 13.1 of the Agreement shall only commence on the day immediately following the last day of the Trial unless either party notifies the other party in writing within the period of the Trial (before the Trial expires) of its intent to terminate this Agreement upon the expiration of the Trial (a phone call accompanied with an email will suffice for such purposes).

Section 3: Termination. The Agreement will automatically terminate if notice of termination is given within the period of the Trial under Section 2 of this Addendum ("Early Termination"). Otherwise, the Agreement will continue in effect according to its terms, as modified by this Addendum.

Section 4: Post-Termination Obligations. Upon Early Termination under this Addendum, the terms of Section 13.3 of the Agreement shall apply; provided that Company will be under no obligation to return to Client all embodiments of Client's Confidential Information that Company may have in its possession given the short nature of the Trial period. The obligations of Section 13.3 of the Agreement shall otherwise survive the expiration or termination of the Agreement for any reason.

Section 5: Return of Client Data. Notwithstanding Section 13.4 of the Agreement, upon Early Termination under this Addendum, no return or retention of Company shall apply. Client should retain its own backup copy and records of all Client Data used in the Services during the Trial.

[End of Addendum]