

## PROFESSIONAL SERVICES AGREEMENT

The following Professional Services Agreement governs the statement of work or other work order ("SOW") between Uptime IT Systems Inc., a Pennsylvania corporation ("Service Provider") and the customer described in the SOW ("Customer") (each of Service Provider and Customer, a "Party"; together, the "Parties") and applies to all Services and Deliverables (both defined below) provided by Service Provider.

**1. Scope of Agreement.** This Agreement is intended to be the master agreement under which Customer may request professional services to be performed by Service Provider (the "Services") and/or that Service Provider deliver certain deliverables (the "Deliverables"). Service Provider will provide only those Services enumerated on one or more written Statements of Work signed by both Parties. Each Statement of Work shall be governed exclusively by the terms of this Agreement, whether or not this Agreement is specifically mentioned.

### 2. Term and Termination.

**2.1 Term.** This Agreement shall commence on the Effective Date and will terminate upon the latest expiration date provided for in an effective Statement of Work, unless earlier terminated or extended in accordance with the provisions of the Agreement. The term of each Statement of Work will be for the period set forth therein. For the avoidance of doubt, if there are any Statements of Work for which the Parties have obligations that extend beyond such termination date, the terms of this Agreement shall continue to apply to such Statements of Work until all obligations thereunder have been satisfied.

**2.2 Termination.** Either Party may immediately terminate this Agreement or any Statement of Work if: (i) the other Party fails to perform its material obligations under this Agreement and such failure is not corrected within sixty (60) days after receipt of written notice of the breach from the non-breaching Party for a nonmonetary breach or within ten (10) days after receipt of written notice of the breach for a monetary breach, or (ii) the other Party has appointed a trustee for the benefit of its creditors, becomes insolvent, bankrupt or initiates a voluntary dissolution. Additionally, this Agreement may be terminated by the Service Provider for any reason or no reason upon ninety (90) days written notice to the Customer. Customer shall remain obligated to pay for all Services provided prior to any termination of this Agreement or any Statement of Work.

**2.3 Effects of Termination.** Upon termination of this Agreement in accordance with Section 2.2, all licenses granted to Customer hereunder shall immediately terminate. The Parties' rights and obligations under Sections 2.2, 2.3, 3, 4, 5.3, 6, 7, 8, 9, 10 (subject to the first sentence of this Section 2.3), 11, 12, and 13 shall survive termination of this Agreement. If any license granted under this Agreement expires or otherwise terminates, Customer shall (a) immediately cease using the licensed materials, and (b) certify to Service Provider within thirty (30) days of expiration or termination that Customer has destroyed or returned to Service Provider such materials and all copies thereof remaining in Customer's possession. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

**2.4 Termination Assistance Services.** If either party terminates this Agreement, Service Provider will assist Customer in the orderly termination of services, including timely transfer of the services to another designated provider. Customer agrees to pay Service Provider on a time and materials basis for rendering such assistance.

**2.5 Termination Fee.** Customer acknowledges that the monthly recurring payments agreed to in the Statement of Work were based on the term agreed to and the understanding that Service Provider would realize the total of all recurring payments; therefore, if Customer terminates a Statement of Work prior to the end of its term, Customer will immediately pay to Service Provider the total remaining recurring payments due through the end of the term as liquidated damages and not as a penalty. The foregoing payments will be in addition to all other legal and equitable rights of Service Provider. In the event that Service Provider terminates this Agreement or any Statement of Work, Customer shall remain obligated to pay all fees that have accrued or that Customer has agreed to pay under any Statement of Work up to the date of termination.

**3. Independent Contractor; Use of Subcontractors.** Service Provider is an independent contractor and nothing in this Agreement or related to Service Provider's performance under any Statement of Work shall be construed to create an employee relationship between Customer and Service Provider or any Service Provider consultant or subcontractor. Service Provider may, in its discretion utilize subcontractors to provide the Services hereunder.

### 4. Pricing and Payment Terms.

**4.1 Services.** Customer shall pay Service Provider for Services in accordance with the fees established in the relevant Statement of Work.

**4.2 Expenses.** Customer shall reimburse Service Provider for actual expenses incurred by Service Provider in performing the Services. A summary of expenses sorted by major category shall be included in the invoice for the associated Services.

**4.3 Payment Terms.** Fees and expenses for Services shall be periodically invoiced by Service Provider and payment is due fifteen (15) days from the date of invoice. Customer agrees to pay a late charge of one and one half percent (1½%) per month or the maximum lawful rate, whichever is less, for all amounts not paid within fifteen (15) days of the date of invoice. Customer shall also reimburse Service Provider for all expenses incurred by Service Provider in exercising any of its rights under this Agreement or applicable law with respect to a default in payment or other breach of this Agreement by Customer, including reasonable attorneys' fees and the fees of any collection agency retained by Service Provider.

**4.4 Taxes.** Amounts payable by Customer hereunder do not include local, state, or federal sales, use, value-added, or other taxes or tariffs of the United States of America or other countries based on the licenses or services provided under this Agreement or Customer's use thereof. Customer shall pay all such taxes or tariffs as may be imposed upon Service Provider or Customer, except income taxes imposed on Service Provider by the United States of America or any state or local government therein. Customer shall be invoiced for, and Customer shall pay, any such taxes and tariffs if Service Provider is required to pay them on Customer's behalf.

**4.5 Failure to Pay.** Customer acknowledges that its failure to pay timely any of the fees payable hereunder, or any portion thereof, shall be a material breach of this Agreement for which Service Provider may, in addition to pursuing all other remedies, withhold Services and/or terminate both this Agreement and any licenses granted hereunder.

## **5. Warranty.**

**5.1 Services Warranty.** Service Provider warrants that it shall perform Services in a professional and workmanlike manner utilizing properly trained personnel. For any breach of the foregoing warranty, Service Provider shall exercise commercially reasonable efforts to re-perform any non-conforming Services that were performed within the ten (10) business day period immediately preceding the date of Customer's written notice to Service Provider specifying in reasonable detail such non-conformance.

**5.2 Third Party Products.** Product warranties for third party products, if any, are provided by the manufacturers thereof and not by Service Provider. Service Provider's sole obligation is to act on behalf of Customer to assist in the satisfaction of any such warranty.

**5.3 Exclusive Remedies.** The express remedies set forth in this Section 5 shall constitute Customer's exclusive remedies, and Service Provider's sole obligation and liability, for any claim (i) that a Service or Deliverable provided hereunder does not conform to specifications or is otherwise defective, or (ii) that the Services were performed improperly.

## **6. Disclaimers.**

6.1 SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CUSTOMER, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

6.2 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 5, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES MADE BY SERVICE PROVIDER, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS IS," AND SERVICE PROVIDER MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY DISCLAIMED BY SERVICE PROVIDER AND ARE EXCLUDED BY THE PARTIES.

6.3 Except as may be done in accordance with Section 13.12, no statement by any Service Provider employee or agent, orally or in writing, shall serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way whatsoever.

**7. LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, SAVINGS, REVENUE, USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION, THAT MAY ARISE IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES OR DELIVERABLES PROVIDED BY SERVICE PROVIDER, OR ANY MATTER WHATSOEVER, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED OR REMEDIES ARE SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR AGGREGATE LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES OR DELIVERABLES PROVIDED BY SERVICE PROVIDER, OR ANY MATTER WHATSOEVER, REGARDLESS OF WHETHER THE CLAIMS ARE BASED OR REMEDIES ARE SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEEDING THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT, AND SHALL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES SPECIFIED HEREIN.

**8. Essential Basis of Bargain.** Customer acknowledges and agrees that the fees charged by Service Provider in this Agreement reflect the overall allocation of risk between the Parties, including by means of the provisions for limitation of liability and exclusive remedies described in this Agreement. Such provisions are an essential basis of the bargain between the Parties and a modification of such provisions would affect substantially the fees charged by Service Provider hereunder. In consideration of such

fees, Customer agrees to such allocation of risk and hereby waives any and all rights, through equitable relief or otherwise, to subsequently seek a modification of such provisions or allocation of risk.

**9. Confidential Information.** In the course of providing the Services, either Party (a "Disclosing Party") may provide certain of its Confidential Information to the other Party (a "Receiving Party"). For purposes of this Agreement, "Confidential Information" shall mean written, confidential and proprietary information of a Disclosing Party that is not available in the public domain. A Receiving Party agrees that it shall not disclose Confidential Information to any third party and shall use the Confidential Information only in connection with the Services. All Disclosing Party Confidential Information shall remain the property of the Disclosing Party. For purposes of the Agreement, software, documentation, other materials or tools used by Service Provider in the performance of the Services, including Service Provider Intellectual Property (as defined in Section 10) shall be considered Service Provider's Confidential Information. Confidential Information shall not include information that is (i) previously and independently known to or developed by a Receiving Party; (ii) acquired by a Receiving Party without continuing restriction on use; (iii) becomes or is publicly available through no breach by the Receiving Party under this Agreement.

The Receiving Party agrees and acknowledges that Confidential Information of the Disclosing Party is entrusted to it in confidence, and the reputation and success of the Disclosing Party depends on maintaining and safeguarding the secrecy of its Confidential Information. The Receiving Party agrees that during the term of this Agreement and at any time thereafter, it (a) shall use the same level of care to protect the confidentiality of the Disclosing Party's Confidential Information as it does to protect its own Confidential Information, but in no event less than a reasonable degree of care, (b) shall not use any Confidential Information of the Disclosing Party except for the purpose of fulfilling its obligations under this Agreement, (c) shall not, and shall not permit others to, disclose, duplicate, transfer, sell, lease, or otherwise make any Confidential Information of the Disclosing Party available to others without the prior written consent of the Disclosing Party, and (d) shall not remove, or permit to be removed, any notice indicating the confidential nature of, or the proprietary rights of the Disclosing Party in, the Disclosing Party's Confidential Information. The Receiving Party shall return all Confidential Information at the earlier of the termination of the Agreement or upon the request of the Disclosing Party, except that Service Provider may retain one (1) copy of the confidential Information for the limited purpose of audit or for litigation purposes. The foregoing obligations regarding Confidential Information shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing confidentiality and similar obligations in this Section 9, each Party may disclose to and permit use of the Confidential Information by their respective legal counsel, auditors and other advisors. Further, the Receiving Party may disclose Confidential Information to the extent required by applicable law or order of a court or governmental agency or the rules of any national stock exchange or any listing agreement with such stock exchange. However, in the event of disclosure pursuant to an order of court or governmental agency, and subject to compliance with applicable law or such order of court or governmental agency, the Receiving Party shall give the Disclosing Party prompt notice to permit the Disclosing Party an opportunity, if available, to obtain a protective order or otherwise protect the confidentiality of such information, all at the Disclosing Party's cost and expense.

## **10. Proprietary Rights.**

**10.1 Service Provider Intellectual Property.** The Parties acknowledge and agree that Service Provider may use preexisting proprietary computer software, methodology, techniques, software libraries, tools, algorithms, materials, products, ideas, skills, designs, know-how or other intellectual property owned by Service Provider or its licensors and Service Provider may also create additional intellectual property, in the performance of the Services (all of the foregoing, the "Service Provider Intellectual Property"). Customer agrees that any and all proprietary rights to the Service Provider Intellectual Property, as it existed as of the date hereof and as it may be modified or created in the course of providing the Services, including patent, copyright, trademark, and trade secret rights, to the extent they are available, are the sole and exclusive property of Service Provider, free from any claim or retention of rights thereto on the part of Customer, and Customer hereby assigns to Service Provider any rights it may have in any of the foregoing.

**10.2 Customer Rights to Deliverables.** Service Provider hereby grants to Customer a perpetual, worldwide, royalty-free, non-exclusive, non-transferable right and license to use, execute, reproduce, transmit, display, perform, create derivative works from, make, have made, sell and import the Deliverables, including such Service Provider Intellectual Property as may be incorporated therein, only for its own internal business purposes and to provide services to its customers consistent with the purposes of the Services.

**10.3 Restrictions.** Customer shall not copy, use, modify, or distribute any Service Provider Intellectual Property except as expressly licensed in this Agreement. Customer shall not cause or permit the modification, distribution, reverse engineering, decompilation, disassembly or other translation of the Service Provider Intellectual Property. Customer shall not alter, change, or remove from the Service Provider Intellectual Property any identification, including copyright and trademark notices, and further agrees to place all such markings on any copies thereof.

**11. Non-Solicitation.** During the term of this Agreement and for twelve (12) months thereafter, neither Party may solicit for employment or engagement as an independent contractor, or employ or engage as an independent contractor, any person who is or was an employee or contractor of the other Party during the twelve (12) month period prior to any such actions, without the prior written consent of such other Party.

## **12. Customer Obligations Regarding Maintenance.**

**12.1 Software Installation or Replication.** If Service Provider is required to install or replicate software as part of the Services, Customer shall independently verify that all such software is properly licensed. Customer's act of providing any software to Service

Provider shall be deemed Customer's affirmative acknowledgment to Service Provider that Customer has a valid license that permits Service Provider to perform the Services related thereto. In addition, Customer shall retain the duty and obligation to monitor Customer's equipment for the installation of unlicensed software unless Service Provider in a written Statement of Work expressly agrees to conduct such monitoring.

**12.2 Suitable Environment; Access.** Customer shall provide a suitable working environment for any equipment for which Service Provider provides maintenance services hereunder ("Covered Equipment"). Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each piece of equipment covered under this Agreement. Service Provider personnel shall have free access to Customer's equipment and premises for the purpose of providing Services hereunder, provided that Service Provider complies with Customer's security regulations.

### **13. General.**

**13.1 Export.** Customer shall comply fully with all relevant export laws and regulations of the United States of America ("Export Laws") to assure that any Deliverable is not (a) exported, directly or indirectly, in violation of Export Laws; or (b) intended to be used for any purposes prohibited by the Export Laws, including nuclear, chemical, or biological weapons proliferation.

**13.2 Notice.** All notices under this Agreement, including notices of address change, shall be in writing and shall be deemed to have been given when sent by (i) registered mail, return receipt requested, or (ii) a nationally recognized overnight delivery service (such as Federal Express), to the appropriate Party at the relevant address first listed above, or to a Party's address as changed in accord with this Section, or (iii) electronic mail.

**13.3 Legal Expenses.** In the event legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorneys' fees and court costs, shall be paid by the other Party.

**13.4 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

**13.5 Governing Law; Venue; Jurisdiction.** This Agreement, and all matters arising under or related hereto, shall be governed according to the laws of the Commonwealth of Pennsylvania, without respect to its conflict of law principles. Unless Service Provider agrees or elects otherwise, all litigation arising under or related to this Agreement shall be brought in Allegheny County, Pennsylvania, as permitted by law. Customer hereby consents to the personal jurisdiction of the above-referenced courts.

**13.6 No Waiver.** No failure on the part of either Party to exercise, and no delay in exercising, any right, power, or privilege shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

**13.7 Assignment.** This Agreement shall be binding upon the Parties and their respective successors and assigns. Customer shall not assign or otherwise transfer its rights hereunder or any interest herein without prior written consent of the Service Provider.

**13.8 No Third-Party Beneficiaries.** This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties' employees, agents, contractors or customers, or upon any other person or entity.

### **13.9 Construction.**

13.9.1 All references in this Agreement to "Articles," "Sections" and "Exhibits" refer to the articles, sections and exhibits of this Agreement.

13.9.2 As used in this Agreement, neutral pronouns and any variations thereof shall be deemed to include the feminine and masculine and all terms used in the singular shall be deemed to include the plural, and vice versa, as the context may require.

13.9.3 The words "hereof", "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented, and not to any subdivision contained in this Agreement.

13.9.4 The word "including" when used herein is not intended to be exclusive and means "including, but not limited to."

13.9.5 Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party shall apply in the interpretation of this Agreement.

13.9.6 The article and section headings and titles appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement or the interpretation hereof.

**13.10 Force Majeure.** Except with regard to any obligation to pay money hereunder, neither Party hereto shall be held responsible for any delay or failure in performance hereunder caused in whole or in part by fire, strike, flood, embargo, labor dispute, delay or failure of any subcontract, telecommunications failure, act of sabotage, riot, accident, delay of carrier or supplier, voluntary

or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any act or omission or other cause beyond such Party's control. If any such contingency does occur, the time to perform an obligation under this Agreement affected thereby shall be deemed extended by the length of time such contingency continues.

**13.11 Entire Agreement.** This Agreement together with the Statements of Work, which are hereby incorporated herein by this reference, contain all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. To the extent there is any inconsistency between a term of this Agreement and a term of any Statement of Work, the term in this Agreement shall govern the performance of Services thereunder.

**13.12 Modification.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party (including a Statement of Work) that expressly states the sections of this Agreement to be modified; no other act, usage, or custom shall be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

**13.13 Purchase Orders.** Customer may, for purposes of administrative convenience, use Customer's standard form of purchase order to order Services. The Parties understand and agree that any terms or conditions on any such purchase order in any way different from or in addition to the terms and conditions of this Agreement shall have no effect whatsoever and Service Provider hereby rejects all such terms and conditions.