

BEEHIVE SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into on the date executed on page five (5) (the “Effective Date”) between **Beehive Industries, LLC**, a Nebraska based LLC with a primary place of business at 151 N 8th St, Ste 300, Lincoln, NE 68508 (“Beehive”), and the **City of Greenfield, IN**, with offices located at 10 South State Street, Greenfield, IN 46140 (“Customer”), each herein referred to individually as a “Party,” or collectively as the “Parties”.

RECITALS

Whereas, the Customer desires to license software and be provided certain hosted software services, maintenance and support services, consulting services, systems integration services, data conversion services, training services, and/or related services as described in the Attached Statement of Work (collectively, “Services”).

Whereas, Beehive desires to perform such services on behalf of the Customer on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter, the Parties, intending to be legally bound, agree as follows:

TERMS AND CONDITIONS

1) SOFTWARE SERVICES AND SUPPORT

- a) Subject to the terms of this Agreement, Beehive will use commercially reasonable efforts to provide Customer the Services as detailed in the **Statement of Work attached as Exhibit A-1** and attached hereto and incorporated herein by this reference. Services are primarily a software as a service offering and include all required software licenses, support, maintenance, hosting, storage, training and any other additional services specifically detailed in the attached Statement of Work.
- b) Software License. Upon payment of all applicable fees by Customer, Beehive grants Customer all required Beehive software licenses required for the performance of the Services contemplated in this Agreement. All licenses are granted and enforced under the provisions of the then current End User License Agreement located at www.beehiveindustries.com/eula.pdf.

2) RESTRICTIONS AND RESPONSIBILITIES

- a) Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); or, modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Beehive or authorized within the Services). With respect to any Software that is distributed or provided to Customer for use on Customer’s premises or devices, Beehive hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term, only in connection with the Services.
- b) Customer represents, covenants, and warrants that Customer will use the Services only in compliance with all applicable laws and regulations and any standard published Beehive policies then in effect, if any. To the extent allowed by law, Customer hereby agrees to indemnify and hold harmless Beehive against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Beehive has no obligation to monitor Customer’s use of the Services, Beehive may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.
- c) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”), unless specifically identified as a responsibility and approved obligation of Beehive in the Statement of Work. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files and other related items owned by Customer.

3) CONFIDENTIALITY; PROPRIETARY RIGHTS

- a) The software and any authorized copies that are made are the intellectual property of and are owned by Beehive. The structure, organization and code of and within the software are valuable trade secrets and confidential information of Beehive. The software is protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant the Customer intellectual property rights in the software and all rights not expressly granted are reserved by Beehive.
- b) The Parties shall use and protect confidential information solely for performing its obligations to the other party. The Parties shall not sell or distribute confidential information. The Parties shall give access to confidential information only to employees or individuals that have need of the information to perform their work functions.
- c) Beehive agrees that all inspection reports, drawings, documentation, photographs, maps and computations prepared by Customer and supplied to Beehive under the terms of this Agreement (“Customer Data”) shall be, and shall remain the exclusive property of the Customer and shall be deemed confidential information of the Customer. Beehive hereby waives any interest, title, lien or right to any such data. Customer shall have the right to use same at the Customer’s sole risk without restriction or limitation and without compensation to Beehive other than that provided in this Agreement.

4) PAYMENT OF FEES

- a) Customer will pay Beehive the then applicable fees for the Services and as detailed in the Statement of Work and in accordance with the terms therein (the “Fees”). Beehive reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current renewal term, upon sixty (60) days prior notice to Customer (which may be sent by email).
- b) Annual license and maintenance Fees may be subjected to an annual increase during the Initial Term or any subsequent renewal term, with notice, where such increase will not exceed the published Consumer Price Index (CPI) from the previous year. Any change in Fees not subjected to a new Statement of Work or any other mutually approved change orders, will not exceed the published CPI from the previous year.
- c) Beehive will bill through an invoice, in which case, full payment for invoices issued must be received by Beehive thirty (30) days after the mailing date of the invoice. Unpaid amounts not received within thirty (30) days will be considered past due and are subject to a finance charge of .67% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate suspension or termination of Services. Continued non-payment will result in all licenses being suspended or revoked, access to services and data restricted or denied, and termination of this Agreement at the sole discretion of Beehive.

5) TERM AND TERMINATION

- a) Subject to earlier termination as provided below, this Agreement is for the period of one (1) year from the Effective Date (“Initial Service Term”), and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party provides notice of termination at least thirty (30) days prior to the end of the then-current term.
- b) Termination. If either party breaches this agreement, the non-breaching party may terminate this agreement upon notice to the breaching party plus three (3) days.
- c) Curing Breach. If the breaching party notifies an intent to cure within three (3) days of the notice received by the non-breaching party of the breach, the breaching party has the right to cure breach within thirty (30) days. If the breaching party does cure the breach within the allotted time, then the agreement continues under the stated rules of this document.
- d) Upon any termination, Beehive will make all Customer Data available to Customer for electronic retrieval for a period of ninety (90) days, but thereafter Beehive may, but is not obligated to, delete stored Customer Data. Beehive may apply additional fees for any efforts Beehive is requested to perform in conjunction with retrieval of Customer data if beyond the license period, but will provide Customer an export of data at no charge for ninety (90) days. Further, Customer will cease all use of the Beehive license and any such materials to which such license applies.

6) WARRANTY AND DISCLAIMER

- a) Beehive represents and warrants that no portion of the Beehive Services 1) contains any deliberate back door, Trojan horse, worm or virus designed to permit access or use of either the Customer computer systems by any unintended party, (2) disable, damage or erase the Service or Customer data, or (3) perform any other such actions and that such Beehive Services do not knowingly infringe on any intellectual property rights of any third party.
- b) Beehive expressly disclaims any warranty of service beyond the purpose for which the Services were created. The Customer bears the risk of using the Services and the entire risk arising out of use or performance of the Services remains with the Customer.
- c) The software is provided to the Customer “AS IS” and with all faults and defects without warranty of any kind, to the maximum extent permitted under applicable law. Beehive, on its own behalf, expressly disclaims all warranties, whether expressed, implied, statutory or otherwise, except what is provided under this Section 6.

7) INDEMNIFICATION

The Parties shall indemnify and hold each other harmless from any and all suits, claims, actions, liabilities, fines, settlements, losses, damages, costs and attorney fees, and any other expenses whatsoever (“Losses”) arising from any actions from the opposite party or from any breach of this agreement.

8) LIMITATION OF LIABILITY

In no event will Beehive, its affiliates, suppliers, or certificate authorities be liable to the Customer for any loss, damages, claims or costs that exceed the license fees paid by Customer to Beehive, Beehive’s entire liability and Customer’s exclusive remedy shall be at the option of Beehive to either (a) return the most recent license fee paid, or (b) repair or replace the Software. Beehive is not responsible for any additional liabilities including any consequential, indirect or incidental damages, any lost profits or lost savings, any damages resulting from business interruption, personal injury or failure to meet any duty of care or claims by a third party, even if a Beehive representative has been advised of the possibility of such loss, damages, claims or costs.

9) INSURANCE COVERAGES

- a) Beehive shall carry all insurance coverage required by law or which would normally be expected for the type of business, additionally, Beehive shall maintain coverages and limits no less than:
 - i) Workers' Compensation - A program of Workers' Compensation insurance in an amount and form, including Employer's Liability with a limit of not less than two-hundred fifty thousand-dollar (\$250,000) limits, covering all persons providing services on behalf of the vendor and all risks to such persons under this agreement.
 - ii) Commercial /General Liability Insurance – General Liability Insurance covering all operations performed by or on behalf of Beehive providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence, and a general aggregate limit of not less than two million dollars (\$2,000,000). The policy coverage shall include:
 - iii) Automobile Liability Insurance – Auto liability insurance with a combined single limit per occurrence of not less than one million (\$1,000,000) per claim or occurrence for property damage and bodily injury.
- b) Proof of Coverage - Beehive shall furnish Certificates of Insurance to the Customer evidencing the insurance coverage, including the endorsements, with Customer as additional insured as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Customer, and shall maintain such insurance from the time Beehive commences performance of services hereunder until the completion of such services and termination of this Agreement.

10) MISCELLANEOUS

- a) Relationship of Parties. Beehive is and shall be deemed to be an independent contractor, and this agreement shall not be construed in any way to create an employment relationship, agency relationship or the relationship of a partnership, joint venture, franchise or other business entity.
- b) Complete Agreement. This agreement may be modified only by a written instrument signed by a duly authorized representative of each party. This agreement constitutes the entire agreement, inclusive of the attachments and the End User License Agreement, between the Parties with respect to the services and supersedes any and all prior and contemporaneous agreements, written or verbal, between the Parties with respect to the services.
- c) Jurisdiction. Any acts or proceedings that may be brought, in connection with or by reason of this agreement shall be brought in state or federal court in Lincoln, Lancaster County, Nebraska and the Customer hereby submits to the jurisdiction of such courts.
- d) Fee Recovery. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- e) Notices. Any notice required hereunder shall be given in writing by registered or certified mail or overnight delivery through a nationally recognized courier, to the address set forth in the first paragraph above, or to such other address or addressee that either party provides in writing to the other party.
- f) Assignment. This Agreement is not assignable, transferable or sublicensable by Customer except with Beehive's prior written consent, not unreasonably withheld. Beehive may transfer and assign any of its rights and obligations under this Agreement without consent, but with notice.
- g) Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
- h) Equal Employment Opportunity. In connection with the carrying out of this project, Beehive shall not discriminate against any employee, applicant for employment, or any other person because of race, color, religion, sex, national origin, ancestry, disability, age or marital status and that employees are treated equally during employment, without regard to their race, color, religion, sex, or marital status.
- i) Headings. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.
- j) Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- k) Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the Parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.
- l) Survival. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed by their authorized officers as of the Effective Date first above written. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Beehive Industries, LLC:

City of Greenfield, IN:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A-1

Statement of Work