**AGREEMENT TO PROVIDE HOSTING SERVICES**

This Agreement to Provide Hosting Services (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of [Country], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [CUSTOMER NAME]** (the "Customer"), a company organised and existing under the laws of [Country], with its head office located at:

[COMPLETE ADDRESS]

1. **HOSTING AGREEMENT**

This Agreement (including its Schedule [SPECIFY] and all other documents referenced herein) is entered into by [YOUR COMPANY NAME] ("The Company") and [CUSTOMER NAME] ("Customer") for the purpose of providing Customer with Web-based access to [YOUR COMPANY NAME]’s software specified in Schedule [SPECIFY], including any updates, upgrades or revisions provided under this Agreement ("Software"), and certain other services relating to the processing of and response to online inquiries and messages ("Online Messages") received by Customer from its customers and other users of Customer's Web site ("Users").

1. **PROVISION OF SERVICES**

The Company will provide Customer with access, maintenance, and related hosting services ("Hosting Services") to the Software installed on the Company's servers and other equipment (the "Company System"). The Customer agrees to provide Company with access to the Customer's premises and equipment upon request from the Company, and to otherwise cooperate with the Company in performing its services.

During the term of this Agreement, the Customer may obtain information ("Reports") regarding the Customer's use of the Software and the quantity and handling of Online Messages routed to the Company System by accessing the Company System through a password-protected Web site made available by the Company, that only authorised employees of the Customer shall have access to. The Hosting Services and the hosting fees specified in Schedule [SPECIFY] do not include any deployment, training or other consulting or professional services which, if applicable, will be specified in a Statement of Work, signed by both parties, and incorporated herein by this reference.

**2.1 Customer Support**

The Company will provide live telephone support to Customer [NUMBER] hours a day, [NUMBER] days a week by a trained Company in customer support representative.

1. **CUSTOMER'S RESPONSIBILITIES**

The Customer agrees that it shall be responsible for providing and maintaining its Internet access and all necessary telecommunications equipment, software and other materials ("Customer Equipment") at Customer's location necessary for accessing the Software and the Company System through the Internet. The Customer agrees to notify the Company of any changes in the Customer Equipment, which may affect the Hosting Services provided hereunder. The Company System must be used for lawful purposes only. The Customer agrees not to transmit, re-transmit or store materials on or through the Company System or the Software that are harmful to the Company System or Software, or in violation of any applicable laws or regulations, including without limitation laws relating to infringement of intellectual property and proprietary rights of others.

The Company grants the Customers a non-exclusive, non-transferable, limited license, with right to sublicense solely to Users, to use such Software only in connection with the Hosting Services. Neither the Customer nor the Users are otherwise permitted to use the Software, nor will the Customer or Users disassemble, decompile or otherwise attempt to discern the source code of such Software. The Customer agrees that, except as expressly set forth in this Section and Section 11, it will not rent, lease, sublicense, re-sell, time-share or otherwise assign to any third party this Agreement or any of Customer's rights or licences to access the Software or the Company System, nor shall the Customer use, or authorise others to use, the Software, Hosting Services or the Company System to operate a service bureau. Despite the preceding sentence, the Customer shall be permitted to provide access to the Company System to its employees and agents located worldwide.

1. **PROPRIETARY RIGHTS**

Except for the limited access right granted to the Customer in this Agreement, all right, title and interest in and to the Software (including any modifications as a result of any implementation services rendered) and the Company System are and shall remain the exclusive property of the Company and its licensors. The Company acknowledges and agrees that the Online Messages are the property of the Customer and that the Company has only a limited right to use the Online messages as outlined in the following sentence. Despite the preceding, the Company may access and disclose the online messages solely as necessary to provide the Hosting Services, to operate and maintain its systems, to comply with applicable laws and government orders and requests, and to protect itself and its customers.

1. **PRICING AND PAYMENT**

The Customer agrees to pay the fees for any services provided under this Agreement as specified in Schedule [SPECIFY] of this Agreement. THE CUSTOMER AGREES TO PAY FOR HOSTING SERVICES ON OR BEFORE THE [SPECIFY] DAY OF THE MONTH IN WHICH THE HOSTING SERVICES ARE PROVIDED, except that, with respect to Additional Fees (as defined in Schedule [SPECIFY]), the Company will invoice the Customer for such fees in the month after the month in which such fees accrue as provided in Schedule [SPECIFY]. All amounts payable hereunder are exclusive of any taxes, and the Customer is responsible for payment of such taxes (excluding taxes based on Company's net income).

All prices are stated, and the Customer shall pay, in [COUNTRY CURRENCY]. Payment received by the Company after the due date shall be subject to a late fee equal to [NUMBER] and [PERCENTAGE %] per cent per month, or, if less, the maximum amount allowed by applicable [YOUR COUNTRY LAW]. At the end of the initial [NUMBER]-year term of this Agreement and any subsequent [NUMBER]-year terms, The Company may adjust the monthly fee payable under this Agreement by providing the Customer with a written notice of such adjustment at least [NUMBER] days before the beginning of the new term.

1. **LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES**
   1. The Company warrants and represents to Customer that
      1. the Software will perform substantially in accordance with the documentation if any, provided by the Company to the Customer, and
      2. the Hosting Services will be performed in a professional manner and in

accordance with Section 2. In the event of Downtime (as defined in this Section below), as the Customer's sole and exclusive remedy and the Company's sole and exclusive liability, the monthly fee payable for the Hosting Services shall be reduced as follows:

* + 1. For the first [NUMBER] minutes of Downtime during Normal Business Hours or the first [NUMBER] hours of Downtime outside of Normal Business Hours ("Initial Downtime"), the Company will credit the Customer's account for [NUMBER] day of service.
    2. For each [NUMBER] hour period of Downtime per day in addition to the Initial Downtime, the Company will credit the Customer's account for [NUMBER] additional day of service.

For the purposes of this Agreement, "Downtime" shall mean any interruption in the availability of Hosting Services to Customer (excluding scheduled interruptions of which Customer is notified [NUMBER] hours in advanced), only if such interruption is due either to:

6.2 an error in the Software, or Failure of the Company System (but not including problems associated with Internet connectivity). Downtime begins upon the Customer notification to the Company of the interruption, either by speaking directly with a Company customer service representative or recording a voice mail message in the Company customer service voice mailbox and continues until the availability of the Hosting Services is restored to the Customer. For purposes of this Agreement, "Normal Business Hours" shall mean between the hours of [HOUR] to [HOUR] [SPECIFY TIME ZONE], Monday through Friday excluding national holidays.

In the event of a breach (other than Downtime) of the warranty outlined in Section 6.1.1 above, Customer's sole and exclusive remedy, and the Company's sole and exclusive liability shall be, at the Company's option, repair or replacement of the Software.

THE FOREGOING CONSTITUTES THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND THE COMPANY'S ENTIRE LIABILITY, FOR DOWNTIME AND FOR BREACH OF THE HOSTING SERVICES WARRANTY PROVIDED IN THIS SECTION 6.1.

6.3 The Company represents and warrants that, prior to, during and after the calendar year [YEAR], the Software and the Company System will process, calculate, manipulate, sort, store and transfer date data without material error or material performance degradation, including without limitation date data which represents or references different centuries or more than one century (such representation and warranty is referred to as "Year [YEAR] Compliant").

In the event that the Software or the Company System is not Year [YEAR] Compliant, the Customer's sole and exclusive remedy, and the Company's sole and exclusive liability shall be for the Company, at no additional cost to Customer, to alter the Software or the Company System so that the Software or the Company System is Year [YEAR] Compliant.

The foregoing warranty is conditioned upon the Customer using the Software and/or the Company System in accordance with its applicable documentation, and on other software, hardware, network and systems (other than the Software and the Company System) with which the Software and/or the Company System interface or interoperate also being Year [YEAR] Compliant.

6.4 EXCEPT AS PROVIDED IN SECTIONS 6.1-6.2, (A) THE HOSTING SERVICES ARE PROVIDED, AND THE SOFTWARE AND THE COMPANY SYSTEM ARE MADE AVAILABLE, BY THE COMPANY TO THE CUSTOMER "AS IS," AND (B) THE COMPANY AND ITS SUPPLIERS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE HOSTING SERVICES, THE SOFTWARE OR THE COMPANY SYSTEM, AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT, TO THE MAXIMUM EXTENT POSSIBLE BY LAW.

6.5 Without limiting the express warranties set forth in this Agreement, the Company does not warrant that the Software, the Company System or the Hosting Services will meet the Customer's requirements (except as provided in Section 6.1) or that the Customer's access to and use of the Software, the Company System or the Hosting Services will be uninterrupted or free of errors or omissions. The Company cannot and does not guarantee the privacy, security, authenticity, and non-corruption of any information transmitted through, or stored in any system connected to the Internet. The Company will use commercially reasonable efforts to maintain or upgrade the Company System to provide the Hosting Services to its customers. However, except as expressly set forth herein, the Company shall not be responsible for any delays, errors, failures to perform, or disruptions in the Hosting Services caused by or resulting from any act, omission or condition beyond the Company's reasonable control.

1. **LIMITATION OF LIABILITY**

EXCLUDING LIABILITY FOR INFRINGEMENT CLAIMS AS DISCUSSED IN SECTION 9 OF THIS AGREEMENT, IN NO EVENT SHALL THE COMPANY BE LIABLE TO THE CUSTOMER FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), OR BE LIABLE TO ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The Company's entire liability under this Agreement for any damages from any cause whatsoever shall in no event exceed an amount equal to the price paid for the Services out of which the claim arose.

1. **CONFIDENTIAL INFORMATION**

Each party agrees to keep confidential and to use only for purposes of performing (or as otherwise permitted under) this Agreement, any proprietary or confidential information of the other party disclosed under this Agreement which is marked as confidential or which would reasonably be considered of a confidential nature. The obligation of confidentiality shall not apply to information which is publicly available through authorised disclosure, is known by the receiving party at the time of disclosure as evidenced in writing, is rightfully obtained from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed. Upon any termination of this Agreement, each party shall return to the other party all confidential information of the other party, and all copies thereof, in the possession, custody or control of the party unless otherwise expressly provided in this Agreement.

1. **INDEMNIFICATION**

Subject to the limitations set forth in this Section 9, the Company will defend any third-party suit or action against the Customer to the extent such suit or action is based on a claim that the Software or the Company System infringes any valid [COUNTRY] patent, copyright, trade secret or another proprietary right, and the Company will pay those damages and costs finally awarded against Customer in any monetary settlement of such suit or action which are specifically attributable to such claim.

These obligations do not include any claims to the extent they are based on the use of the Software or the Company System in violation of this Agreement or combination with any other software or hardware, or any modification to the Software or the Company System under the Customer's specifications. If any portion of the Software or Company System becomes, or in the Company's opinion is likely to become, the subject of a claim of infringement, the Company may, at its option and expense,

* 1. procure for the Customer the right to continue using such Software or the Company System, or replace or modify the Software or the Company System so that it becomes non-infringing. The indemnity obligations outlined in this Section 9 are contingent upon:
     1. The Customer giving prompt written notice to the Company of any such claim(s);
     2. The Company having sole control of the defence or settlement of the claim; and
     3. At the Company's request and expense, the Customer cooperating in the investigation and defence of such claim(s). THE PRECEDING STATES THE COMPANY'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

1. **TERM AND TERMINATION**

**10.1 Term and Termination**

This Agreement shall continue in effect from the Effective Date for a [NUMBER] year period, unless earlier terminated as set forth below, and thereafter shall renew automatically for successive [NUMBER] year periods unless either party gives the other party at least [NUMBER] days prior written notice of its intent not to renew the Agreement. In addition, either party may terminate this Agreement by giving the other party written notice of such termination upon the other party's material breach of any material term (subject to the other party's right to cure within [NUMBER] days after receipt of such notice), the other party's insolvency, or the institution of any bankruptcy or similar proceedings by or against the other party.

**10.2 Effect of Termination**

If this Agreement is terminated the Customer shall immediately lose access to the Software and the Company System. Except in the event of termination for the Customer's breach, the Company shall provide the Customer with an electronic copy of the final Reports (covering the month just before termination of this Agreement). The Company shall be entitled to retain a copy (whether electronic or otherwise) of the Online Messages and the Reports for its records and internal purposes and shall not disclose such Online Messages or Reports to any third party except as permitted under Section 4. Within [NUMBER] days of any termination of this Agreement, Customer shall pay to the Company all unpaid fees accrued before termination. Sections 4, 5 (as to amounts accrued but unpaid), 7, 8, 10.2 and 12 and Schedule [SPECIFY] (as to amounts accrued but unpaid) shall survive any expiration or termination of this Agreement.

1. **CUSTOMER REFERENCES**

The Customer agrees that, during the term of this Agreement, the Company may reference the Customer in Company's customer listings and may place the Customer's name and logo on the Company's Web site as the Customer grants to Company a right to use the Customer's trademarks (name and logo only) designated by the Customer for such limited uses, subject to the Customer's trademark/logo usage guidelines, if any, provided by the Customer to the Company. With these limited exceptions, the Company agrees that it may not use the Customer's name, logo or any other trademarks (including in any press releases, customer "case studies," and the like) without the Customer's prior consent.

1. **MISCELLANEOUS**

This Agreement, including Schedule [SPECIFY] and any other Schedules hereto, constitutes the entire agreement of the parties and supersedes any prior agreements between the parties regarding the subject of this Agreement. Except as otherwise expressly provided herein, this Agreement may be modified only by a writing signed by an authorised representative of each party.

This Agreement shall be governed by and construed by the laws of [Country] exclusive of its conflict of laws principles. Notices under this Agreement shall be in writing, addressed to the party at its last-provided address, and shall be deemed given when delivered personally, or by electronic mail (with confirmation of receipt) or conventional mail (registered or certified, postage prepaid with return receipt requested). Nothing contained in this Agreement is intended or is to be construed to constitute the Company and the Customer as partners or joint venturers or either party as an agent of the other.

If any provision of this Agreement shall be declared invalid, illegal or unenforceable, all remaining provisions shall continue in full force and effect. All waivers of any rights or breach hereunder must be in writing to be effective, and no failure to enforce any right or provision shall be deemed to be a waiver of the same or other right or provision on that or any other occasion. Neither party may assign or otherwise transfer its rights and/or obligations under this Agreement without the prior written consent of the other party. Despite the preceding, no consent shall be required for an assignment of this Agreement made under a merger, consolidation, or the acquisition of all or substantially all of the business and assets of a party. This Agreement is legally binding and is of mutual benefit to the parties and their successors and permitted assigns.

IN WITNESS WHEREOF, [COMPANY NAME] have executed this Agreement as of the date first above written.

[YOUR COMPANY NAME] CUSTOMER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title