REQUEST FOR AGENDA PLACEMENT FORM
Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom
TODAY'S DATE: August 17, 2021

DEPARTMENT: Purchasing

SIGNATURE OF DEPARTMENT HEAD:

REQUESTED AGENDA DATE: August 23, 2021

SPECIFIC AGENDA WORDING: Consideration and approval of the Master Subscription Agreement and Terms and Conditions and the Johnson County Contract Terms and Addendum with Dude Solutions, Inc for a work order program for maintenance orders with Johnson County.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min   **ACTION ITEM:**   X
                                                                                WORKSHOP
(Anticipated number of minutes needed to discuss item)   **CONSENT:**
                                                                                EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: IT DEPARTMENT:
AUDITOR: PURCHASING DEPARTMENT:
PERSONNEL: PUBLIC WORKS:
BUDGET COORDINATOR: OTHER: SO

************This Section to be completed by County Judge's Office***********

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL   _____ Date_____

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – DUDE SOLUTIONS, INC.   2021

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **JOHNSON COUNTY, TEXAS,** a political subdivision of the State of Texas, (hereinafter referred to as **"COUNTY"** and **Dude Solutions, Inc.   Johnson County and Dude Solutions, Inc.** may be collectively identified as the **"Parties"** or each individually a **"Party").   This Addendum is part of the Agreement with Dude Solutions, Inc. and is intended to modify (as set forth in this Addendum) all documents, including any Terms of Use, Service Agreement, Proposal and any acceptance of any Proposal put forth by Dude Solutions, Inc.**

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

> **… But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) …**

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

    a.   the date the governmental entity receives the goods under the contract;

    b.   the date the performance of the service under the contract is completed; or

    c.   the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.,* as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that **Dude Solutions, Inc.** might lawfully seek to claim as confidential, then County will forward the request to **Dude Solutions, Inc.** It shall be the obligation of **Dude Solutions, Inc.** to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with COMPANY in making such submission to the Texas Attorney General's Office. **Dude Solutions, Inc. acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by **Dude Solutions, Inc.** pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. **Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.**

7.2

Dude Solutions, Inc. certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

7.3

Dude Solutions, Inc. verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.4

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

7.5

Notwithstanding any other provision in this Addendum or the associated documents, to the extent **Dude Solutions, Inc.** is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

7.6

NOT APPLICABLE.

8.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and <u>any provision to the contrary is hereby deleted</u>. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY <u>DUDE SOLUTIONS, INC.</u> IS HEREBY DELETED.*

APPROVED AS TO FORM AND CONTENT:

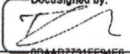**JOHNSON COUNTY:**

Roger Harmon
As Johnson County Judge

8-23-21
Date

Attest:

County Clerk, Johnson County

8-23-21
Date

Dude Solutions, Inc.:

_____
Authorized Representative of
Dude Solutions, Inc.

8/12/2021 | 1:57:57 PM EDT
_____
Date

Printed Name: Brian Benfer
_____

Title: SVP, Sales
_____

Dude Solutions™

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this "Agreement") shall govern Subscriber's (as defined below) access and use of the Services (as defined below) provided by Dude Solutions ("DSI"). BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY OTHERWISE ACCESSING AND USING THE SERVICES, SUBSCRIBERAGREES TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "ACCOUNT" OR "SUBSCRIBER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Section 1.0   Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 "Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Service.

1.2 "Account" means Subscriber's specific account where Subscriber subscribes to access and use Service(s).

1.3 "Account User" means each employee, consultant and contractor of Subscriber that has been granted Access Credentials.

1.4 "Affiliate" means, with respect to any legal entity, any other legal entity that (i) controls, (ii) is controlled by or (iii) is under common control of such legal entity. A legal entity shall be deemed to "control" another legal entity if it has the power to direct or cause the direction of the management or policies of such legal entity, whether through the ownership of voting securities, by contract, or otherwise.

1.5 "Subscription Fee" means the fee invoiced to Subscriber by DSI prior to the Initial Term and each applicable Renewal Term, which is required to be paid in order for Subscriber to be permitted to access and use the Service and, if applicable the API.

1.6 "API" means DSI's proprietary application programming interface and any accompanying or related documentation, software libraries, software tools, published specifications, and other materials, as amended from time-to-time in DSI's sole discretion.

1.7 "Beta Service" means DSI Service or functionality that may be made available to Subscriber to try at its option at no additional charge that is clearly designated as beta, pilot, limited release, early adoption, non-production, sandbox, evaluation or a similar description.

1.8 "Business Hours" means the applicable business hours as defined on the Order Form.

1.9 "Confidential Information" means any non-public information and/or materials maintained in confidence and disclosed in any form or medium by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party"), that is identified as confidential, proprietary or that a reasonable person should have known, was the Confidential Information of the other party given the nature of the circumstances or disclosure, or as otherwise defined as Confidential Information, trade secrets, and proprietary business information as provided under applicable state law and exempted from disclosure by the applicable statute. Confidential Information may include without limitation: information about clients, services, products, software, data, technologies, formulas, processes, know-how, plans, operations, research, personnel, suppliers, finances, pricing, marketing, strategies, opportunities and all

other aspects of business operations and any copies or derivatives thereof. Confidential Information includes information belonging to a third party that may be disclosed only under obligations of confidentiality. Notwithstanding the foregoing, Confidential Information shall not include information that Receiving Party can demonstrate: (a) is or becomes generally known to the public without breach of any obligation by Receiving Party; (b) is received from a third party without breach of any obligation owed to Disclosing Party; or (c) is or has been independently developed by Receiving Party without the benefit of Confidential Information.

1.10   "Content" means all of the audio and visual information, documents, content, materials, products and/or software contained in, or made available through, the Service.

1.11   "Community Development Services" means the SmartGov and ATS Services subscribed to by Subscriber pursuant to the Agreement, Documentation or Order Form.

1.12   "Documentation" means the user documentation relating to the Service, including but not limited to descriptions of the functional, operational and design characteristics of the Service.

1.13   "Dude Solutions" or "DSI" means Dude Solutions, Inc., Dude Solutions Canada, Inc., Assetic Australia Pty Ltd and Confirm Solutions Limited together with their affiliates, successors and assigns.

1.14   "DSI Data" means all data, information and other content provided by or on behalf of DSI to any of the DSI Services.

1.15   "Implementation, Training and Support Program" or "ITSP" means DSI's comprehensive implementation, training and support program provided to DSI's Subscribers with respect to the Service.

1.16   "Intellectual Property Rights" means all ideas, concepts, designs, drawings, packages, works of authorship, processes, methodologies, information, developments, materials, inventions, improvements, software, and all intellectual property rights worldwide arising under statutory or common law, including without limitation, all (i) patents and patent applications owned or licensable by a party hereto; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; (iii) rights related to protection of trade secrets and Confidential Information; (iv) trademarks, trade names, service marks and logos; (v) any right analogous to those set forth in clauses (i) through (iv); and (vi) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.17   "Order Form" means DSI's ordering document or online order specifying the Services to be provided hereunder that is entered into between Subscriber and DSI or its Affiliates, including any addenda and supplements. By entering into an Order Form, Affiliate(s) agree to be bound by the terms of this Agreement as if an original party.

1.18   "Privacy Policy" means the DSI privacy policy, as amended from time-to-time, which can be viewed at www.dudesolutions.com/privacy.

1.19   "Professional Service" means the professional, technical, consulting and/or other services to be performed by DSI that are ordered by Subscriber on an Order Form or provided without charge (if applicable).

1.20   "Service" means DSI's suite of Software-as-a-Service (SaaS) applications, products and services, as updated, enhanced or otherwise modified from time-to-time that are ordered by Subscriber on an Order Form or provided without charge (if applicable) and made available by DSI, including mobile components. For avoidance of doubt, Service applies only to Subscriber's production instances and shall exclude all beta and early adopter programs, user interface (UI) or user experience (UX) changes, feature or functionality improvements, and enhancements where a workaround exists in production.

1.21   "Subscriber" means the legal entity identified on the Account.

1.22   "Subscriber Data" means all data, information and other content provided by or on behalf of Subscriber to the Service, including that which the Account Users input or upload to the Service.

1.23   "Subscriber-Hosted Software" means DSI's suite of Software-as-a-Service (SaaS) software applications, as updated, enhanced or otherwise modified from time-to-time that are: (i) ordered by Subscriber on an Order Form or provided without charge (if applicable) and made available by DSI, including mobile components, and (ii) granted a non-exclusive and non-transferable license (with no right to sublicense) to install and use software for the Term.

1.24 "Third Party" means a party other than Subscriber or DSI.

Section 2.0   Use of the Service and API; Proprietary Rights

2.1   DSI Cloud Service; Subscriber-Hosted Software.

(a)   *DSI Cloud Service.* Unless otherwise specified on an applicable Order Form, DSI Service shall be provided as DSI-hosted, cloud Service. DSI grants Subscriber a non-exclusive and non-transferable right to access and use the Service for the Term.

(b)   *Subscriber-Hosted Software.* Where an applicable Order Form sets forth Subscriber-Hosted Software, subject to the provisions of this Agreement, DSI grants Subscriber a non-exclusive and non-transferable license (with no right to sublicense) to install and use the software for the Term. In respect of such Subscriber-Hosted Software:

(i)   Subscriber is responsible for installing and implementing the Subscriber-Hosted Software and any updates, enhancements or modifications, except for any Professional Services set forth on an applicable Order Form (i.e. implementation).

(ii)   Subscriber may create copies of the Subscriber-Hosted Software to the extent strictly necessary to install and operate the Subscriber-Hosted Software for use in accordance with this Agreement, and to create backup and archival copies to the extent reasonably required in the normal operation of Subscriber systems. All such copies must include a reproduction of all copyright, trademarks or other proprietary notices contained in the original copy of the Subscriber-Hosted Software.

(iii)   Subscriber is responsible for providing the Environment and ensuring the Environment functions properly, and for implementing appropriate data backup and security measures. "Environment" means the systems, networks, servers, equipment, hardware, software and other material specified in Documentation or an Order Form on which, or in connection with which, the Subscriber –Hosted Service will be used.

2.2   Use of the Service and API.

(a)   *Service Subscription.* Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.2 and payment of the Subscription Fees required hereunder), (i) DSI shall permit Subscriber's Account Users to access and use the Service(s) during the Term, including access and use of all of the Content contained in or made available through the Service(s), (ii) Subscriber shall be automatically enrolled in the ITSP ("Implementation, Training and Support Program"), if applicable, and (iii) DSI shall use commercially reasonable efforts to make available to Subscriber each of the components described in the ITSP, when applicable. Subscriber agrees that it shall use the Service(s) solely for internal business purposes, and access and use of the Service(s) and the ITSP shall be limited to Account Users.

(b)   *API License.* Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.2 and payment of the Subscription Fees required hereunder), DSI hereby grants to Subscriber a limited, non-exclusive, non-transferable, revocable license (without the right to sublicense) to use and make calls to the API solely for the purpose of (i) extracting and transferring Subscriber Data from the Service to other Third Party applications used by the Subscriber for internal business purposes, and/or (ii) Subscriber's internal development efforts to develop applications to work in conjunction with the functionality and capabilities of the Service purchased by Subscriber ("Subscriber Applications"). Subscriber shall have no right to distribute, license (whether or not through multiple tiers) or otherwise transfer the API to any Third Party or incorporate the API in any software, product, or technology. DSI sets and enforces limits on Subscriber use of DSI API

(e.g. limiting the number of API requests that may be made or the number of Subscriber uses). Subscriber agrees to, and will not circumvent, DSI's usage guidelines and volume limits as described in DSI's technical documentation or other documentation otherwise made available to Subscriber. Any usage beyond the guidelines and volume limits must obtain DSI's prior express consent from DSI.

(c)   *Account Setup.* To subscribe to the Service, Subscriber must establish its Account, which may only be accessed and used by its Account Users. To setup an Account User, Subscriber must provide DSI (and agree to maintain, promptly update and keep) true, accurate, current and complete information for such Account User. If Subscriber or any applicable Account User provides any information that is untrue, inaccurate, not current or incomplete, DSI has the right to immediately suspend or terminate Subscriber's Account and usage of the Service and API and refuse any and all future use. Each Account User must establish and maintain personal, non-transferable Access Credentials, which shall not be shared with, or used by, any other Third Party. Subscriber may not transfer an Account User's Access Credentials and/or its right to access and use the Service to a different user. Subscriber shall be solely responsible for any and all activities that occur under its Account, including all acts and omissions of its Account Users. Subscriber shall notify DSI immediately of any unauthorized use of its Account and/or any other breach of security of the Service that it suspects or becomes aware of.

(d)   *Subscriber Responsibilities.* Subscriber shall: (i) take appropriate action to ensure that non-Account Users do not access or use the Service or API; (ii) ensure that all Account Users comply with all of the terms and conditions of this Agreement, including the limitations and restrictions set out in Section 2.2(e); (iii) be solely responsible for the accuracy, integrity, legality, reliability and appropriateness of all Subscriber Data created by Account Users using the Service; (iv) access and use the Service solely in compliance with the Documentation and all applicable local, state, federal, and foreign laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (v) allow e-mail notifications generated by the Service on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) promptly update and upgrade its system as requested or required in order to ensure continued performance and compatibility with upgrades to the Service and/or API Modifications (as defined in Section 2.2(g)). Subscriber shall be responsible for any breach of this Agreement by Account Users.

(e)   *Limitations and Restrictions.* Subscriber agrees that it shall not, and shall not permit any Third Party to, directly or indirectly: (i) modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of the Service or API; (ii) assign, transfer, lease, rent, sublicense, distribute or otherwise make available the Service or API, in whole or in part, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Access Credentials or otherwise allow access or use the Service or API to provide any service bureau services or any services on a similar basis; (iv) use the Service or API in a way not authorized in writing by DSI or for any unlawful purpose; (v) use the Service or API to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) attempt to tamper with, alter, disable, hinder, by-pass, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Service or API; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Service; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Service or API; (ix) interfere with or disrupt the integrity or performance of the Service, API or the data contained therein; (x) access or use the Service or API in order to replicate applications, products or services offered by DSI and/or otherwise build a competitive product or service, copy any features, functions or graphics of the Service or API or monitor the availability and/or functionality of the Service or API for any benchmarking or competitive purposes; (xi) under any circumstances, through a Third Party application, a Subscriber Application or otherwise, repackage or resell the Service, API or any DSI data received via API; (xii) store, manipulate, analyze, reformat, print, and display the

Content for personal use; and (xiii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Service. Notwithstanding the foregoing restrictions, in the event Subscriber has purchased a Subscription for Commercial Use (as such term is defined below), Subscriber shall be permitted to use the Service to provide Third Party services in cases where such Third Parties access the Subscriber provided applications or services, but where such Third Parties do not have the ability to install, configure, manage or have direct access to the Services. DSI hereby agrees, subject to payment of the applicable fees, to permit such use and the terms of this Agreement, including references to "internal use" and/or "internal business operations" shall be deemed to include and permit such use (hereafter referred to as "Commercial Use").

(f)   *Additional Service Guidelines*. DSI reserves the right to establish or modify general practices and limits concerning use of the Service. DSI shall use reasonable efforts to provide thirty (30) days' prior notice of any such modification. DSI also reserves the right to block IP addresses originating a Denial of Service (DoS) attack. DSI shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Service or API and the block may be removed once DSI is satisfied corrective action has taken place to resolve the issue.

(g)   *API Modifications*. DSI may modify, amend, change, or deprecate all or part of the API from time-to-time (an "<u>API Modification</u>"). DSI shall use reasonable efforts to provide thirty (30) day notice to Subscriber of any such API Modifications. Any changes to new API functions or changes made for legal reasons will be effective immediately. If Subscriber does not agree to the modification, Subscriber may discontinue use of that API. Subscriber's continued use of the API constitutes acceptance of the modifications.

(h)   *Links to Third Party Websites*. To the extent that the Service links to any Third Party website, application or service, the terms and conditions thereof shall govern Subscriber's rights with respect to such website, application or service, unless otherwise expressly provided DSI. DSI shall have no obligations or liability arising from Subscriber's access and use of such linked Third Party websites, applications and services.

(i)   *Beta Service*. From time to time, DSI may make Beta Service available to Subscribers at no charge. Subscriber may choose to try such Beta Service or not in its sole discretion. Use of Beta Service is at Subscriber's sole risk and may contain bugs or errors. Subscriber may discontinue use of the Beta Service at any time, in its sole discretion. Further, DSI may discontinue any and all Beta Service availability at any time in its sole discretion without notice. NOTWITHSTANDING THE REPRESENTATIONS, WARRANTIES AND DISCLAIMERS IN SECTION 7, BETA SERVICE AND DOCUMENTATION, ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. DSI EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DSI SHALL HAVE NO INDEMNIFICATION OBLIGATIONS AND NO LIABILITY OF ANY TYPE WITH RESPECT TO THE BETA SERVICE UNLESS SUCH EXCLUSION IS UNENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE DSI'S LIABILITY WITH RESPECT TO THE BETA SERVICE PROVIDED SHALL NOT EXCEED $500.00.

2.3   <u>Proprietary Rights</u>.

(a)   Subscriber acknowledges and agrees that (as between Subscriber and DSI) DSI retains all ownership right, title, and interest in and to the Service, API, the Documentation and the Content, including without limitation all corrections, enhancements, improvements to, or derivative works thereof (collectively, "<u>Derivative Works</u>"), and in all Intellectual Property Rights therein or thereto. To the extent any Derivative Work is developed by DSI based upon ideas or suggestions submitted by Subscriber to DSI, Subscriber hereby irrevocably assigns all rights to modify or enhance the Service and/or API using such ideas or suggestions or joint contributions to DSI, together with all Intellectual Property Rights related to such Derivative Works. Nothing contained in this Agreement shall be construed

to convey to Subscriber (or to any party claiming through Subscriber) any Intellectual Property Rights in or to the Service, API, the Documentation and the Content, other than the rights expressly set forth in this Agreement.

(b) DSI acknowledges and agrees that (as between Subscriber and DSI) Subscriber retains all ownership right, title, and interest in and to the Subscriber Data, including all Intellectual Property Rights therein or thereto. Notwithstanding the foregoing, Subscriber hereby grants DSI and its Affiliates a non-exclusive, royalty-free license to: (i) access, display, copy, distribute, transmit, publish, disclose and otherwise use all or any portion of the Subscriber Data to fulfill its obligations under this Agreement. In addition, Subscriber hereby grants DSI a non-exclusive, royalty-free right to (i) use and incorporate Subscriber's feedback, including but not limited to suggestions, enhancement requests, recommendations and corrections (the "Feedback") relating to the Service and (ii) use aggregated and de-identified data generated and/or derived by DSI from the Subscriber Data (the "De-Identified Data") in order to improve the Service and DSI's performance hereunder, including without limitation, submitting and sublicensing such De-Identified Data to Third Parties for analytical purposes, provided that DSI shall take commercially reasonable efforts to conduct such de-identification in a manner that ensures that such De-Identification cannot be traced back to natural persons.

(c) Subscriber acknowledges the Services may utilize, embed or incorporate Third Party software and/or tools (each, a "Third-Party Tool") under a license granted to DSI by one or more applicable Third Parties (each, a "Third-Party Licensor"), which licenses DSI the right to sublicense the use of the Third-Party Tool solely as part of the Services. Each such sublicense is nonexclusive and solely for Subscriber's internal use and Subscriber shall not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. Subscriber further acknowledges that each Third-Party Licensor retains all right, title, and interest to its applicable Third-Party Tool and all documentation related to such Third-Party Tool. All confidential or proprietary information of each Third-Party Licensor is Confidential Information of DSI under the terms of this Agreement and shall be protected in accordance with the terms of Section 8.

Section 3.0   DSI Responsibilities

3.1   Implementation, Training and Support Program (ITSP). During the Term DSI (or its agent, representative or designee) shall provide and maintain an ITSP program. During the Term, DSI shall, as part of Subscriber's Subscription Fees, provide telephone and email support ("Support Services") as set forth in an applicable Order Form.

3.2   Professional Services. DSI shall provide Professional Services that are mutually agreed upon and described in one or more statements of work that expressly reference this Agreement and, if applicable, DSI's Professional Services Agreement. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that will be developed pursuant to such statement of work, and (iii) if applicable, sets forth each party's respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work.

3.3   Service Levels.

(a) DSI shall use commercially reasonable efforts to make the Service available 99.9% of the time for each full calendar month during the Term, determined on a twenty-four(24) hours a day, seven (7) days a week basis (the "Service Standard"). Service availability for access and use by Subscriber(s) excludes unavailability when due to: (a) any access to or use of the Service by Subscriber or any Account User that does not strictly comply with the terms

of the Agreement or the Documentation; (b) any failure of performance caused in whole or in part by Subscriber's delay in performing, or failure to perform, any of its obligations under the Agreement; (c) Subscriber's or its Account User's Internet connectivity; (d) any Force Majeure Event; (e) any failure, interruption, outage, or other problem with Internet service or Non-DSI Service; (f) Scheduled Downtime; or (g) any disabling, suspension, or termination of the Service by DSI pursuant to the terms of the Agreement. "Scheduled Downtime" means, with respect to any applicable Service, the total amount of time (measured in minutes) during an applicable calendar month when such Service is unavailable for the majority of Subscribers' Account Users due to planned Service maintenance. To the extent reasonably practicable, DSI shall use reasonable efforts to provide eight (8) hours prior electronic notice of Service maintenance events and schedule such Service maintenance events outside the applicable Business Hours.

(b)   DSI shall use reasonable efforts to ensure the availability of API in accordance with the service levels described in Section 3.3(a). Notwithstanding the foregoing, DSI does not guarantee any required uptime, performance, or integrity of any product, application or service that integrates with and/or otherwise utilizes API (including, without limitation, any such product, application or service developed by Subscriber). Moreover, DSI shall not be liable to Subscriber or any Third Party for the unavailability of the API or the failure of API to perform in accordance with its specifications. Subscriber shall not represent to any Third Party any availability or performance levels with respect to API.

3.4   Protection of Subscriber Data. DSI shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, unauthorized access or disclosure of Subscriber Data. All data and information provided by Subscriber through its use of the Service is subject to DSI's privacy policy, as amended from time-to-time, which can be viewed by clicking the "Privacy" hypertext link located within the Service. By using the Service, Subscriber accepts and agrees to be bound and abide by such privacy policy. At all times during the Subscription term and upon written request of Subscriber within thirty (30) days after the effective date of termination or expiration of this Agreement, Subscriber data shall be available for Subscriber's export and download. Following the thirty (30) days after termination or expiration, DSI shall not be obligated to maintain Subscriber Data and may delete or destroy what remains in its possession or control unless prohibited by law.

(a)   If applicable in the United States, if Subscriber is a "Covered Entity" under the Health Insurance Portability and Accountability Act of 1996 (as amended from time to time, "HIPAA"), and if Subscriber must reasonably provide protected health information as defined by HIPAA in order to use the Services, DSI shall be Subscriber's "Business Associate" under HIPAA, and any Subscriber Data provided by Subscriber to DSI in their capacities as a Covered Entity and Business Associate, respectively, DSI and Subscriber shall enter into a Business Associate Agreement (the form of which shall be reasonably satisfactory to DSI).

(b)   If applicable in the United Kingdom, Switzerland or European Economic Area (EEA), both parties will comply with the applicable requirements of Data Protection Legislation. "Data Protection Legislation" means (i) the United Kingdom's Data Protection Act 2018, and (ii) the General Data Protection Regulation ("GDPR") and any national implementing laws, regulations or secondary legislation. DSI and Subscriber agree that DSI will not be processing any personal data on behalf of the Subscriber as "Data Controller" (defined in accordance with the Data Protection Legislation). DSI will collect, use, disclose, transfer and store personal information when needed to administer this Agreement and for its operational and business purposes, in accordance with Data Protection Legislation. To the extent personal data from the UK, Switzerland or the EEA are processed by DSI, the terms of a data processing addendum ("DPA") must be signed by the parties. To the extent DSI processes personal data, its binding corporate rules and the standard contract clauses shall apply, as set forth in the DPA. For standard contract clauses, Subscriber and DSI agree that Subscriber is the data exporter and Subscriber's acceptance of this Agreement or applicable Order Form shall be treated as its execution of the standard contract clauses.

Section 4.0   Third Party Interactions

4.1   <u>Relationship to Third Parties</u>. In connection with Subscriber's use of the Service, at Subscriber's discretion, Subscriber may: (i) participate in Third Party promotions through the Service; (ii) purchase Third Party goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Service, API and a Third Party provider; (iv) receive additional functionality within the user interface of the Service through use of the API; and/or (v) receive content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such Third Party activity, shall be solely between Subscriber and the applicable Third Party. DSI shall have no liability, obligation or responsibility for any such Third Party correspondence, purchase, promotion, data exchange, integration or interaction. DSI does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by DSI as "certified," "validated," "premier" and/or any other designation. DSI does not endorse any sites on the Internet that are linked through the Service.

4.2   <u>Ownership</u>. Subscriber is the owner of all Third Party content and data loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. DSI shall not comment, edit or advise Subscriber with respect to such Third Party content and data in any manner.

Section 5.0   Fees and Payment.

5.1   <u>Fees</u>. Subscriber shall pay to DSI all fees specified in Order Forms. All Subscription Fees are non-refundable and non-cancelable, and the Subscription Fee for such Service subscription shall be invoiced upon commencement of the Initial Term of a Service subscription. Thereafter, DSI shall make reasonable efforts to invoice Subscriber for each applicable Subscription Fee sixty (60) days prior to the commencement of the applicable Renewal Term. Unless Subscriber provides written notice of termination in accordance with Section 6.1, Subscriber agrees to pay all fees no later than thirty (30) days after the receipt of DSI's applicable invoice. Subscriber is responsible for providing complete and accurate billing and contact information to DSI and notifying DSI promptly of any changes to such information.

5.2   <u>Automatic Payments</u>. Subscriber shall, upon the written request from DSI, establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the "<u>Automatic Payment Method</u>"). Upon establishment of such Automatic Payment Method, DSI is hereby authorized to charge any applicable Subscription Fee using such Automatic Payment Method.

5.3   <u>Overdue Charges</u>. If any invoiced amount is not received by DSI by the due date, without limiting DSI's rights or remedies, those overdue charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum amount permitted by law, whichever is lower. DSI reserves the right to condition an overdue Account's future subscription renewals and Order Forms on shorter payment terms than those stated herein.

5.4   <u>Renewal Charges</u>. DSI maintains the right to increase Subscription Fees and other applicable fees and charges in connection with each Renewal Term.

5.5   <u>Taxes</u>. DSI's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "<u>Taxes</u>"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If DSI has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 5.5, DSI shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides DSI with a valid tax exemption

certificate authorized by the appropriate taxing authority. Subscriber agrees to indemnify and hold DSI harmless from any encumbrance, fine, penalty or other expense which DSI may incur as a result of Subscriber's failure to pay any Taxes required hereunder. For clarity, DSI is solely responsible for taxes assessable against DSI based on its income, property and employees.

5.6   Purchases through Resellers. In the event Customer purchases the Services (including any renewals thereof) through an authorized reseller of DSI, the terms and conditions of this Agreement shall apply and supersede any other agreement except for any terms and conditions related to fees, payment or Taxes. Such terms and conditions shall be negotiated solely by and between Subscriber and such authorized reseller. In the event Subscriber ceases to pay the reseller, or terminates its agreement with the reseller, DSI shall have the right to terminate Subscriber's access to the Service at any time upon thirty (30) days' prior written notice to Subscriber unless Subscriber and DSI have agreed otherwise in writing.

Section 6.0   Term and Termination

6.1   Term. This Agreement commences on the date Subscriber establishes its Account and continues until the Service subscription hereunder has expired or has been terminated (the "Term"). The initial term of the Service subscription shall be set forth on the Order Form (the "Initial Term"). Thereafter, except as stated on an applicable Order Form, the Service subscription shall automatically renew for additional periods equal to the expiring subscription term or one year, whichever is longer (each, a "Renewal Term") unless either party has provided written notice of its intent to terminate the Service subscription not less than forty-five (45) days prior to the expiration of the then-current Initial or Renewal Term applicable to the Service subscription.

6.2   Termination. Either party may terminate this Agreement (including its Service subscription and Account) prior to the expiration of the Term if (i) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach is given by the non-breaching party or (ii) Subscriber becomes the subject of a petition in bankruptcy or other similar proceeding; provided that if the breach involves a failure of Subscriber to pay any of the fees required under this Agreement, the cure period shall be reduced to ten (10) days. If the Agreement is terminated by Subscriber in accordance with this Section 6.2, DSI will refund any prepaid Subscription Fees covering the remainder of the Term of all Order Forms after the effective date of termination. If the Agreement is terminated by DSI in accordance with this Section 6.2, Customer will pay any unpaid fees covering the remainder of the term on all Order Forms to the extent permitted by applicable law. In no event will termination relieve the Subscriber of its obligation to pay any fees payable to DSI for the period prior to the effective date of termination. Without limiting the foregoing, in the event such breach that gives rise to the right by DSI to terminate this Agreement, DSI may elect to suspend Subscriber's access and use of the Service, API and the Account until the breach is cured. DSI's exercise of its suspension right shall be without prejudice to DSI's right to terminate this Agreement upon written notice to Subscriber.

6.3   Effect of Termination. Upon termination of this Agreement, (i) Subscriber's access and use of the Service shall automatically and immediately cease, and (ii) subject to Section 3.4, DSI shall have no obligation to maintain the Subscriber Data or to forward the Subscriber Data to Subscriber or any Third Party.

6.4   Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 2, 3.4, 6.3, 7, 8 and 9. Termination of this Agreement, or any of the obligations hereunder, by either party shall be in addition to any other legal or equitable remedies available to such party, except to the extent that remedies are otherwise limited hereunder.

Section 7.0   Representations, Warranties and Disclaimers

7.1   Representations. Each party represents that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against it in accordance with its terms.

7.2   Warranties.

(a)   DSI represents and warrants that during the applicable subscription Term that Service will perform materially in accordance with the applicable Documentation. For any breach of this warranty in Section 7.2(a), Subscriber's exclusive remedy and DSI's entire liability shall be as described in Section 6.2 (Termination).

(b)   DSI represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 7.2(b), Subscriber's exclusive remedy and DSI's entire liability shall be the re-performance of the applicable Professional Services.

(c)   SERVICE, CONTENT, DOCUMENTATION, STORED DATA AND BETA SERVICE ARE PROVIDED "AS-IS" AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY. EXCEPT AS EXPRESSLY STATED HEREIN, THE PARTIES MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR ANY CONTENT, DOCUMENTATION, STORED DATA OR BETA SERVICES. PARTIES SPECIFICALLY DISCLAIM ALL REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.3   Indemnification.

(a)   *Indemnity by DSI.* DSI shall defend and indemnify Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Service as expressly permitted hereunder infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber (x) promptly gives DSI written notice of the Claim; (y) gives DSI sole control of the defense and settlement of the Claim; and (z) provides to DSI all reasonable assistance, at DSI's expense. If DSI receives information about an infringement or misappropriation claim related to the Service, DSI may in its sole discretion and at no cost to Subscriber: (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the Service, or (iii) terminate this Agreement (including Subscriber's Service subscriptions and Account) upon prior written notice and refund to Subscriber any prepaid Subscription Fee covering the remainder of the term of the terminated Service subscriptions. Notwithstanding the foregoing, DSI shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Service in combination with any software or hardware not expressly authorized by DSI, (B) any modifications or configurations made to the Service by Subscriber without the prior written consent of DSI, and/or (C) any action taken by Subscriber relating to use of the Service that is not permitted under the terms of this Agreement. This Section 7.3(a) states Subscriber's exclusive remedy against DSI for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from Subscriber's use of the Service.

(b) To the extent permitted by law, Subscriber shall defend and indemnify DSI from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by DSI, in connection with any Claim alleging that the Subscriber Data, or Subscriber's use of the Service or API in breach of this Agreement, infringes upon any patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; unless applicable laws prohibit public entities from such indemnification and provided that DSI (x) promptly gives Subscriber written notice of the Claim; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber all reasonable assistance, at Subscriber's expense. This Section 7.3(b) states DSI's exclusive remedy against Subscriber for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from the Subscriber Data or Subscriber's use of the Service.

7.4 Limitation of Liability. IN NO EVENT SHALL DSI, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER TO DSI PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE FIRST ACT OR OMISSION GIVING RISE TO THE LIABILITY. UNDER NO CIRCUMSTANCES SHALL DSI HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF DSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR PRODUCTS LIABILITY. NOTHING IN THIS SECTION SHALL LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 5.

Section 8.0 Confidentiality

8.1 Protection of Confidential Information. The Receiving Party agrees that it shall: (i) use the Confidential Information solely for a purpose permitted by this Agreement, (ii) use the same degree of care as Receiving Party uses with its own Confidential Information, but no less than reasonable care, to protect Confidential Information and to prevent any unauthorized access, reproduction, disclosure, or use of any of Confidential Information; and(iii) restrict access to the Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are prohibited from disclosing the information by a contractual, legal or fiduciary obligation no less restrictive than this Agreement. Receiving Party shall not use, reproduce, or directly or indirectly allow access to the Confidential Information except as herein provided or export Confidential Information to any country prohibited from obtaining such information under any applicable laws or regulations.

8.2 Compelled Disclosure. If Receiving Party is required to disclose any Confidential Information to comply with law, to the extent legally permitted, Receiving Party shall: (a) give the Disclosing Party reasonable prior written notice to permit Disclosing Party to challenge or limit any such legally required disclosure; (b) disclose only that portion of the Confidential Information as legally required to disclose; and (c) reasonably cooperate with Disclosing Party, at Disclosing Party's request and expense, to prevent or limit such disclosure.

8.3 Records Requests. To the extent permitted by law, Subscriber shall treat as exempt from treatment as a public record, and shall not unlawfully disclose in response to a request made pursuant to any applicable public records law, any of DSI's Confidential Information. Upon receiving a request to produce records under any applicable public records or similar law, Subscriber shall immediately notify DSI and provide such reasonable cooperation as requested by DSI and permitted by law to oppose production or release of such DSI Confidential Information.

8.4 Remedies. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information and agrees to reasonably cooperate with Disclosing Party in its efforts to mitigate any resulting harm. Receiving Party acknowledges that Disclosing Party would

have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

Section 9.0   Miscellaneous

9.1   <u>Compliance with Laws</u>. Each party will comply with all laws and applicable government rules and regulations insofar as they apply to such party in its performance of this Agreement's rights and obligations.

9.2   <u>Acceptance of Privacy Policy</u>. All data and information provided by Subscriber through its use of the Service is subject to DSI's Privacy Policy. By using the Service, Subscriber accepts and agrees to be bound and abide by such Privacy Policy.

9.3   <u>Relationship of the Parties</u>. DSI is performing pursuant to this Agreement only as an independent contractor. DSI has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between DSI and Subscriber. DSI shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

9.4   <u>Waiver</u>. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

9.5   <u>Assignment</u>. Subscriber shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void. DSI shall have the full ability to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement.

9.6   <u>Force Majeure</u>. Subject to the limitations set forth below and except for fees due for Service rendered, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a "<u>Force Majeure Event</u>"). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

9.7   <u>Entity, Governing Law, Notices and Venue</u>. All notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); (c) by business mail (upon written verification of receipt); or (d) except for notice of indemnification claims, via electronic mail to Subscriber at the e-mail address maintained on Subscriber's Account and to DSI at notice@dudesolutions.com. The DSI entity entering into this Agreement, the address to which notices shall be directed under this Agreement and the law that will apply in any

dispute or lawsuit arising out of or in connection with this Agreement shall depend upon where Subscriber is domiciled:

(a)   In the United States and all other domiciles not otherwise mentioned, the DSI entity is Dude Solutions, Inc., a Delaware corporation, notices shall be addressed to 11000 Regency Parkway, Suite 400, Cary, NC 27518, Attn: General Counsel, governing law shall be Delaware and the courts with exclusive jurisdiction shall be Delaware without regard to the principles of conflicts of laws, unless otherwise required by applicable law where Subscriber is a public entity.

(b)   In Canada, the DSI entity is Dude Solutions Canada, Inc., an Ontario corporation, notices shall be addressed to Bay Adelaide Centre, 333 Bay Street, Suite 2400, PO Box 20, Toronto, ON, M5H 2T6 Attn: Dude Solutions General Counsel, governing law shall be Ontario and the courts with exclusive jurisdiction shall be Toronto, Ontario, Canada without regard to the principles of conflicts of laws.

(c)   In the United Kingdom or a country in Europe, the DSI entity is Confirm Solutions Limited, a limited company in England, notices shall be addressed to Central House Unit C Compass Centre North, Chatham Maritime, Chatham, England, ME4 4YG, Attn: General Counsel, governing law shall be England and the courts with exclusive jurisdiction shall be London, England without regard to the principles of conflicts of laws.

(d)   In Australia, New Zealand, a country in Asia or the Pacific region, the DSI entity is Assetic Australia Pty Ltd, a proprietary limited company in Australia, notices shall be addressed to Level 9, 257 Collins Street, Melbourne, VIC 3000 Australia, Attn: General Counsel, governing law shall be Australia and the courts with exclusive jurisdiction shall be New South Wales, Australia without regard to the principles of conflicts of laws.

9.8   Interpretation of Agreement. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.9   No Third Party Beneficiaries. No person or entity not a party to the Agreement shall be deemed to be a third party beneficiary of this Agreement or any provision hereof.

9.10   Severability. The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.11   Entire Agreement. This Agreement, including any applicable Order Form, is the entire agreement between Subscriber and DSI regarding Subscriber's use of the Service and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in any purchase order or in any other order documentation is void. In the event of any conflict or inconsistency between the documents, the order of precedence shall be (1) the applicable Order Form, (2) any schedule or addendum to this Agreement, and (3) the content of this Agreement.

9.12   Export Compliance. The Service, Professional Service, Content or other technology DSI may make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Subscriber shall not permit any Account User to access or use any Service, Content or other DSI technology in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.

9.13   Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connect with this Agreement.

Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Subscriber learns of any violation of the above restriction, Subscriber shall immediately notify DSI.

9.14   Cooperative Use. With Subscriber's approval, the market research conducted by Subscriber during its selection process for the Services may be extended for use by other jurisdictions, municipalities, and government agencies of Subscriber's state. Any such usage by other entities must be in accordance with ordinance, charter, and/or procurement rules and regulations of the respective political entity.

9.15   Modifications. DSI may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, DSI shall notify Subscriber.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement.
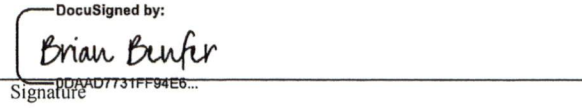
Johnson County
~~Stephens County Hospital~~

_____
Signature

Roger Harmon
Print Name

County Judge
Title

8-23-21
Date Signed

Dude Solutions, Inc.

DocuSigned by:

Brian Benfer
DDAAD7731FF94E6...
Signature

Brian Benfer
Print Name

SVP, Sales
Title

8/17/2021 | 3:52:07 PM EDT
Date Signed

Dude Solutions

PREPARED FOR
Johnson County

Josh Green
Facilities
2 N Main St
Cleburne, TX 76033

PREPARED BY
Dude Solutions

11000 Regency Parkway, Suite 400

Cary, NC 27518

PUBLISHED ON
July 21, 2021

Dude Solutions

Q-255742

Pricing based on square footage of about 199,000 square feet. Pricing includes Omnia Partners discount

Subscription	
Asset Essentials Core Plus	2,904.50 USD
- Facilities/Physical Plant Module	0.00 USD
Dude Analytics	0.00 USD
Asset Essentials Inventory	0.00 USD
Subscription Term: 13 months	
8 months included at no additional cost	**Subtotal:** 2,904.50 USD

Implementation & Services	
Asset Essentials Standard Implementation	1,615.00 USD
	Subtotal: 1,615.00 USD
Total Initial Investment	**4,519.50 USD**

Pricing for the First Renewal Term is 6,970.81 USD

Dude Solutions

Legendary Support Team

Support is available Monday through Friday from 8am-6pm EST. Clients can reach out through phone, email, or in product chat options. Our goals are to respond to support emails within an hour, answer the phone within 3 rings, and provide immediate access through live chat. Any support requests submitted after business hours are responded to the next business day.

In many cases, Support can resolve software questions and issues during the initial outreach or response with an explanation of features, functionality, options, or a description of known workarounds. For those issues that can't be resolved immediately or are more complex, the Support rep will escalate the case to a "Tier 2" level for assistance. For those issues that are determined to be a defect in the application, DSI Support staff will escalate the case to our Development team. Through discussion and analysis, as well as assessing the impact of the problem on the overall business, a severity level (1, 2, 3 or 4) will be assigned to the issue.

Client Success Team

Dude Solutions is invested in your Success.

Our Client Success team is here to ensure you are meeting your goals and getting the results you expect post-deployment. You'll have a team of professionals who will provide you with best practices for the solutions and your industry. Client Success is outcome-focused and ready work with you to get the most out of your solutions and services, and to grow along with your operations goals.

Asset Essentials – Standard Implementation

Purpose

Dude Solutions' (DSI) Asset Essentials with Standard Implementation service is designed to provide our clients with guidance by experienced subject matter experts to ensure an effective and efficient implementation and a faster ROI. With over 12,000 clients successfully using our software, we understand what it takes to successfully implement your solution and look forward to working with you through our Standard Implementation service.

Value

By partnering with Dude Solutions and taking advantage of our Standard Implementation service, you are provided expert guidance in the best practice configuration and usage of Asset Essentials. By following our focused project plan, you will experience fast time to value and will see your AE account configured and ready to use within 30 days, plus an additional 30 days of go-live support from your Implementation Specialist. Our Train-the-Trainer approach streamlines the implementation process and empowers the Client Project Lead to fully own and operationalize Asset Essentials quickly within their organization.

Deliverables

- Project Kickoff call
- Access to Basecamp project collaboration tool

- 30-day implementation support
- Optional template-based data imports for available Location, Asset, and User data during the project period
- 1-on-1 configuration guidance by dedicated Implementation Specialist
- 30-day go-live support
- Train-the-trainer best practices and content to onboard your team

- Unlimited access to Help Site and Virtual Classroom Trainings

Methodology and Approach

With over 12,000 clients successfully using our software, we understand the importance of moving quickly to be able to configure a new system and drive adoption within your organization to facilitate a smooth transition from your current system to Asset Essentials. Your Standard Implementation service will begin with a Kickoff Call with one of our Project Coordinators. From there, a dedicated Implementation Specialist will guide and assist you through the implementation project. The first 30 days are focused on account configuration and training while the final 30 days are dedicated towards go-live support to ensure account enablement. By following this plan you'll be empowered to effectively streamline your operations using Asset Essentials. Below is a sample Standard Implementation service delivery:

Sample Standard Implementation Service

Your dedicated implementation team will be here to assist you during the duration starting during the Kickoff call.

Project Kickoff & Building Your Foundation: Weeks 1-2	
Project Kickoff	Kickoff Call with Project Coordinator. Agenda: • Introductions – Project Roles and Responsibilities • Overview of Implementation Process and Tools • Discuss Current Processes and Goals • Review Basecamp and Resources • Review Account Setup Spreadsheet • Determine Timeline and Next Steps

Account Setup and Configuration	• Attend Fundamentals virtual classroom training or review equivalent help content • Understand basic navigation and configuration requirements • Watch First Steps video • Compile location, user, work category, and asset data in templates • Initial Data Review Call with Implementation Specialist • Login to Asset Essentials pending client data load • Become familiar with basic functionality of the system • Configure locations, users, work categories, assets • Connect with Implementation Specialist on account configuration progress • If integrating AE with GIS - Rest URLs/WebMap ID • Set Initial Map Extent • Configure Map Service and/or Geocode Service • Confirm GIS data loads properly on Map- To test, turn on 3-5 GIS layers in the map view to confirm the data displays correctly • Confirm GIS data loads properly on the Mobile App map • Sync **ONE LAYER** at minimum to test for any potential issues. • On Map – make sure you can identify an asset and create a WO against it. • On App – make sure you can "Create WO" and associate to a GIS-synced Asset.

Work Order Management: Week 3

Account Setup and Configuration	• Attend Work Order Management virtual classroom training or review equivalent help content • Attend Mobile App virtual classroom training or review equivalent help content • Continue account configuration of work categories, priorities, work types, approval routing, email notifications • Connect with Implementation Specialist on account configuration and work order management progress • Download Mobile App and review Help Documentation • Review mobile functionality with Implementation Specialist

Preventative Maintenance: Week 4

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Account Setup and Configuration	• Attend Preventive Maintenance virtual classroom training or review equivalent help content • Begin setting up PM Schedules • Create and complete test PM work orders • Connect with Implementation Specialist on account configuration progress

Go Live Support: Use Case Testing and User Training: Weeks 5-7

Use Case Testing and User Training	• Perform use case testing to ensure solution readiness • Submit test requests to confirm routing and approval process • Confirm email notifications are sent and received as expected • Have representatives from various user roles login to confirm they can execute job functions as expected • Ensure desktop and mobile functionality and views are as expected • End users access and review online help documentation • Confirm users can access AE and perform expected job functions

Go Live Support: Prepare for Launch and Project Close: Week 8

Implementation Complete and Project Close	• Confirm goals defined during Kickoff call have been met • Confirm product readiness • Introduce ongoing DSI resources • Close project

Excluded from Standard Implementation

For the avoidance of doubt, the following services are not included:

- Evaluation of your current practices, policies and procedures for the purposes of performance improvements.
- Troubleshooting any issues related to your IT infrastructure or mobile devices
- Migration of data from other systems or locations
- Export of data to any other systems or third parties
- Role-based end-user trainings

Completion Criteria

The steps (To Do's) in the Basecamp project plan represent the individual activities that constitute Standard Implementation for Asset Essentials. Upon completion of the required To Do's, the Standard Implementation Service will be deemed delivered and the project will be closed. Some To Do's may not be applicable to the Client's needs and may be waived from the project upon agreement between the Client and Implementation Specialist. Some To Do's (data importing, for example) are considered optional and may or may not be completed depending on the availability of data to be imported. Completion of optional To Do's is not required to complete delivery of Standard Implementation and close the project.

Client Assumptions

The success of this project is dependent on the attendance and full engagement of the key stakeholders.

- The client will schedule time for the appropriate resources to be available to the Implementation Specialist for all scheduled and/or required activity.
- Should the need to reschedule any engagements arise, the client will be responsible for reaching out to their implementation specialist within the 60-day project duration window and will be subject to the implementation specialist's availability.
- The client shall be primarily responsible for providing access and training on Asset Essentials to end-users.

- The client will provide data to be imported in a timely manner and in the template format provided via Basecamp so the Implementation Specialist has an opportunity to import the data during the 60-day project period.
- If there is no existing data, the Implementation Specialist will guide the client to focus first on key equipment and their associated PMs to be manually entered into Asset Essentials by the Client.
- Client will have access to GIS system. ArcGIS online Viewer licenses may be required.
- Client will have access to personnel on their side to make changes to GIS.
- GIS layers should all have unique names and Global IDs for Asset-syncing to be successful.

- Client IT department is responsible for ensuring access to mobile devices, internet connections, email access and web link access to the application(s)

Project Assumptions

DSI has made the following general assumptions in this SOW to derive the estimated cost for this project. It is the responsibility of Client to validate these assumptions and responsibilities before signing the Acceptance. Deviations from these assumptions may impact DSI's ability to successfully complete the project. DSI is not responsible for delays caused by missed scheduled engagements and low engagement preventing client from being able to successfully implement.

- Standard Implementation is designed and resourced to be completed within 60 days of the project kickoff call. In the event additional time is required, there is a mechanism to purchase a Project Extension. Implementation Specialist will need to be notified that an extension is needed at least 10 days in advance.
- Without an extension, the implementation project will be closed after 60 days and the Implementation Specialist redirected, but the client will retain full access to Asset Essentials along with DSI VCTs, LMS, online Help Documentation, and our Legendary Support Team

- DSI is not responsible for delays caused by missing data or other configuration information that is required to be available prior to the Standard Implementation service. Having the requested data and configuration information available prior to implementation may minimize delays so progress can be made quickly.
- Project extensions will be considered for extenuating circumstances and will follow the change control process, which requires management approval.

Change Controls

Parties may agree to modify the Services through a written change order specifically referencing this applicable Statement of Work. Such change order will become part of the applicable Statement of Work when executed by both Parties, and the services described therein will become part of the Services.

You may request that DSI add services not in the Specifications by submitting a written proposed change order to DSI. DSI shall negotiate in good faith regarding change order prices and shall not require rates higher than those set forth in the Investment page. Such change order will become part of the applicable Statement of Work when executed by both Parties, and the services described therein will become part of the Services.

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Proposal terms

- Proposal has been prepared for Johnson County ("Subscriber")
- Proposal expires in sixty (60) days
- Initial Term: 13 months

Order Form terms

- This Order Form and its Services are governed by the terms of the Dude Solutions, Inc. Master Subscription Agreement found at https://www.dudesolutions.com/terms (https://www.dudesolutions.com/terms) ("Terms"), unless Subscriber has a separate written agreement executed by Dude Solutions, Inc. ("DSI") for the Services, in which case the separate written agreement will govern. Acceptance is expressly limited to these Terms. Any additional or different terms proposed by Subscriber (including, without limitation, any terms contained in any Subscriber purchase order) are objected to and rejected and will be deemed a material alteration hereof.
- The Effective Date of the Agreement between Subscriber and DSI is the date Subscriber accepts this Order Form.
- During the Term, DSI shall, as part of Subscriber's Subscription Fees, provide telephone and email support ("Support Services") during the hours of 8:00 AM and 6:00 PM EST, Monday through Friday, excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve and Christmas Day ("Business Hours"), except Community Development Services, where Business Hours means 5:00 AM – 5:00 PM PST.

- Acceptance of this Order Form on behalf of a company or legal entity represents that you have authority to bind such entity and its affiliates to the order, terms and conditions herein. If you do not have such authority, or you do not agree with the Terms set forth herein, you must not accept this Order Form and may not use the Service.

Additional information

- DSI fees do not include any taxes, levies, duties, or similar government assessments for which Subscriber may be responsible. Tax exemption certifications can be sent to accountsreceivable@dudesolutions.com (mailto:accountsreceivable@dudesolutions.com).
- Billing frequency other than annual is subject to additional processing fees.

- Please reference Q-255742 on any applicable purchase order and email to accountsreceivable@dudesolutions.com (mailto:accountsreceivable@dudesolutions.com)

- Dude Solutions, Inc. maintains the necessary liability coverage for its products and professional services. Proof of insurance can be provided upon request.

Dude Solutions

Software for Smarter Operations

Q-255742

Accepted by: Johnson County

Roger Harmon
Printed Name

[signature]
Signed Name

County Judge
Title

_8-23-21_
Date

Accepted by: Dude Solutions

Brian Benfer
Printed Name

DocuSigned by:
Brian Benfer
0DAAD7731FF94E6...
Signed Name

SVP, Sales
Title

8/17/2021 | 3:52:07 PM EDT
Date