



UTILIWARE SERVER HOSTING AND MANAGEMENT SERVICE AGREEMENT

THIS SERVER HOSTING SERVICES AGREEMENT (hereinafter "Agreement"), is made and entered into as of _____ (hereinafter "Effective Date") by and between _____ (hereinafter "CUSTOMER"), having offices at _____ and, Utiliware Corporation (hereinafter "UTILIWARE") having offices at 3830 Valley Center Drive, Suite 705-295, San Diego, California 92130.

RECITALS

UTILIWARE has a data center that includes but not limited to servers, software licenses, appliances, load balancers, switches and firewalls for a CUSTOMER to host server(s) pursuant to the terms and conditions of this Agreement. CUSTOMER desires to obtain services from said data center. UTILIWARE is willing to host CUSTOMER servers in data center pursuant to the terms and conditions of this Agreement.

WHEREAS, UTILIWARE currently contracts with an Internet Service Provider (hereinafter "ISP") to house UTILIWARE data center for the purpose of allowing a customer server(s) access to the global network of Interconnected Computer Networks (hereinafter "Internet"); and

WHEREAS, CUSTOMER desires server services from UTILIWARE'S data center for the purpose of hosted server(s) to access the Internet; and

WHEREAS, UTILIWARE will provide services as outlined in the UTILIWARE Service(s) Order Form, (hereinafter "SOF") and Amendments thereto, if any, identified herewith and made a part hereof, at which certain services shall be provided in conformity with the applicable specifications set forth in the Exhibits to each SOF. Each SOF shall only be effective upon its being dated and subscribed to by the Parties for identification purposes and together with the terms hereof shall constitute the entire agreement between the Parties with respect to the Application Hosting and the Internet Connection (collectively the "Agreement"); and

WHEREAS, UTILIWARE is willing to grant CUSTOMER authority to use a portion of UTILIWARE'S network to host servers and transport CUSTOMER'S network traffic to and from the Internet.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, UTILIWARE and CUSTOMER (hereinafter collectively the "Parties," or individually referred to as "CUSTOMER" and "UTILIWARE ") hereby agree as follows:

- 1. UTILIWARE'S DUTIES AND OBLIGATIONS.** During the term hereof, UTILIWARE shall, subject to the terms and conditions hereof, provide CUSTOMER'S Server(s) with the following:
 - a. Internet Access.** UTILIWARE grants access to the Internet with data center. Stated bandwidths apply to all services provided by data center. UTILIWARE cannot guarantee the bandwidth past ISP's network. UTILIWARE agrees to supply to

CUSTOMER over its connection the full set of routing entries which it possesses at all times during the performance of this Agreement. UTILIWARE agrees to make a 'best effort' attempt to ensure that CUSTOMER announced applications are always available. It is understood server(s) performance is subject to software quality for servers and network. UTILIWARE grants to CUSTOMER authority to convey network traffic to and from the Internet through UTILIWARE'S network to the CUSTOMER'S network as specified in the Service Order Form (SOF) attached hereto.

- b. **System Management.** CUSTOMER may grant access to perform the following services as specified in the Service Order Form (SOF) attached hereto.
 - i. **Patching and Update Services.** UTILIWARE will apply all patched to servers, software, appliances and network gear during it next available maintenance window. If a patch or update is high priority, Utiliware may at it discretion apply the patch outside the maintenance window with 1 hours notice via email. Maintenance windows are Monday and Wednesday evening between 8:00PM and 10:00PM PST. If maintenance cannot be completed during the allocated time, Utiliware may extend the maintenance window to complete tasks with email notification.
 - ii. **Backup Archive Services.** UTILIWARE may create and run backup scripts. The backup data is store on CUSTOMER server(s) or UTILIWARE backup server(s). *Best effort will be take to insure the backup and restore operations work properly. Utiliware make no guarantee as to the reliability of the backup and restore operation. Utiliware strongly recommend daily, weekly or monthly backups.*
 - iii. **Monitoring Services.** UTILIWARE may setup network and service probes to monitor servers internally. UTILIWARE may setup external probe to monitor internet facing services. These internal and external probes will be monitored by individuals and/or by communication devices such as phone or pager. This monitoring will be performed 24 hours a day, 7 days a week.
 - iv. **Log Management.** UTILIWARE may from time to time. Compress, backup or purge log files.
- c. **Power.** UTILIWARE provides N+1 power redundancy to the power distribution unit (PDU) or power strip. All equipment is plugged into PDU or power strip.
- d. **Hardware.** CUSTOMER or UTILIWARE may provide hardware. All CUSTOMER hardware approval is required by UTILIWARE. UTILIWARE reserves the right to terminate hosting and support for any CUSTOMER provided hardware.

2. CUSTOMER'S DUTIES AND RESTRICTIONS.

- a. CUSTOMER shall provide all necessary preparations required to comply with UTILIWARE'S installation, setup and maintenance of application. Any transmission or retransmission of material in violation of any Local, State or Federal and/or regulations is expressly prohibited. This extends to and includes, but is not limited to any copyrighted, trademarked or patented materials or communications judged to be threatening or obscene, and any material or communications prohibited by trade secret. CUSTOMER may NOT sell, assign or transfer their service order without the prior written consent of UTILIWARE. UTILIWARE may however at anytime sell, assign or transfer this Agreement. Internet Protocol addresses (hereinafter "IP")

allocated by UTILIWARE to CUSTOMER will remain the property of UTILIWARE and are non-portable if CUSTOMER'S service is terminated for any reason. CUSTOMER will correct any application errors or problems with hosted application and such issues will waive UTILIWARE'S responsibility in the reliability of the application. The provision of UTILIWARE'S services, are subject to UTILIWARE'S continuing approval of credit-worthiness of CUSTOMER.

3. AUTHORITY TO CONVEY TRAFFIC AND PERMISSIBLE USE

- a. **UTILIWARE grants CUSTOMER.** UTILIWARE grants to CUSTOMER authority to convey network traffic to and from the Internet through UTILIWARE'S network to the CUSTOMER'S network as specified in the SOF attached hereto.
- b. **"AS IS".** Service is accepted "AS IS" by CUSTOMER. Service may only be used for activities deemed lawful by local, state and federal governmental authorities.
- c. **Unsolicited Commercial Electronic Mail.** At no time is the service to be used for the purpose of sending unsolicited commercial electronic mail. Unsolicited commercial electronic mail is defined as the electronic delivery of un-requested mail soliciting the sale of goods or services to an individual or individuals who have not (a) requested information or mail to be sent or (b) have not had previous contact with CUSTOMER'S establishment. The practice of sending unsolicited electronic mail is frowned upon by the Internet community in general and will not be tolerated by UTILIWARE. In light of the foregoing, CUSTOMER agrees that CUSTOMER shall pay the sum of five dollars (\$5.00) to UTILIWARE for each unsolicited commercial electronic mail notification received by UTILIWARE as a result of CUSTOMER'S actions. UTILIWARE shall forward all unsolicited commercial electronic mail notifications received, to CUSTOMER via email. CUSTOMER agrees that CUSTOMER shall within twenty-four (24) hours of CUSTOMER'S receipt of such notification by UTILIWARE respond in writing to the unsolicited commercial electronic complaint via email. CUSTOMER shall forward any payment due under this section to UTILIWARE on the 15th day of each month in accordance with CUSTOMER'S payment terms as described within section 6 of this Agreement. UTILIWARE further reserves the right to terminate this Agreement with CUSTOMER if such violation of this section occurs or continues to occur after notification by UTILIWARE to CUSTOMER. CUSTOMER may terminate agreement if unsolicited commercial electronic mail notification exceed amount listed on SOF.
- d. **CUSTOMER'S Equipment.** CUSTOMER may only connect equipment approved by UTILIWARE.

4. TERM, TERMINATION AND RENEWAL

- a. **Term.** The term of this Agreement is variable and can be on a monthly or annual basis. **The term of the Agreement will be determined on the SOF and will be initiated on the date CUSTOMER signs the Service Agreement.** Rates will vary depending upon the term of the Agreement. Long-term service orders are considered to be anything over six (6) months. Once a long-term Agreement has expired, CUSTOMER shall continue its service on a month-to-month basis upon the same terms and conditions specified herein, or renew its Agreement, unless terminated by either CUSTOMER or UTILIWARE upon thirty (30) days' prior written notice.

- b. Termination.** Monthly service may be canceled by providing a written notification thirty (30) days in advance. Only a written request to terminate service relieves CUSTOMER from the obligation to pay charges at the conclusion of thirty (30) days. Termination of long-term service (six (6) months – sixty (60) months) requires written notification from CUSTOMER thirty (30) days before the Agreement ends. In the event that CUSTOMER terminates Service prior to the expiration of the term specified on the SOF, CUSTOMER is liable for 100% of the monthly charges multiplied by the number of months remaining in the Agreement.
- c. Renewal.** Monthly service is automatically renewed every month, unless terminated by either CUSTOMER or UTILIWARE upon thirty (30) days' prior written notice.

5. RATES AND BANDWIDTH LEVELS

- a. Bandwidth Rates.** Rates are set forth on the SOF. For monthly service, UTILIWARE reserves the right to change its rates by notifying CUSTOMER thirty (30) days in advance of the effective date of such changes. UTILIWARE will provide thirty (30) days written notice of an increase in base prices. Following a receipt of a notice of an increase in base prices, CUSTOMER shall have ten (10) days from the effective date of the increase to provide UTILIWARE with a written request to terminate service. In such a case CUSTOMER shall incur no termination fees. If CUSTOMER does not give notice of its intent to terminate, CUSTOMER'S existing service will be billed at the new base prices. If CUSTOMER elects to terminate, said termination will be effective thirty (30) days following the receipt of CUSTOMER'S notice to terminate, and CUSTOMER will be responsible for all charges during said CUSTOMER'S thirty (30) day period at the rate previously charged to CUSTOMER.
- b. Bandwidth Levels.** CUSTOMER may elect to increase or decrease its level of bandwidth, by notifying UTILIWARE in writing, thirty (30) days in advance. In such case, CUSTOMER will incur a service charge every time it decreases its bandwidth. If CUSTOMER increases its bandwidth, CUSTOMER will incur a service charge equal to the difference between current and higher bandwidth installation fees. CUSTOMER'S next invoice will reflect new monthly fees.

6. PAYMENT

- a. Payment.** The setup and first month's charge are required to be paid to UTILIWARE upon the date this Agreement is executed by CUSTOMER. THE SEUP CHARGE IS NON-REFUNDABLE AND THE FIRST MONTH'S CHARGE IS PRORATED. Within (30) days of the execution of this Agreement by CUSTOMER, or on the date that service is initiated, as defined by the date of the UTILIWARE SETUP Acceptance of Installation Form, which ever occurs first, an invoice will be generated for the first partial month's charge and for the second month's charge. CUSTOMER will be invoiced on the 20th of every month. Payment in full is due on the 1st of the month, or the next business day, thereafter. If payment is not received by the 10th, a service charge (2% of the total amount of the invoice due) will be added to the invoice. Thereafter, total payment is due in full by the 15th of the month or the next business day thereafter to avoid service interruption. If service is interrupted, CUSTOMER has until the end of the month to pay the overdue charges. On the 1st of the next billing month or the next business day thereafter,

CUSTOMER can reactivate service by paying a reactivation charge of seven hundred dollars (\$700.00) plus all other overdue charges.

- b. Passing Checks on Insufficient Funds.** In the event that CUSTOMER passes a check on insufficient funds to UTILIWARE, UTILIWARE shall assess a twenty-five dollar (\$25.00) charge to CUSTOMER for CUSTOMER'S first check passed on insufficient funds. In the event that CUSTOMER passes subsequent checks on insufficient funds to UTILIWARE, UTILIWARE shall assess a thirty-five dollar (\$35.00) charge to CUSTOMER for each subsequent check passed on insufficient funds. As used in this paragraph, to "pass a check on insufficient funds" means to make, utter, draw or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm or corporation that refuses to honor the check, draft, or order for any of the following reasons: (1) Lack of funds or credit in the account to pay the check; (2) The person or entity who wrote the check does not have an account with the drawee; or (3) The person or entity who wrote the check instructed the drawee to stop payment on the check.

7. LIMITATION OF LIABILITY

- a.** IN NO EVENT SHALL UTILIWARE BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM, OR RELATED TO, ANY FAILURE OR DELAY OF UTILIWARE IN PROVIDING ACCESS TO THE INTERNET AND/OR HOSTING CUSTOMER'S APPLICATION UNDER THIS AGREEMENT. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT UTILIWARE HAS NOT MADE ANY GUARANTEES OR PROMISES WITH REGARD TO THE EXACT DATE OF THE COMPLETE INSTALLATION AND OPERATIONAL STATUS OF CUSTOMER. CUSTOMER SHOULD NOT TERMINATE ANY OTHER NETWORK OR ALTERNATIVE SERVICE CURRENTLY IN USE PRIOR TO INSTALLATION BEING COMPLETE. IN NO EVENT SHALL UTILIWARE BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PERFORMANCE OR BREACH THEREOF, OR THE ACCURACY OR CORRECTNESS OF DATABASES OR THE INFORMATION CONTAINED THEREIN, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. ANY CLAIM OR LEGAL ACTION ARISING OUT OF FAILURE, MALFUNCTION OR DEFECTS IN UTILIWARE SERVICES OR GOODS, OR ARISING FROM THIS AGREEMENT IN ANY RESPECT, SHALL BE BROUGHT WITHIN A PERIOD OF ONE (1) YEAR FOLLOWING THE OCCURRENCE OR SAID CLAIM SHALL BE DEEMED WAIVED. UTILIWARE'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL PAYMENTS RECEIVED BY UTILIWARE FROM CUSTOMER WITHIN THE PAST TWELVE (12) MONTHS FROM WHICH SUCH LIABILITY ALLEGEDLY AROSE. OTHER THAN WHAT IS SPECIFICALLY PROVIDED FOR WITHIN THIS PARAGRAPH, UTILIWARE WILL NOT BE RESPONSIBLE FOR ANY DAMAGES SUFFERED BY CUSTOMER IN ANY WAY RELATED TO THIS AGREEMENT. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES,

WRONG DELIVERIES, AND ANY AND ALL SERVICE INTERRUPTIONS CAUSED BY UTILIWARE AND ITS EMPLOYEES OR AFFILIATES BY ITS OWN NEGLIGENCE OR CUSTOMERS ERRORS OR OMISSIONS.

8. SERVER HOSTING LIMITATION OF LIABILITY

- a. In no event shall UTILIWARE or any of its officers, directors, employees, affiliates and agents be liable for any loss of profit or revenue by CUSTOMER or for any consequential, incidental, special, punitive or exemplary damages incurred or suffered by CUSTOMER, nor for any loss of power, HVAC interruption or software application failure, even if UTILIWARE has been advised of the possibility of such loss or damage. Further, the CUSTOMER agrees to indemnify and hold harmless UTILIWARE, its officers, directors, employees, affiliates, and agents, from and against any liability, loss, claim, damage or expense (including legal fees and expenses) arising out of CUSTOMER'S use of the Server Hosting Service.

9. SERVICE LEVEL AGREEMENTS

a. Satisfaction Service Level Agreement

- i. Performance Criteria: If, by or before the ninetieth day after the Effective Date of the Agreement ("Satisfaction Period"), the CUSTOMER is not 100% satisfied with the availability; performance, and throughput, defined as the full and consistent ability to use the Mbps of bandwidth purchased by CUSTOMER from UTILIWARE (collectively "Performance Criteria") and the availability of the hosted application then CUSTOMER may provide written notice to UTILIWARE identifying the affected service and documenting how the service is not meeting the Performance Criteria. UTILIWARE shall have thirty (30) days from receipt of the notice to cure the problem.
- ii. Compensation: If UTILIWARE does not (a) provide documentation to demonstrate that the service is meeting the Performance Criteria or (b) does not cure the service such that it demonstrably meets the Performance Criteria, then CUSTOMER may provide written notification to UTILIWARE of its intent to terminate the Agreement under this Satisfaction Service Level Agreement. Such termination shall be effective as of the tenth business day after UTILIWARE receives the termination letter from CUSTOMER ("Termination Date") and CUSTOMER'S use of the applicable service shall be disconnected as of the Termination Date.

b. Availability Service Level Agreement

- i. Performance Criteria Multi-Homed Bandwidth: The services will be available to CUSTOMER Equipment 100% of the time. "Availability" is defined as the ability to successfully transmit data packets. "UTILIWARE Unavailability" consists of the number of minutes that service was not Available to the CUSTOMER Equipment, but will not include unavailability (a) continuing for an hour or less which CUSTOMER fails to report to UTILIWARE within four (4) days; (b) any unavailability resulting from (i) Network maintenance by UTILIWARE or ISP or by an internet backbone provider of which CUSTOMER has received at least twelve (12) hours advance notice, (ii) CUSTOMER'S applications, equipment, or facilities,

(iii) acts or omissions of CUSTOMER, or any use or user of the service authorized by CUSTOMER or (iv) reasons of Force Majeure.

- ii. Notification: UTILIWARE will use reasonable efforts to inform CUSTOMER, via telephone or e-mail or other immediately available mechanism selected by UTILIWARE, within sixty (60) minutes after any UTILIWARE Unavailability.
- iii. Reporting Methods: UTILIWARE will provide to CUSTOMER a report showing the bandwidth consumption by IP address and web log analysis. Estimates will be used to calculate ancillary services such as email, DNS and log analysis.

c. Performance Service Level Agreement.

- i. Network Performance Criteria: UTILIWARE provides internet connectivity at a rate of not more than forty (40) milliseconds (ms) average roundtrip delay on the UTILIWARE Internet Network. The UTILIWARE Internet Network starts with UTILIWARE'S Internet connectivity equipment, continues through the local connectivity, and ends at the first available router of each ISP. An average roundtrip delay is calculated over a twenty-four (24) hour period beginning at 12:01 A.M. each day.
- ii. Application Performance Criteria: UTILIWARE will host the server(s) and gage the performance based on the hardware provided in the SOF. UTILIWARE will, in the event of an application failure, will restart service or reboot server within 30 minutes of notification from monitoring services. If restarting the service does not remedy the problem, customer will be notified and give an estimated time till server and/or service can be fix and services restore. UTILIWARE will provide 4 hours per month, billed in hourly intervals, for service failures time. All overage is bill at the consulting rate as specified in the SOF attached hereto.
- iii. Compensation: If UTILIWARE fails to meet this Performance Criteria, UTILIWARE will issue a credit to the CUSTOMER on the next monthly invoice in an amount equal to the pro-rated charges for one (1) day of the UTILIWARE service recurring monthly fee for each twenty-four (24) hour day in which the performance guarantee is not achieved.

10. INDEMNIFICATION AND HOLD HARMLESS

- a. As a customer of UTILIWARE, and as a user of UTILIWARE'S services, the CUSTOMER agrees to indemnify and to hold harmless UTILIWARE and its officers, directors, employees, affiliates and agents from and against any liability, loss, claim, damage or expense (including legal fees and expenses) as a result of a breach by CUSTOMER of any of its obligations under this Agreement or as a result of CUSTOMER'S negligence, misrepresentations, errors and omissions, fraud or criminal acts. UTILIWARE shall not be liable, either in contract or in tort, for prosecution from unauthorized access of its customers transmission facilities or customer-owned premise equipment, or for unauthorized access to or alteration, theft or destruction of a customer's data files, programs, or information, through accident, fraudulent means or devices, or any other method, even should such access occur as a result of UTILIWARE negligence. UTILIWARE shall not be in any way responsible for claims or damages caused by a customer, through fault, negligence or failure to

perform customer's responsibilities, claims against a customer by any other party, any act or omission of any party furnishing services and or products; or for the installation and/or removal of any and all equipment supplied by any service provider or UTILIWARE.

11. DISCLAIMER OF WARRANTIES

- a. UTILIWARE makes no warranties, express or implied, including, but not limited to, any warranties or merchantability or fitness for any particular purpose. Further, CUSTOMER agrees and acknowledges that no employee, agent, representative or affiliate of UTILIWARE has authority to bind UTILIWARE to any oral representations or warranty concerning Services provided to CUSTOMER under this Agreement.

12. HIRING OF UTILIWARE PERSONNEL

- a. **UTILIWARE'S Investment in Personnel.** CUSTOMER acknowledges that UTILIWARE has made significant investments of time and money identifying and training the Personnel who are or may perform Services on behalf of CUSTOMER. CUSTOMER further acknowledges that CUSTOMER will benefit from UTILIWARE'S investment through its provision of Personnel. CUSTOMER also acknowledges that UTILIWARE would be harmed and would lose significant investments made by it if CUSTOMER were to directly hire UTILIWARE'S Personnel after they have been introduced to CUSTOMER by UTILIWARE, and that in such event, CUSTOMER would be enjoying all the benefits of UTILIWARE'S prior investments of time and money in said Personnel, without having made any of such investments.
- b. **No Solicitation.** In view of UTILIWARE 'S significant investments of time and money in its Personnel, and specifically in the Personnel who are to provide Services to CUSTOMER, CUSTOMER agrees that it shall not, directly or indirectly, solicit, recruit or seek to hire any Personnel of UTILIWARE who are or have been assigned to perform work for CUSTOMER under this Agreement, until one (1) year after the termination of this Agreement.
- c. **Hiring Fee.** CUSTOMER agrees that if any Personnel of UTILIWARE, who are or have been assigned to perform work for CUSTOMER under this Agreement, are the initiating party in seeking employment with CUSTOMER, and if CUSTOMER hires such Personnel, CUSTOMER shall provided UTILIWARE with written notice of the fact of its hiring of such Personnel within thirty (30) days of such hiring. In order to compensate UTILIWARE for losses of investments of time and money in such Personnel who are hired by CUSTOMER, and to help UTILIWARE defray the expenses that shall be incurred in replacing such Personnel who are hired by CUSTOMER, within thirty (30) days of the date of such hiring, CUSTOMER shall pay UTILIWARE an amount equal to one hundred percent (100%) of the total first year compensation CUSTOMER pays such Personnel. CUSTOMER specifically acknowledges and agrees that the fee contemplated by this Section 12.3 is reasonable and necessary to protect UTILIWARE'S investments and to defray costs associated with replacing any such Personnel who are hired by CUSTOMER.

13. MISCELLANEOUS

- a. **Governing Law, Forum and Place of Performance.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of California without regard to conflicts of law principles. All disputes arising under this Agreement shall be brought in Superior Court of the State of California in San Diego County or the United States District Court for the Southern District Court of California in San Diego, California, as permitted by law. The Superior Court of San Diego County and the United States District Court for the Southern District of California in San Diego, California shall each have non-exclusive jurisdiction over disputes under this Agreement. CUSTOMER consents to the personnel jurisdiction of the above courts. CUSTOMER further agrees that the place of the performance of this Agreement shall be San Diego, California.
- b. **Attorneys' Fees.** In the event any proceeding or lawsuit is brought by a Party to this Agreement against the other, in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and reasonable attorneys' fees on appeal.
- c. **No Agency.** The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CUSTOMER and either UTILIWARE or any employee or agent of UTILIWARE.
- d. **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
- e. **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.
- f. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.
- g. **Language.** This Agreement is in the English language only, which language shall be controlling in all respect, and all versions of this Agreement in any other language shall be for accommodation only and shall not be binding on the Parties to this Agreement. All communications and notices made or given pursuant to this Agreement, and all documentation and support to be provided, unless otherwise noted, shall be in the English language.
- h. **Modification.** This Agreement may only be amended or supplemented by a writing that refers explicitly to this Agreement and is signed by duly authorized representatives of CUSTOMER and UTILIWARE. No agent, employee or representative of UTILIWARE has the authority to bind the Parties to any representation or warranty unless such is specifically included in this Agreement, the SOF, or with a written Amendment thereto. Notice to Parties of disputes arising



under this Agreement shall be sent by registered mail to the Parties to the address shown on the most recent service order.

- i. Excused Performance.** Neither Party shall be liable to the other Party under this Agreement for any failure or delay in performance that is due to causes beyond its reasonable control, including but not limited to, acts of nature, governmental actions, fires, civil disturbances, interruptions of power, transportation problems, or telecommunication fiber cut.
- j. Assignment.** CUSTOMER may not delegate, assign or transfer this Agreement, or any of CUSTOMER'S rights or duties hereunder, including by way of merger (regardless of whether CUSTOMER is the surviving entity) or acquisition, and any attempt to do so, without UTILIWARE'S express prior written consent, shall be void. UTILIWARE may assign this Agreement, and its rights and obligations hereunder, in its sole discretion.
- k. Use Of CUSTOMER'S Name.** Neither CUSTOMER nor UTILIWARE shall use the other parties name in publicity or press releases without prior written consent. CUSTOMER will allow UTILIWARE to list CUSTOMER'S name and link CUSTOMER'S application/website from (<http://www.utiliware.com>) website.
- l. Survival Provision.** The Parties' rights and obligations, which by their nature would extend beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, cancellation or expiration.
- m. Notices.** All formal notifications and transmittals to UTILIWARE issued pursuant to the provisions of this Agreement shall be sent to: Utiliware Corporation 3830 Valley Centre Drive suite 705-295, San Diego, CA 92130. All formal notices and transmittals to CUSTOMER shall be sent to:

Either Party may change the notice address or addressee by providing prior written notice

- n. Written Notice.** Where required, written notices are agreed to be delivered by overnight carrier (UPS Red or equivalent) with signature required, or by fax to the designated party. Notice is deemed given next business day in the case of overnight letter carrier, or on confirmation of receipt in the case of delivery by fax. Fax transmission receipt must be confirmed by telephone.
- o. Default.** If CUSTOMER fails to pay for services rendered hereunder, UTILIWARE may, at its sole option and with written notice, issue a default termination letter to CUSTOMER to cure the default condition. If the default condition is not remedied within the time period specified in the notice letter, which shall not be less than fourteen (14) calendar days, UTILIWARE may then, without the necessity of any further notice, discontinue performance and terminate this Agreement, as applicable, for default and pursue any other remedies available at law or in equity.



UTILIWARE’S failure to exercise any of its rights hereunder shall not constitute or be construed by CUSTOMER as being a waiver of any past, present, or future right or remedy.

- p. Entire Agreement. This Agreement, including SOF and all additional Attachments, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements of such Parties in connection herewith. CUSTOMER acknowledges that it has not been induced to enter into this Agreement by any representative or promise not specifically expressed in this Agreement. Any modification made hereto shall not be valid and binding unless it is in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CUSTOMER signature line, UTILIWARE signature line, Authorized Representative Signature, Authorized Name (Print or Type), Authorized Title