SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this [___] day of [___] 20__ (the "Effective Date") between **[SERVICE PROVIDER NAME]** with a place of business at **[SERVICE PROVIDER ADDRESS]** ("Service Provider"), and **[CLIENT NAME]** ("Client") (each a "Party" or collectively the "Parties").

This Agreement includes and incorporates the attached Terms and Conditions as well as the attached Order Form and/or Statement of Work (if applicable), and the Agreement contains, among other things, warranty disclaimers, liability limitations, and use limitations. The provisions of this Agreement and the Terms and Conditions will control over any conflicting provisions in any order form or statement of work, unless the order form or statement of work indicates the clear intent of the Parties that such conflicting provision prevail over a term or condition of this Agreement for that order form or statement of work.

[SERVICE PROVIDER NAME]:   **[CLIENT NAME]:**

Signature: ――――――――――   Signature: ――――――――――

Name: ―――――――――――   Name: ―――――――――――

Title: ―――――――――――   Title: ―――――――――――

BILLING INFORMATION

Billing Contact:

Billing Address:

Phone:

E-Mail: _____

P.O. #   _____

(Any inquiries should be directed to **[SERVICE PROVIDER EMAIL CONTACT]**)

TERMS AND CONDITIONS

1. **SAAS SERVICES AND SUPPORT**

   1.1. Subject to the terms of this Agreement and its exhibits, Service Provider will use commercially reasonable efforts to provide Client with, or make available to the Client, the services, software, documentation, and support as further detailed in any associated order form and statement of work to which these terms and conditions are attached by reference (the "<u>Services</u>").

2. **RESTRICTIONS AND RESPONSIBILITIES**

   2.1. Client will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services including any software or documentation delivered as part of the Services (the "<u>Software</u>"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Service Provider or authorized within the Services) or remove any proprietary notices or labels.

   2.2. Client shall use the Services in compliance with Service Provider's standard published policies then in effect (the "<u>Policy</u>"), and each Party shall comply with those laws, treaties, regulations, and conventions applicable to the Services or the obligations under this Agreement, including without limitation those related to data privacy, international communications, and the transfer of technical or personal data.

   2.3. Client shall obtain and maintain any equipment and ancillary services needed to connect to, access, or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "<u>Equipment</u>"). Client shall also be responsible for maintaining the security of the Equipment, Client account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Client account or the Equipment with or without Client's knowledge or consent.

   2.4. Service Provider shall implement and maintain reasonable data security measures for the Services consistent with general industry standards and applicable data security and privacy laws. As part of these standards, the Service Provider will have, implement, and maintain a written information security program with appropriate administrative, technical, and physical safeguards to protect the data it receives from the Client in connection with the Services ("<u>Client Data</u>"). The Service Provider shall notify Client without undue delay upon becoming aware of a data breach affecting the Client Data requiring notice by law.

   2.5. Although Service Provider has no obligation to monitor Client's use of the Services, Service Provider may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of this Agreement. Client will indemnify the Service Provider and its affiliates and its and their respective employees and representatives from and against any damages, losses, liabilities, and expenses, including reasonable attorney fees and other legal costs, of any third-party claim or allegation to the extent caused by the Service Provider's use of the Client Data to provide the Services, the Client's violation of this Agreement, or the Client's willful misconduct or negligent acts or omissions in connection with the Services.

   2.6. If the Services contain any software that was developed using open source code ("<u>Open Source Software</u>"), the Open Source Software will be provided to Client under one or more license agreements that contain important information concerning ownership, terms of use, rights, and restrictions. Client acknowledges that it will comply with the terms and conditions of the applicable Open Source Software license agreements in addition to all other the terms applicable to Software under this Agreement. Any Open Source Software is not subject to the terms and conditions herein, including any indemnification.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1. Each Party (as the "<u>Receiving Party</u>") understands that the other Party (the "<u>Disclosing Party</u>") has disclosed or may disclose non-public business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "<u>Confidential Information</u>"). Confidential Information of Service Provider includes non-public information regarding features, functionality, and performance of the Services. Confidential Information of Client includes the Client Data. The Receiving Party agrees not to disclose any of the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except to its or its affiliates' officers, directors, employees, contractors, or consultants ("<u>Representatives</u>"), who reasonably require such access in connection with the provision of the Services and are directed to comply with the provisions of this Section. Each Party (including its Representatives) will use no less than the same standard of care to protect any Confidential Information disclosed during the performance of this Agreement that it uses to protect its own confidential information, but in no event less than a reasonable standard of care. Each Party will use Confidential Information disclosed by the other Party only as required for the performance of this Agreement and for no other purpose. Notwithstanding the foregoing, Confidential Information shall not include any information which: (i) is public or becomes public through no breach of this Agreement by the Receiving Party or its Representatives; (ii) is known to, or in the possession of, the Receiving Party or its Representatives prior to disclosure hereunder by the Disclosing Party; (iii) is received by the Receiving Party or its Representatives from a source that, to the Receiving Party's knowledge, is not in breach of an obligation of confidentiality to the Disclosing Party; (iv) is independently developed by the Receiving Party or its Representatives without reference to the Confidential Information, or (v) required to be disclosed by law or a court of competent jurisdiction. The Receiving Party shall be liable for any breaches of this Section by its Representatives, and any such breach shall be deemed a breach by Receiving Party hereunder.

3.2. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law, regulatory authority, or order to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and commercially reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

3.3. Each Party retains any intellectual property rights owned or developed by or on behalf of that Party prior to or independent from this Agreement. Client shall own all right, title, and interest in and to the Client Data. Service Provider shall own and retain all right, title and interest in and to (a) the Services (including the Software), all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services, (c) all intellectual property rights related to any of the foregoing, and (d) any data that is based on or derived from the Client Data and provided to Client as part of the Services. Notwithstanding anything to the contrary, Service Provider shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and Service Provider will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Service Provider offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein. During the Term of the Agreement, Client shall have the right to access and use the Services except as provided herein. Client may not disclose, reproduce, distribute, modify, abstract, or otherwise use items delivered other than in connection with the Services.

Client acknowledges that, except for the limited rights granted above, as between Service Provider and Client, Service Provider owns all right, title, and interest in and to the Services.

3.4. During the Term, Client authorizes Service Provider to refer to Client as a customer and user of the Services among lists of other customers and to use Client's name and logos in connection therewith. Client may withdraw this authorization at any time upon notice.

4.   PAYMENT OF FEES

4.1. Client will pay Service Provider the applicable fees described in the Order Form for the Services in accordance with the terms therein (the "Fees"). All payments made by Client under this Agreement are non-refundable and non-creditable against each other. Client shall make all payments hereunder in US dollars. If Client's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Client shall be billed for such usage and Client agrees to pay the additional fees in the manner provided herein. Fixed fee projects will include a detailed description of the Services being provided to Client for the fixed fee amount. Only the Services explicitly set forth in the statement of work as a fixed fee will be included in the fixed fee amount. Pricing shall remain fixed for the first year of the Agreement. Service Provider reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Service Term or then-current renewal term, upon thirty (30) days prior notice to Client (which may be sent by email).

4.2. Service Provider may choose to bill through an invoice, in which case, invoices are due thirty (30) days from the date of invoice. If Client believes that Service Provider has billed Client incorrectly, Client must contact Service Provider no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared, to receive an adjustment or credit. Failure to dispute an invoice within thirty (30) days shall constitute Client's acceptance of the invoice and the related charges.

4.3. Unpaid amounts are subject to a finance charge of the lesser of 1.5% per month or the maximum permitted by law, plus all expenses of collection and may result in immediate termination of Service. Client shall be responsible for all taxes associated with Services other than taxes based on Service Provider's net income.

5.   TERM AND TERMINATION

5.1. Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the Order Form, and, upon expiration of the initial Service Term or any renewal term, shall automatically renew for additional periods of the same duration as the Service Term (collectively, the "Term"), unless either Party notifies the other in writing at least thirty (30) days prior to the end of the initial Service Term or any renewal term, as applicable, that it has elected to terminate the Agreement.

5.2. Service Provider may suspend the Services in the event of: (a) non-payment; (b) any material breach by Client; or (c) if required to avoid harm to Service Provider or any third party. Such suspension will only apply to those parts of the Services to the extent and duration necessary to address the breach or threat and in case of non-payment, until payment is received in full.

5.3. If either Party breaches any of its material obligations, representations or warranties under this Agreement, the non-breaching party will have the right to terminate this Agreement by giving the breaching party notice of intention to terminate. Termination will become effective automatically and without further notice unless the breaching party cures the breach within thirty days (30) days after the giving of such notice.

5.4. Either Party may terminate this Agreement upon sixty (60) days prior written notice to the other Party after the initial Service Term. Notwithstanding any expiration or termination of this Agreement, Client shall remain obligated to pay Service Provider any fee otherwise payable for

Services rendered prior to expiration or termination of this Agreement. Provided that Client is not in default under this Agreement, upon Client's request, Service Provider will, at Client's cost, make all Client Data available to Client for electronic retrieval for a period of thirty (30) days after expiration or termination, but thereafter Service Provider may, but is not obligated to, delete stored Client Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

6.1. Service Provider shall, during the Term, use commercially reasonable efforts to maintain the Services in conformance with the specifications herein and in the applicable Order Form or Statement of Work (if applicable). The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Service Provider or by third-party providers, or because of other causes beyond Service Provider's reasonable control, but Service Provider shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption and shall use reasonable efforts to minimize any inconvenience caused by such service disruption. However, Service Provider does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.

6.2. EXCEPT FOR THE LIMITED WARRANTY SET FORTH HEREIN, SERVICE PROVIDER AND ITS EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS, AND ASSIGNS PROVIDE THE SERVICES AND DELIVERABLES ON AN AS-IS AND AS-AVAILABLE BASIS AND MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER DISCLAIM ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR THIRD-PARTY SOFTWARE. SERVICE PROVIDER DOES NOT WARRANT THAT ANY SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER, THAT THE FUNCTIONS CONTAINED IN SUCH SOFTWARE WILL FUNCTION WITH OTHER SOFTWARE OR HARDWARE, OR WITHIN A SYSTEM, THAT SOFTWARE DEVELOPED BY SERVICE PROVIDER IS RESISTANT TO HACKING, MALICIOUS INTRUSION BY THIRD-PARTIES, OR ANY OTHER UNAUTHORIZED ACCESS.

7. LIMITATION OF LIABILITY

7.1. WITH THE EXCEPTION OF THE AMOUNT THAT CLIENT OWES SERVICE PROVIDER FOR SERVICES RENDERED (INCLUDING COSTS, EXPENSES, INTEREST, AND ATTORNEY FEES INCURRED BY SERVICE PROVIDER WITH RESPECT TO RECOVERING ANY AMOUNTS OWED TO SERVICE PROVIDER UNDER THIS AGREEMENT) AND IN THE CASE OF A PARTY'S OBLIGATIONS REGARDING INDEMNIFICATION, THE AGGREGATE LIABILITY OF EITHER PARTY FOR ANY CLAIMS DERIVING FROM OR ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CLIENT TO SERVICE PROVIDER FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHAT CAUSE OF ACTION (INCLUDING NEGLIGENCE) OR CLAIM FOR RELIEF IS ASSERTED, IN NO EVENT WILL EITHER PARTY OR ITS EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS, AND ASSIGNS BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF DATA, LOST TIME, LOST SAVINGS, LOST CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, OR FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8. FORCE MAJEURE

8.1. Neither Party to this Agreement shall be responsible for any delays or failure to perform any provision of this Agreement (other than payment obligations) due to acts of God, strikes or other disturbances, pandemics, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes beyond the control of such Party. Notwithstanding anything contained herein, the Client may terminate the Agreement if the Service Provider fails to continue to deliver the Services for thirty (30) days from the starting of a force majeure event.

9. MISCELLANEOUS

9.1. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any failure by either Party to enforce strict performance by the other Party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement.

9.2. This Agreement is not assignable or transferable or sublicensable by either Party without the other Party's prior written consent, which consent for assignment shall not be unreasonably withheld, conditioned, or delayed.

9.3. This Agreement and the attached exhibits and attachments contain the entire understanding of the Parties hereto relating to the subject matter hereof and supersedes all prior and collateral agreements, understandings, statements, and negotiations of the Parties. Each Party acknowledges that no representations inducements, promises or agreements, oral or written, with reference to the subject matter hereof have been made other than as expressly set forth herein. Specifically, the provisions of this Agreement will control over any standard or boilerplate terms and conditions included on any document provided by the Parties.

9.4. All waivers, changes in scope of Services, and modifications must be in a writing signed by both Parties, except as otherwise provided herein. Service Provider reserves the right to make changes to the Services that do not materially diminish the functionality and value of the Services as a whole.

9.5. No agency, partnership, joint venture, or employment is created because of this Agreement and Client does not have any authority of any kind to bind Service Provider in any respect whatsoever.

9.6. Notice by either Party under this Agreement shall be in writing and personally delivered or given by registered mail, return receipt requested, overnight courier, addressed to the other Party at its address given herein (or any such other address as may be communicated to the notifying Party in writing) and shall be deemed to have been served if delivered in person, on the same day; if sent by registered mail, ten (10) days after deposit into the mail system, if sent by overnight courier, the next business day.

9.7. Each Party irrevocably agrees that any legal action, suit, or proceeding in any way arising out of or in connection with this Agreement shall be governed by and construed in accordance with and submitted to the exclusive jurisdiction of the State of _____, U.S.A. Each Party waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action, suit, or proceeding and irrevocably waives any right to claim or assert forum non conveniens and submits to the jurisdiction of such court in any suit, action or proceeding. The non-prevailing Party shall pay the prevailing Party's reasonable attorney fees and related costs and expenses for any legal action, suit, or proceeding in any way arising out of or in connection with this Agreement.

9.8. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Any

electronic signature or electronically transmitted copy of a signature of any Party hereto shall be deemed an original and shall constitute a legal, valid, and binding execution hereof by such Party.

ORDER FORM

Client:	Contact:
Address:	Phone:
	E-Mail:

This order form and its attachments ("Order Form") is issued pursuant to the SaaS Services Agreement between [Service Provider Name] ("Service Provider") and [Client Name] ("Client") effective as of _____ __, 20__ (the "Agreement"). This Order Form is subject to the terms and conditions contained in the Agreement between the Parties and is made a part thereof. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this Order Form and the terms of the Agreement, the terms of the Agreement shall prevail, unless the order form or statement of work indicates the clear intent of the Parties that such conflicting provision prevail over a term or condition of this Agreement for that statement of work or order form. Specifically, the provisions of the Agreement will control over any standard or boilerplate terms and conditions included on any document provided by the Parties.

Services: *[Name and briefly describe services here]* _____ (the "Service(s)"). Service Provider will use commercially reasonable efforts to provide Client the Services described in the Statement of Work ("Statement of Work") attached as Exhibit A hereto, and Client shall pay Service Provider the Fees in accordance with the terms herein. Any change to the scope of Services must be mutually agreed and accomplished by written amendment executed by both Parties.

Fees (the "Fees"): $_____ US Dollars per month, payable in advance, subject to the terms herein and the Agreement. [Add one-time fees, additional fees for overages, optional fees, etc.]	**Service Term** (the "Service Term"): [One] Year **Service Capacity** (the "Service Capacity"): [Describe Service Capacity limitations and additional overage charges (if any)]
Expenses: The Client will reimburse Service Provider for the expenses incurred during implementation after being properly justified and documented.	

Usage Limitations: *[Note: include any limits on usage.]*

[Service Level Terms/Technical Support?] [Attach as Exhibit B if provided or DELETE Exhibit B] Subject to the terms of this Agreement, Service Provider will use commercially reasonable efforts to provide Client the technical support in accordance with the Service Level Terms attached hereto as Exhibit B.

[SERVICE PROVIDER NAME]:   [CLIENT NAME]:

Signature: ━━━━━━━━━━━━━   Signature: ━━━━━━━━━━━━━

Name: _____ Name: _____

Title: _____ Title: _____

P.O. #_____

(Any inquiries should be directed to **[SERVICE PROVIDER EMAIL CONTACT]**)

EXHIBIT A

STATEMENT OF WORK

Examples of things to include in this section

Bulk provisioning of user accounts
Client training (on site or via webinar)
Providing documentation
Custom development work (one-time)
etc.

EXHIBIT B

SERVICE LEVEL AGREEMENT

During the Service Term of the attached Order Form, Service Provider will use commercially reasonable efforts to provide support and maintenance services for the Services defined in the attached Exhibit A, to the extent Service Provider makes such services generally available to its customers, but specifically excluding any new products, offerings, applications, or add-ons for which Service Provider charges a separate fee, unless Client separately purchases a license or subscription thereto. Service Provider reserves the right to make changes to the support and maintenance services it offers. If any such change materially diminishes the functionality and value of the Services as a whole, then: (a) Service Provider shall notify Client at least sixty (60) days prior to implementing such change (except in cases where Service Provider determines that expedited implementation is required); and (b) if Client disapproves of any such change that materially diminishes the functionality and value of the Services as a whole, Client shall have the right, exercisable no later than thirty (30) days after such change has been implemented, as Client's sole remedy, to terminate this Order Form upon notice to Service Provider.