

## MASTER SERVICES AGREEMENT

### Cover Sheet

This Master Services Agreement (the "Agreement") is made as of this 16th day of December, 2018, (the "Effective Date") by and between, Super-Server, LLC, d/b/a Proxios, a Virginia corporation having its principal place of business at 701 East Byrd Street, 17<sup>th</sup> Floor, Richmond, Virginia 23219 ("Proxios") and Customer located at the address listed in Exhibit A below ("Customer"). This Agreement will include this Cover Sheet, the attached Terms and Conditions, all attached Exhibits, and Statements of Work, and any and all attached or incorporated policies, schedules, and/or other documents. In the event of a conflict among a term set forth in the attached Terms and Conditions, a term set forth in an Exhibit, and/or a Statement of Work, and a term set forth in an attached or incorporated policy, schedule, or other document, the term set forth in the attached Terms and Conditions will control unless the conflicting term specifically references the inconsistent term of the attached Terms and Conditions, in which case the conflicting term will control only for the limited purposes set forth in the document containing such term.

Intending to be legally bound, each of the undersigned parties has caused its duly authorized representative to execute this Agreement.

SUPER-SERVER, LLC d/b/a PROXIOS

Customer

By: 

By: 

Name: Patrick Butler

Name: Martha Shickle

Title: VP

Title: Executive Director

Date: 1/2/19

Date: 12/19/18

## TERMS AND CONDITIONS

1. Definitions. For all purposes of this Agreement, the following terms shall have the following meanings:

1.1 "Applications" means the Hosted Applications, Integrated Applications, Standard Applications, and System Software, collectively.

1.2 "Authorized User" means Customer and those of Customer's officers, directors, employees, partners, agents, advisers and independent contractors to whom Customer issues or authorizes the issuance of a user ID and password enabling access to the Applications.

1.3 "Change Order" means a written document modifying one or more terms set forth in an applicable Statement of Work (including any changes in scope, cost or schedule), which document must be executed by both parties to be effective.

1.4 "Communications" means all third party supplied data transmission lines and related equipment required to establish data links between the System Hardware and a facility of the Customer.

1.5 "Contract Year" has the meaning set forth in Section 14.1.

1.6 "Customer Content" means the Hosted Applications and all data, information or content (including without limitation, e-mails, documents, files and records), in any form, that is (i) loaded into the Applications and/or the System or otherwise made available to Proxios by or on behalf of Customer and/or any Authorized Users (including without limitation, any content or information sent to Customer via the System by Customer's clients or other third parties); or (ii) generated by the Applications and/or the System based on such information, data or content.

1.7 "Customer Hardware" means hardware components owned or leased by Customer and used to access or use the System regardless of location or ownership and include but are not limited to Workstations, printers, and other hardware.

1.8 "Deliverables" means those custom-developed documents, designs, computer programs, computer systems, data, computer documentation, reports, analyses, recommendations and other materials authored or prepared by Proxios for Customer as part of Services performed pursuant to a Statement of Work.

1.9 "Disaster" means an occurrence or condition of Force Majeure that renders the Services substantially or totally unavailable through the System.

1.10 "Documentation" means all specifications, user manuals, and all written materials and documentation relating to the performance, operation and/or use of the Applications and the System and each component thereof, as well as any written proposals, program manuals and marketing materials submitted by Proxios to Customer.

1.11 "Event of Default" has the meaning set forth in Section 14.2.

1.12 "Holidays" means the following days: New Year's Day, Memorial Day, the fourth of [Month], Labor Day, Thanksgiving Day and the day after Thanksgiving, one half day on Christmas Eve and Christmas Day.

1.13 "Hosted Applications" means all end user software that Customer licenses or develops for its own use on Proxios' System Hardware and identified as Hosted Applications in Exhibit A to this Agreement.



1.14 "Normal Business Hours" means 8:00 a.m. until 6:00 p.m. Eastern Time Monday through Friday, excluding holidays.

1.15 "Hosted Hardware" means hardware owned by Customer and operated by Proxios on Customer's behalf to run Applications.

1.16 "Integrated Applications" means add-ins, TSRs (also known as "terminate and stay resident programs") and in general any application that is or can be invoked from within another Application, such as formatting aids, timekeeping utilities, document management systems, or the integrated aspects or components of any of the foregoing.

1.17 "Term" has the meaning set forth in Section 14.1.

1.18 "Major Default" has the meaning set forth in Section 14.2.

1.19 "Professional Services" means the implementation, Support and other services provided by Proxios to Customer under this Agreement or a Statement of Work.

1.20 "Proxios IP" means (i) the software, processes and know-how involved in the creation, management and operation of the System including, without limitation, any network monitoring and reporting functionality associated therewith; (ii) server configurations, scripts, and other server-related settings or parameters; (iii) related System Documentation including drawings, diagrams and System architecture documents; and (iv) lists of all Third Party Products used to provide the Services.

1.21 "Standard Applications" means all end user software licensed by Proxios on behalf of Customer for use by Customer, which are identified as Standard Applications on Exhibit A attached to this Agreement.

1.22 "Statement of Work" means a document, annexed to, or by its terms incorporated into this Agreement, that specifies:

1.22.1 the Applications to be provided or made available to Customer by Proxios;

1.22.2 the specific Services to be furnished by Proxios;

1.22.3 a description of features and specifications of the Deliverables resulting from such Services;

1.22.4 a description of any actions, input or obligations of Customer upon which Proxios' performance of the Services is dependent;

1.22.5 a description of any actions, input or obligations of third parties, including but not limited to providers of Communications, Hosted Applications or other elements of the System;

1.22.6 a description of the solution designed or to be supplied by Proxios and/or Third Party Providers (defined below);

1.22.7 an implementation plan (including timeline and corresponding milestones) for Proxios and/or Third Party Providers to implement the solution;

1.22.8 a performance schedule, standards and service levels relating to such Services;

1.22.9 the applicable fees (including any applicable limits to or caps on fees) and payment terms related thereto; and

1.22.10 any other applicable terms and conditions.

1.23 "Support Services" means all services which Proxios renders, either at Customer's request or otherwise, to keep the System operating according to the terms of this Agreement and the Service Level Agreement, as more fully described below.

1.24 "System" shall mean all System Hardware, Hosted Hardware, System Software, Standard Applications, Hosted Applications and the Customer Data, collectively.

1.25 "System Hardware" means (i) hardware owned or operated by Proxios (e.g. modems, WAN access devices, switches, routers, servers, processors, RAM, and other storage devices or media, any of which may be utilized or controlled by Proxios in providing the System Services), (ii) hardware (or its virtual or cloud equivalent) owned, operated or provided by third parties (including without limitation Microsoft Azure, Amazon AWS, or other cloud providers) regardless of location, and (iii) any of the foregoing, regardless of ownership, located in a DR facility with whom Proxios or Customer contracts.

1.26 "System Services" includes the "technology as a service" that Proxios provides to Customer by means of the System and the Support Services.

1.27 "System Software" shall mean software used to support and integrate the System Hardware and Hosted Hardware with the Customer Hardware, including the Windows operating system, VMware, Citrix and Terminal Services components.

1.28 "Third Party Provider" means a vendor, consultant, licensor, or developer, retained by either Proxios or Customer, who provides hardware, software or services included in or relating to the System.

1.29 "Update" means a release for the System Hardware, the Standard Applications, the Hosted Applications, the Hosted Hardware or the System Software containing error corrections and/or minor enhancements that is made commercially available by the respective Third Party Providers of System elements and is generally indicated by a change in the version number in the tenths or hundredths digit to the right of the decimal point (e.g., a change from version x.xx to x.xy or x.yx) and any corrections and updates to the associated Documentation.

1.30 "Upgrade" means a modification, replacement or conversion of the System Hardware, the Standard Applications, the Hosted Applications, the Hosted Hardware or the System Software that adds significant new functions or substantially improves performance or capability of the System or any component thereof, including, without limitation, enhancements, alterations, revisions, releases, and new versions of any component of the System.

## 2. General Appointment.

2.1 Engagement. Customer hereby engages and appoints Proxios to provide the System Services to Customer via the System as specified in this Agreement, during the Term of this Agreement. Proxios hereby accepts such engagement subject to the terms and conditions of this Agreement.

2.2 Summary of System Services. Proxios will supply, or operate on behalf of Customer, the System, including but not limited to the System Hardware, System Software and the Standard Applications of Customer's choosing listed in Exhibit A. For the Implementation Fees and except as otherwise provided for in this Agreement, Proxios will, independently or working with Third Party Providers of Hosted Applications or other System elements, install the Standard and the Hosted Applications on the System Hardware or Hosted Hardware, as applicable, which installation will be performed in accordance with an applicable Statement of Work. Proxios will also provide Professional and Support Services to maintain the System in accordance with the applicable Documentation and the Support Services, Service Level Guarantee and Response Time Warranty annexed hereto as Exhibit B.



2.3      **Contacts.** Each Party's Key Contact, who shall be identified in Exhibit A, shall serve as the initial and primary point-of-contact for implementing and resolving disputes that arise from this Agreement.

### 3.      **Licenses.**

3.1      **Grant of License to Customer Content.** Customer hereby grants to Proxios, during the Term of this Agreement, a limited, royalty free, non-exclusive, non-transferable, non-assignable license (without a right to sublicense) to load, run, input, store, download, upload, publicly display (only to the extent permitted under this Agreement) and otherwise use the Customer Content for the sole purpose of rendering the Services to Customer in accordance with the terms and conditions of this Agreement.

3.2      **Grant of License by Proxios.** Proxios hereby grants to Customer and its Authorized Users a non-exclusive, worldwide, multi-site, right and license, to access and otherwise use the System (including all components thereof and Applications hosted therein) and to use any related Documentation for Customer's internal business purposes. The parties acknowledge and agree that Exhibit A may be amended from time to time upon the mutual written agreement of the parties to include additional Applications or otherwise to expand the Services. The number of concurrent licenses granted by Proxios to Company and any other applicable license restrictions, together with any functional specifications (as defined below) relating to such additional Services or Applications, will be set forth in an amendment to Exhibit A. Proxios will either supply Customer with or permit Customer to create user names and passwords that will permit Authorized Users to access the System. No right of sublicense is granted to Customer; provided, however, that Customer may permit third Party vendors, outsourcers and other service providers to access and/or use the System and the Documentation pursuant to the rights granted to Client hereunder on behalf, and for the benefit, of Client.

3.3      **Third Party Rights and Licenses.** The System includes hardware or software licensed or purchased from third parties ("Third Party Products"). As between the parties, Proxios (i) is solely responsible for securing all necessary rights and licenses to use such Third Party Products to provide the System Services to Customer and to enable Customer to use the System Services pursuant to the terms and conditions of this Agreement; and (ii) Proxios is solely responsible for verifying that the System Software, the System Hardware and/or the Applications meet or exceed the minimum specifications supplied by vendors or licensors of the Third Party Products for proper interoperability and integration of such Third Party Products with the System and the Applications. Customer acknowledges that some Applications are provided under the terms of various license agreements with vendors of Proxios, including but not limited to Microsoft under the Microsoft Services Provider License Agreement (the "SPLA") and that the license fees for System Services depend on the nature and extent of use (as such term is defined by Proxios vendors) of such Applications by Customer as reported to vendors by Proxios. Customer agrees that it is responsible for maintaining accurate records of such use as required by the SPLA and other applicable license provisions and agrees to be responsible for charges resulting from its use. Customer further agrees to accurately report to Proxios the nature and quantity of licenses that Customer maintains for any Applications which may require separate licensing. Customer, not Proxios, is ultimately responsible for all license fees payable to Microsoft or other licensors of all Applications other than the Standard Applications itemized on any bill from Proxios and which Customer has paid or any licenses which may be included as a part of the System Software, and Customer agrees to reimburse or indemnify Proxios for any license fees, royalties, penalties, surcharges or other amounts paid or payable by Proxios to Microsoft or other licensors of Applications which, but for Customer's use, would not be payable.

3.4      **Copies.** Subject to the terms of applicable licensing agreements for Third Party Products, Customer may request that Proxios copy and maintain on Customer's behalf the Applications as required for backup, archival, distribution of the Applications (including the Proxios IP), disaster recovery, testing, training, development and/or other similar purposes, and such copies may be stored on Customer-owned equipment in Customer's Disaster Recovery Facility or any Disaster Recovery Facility with which Customer contracts. Any fees for Professional Services, Proxios IP, Third Party Product licenses, System Hardware or other items associated with the provision of copies will be identified in an addendum to Exhibit A and/or an appropriate Statement of Work. Customer will not remove any copyright notices or other proprietary



notices appearing in the Application. Customer agrees that the sole purpose of such copies is to facilitate recovery from a catastrophic event, and Customer agrees that it will only use such copies for such purpose.

#### 4. Ownership.

4.1 Ownership by Customer. Proxios acknowledges and agrees that Customer is the owner, licensor or licensee of all Customer Content, the Customer Hardware, the Hosted Hardware and rights to use the Hosted Applications, and that Proxios receives no ownership rights therein. Proxios agrees not to use, reproduce, duplicate, sell, distribute, transfer or otherwise exploit for commercial purposes the Customer Content or the Hosted Applications for any purpose other than to provide the Services to Customer in accordance with this Agreement. Proxios agrees to comply with the terms or conditions of any license agreements between Customer and suppliers of the Hosted Hardware and the Hosted Applications, provided that (a) Customer agrees to consult with Proxios prior to entering new license Agreements for software or applications that will become Applications and, where appropriate and permitted by the applicable vendor, to permit Proxios to review such license agreements prior to execution; and (b) any payment obligations to purchase or license, including all on-going maintenance and Support fees, such Hosted Applications are Customer's responsibility.

4.2 Ownership by Proxios. Customer acknowledges and agrees that, as between the parties, Proxios is the owner or licensor of all of the Proxios IP, including the Standard Applications, the System Hardware, the System Software, and all intellectual property inherent therein, and that Customer receives no ownership rights therein. Customer agrees not to use, reproduce, duplicate, sell, distribute, transfer or otherwise exploit for commercial purposes any of the Applications or any other element of the System for any purpose other than as described in this Agreement.

4.3 Reservation. All rights not expressly granted herein are reserved to their respective owner. Except as expressly set forth in this Agreement, the parties do not, directly, by implication, or otherwise, grant to each other any rights or licenses, and neither Party shall have any ownership rights in any intellectual or tangible property of the other.

#### 5. Proxios Obligations. Proxios shall render Services to Customer as follows:

5.1 Implementation. Proxios will implement the System in accordance with Section 7 of this Agreement.

5.2 System Hardware, Hosted Hardware and System Software -- Hosting and Support. Proxios will supply and/or maintain the System Hardware, Hosted Hardware and System Software necessary for Customer to access and use the System in accordance with the Service Level Agreement contained in Exhibit B. In addition, Proxios will make available to Customer Support Services as specified in Exhibit B hereto as well as any component-specific service level agreements.

5.3 System Access. Proxios will provide Customer with enough concurrent system, networking user accesses and applications licenses, as appropriate, to support the initial maximum number of Authorized Users of the System and of the component Applications as specified in Exhibit A and for which the Customer is charged Fees specified in Exhibit A. If, in the ordinary course of business, Customer increases or decreases the number of Authorized Users above or below the initial maximum number of Users of the System or of an Application, Proxios will, within seventy two (72) hours after receiving notice of such increase or decrease, provide to Customer a corresponding increase or decrease in Authorized User accesses and will configure and set up new Authorized User accounts. Extraordinary increases or decreases may not be feasible within such time period, and will be the subject of a separate Statement of Work. Proxios will be responsible for determining any additional bandwidth needs created by the addition of Authorized User accounts (and/or additional facilities) and if Customer is attached to Proxios' WAN, Proxios will be responsible for provisioning such connectivity and connecting it to the Customer wide area network ("WAN"). Customer will implement and provision its WAN and LAN infrastructure and capacity in accordance with Proxios's recommendations, and notwithstanding anything to the contrary in this Agreement, Proxios will not be responsible for System Services performance issues which are the direct or



indirect result of Customer's failure to implement or provision the recommended WAN and LAN infrastructure and capacity. Proxios and Customer will work together to project Customer's access needs such that Proxios can secure additional Authorized User accesses as necessary to accommodate Customer's addition of new Authorized Users (individually or in groups). Customer acknowledges that provisioning WAN services may entail significant lead times beyond the control of Proxios, and Proxios will not be responsible for provisioning delays beyond its control.

5.4 Routine Updates and Upgrades. From time to time, Proxios or Third Party Providers will implement routine Updates or Upgrades to the System Software, System Hardware, and the Standard Applications. Proxios will provide advance notice to Customer of such Updates and Upgrades, and will advise Customer of any expected downtime or potential effects on the System Services.

5.5 Updates and Upgrades to, or reinstallation of, Hosted Applications. Customer acknowledges that an Update or Upgrade to Components of the System will typically necessitate (a) Professional Services to be performed by Proxios or subcontractors and/or (b) Updates or Upgrades to Hosted Applications or Hosted Hardware in order for the Upgraded/Updated System to continue to function properly and provide Customer with functions and features comparable to the pre-Upgrade/Update System. Such Professional Services may include, but not be limited to, reinstallation of Hosted Applications and/or the integration of plug-ins or add-ons of Hosted Applications into the Standard Applications. Although Proxios generally does not charge separately for routine Updates and Upgrades to the System per Section 5.4 above, Customer agrees to pay for the costs of Professional Services and for license fees for Updates and/or Upgrades to the System or the Hosted Applications that may be required to maintain functions and features of the System that depend on or use of Hosted Applications or Hosted Hardware. In such situations where Professional Services are required, Proxios will provide a Statement of Work that includes a good faith estimate of the applicable Professional Services fees associated with such Update or Upgrade (which Statement of Work will include the information set forth in Section 1.22 above). Wherever reasonably feasible, Proxios will offer Customer the option to defer or opt-out of Upgrades or Updates, however, Customer acknowledges and agrees that Proxios' reasonable determination to implement an Upgrade or Update shall control. Customer shall not be obligated to make any additional payments for Updates or Upgrades to the System that are not related to the Hosted Applications or Hosted Hardware.

5.6 Non-routine Services, Updates and Upgrades. From time to time, in response to unanticipated circumstances or events, Professional Services or Updates or Upgrades to the System, the System Hardware, the Standard Applications, or the Hosted Applications may be required on an urgent basis to maintain the functionality and security of the System and the Services. Proxios will provide advance notice of the need for such services, Updates or Upgrades wherever practicable, however, Proxios has full discretion to perform such services and implement such Updates or Upgrades without Customer's prior approval if necessary to preserve the functionality or security of the Services and the System, both for Customer and for other customers of Proxios. If Customer is given administrative access to any component of the System and Customer's access of such component results in System downtime, lack of functionality, degraded performance, or other situation requiring Proxios's intervention, Proxios's efforts to rectify the situation will be considered Non-routine Services for purposes of this Section and Customer will pay Proxios in accordance with Section 8.4.

5.7 Customer Software Currency. In keeping with Section 5.5 above, Proxios may require an Upgrade or Update, or reinstall any part of the System, including (a) the Hosted Applications, (b) operating systems, and (c) Customer Hardware so that System Software and/or System Hardware are no more than two (2) versions older than the current version at any time generally available in the marketplace and still supported by their respective vendors.

5.8 Browser Compatibility. Customer may use any browser supported by Citrix or Microsoft software, however Proxios cannot guarantee that any browser selected by Customer will provide equivalent performance to browsers specified by Proxios.

5.9 Additional Applications. If Customer requests Proxios to upgrade, add, or replace any Applications, or hardware in addition to that specified in the Exhibit A, such Upgraded, additional, or



substituted Applications or hardware will only be provided pursuant to a written amendment or other written agreement between the parties, in either case executed by authorized representatives of each Party and setting forth the fees and additional terms and conditions applicable to such Upgraded, additional, or substituted Applications.

5.10 Storage of Customer Content. Proxios will provide Customer, in accordance with the Service Level Agreement included in Exhibit B and the security standards set forth in this Agreement, with access to data storage to allow Customer to store and access any Customer Content. Such access is subject to the exceptions to availability contained in Exhibit B of this Agreement.

5.11 Monitoring Use and Downtime. Proxios will monitor and keep track of the number of Authorized Users accessing the System, the number of users of each of the Applications, all data storage, all Scheduled Downtime, and all Unscheduled Downtime, as those terms are defined in the Service Level Agreement attached hereto as Exhibit B. To the extent feasible, Proxios will provide read only access to such monitoring information to the key Contact, designated by Customer.

#### 5.12 Security.

5.12.1 General. Proxios shall use and shall provide to Customer virus-checking software, firewall software (collectively "Security Software") designed to prevent the destruction of or interference with the Applications and the Customer Content running on the System Hardware and System Software, to the extent that such Security Software is included in the System or the Standard Applications. Proxios shall use and provide to Customer password implementation and enforcement software designed to ensure that access to the System is only granted to Authorized Users. Customer shall be responsible for adding and changing Authorized User authorizations and access to the System including the Applications. Customer acknowledges that Proxios cannot and does not warrant that Security Software is 100% effective. Proxios will not be liable for any direct or indirect consequences of the failure of Security Software to prevent viruses, intrusions, breaches, or other malicious acts.

5.12.2 Security Patches. Proxios will use a level of effort appropriate to the urgency of the situation and the nature of any security threat, to implement any and all security patches, bug fixes, and/or any other similar security or performance-enhancement releases made available to Customer in connection with any widely-deployed operating system or similar software. Customer acknowledges that Proxios does not own or develop security patches and does not have the ability or legal right to modify Standard Applications that are Third Party Products. Accordingly, Customer acknowledges that Proxios cannot ensure full integration of such security patches without diminution of functionality.

5.12.3 Network Access. The parties agree and acknowledge that as part of the provision of the Services, Proxios will have access to the Customer Content as well as the Customer-owned parts of the System. Proxios shall use industry standard techniques and protocols to the end that:

- A. Such access is restricted to authorized Proxios employees who have entered confidentiality agreements with Proxios that apply to Customer's Confidential Information;
- B. Upon request, Proxios provides Customer with a list of all such authorized employees (which list will be updated from time to time as necessary);
- C. Such access is used solely for purposes of fulfilling Proxios' obligations under this Agreement;
- D. Such access (if obtained remotely) is obtained through a secure connection; and



E. Proxios uses such remote access capability only to access equipment or software that is directly involved in Proxios' performance of its obligations hereunder and does not access any other Customer or third party systems, databases, equipment or software.

5.12.4 Comprehensive Security Policy. Proxios shall establish and maintain reasonable safeguards against the destruction, loss, alteration of, or unauthorized access to Customer Content stored on or transmitted via the System. Proxios will also publish security policies and procedures to be followed by Customer, and update such policies and procedures from time to time as circumstances and developments warrant. Proxios certifies that it has implemented and currently maintains an information security program that meets accepted industry standards to protect such Customer Content, which program includes administrative, technical, and physical safeguards:

- A. To protect the security and confidentiality of such Customer Content;
- B. To protect against any reasonably anticipated threats or hazards to the security or integrity of such Customer Content; and
- C. To protect against unauthorized access to or use of such Customer Content that could result in harm or inconvenience to Customer, or to any of its employees or clients.

5.12.5 Notice of Security Breach. If either Party experiences or detects a breach of System security affecting Customer Content, it will immediately advise the other Party. Proxios will promptly take steps to remedy or prevent such breach. Customer will use its best efforts to cooperate with Proxios in such situations, and will comply with the reasonable requests of Proxios when Proxios determines that action is required by Customer. For avoidance of doubt, Customer will be responsible for notifying its clients or other affected third parties of any such security breach, as and to the extent required by applicable law or otherwise as Customer determines is appropriate; provided, however, that Proxios will cooperate with Customer to provide information about the cause and effect of such breach and the steps taken to remediate such breach. Notwithstanding the foregoing, Proxios will not be in breach of this Section 5.12.5 if it is prevented from such notification by applicable law or limitations imposed by government authority asserting jurisdiction over such matters.

5.12.6 Customer Responsibility. Customer is responsible for implementing and complying with the Security Policies and Procedures published by Proxios. Proxios is not responsible for the consequences of Customer's failure to implement and comply with such procedures. Customer acknowledges that such Security Policies and Procedures may dictate acquisition and implementation of security hardware and software and that Proxios may, at any time, charge the Customer for the acquisition, licensing, installation of new or upgraded security hardware or software, and all other resulting costs, whether in response to, or in anticipation of actual or potential threats. Customer will be responsible for the foreseeable consequences of the failure by its employees or contractors to implement and comply with the Security Policies and Procedures published from time to time by Proxios.

5.12.7 Customized Security Levels. Without limiting the foregoing, Customer and Proxios will work together to determine appropriate levels of security and access controls for different Applications or components within the System. The initial consultation and implementation relating to such security levels will be included as part of the implementation services and the Support Services; provided, however, that any subsequent project-specific consultation may be subject to Professional Services fees, which will be set forth in a Statement of Work relating to such project.

5.12.8 Applicability of Security Requirements. The security requirements set forth herein will apply to all components of the System to the extent that such components are within Proxios control, including both the primary hosting facilities as well as to the designated Customer Disaster Recovery Facility.



5.12.9 Security Audits/Inspections. During normal business hours and upon no less than ten (10) business days' advance written notice, Customer may inspect the Proxios' Security Policy and practices, associated audit reports, summaries of test results and equivalent measures taken by Proxios to ensure that the Security Policy meets the requirements set forth in this Agreement. At the request of Customer, Proxios will use reasonable efforts to permit inspections or audits on shorter notice, but Proxios has absolute discretion to deny any request for an audit or inspection on shorter notice. Under no circumstances will Customer perform, or engage others to perform, or encourage penetration testing or other "ethical hacker" methods or procedures on the System without Proxios's prior written consent, which Proxios may withhold in its absolute discretion.

5.12.10 Security Limitations. Customer acknowledges that the security of the System is dependent in many respects on the performance and efficacy of various third party security hardware, software, and services and that Proxios does not undertake to provide nor can it guarantee a greater level of security than that provided by such software, hardware, and services.

### 5.13 System Performance.

5.13.1 Proxios shall design and manage the System to meet or exceed the requirements set forth in the Service Level Agreement ("SLA") as set forth on Exhibit B hereto.

5.13.2 Notwithstanding any SLA or provision thereof, Customer acknowledges that Proxios' operation of the System cannot provide any higher level of performance, availability, uptime, Response Time, repair time or recovery time for a given failure mode than is possible if the Applications were installed on Customer's own commercially available hardware and software similar to the hardware and software that comprise the System. Therefore, to the extent that any response or recovery time is specified in an SLA, Proxios shall not be in default hereunder if Proxios' actual response, recovery or repair time is not more than 110% of the best standard offered by the manufacturer or licensor of the hardware or software that is the cause or limiting factor of the response, recovery or repair. If Customer desires to hold Proxios to a higher standard, Proxios will provide Customer with a proposal for redundant hardware and/or software configurations that would reduce or eliminate the response, recovery or repair time related to a particular failure mode. Proxios has no responsibility for the performance of Hosted Applications unless Proxios specifically assumes such responsibility in a Statement of Work.

5.13.3 Backup Procedures. Proxios will initiate Backup Procedures Monday through Friday, beginning generally after normal business hours, with the intent that information stored since the most recent Backup Procedure can be recovered for Customer the next business day. Proxios will maintain such Backups or the information necessary to restore Client's information for not less than thirty (30) days from the date of the Procedure that created the Backup or information necessary to restore the Client's information. Although Proxios will use commercially reasonable efforts in performing Backup Procedures, Proxios cannot and does not guarantee that Backup Procedures will be successful or that Customer data will be recoverable from Backups. Proxios may change its Backup procedures, schedules, methods, software, and hardware at any time without notice to Customer, provided that such changes are made in good faith to increase the safety, efficiency, or reliability of Backups. Proxios will review its Backup Procedures with Customer during normal business hours upon reasonable request. Customer acknowledges and agrees that backup procedures, retention periods, usage, storage, and bandwidth limitations for any data residing in Microsoft cloud-based services (such as Exchange Online, Sharepoint Online, OneDrive for Business and Office 365) will be governed by the Microsoft policies and procedures in effect from time to time, and that such policies and procedures can and will differ from the policies and procedures of Proxios. Proxios specifically disclaims responsibility for the backup, recovery, and security of all Customer data stored in any such Microsoft Cloud-based application or platform.

5.13.4 Disaster Recovery ("DR") Facility. Customer has not contracted for Proxios to provide a DR Facility. If Customer desires to contract for a DR Facility, Proxios will have a right of first refusal to provide such capability. If Proxios elects not to provide Customer's DR Facility, it will so notify Customer within sixty (60) day's following Customer's notice to Proxios of its intention to contract for a DR Facility. Whether or not Proxios provides the DR Facility, Customer agrees that Proxios will either (i) design



the DR Facility or (ii) have a right of approval for the design of the DR Facility. Proxios will manage and operate any DR facility unless Proxios is incapacitated by a disaster. Activation of Customer's DR Facility will not relieve Customer of its payment obligations under this Agreement. Development of DR Facility specifications, design of the DR Facility, and implementation and ongoing management and operation of the DR Facility, and Proxios's fees for such services will be set forth in a separate Statement of Work.

5.13.5 Without limiting the foregoing, Proxios will cooperate with Customer to develop and codify a Disaster Recovery Plan and to perform tests of the Disaster Recovery Plan no less than once per Contract Year during the Term.

5.13.6 Customer acknowledges that Backups may contain data and applications of other Proxios Customers; therefore Proxios cannot provide Customer with direct possession of such backups. To the extent permitted by the Procedures identified in 5.13.3, Proxios will restore and provide to Customer any Customer data requested by Customer in response to any loss of or inability to access data on the System. Customer further acknowledges and agrees that the shared infrastructure on which Proxios operates makes it infeasible for Proxios to delete Customer's data from all Backup information immediately upon termination of this Agreement. Customer's data will, however, be deleted in the ordinary course as Proxios makes backups in its regular cycle described in 5.13.3.

5.14 Consulting and Programming. Proxios may provide Customer with consulting, integration or other services pursuant to one or more Statements of Work that will be governed by the terms and conditions of this Agreement.

5.15 Training. Proxios will provide Customer personnel with training materials as well as web-based or live training on the System operations, maintenance, security, and architecture from time to time or as requested by Customer. Such training will be performed as agreed by the parties in one or more Statements of Work and for fees agreed upon by the parties in writing. If Users of Customer elect not to participate in training, Customer may be charged for any time supporting such Customer staff if Proxios determines, at its sole discretion, that such support would have been unnecessary had such users previously participated in such training. Furthermore, Customer will be responsible for the consequences of its employees' or contractors' failure to follow or implement security procedures and protocols.

## 6. Customer Obligations.

6.1 Exclusivity. Sole Source Vendor. Recognizing that Proxios has made and will make, throughout the Term of this Agreement, substantial investments and long term commitments on behalf of Customer and that the efficient and cost-effective provision of a consistent and high performing IT environment requires a high degree of systems integration, coordination, design, and maintenance, Customer agrees that it will not:

6.1.1 cause any third party to provide the System Services taken as a whole in parallel with, as a replacement for, or competitive with, the Proxios System Services, during the term of this Agreement, or

6.1.2 license individual Applications or obtain components of the System Services from other providers except as permitted by Section 6.5.

6.2 Fees. Customer shall timely pay to Proxios all fees and expenses specified on Exhibit A in accordance with the procedures set forth herein and on Exhibit A.

6.3 System Utilization. Customer will not reduce its overall utilization of the System so as to reduce Proxios aggregate System Services fees by more than fifteen percent (15%) during any period of 12 consecutive months; provided, however, that if Customer undergoes a material adverse business change (e.g., a significant reduction in the number of Authorized Users resulting from the divestiture of offices or practice groups, or a firm-wide reduction in force), then Customer may reduce utilization of the



System in proportion to such reduction in size without breaching this provision. In such an instance, Customer will provide Proxios as much notice as possible prior to reducing its utilization. The System Services fee amount to be used as the baseline for calculating the percentage reduction set forth above will be the average monthly System Services fees incurred by Customer to Proxios during the twelve (12) month period immediately preceding the reduction in System Services fees provided, however, that during the first twelve (12) months of the Term of the Agreement, the parties will look to the fees estimated in Exhibit A or the average of the prior three System Service fees, whichever is greater, to determine the baseline System Services fees..

6.4 Implementation. Customer will reasonably participate in implementing the System in accordance with Section 7 of this Agreement and the associated Exhibits and Statements of Work. In addition, Customer will engage Third Party Providers as necessary or appropriate to install and integrate the Hosted Applications and the Hosted Hardware with the System, with the assistance and cooperation of Proxios as provided in the applicable Statements of Work.

#### 6.5 Right of First Refusal for Applications and System Services.

6.5.1 Customer recognizes that both Proxios and Customer benefit from Proxios's consolidated buying power in obtaining System Services, licensing Standard Applications, and, in some cases, Hosted Applications. Customer therefore agrees that it will not obtain System Services or licenses for the Applications independently of Proxios without Proxios's written consent, so long as Proxios offers to provide or obtain on Customer's behalf the System Services or Applications to the Customer and provided that the fees charged by Proxios for such System Services or licenses do not exceed the price at which Customer could obtain such System Services or licenses for Applications independently.

6.5.2 If Customer desires to implement a System Service or an Application that is not a Standard Application, but one which, nonetheless, might have general applicability to customers of Proxios generally, Customer will give Proxios the opportunity to provide that System Service or Application as part of the System Services or Standard Applications, provided it does not charge Customer a greater fee than Customer would pay if it acquired or licensed the same independently.

6.5.3 If Customer desires to obtain or implement System Services or licenses for Applications independently of Proxios under Sections 6.5.1 or 6.5.2, it will provide Proxios with the bona fide price quotation under which it would implement or obtain such System Services or Applications, and allow Proxios not less than thirty (30) days to provide a propose fee for which Proxios would provide the System Services or Applications.

6.6 Control of Use. Customer shall be responsible for requiring its employees and representatives to use the Services in accordance with the applicable terms of this Agreement.

6.7 Communications. Except as otherwise specified in this Agreement, Communications costs and Communications systems will be the responsibility of Customer. Under the terms as specified in this Agreement, Proxios will provide reasonable assistance to any Communications provider so as to resolve any problems with the Communications. PROXIOS MAKES NO REPRESENTATIONS AS TO THE RELIABILITY OF SERVICE LEVEL PERFORMANCE OF THE COMMUNICATIONS PROVIDER AND PROXIOS WILL NOT BE LIABLE FOR ANY DAMAGES OR LOSS ASSOCIATED WITH COMMUNICATIONS FAILURE, PROBLEMS, PERFORMANCE OR RELATED SYSTEM DOWNTIME.

6.8 Customer Hardware. All Customer Hardware and hardware-dependent software which Authorized Users use to access the System must conform to Proxios' requirements. Customer acknowledges that failure to meet this obligation may result in less than optimal performance or even failure of the System. Customer acknowledges that Proxios may impose additional fees to cover excess support costs associated with Customer use of non-conforming hardware. Except as otherwise specified in this Agreement, Customer will provide all Workstations, end user printers, and all other end user components which reside on Customer premises or locations other than Proxios's facilities, and which are required to



connect Workstations and printers to the System Hardware, Hosted Hardware and System Software. The end user components which may be required include, but may not be limited to:

- 6.8.1 Desktop PCs with a monitor, a keyboard and a mouse
- 6.8.2 Laptop PCs with integral display, keyboard and pointing device or external versions of the same
- 6.8.3 Network hubs and/or switches as specified by Proxios
- 6.8.4 Routers, modems, firewalls and wireless access points as specified by Proxios
- 6.8.5 Virtual Private Network Hardware and/or software as specified by Proxios
- 6.8.6 Printers approved by Proxios for use with the System Hardware, Hosted Hardware and System Software and for which device drivers are readily available.
- 6.8.7 Smartphones, tablets or other personal devices through which Customer's End-Users may access the System Services.

6.9 Security. All Customer Hardware which Authorized Users use to access the System must conform to Proxios' security requirements, and Customer acknowledges that such requirements may change at any time. To meet these requirements Customer may obtain appropriate anti-virus and other software, firewall software, encryption software and intrusion detection software on its own with Proxios' approval or, alternatively, Proxios will provide such software in accordance with Section 5 above. When using the System, Customer shall use and will not disable the virus-checking software and other software, including firewall software, encryption software and intrusion detection software on either the System Hardware or Customer Hardware. Customer shall use password software as provided by, and in the manner specified by, Proxios to ensure that access to the System is only granted to Authorized Users. Customer shall work with Proxios to establish appropriate work-flow and permissions (access) requirements to Proxios (e.g., which Authorized Users have which levels of access to the Applications; what functions can be performed by different classes of Authorized Users, etc.). Likewise, Customer will work with Proxios to classify different types of Customer Content and specify the applicable levels of security or protection for such classes.

6.10 Notice of Problems. Customer will provide Proxios with immediate notice via telephone, e-mail or by other means which Proxios may provide of any problems that it experiences with the System or any components, including but not limited to downtime, and/or poor performance of the System.

6.11 Backup/Disaster Recovery. If Customer has not contracted with Proxios to provide a Disaster Recovery Facility for Customer use, Customer will be responsible for securing (identifying and entering into an appropriate lease or purchase agreement) a facility to provide disaster recovery and backup services (the "Disaster Recovery Facility") and purchasing the Customer Hardware that will reside in such facility. Proxios will work with Customer to establish appropriate Communications connections to such facility and the Customer Equipment therein and to establish a regular backup process such that the Applications are replicated within the Disaster Recovery Facility and backup copies of the Customer Content are transmitted to and maintained within the Disaster Recovery Facility.

6.12 End User Feedback. Customer will permit Proxios to engage with authorized users to obtain feedback to enable Proxios to provide highest quality service to Customer.

## 7. Implementation Services.

7.1 Implementation Statement of Work. Proxios, Customer and Third Party Vendors (as applicable) will develop a detailed implementation plan and associated Statements of Work to convert the



existing Authorized Users using Customer's current technology platform over to the System and will develop follow-on Statements of Work as necessary throughout the Term to address additional implementations, installations of Updates or Upgrades and other Professional Services. These Statements of Work will define all implementation and customization activities to be undertaken pursuant to this Agreement. If Customer wishes Proxios to perform any work that is beyond the scope of a Statement of Work, Proxios will not be obligated to do so (and Customer will not be obligated to pay any additional fees for such work) unless the parties have first executed a Change Order in accordance with the procedures set forth herein. The initial implementation plan and any subsequent implementation plans may be executed in distinct phases limited to discrete components of the System, Applications and/or Authorized Users, based on separate multiple and discrete Statements of Work undertaken by Proxios and/or the Third Party Vendors (as applicable).

7.2 Milestones. If any implementation plan or Statement of Work sets forth any milestones for implementation or other projects, Proxios and Customer each shall exercise reasonable and diligent efforts to achieve such milestones. Customer shall provide all input, personnel and facilities reasonably necessary or desirable for Proxios or Third Party Providers to achieve such milestones, and any delay in Customer input or approvals shall result in a corresponding postponement of any such milestones; provided, however, that if Proxios believes that Customer's acts or failures to act may cause a delay in the schedule, Proxios will notify Customer promptly in writing.

7.3 Change Order Procedures. If either Party believes that a change in a Statement of Work (whether in time frames, costs or deliverables) is necessary or desirable, such Party shall submit a written change request to the other (a "Change Request"). In the event of a Customer Change Request, Proxios shall, within five (5) business days of its receipt of such Change Request, provide to Customer a written statement describing in detail the modifications to the services being or to be performed, the effect of such modified services on the Project Plan and the cost or savings associated therewith (the "Change Response"). If such response is not practicable within five (5) business days, Proxios shall advise Customer within such time when the Change Response shall be available. If Proxios submits a Change Request to Customer, such Change Request shall include the information required for a Change Response. Customer shall accept or reject any Proxios-initiated Change Request or any Change Response, as applicable, within five (5) business days after receipt of same from Proxios. If Customer accepts a Change Response in writing, such Change Response, together with Customer's Change Request shall be deemed a Change Order and shall become part of the applicable Statement of Work. If Customer rejects such Change Response, Proxios shall continue to install the System in accordance with the terms of this Agreement and the Statement of Work.

7.4 Commencement of Live Testing and Acceptance Period. Upon the parties' completion of a Statement of Work (or, as applicable, the completion of a Milestone), Proxios shall give notice to Customer that it believes the System (or component thereof) is ready for live testing during the Acceptance Period. The parties shall exercise reasonable and diligent efforts to complete tasks under the Statement of Work in order to enable notice of readiness for live testing by the Live Testing Target Date specified in Exhibit A (in connection with the initial implementation) and specified in subsequent Statements of Work (in connection with subsequent projects). Live testing of the System may be undertaken at once, or introduced with different applications and facilities over a period of time, as is specified in the Statement of Work, or as the parties may otherwise agree. Unless a Statement of Work or a Change Order provides to the contrary, Proxios shall create a parallel testing environment that allows the Customer to review and test the System between the Live Testing Target Date and the Acceptance Target Date shown on the applicable Statement of Work (with respect to subsequent projects)(each, an "Acceptance Period"). During the Acceptance Period during which live testing is underway, Customer may test applicable Standard or Hosted Applications, System Software and the System, as applicable, with actual data in order to verify and confirm that each Hosted Application, Standard Applications, System Software or the System, as applicable, operates in substantial conformity to the specifications and requirements of the Statement of Work, the applicable Documentation, and any additional or different specifications and requirements set forth in this Agreement or amendment thereto. Acceptance of the applicable System component(s) by Customer shall not unreasonably be withheld and will be deemed to occur on any of the following: (i) (A) Customer fails to deliver a Non-Conformity Notice (as defined in Section 7.5 within thirty (30) days, or such other period of time specified in the Statement of Work, after the commencement of the applicable Acceptance Period (the



"Initial Test Period"), (B) Proxios provides notice to Customer that Customer has not provided a Non-Conformity Notice within the Initial Test Period, and (C) Customer fails to respond with five (5) business days after receipt of notice from Proxios (the "Customer Cure Period"), or (ii) Customer has notified Proxios in writing that it has accepted the Deliverables or the Milestone meets the applicable acceptance criteria.

7.5 Non-Conformity Notices and Correction. If Customer discovers a failure of the System or component thereof being tested to conform to the applicable specifications or acceptance criteria set forth in the Statement of Work ("Non-Conformity"), Customer will deliver a written notice specifying each Non-Conformity in reasonable detail (a "Non-Conformity Notice") to Proxios on or before the expiration of the Initial Test Period. Proxios will, at no additional cost to Customer, correct the Non-Conformities stated in the Non-Conformity Notice within a reasonable period of time (which time period may be set forth in the Statement of Work). After Proxios makes such corrections to the non-conforming System components and makes such System components available to Customer for acceptance, Customer will have fifteen (15) days to re-test the System components ("Additional Test Period"). If any Non-Conformity remains, the process stated above will be repeated. Proxios shall exercise diligent efforts to complete any needed corrections as quickly as possible. Upon final acceptance, Proxios may disable the parallel testing environment.

7.6 Implementation Fee. The fees for Proxios' implementation services (the "Implementation Fees") will be set forth in the initial implementation Statement of Work, along with a schedule for payment of the Implementation Fees, which schedule may include expedited payment or bonus payments for timely Acceptance of the System or components thereof in accordance with the implementation schedule set forth in the Statement of Work. Fees for Professional Services in connection with other Statements of Work (which may be Implementation Fees or otherwise), will be set forth in each applicable Statement of Work.

## 8. Fees.

8.1 Fees for the Services. All Services hereunder will be provided for the fees and other financial terms as set forth on Exhibit A or an applicable Statement of Work.

8.2 System Fees. Customer agrees to pay the System Fees as specified in Exhibit A, beginning upon its use of the System. System Fees will be billed on a monthly basis and will be calculated as set forth in Exhibit A. System Fees may include (i) Authorized User fees, which are fees based on the number of Authorized Users who may access the System during a month; (ii) Concurrent User fees, which are fees based on the maximum number of Users that simultaneously accessed an Application at any point during the relevant month; (iii) Licensed User fees which are based on the total number of Licensed Users licensed to access a specific Application during a month, regardless of actual use or access, or (iv) other component based fees as specified in Exhibit A.

8.3 Professional Services Fees. Customer agrees to pay the Professional Services Fees for any services not included in the Support Services, as such fees are specified in Exhibit A, beginning on the AcceptanceDate and thereafter on a monthly basis.

8.4 Fees for Non-Routine Services, Updates or Upgrades. Proxios will charge Customer and Customer will pay Proxios for Non-Routine Services, Updates or Upgrades described in Section 5.6 on a time and materials basis at reasonable commercial rates and prices prevailing in the market at the time.

8.5 Expenses. Proxios will be entitled to reimbursement of its reasonable expenses incurred in connection with the performance of this Agreement or a Statement of Work provided that such expenses in excess of \$500.00 are approved by Customer in advance and in writing. Expenses will be itemized in Proxios' monthly invoice. Upon Client's written request, Proxios will produce documentation of such expenses

8.6 Fee Changes. Itemized Fees for the System Services and Professional Services shall remain in place as set forth in Exhibit A during the Initial Contract Year. Thereafter, for the System Services



and for Professional Services may be increased by no more than the greater of (a) a cumulative annual rate of three percent (3%) or (b) the cumulative change in the Consumer Price Index (CPI-Urban) in each case, measured from the Initial Acceptance Date. Such increases may be made no more than once per Contract Year and will take effect sixty (60) days after written notice to Customer. Notwithstanding the foregoing, Proxios may pass through to Customer (a) any cost increases incurred by Proxios for Standard Applications or Hosted Applications, or (b) any Security-related expenses that Proxios deems necessary to meet its Security obligations under this Agreement as described in Section 5.6. Proxios will provide Customer with documentation of any such Security-related expenses. The foregoing limitation in no way limits the increases in total fees resulting from increases in Authorized Users, Licensed Users, Concurrent Users, or expansion of System Services agreed to by the Customer.

8.7 Payment. All undisputed invoices (or portions thereof) are payable in full within thirty (30) days of Customer's actual receipt. Proxios may impose on any delinquent payment a fee equal to the lesser of 1.5% per month or the maximum percentage allowed under applicable law, and Customer agrees to pay any such fee. If Customer believes in good faith that all or part of an invoice is erroneous, Customer will notify Proxios in writing within ten business (10) days of Customer's receipt of such invoice and will detail the basis for the dispute.

8.8 Taxes. All fees charged by Proxios are exclusive of any sales, use, value added, consumption and/or all other taxes or duties, however designated, that are assessable on the System, Applications or hardware (collectively "Taxes"). Customer shall pay all Taxes, except for Taxes based on Proxios' net income, except to the extent that Customer provides to Proxios an appropriate certificate of exemption from the applicable taxing authority. If a taxing authority determines that Proxios is required to pay any Taxes in arrears, and if such Taxes would have been paid by Customer under the terms of this Agreement, then Customer agrees to pay such Taxes upon receiving notification from Proxios of such Taxes being due. All such Taxes will be invoiced, collected and remitted to the appropriate state or jurisdiction by Proxios.

## 9. Customer Warranties.

9.1 Customer warrants that it owns or has the right to license to Proxios the Customer Content for the limited purposes set forth in this Agreement.

9.2 Customer warrants that it will not intentionally or negligently use the System or any part thereof in a manner which may violate or infringe in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. For avoidance of doubt, Proxios acknowledges and agrees that Customer is not responsible for the content of unsolicited e-mail communications, documents, correspondence or other content or information that Customer receives via the System from third parties.

9.3 Customer warrants it will not (and will not suffer or permit its Authorized Users to) intentionally or negligently damage, destroy, disable, or overload any of the hardware or software making up the System by means of a virus, worm, trap door, back door, time clock, counter, or any other means.

9.4 Customer warrants that it will not (and will not suffer or permit its Authorized Users to) intentionally or negligently take measures or perform actions that prevent other users or customers of Proxios from accessing other hardware, software or services provided by Proxios, except that Customer shall have the right to cause Proxios to take diligent steps (consistent with the security requirements set forth in Section 6.9) to prevent anyone other than an Authorized User or an authorized Proxios employee from accessing the Customer Content and other elements of the System dedicated to Customer.

## 10. Proxios Warranties, Disclaimers and Limitations.

10.1 Proxios warrants that it will comply with the Service Level Agreement set forth in Exhibit B.



10.2 Proxios warrants that:

10.2.1 The Professional Services will be performed in a workmanlike manner and in accordance with applicable industry standards, as well as in accordance with the description of such Professional Services set forth in the applicable Statement of Work;

10.2.2 The System and the Applications (excluding the Hosted Applications and the Hosted Hardware) will conform to the descriptions set forth in the applicable Documentation, Statement of Work and/or Exhibits to this Agreement;

10.2.3 It will exercise reasonable care (and in no event a lesser standard of care than Proxios exercises with respect to its own computer systems) (a) to prevent the System and the Applications (excluding the Hosted Applications and the Hosted Hardware) from containing any program code, programming instruction or set of instructions intentionally constructed for the purpose of damaging, interfering with or otherwise adversely affecting computer programs, data files or operations (a "Virus"); and (b) to avoid introducing any Virus into the information technology environment of Customer or of Customer's environment in Proxios' hosting environment. In the event a Virus is found to have been introduced by Proxios into the information technology environment of Customer or Customer's environment in Proxios' hosting environment, Proxios shall use commercially reasonable efforts, at no charge to Customer, to assist Customer in eradicating and mitigating the effects of the Virus;

10.3 DISCLAIMER: THE CLIENT ACKNOWLEDGES THAT THE CONTINUITY, PERFORMANCE AND QUALITY OF THE DELIVERY OF THE SERVICES DEPENDS ON A COMPLEX SYSTEM INCLUDING, BUT NOT LIMITED TO, THIRD PARTY NETWORK COMPONENTS AND COMMUNICATIONS, THIRD PARTY SOFTWARE, THIRD PARTY MACHINES AND OTHER HARDWARE, THIRD PARTY SECURITY PRODUCTS OR SERVICES, OR OTHER THIRD PARTY PRODUCTS OR SERVICES WHICH MAY BE USED IN THE DELIVERY OF THE SERVICE BUT NOT BE WITHIN THE CONTROL OF PROXIOS OR ITS VENDORS OR AGENTS. ACCORDINGLY, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY STATEMENT OF WORK, NEITHER PROXIOS OR ITS VENDORS OR AGENTS MAKE ANY WARRANTY, NOR WILL ANY WARRANTY BE IMPLIED (i) AGAINST BREACH OR COMPROMISE OF THE SECURITY OF DATA, INCLUDING PERSONAL DATA, OR (ii) THAT THE SERVICES WILL BE UNINTERRUPTED. THE FAILURE OR BREACH OF ANY (i) ANTI-VIRUS, FIREWALL, ENCRYPTION SYSTEM, BACKUP SYSTEM OR PROCEDURE, OR OTHER SECURITY MEASURE OR (ii) THIRD PARTY SERVICES UNDERLYING THE SERVICES, BY ITSELF DOES NOT CONSTITUTE NEGLIGENCE, BREACH OR DEFAULT BY PROXIOS OR ITS AGENTS FOR PURPOSES OF THIS AGREEMENT.

10.4 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTY AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF (1) TITLE, (2) NON-INFRINGEMENT, (3) NON-INTERFERENCE, (4) MERCHANTABILITY, (5) ACCURACY, AND (6) FITNESS FOR A PARTICULAR PURPOSE.

11. Confidentiality.

11.1 Definition of Confidential Information. "Confidential Information" means the terms of this Agreement and all non-public business information pertaining to the disclosing Party (the "Disclosing Party"), including, but not limited to, information relating to: (i) the Disclosing Party's planned or existing computer systems and systems architecture, including computer hardware, computer software, Source Code, object code, Documentation, methods of processing and operational methods; (ii) the Disclosing Party's customer lists, client information, sales, profits, organizational structure and restructuring, new business initiatives and finances; (iii) the Disclosing Party's services and products, product designs, and how such products are administered and managed; (iv) the Disclosing Party's product strategies, tax interpretations, tax positions and treatment of any item; (v) Confidential Information of third parties with which the Disclosing Party conducts business (including, in the case of Customer, Customer's clients); and



(vi) in the case of Customer, the Customer Content, each Party's business plans, finances, costs, prices, customer and vendor information, competitive information, and any other information that has actual or potential economic value by reason of not being generally known. Confidential Information does not include: (a) information that is or becomes generally known by lawful means, as demonstrated by the receiving Party's ("Receiving Party") records; (b) information that is developed independently, without any reference to or reliance on the other's Confidential Information, as demonstrated by the Receiving Party's records; (c) information that was known to the Receiving Party prior to the time of disclosure from the Disclosing Party, as demonstrated by the Receiving Party's records; (d) Information learned from a third party holding same lawfully and not under an obligation of confidentiality to the other; or (e) information with respect to which a disclosing Party consents in writing to disclosure, but only to the extent of such consent. In addition, each Receiving Party shall notify the other Disclosing Party immediately and in writing of any demands pursuant to a subpoena, regulatory process or other legal process to disclose the other Disclosing Party's Confidential Information and shall object to the request to the fullest extent permitted by law and cooperate (at Disclosing Party's expense) with the Disclosing Party's efforts to quash or narrow such request. Neither Party shall produce any of the other Party's Confidential Information pending resolution of one or both of the parties' objections unless a court overrules such objections in the form of a non-appealable judicial order. Without limiting the foregoing, the Party owning the Confidential Information may not unreasonably withhold approval of protective arrangements.

11.2 Use of Confidential Information. Neither Receiving Party shall use the other's Confidential Information except as is reasonably necessary to perform its obligations and exercise its rights under this Agreement, and neither Receiving Party shall disclose the other's Confidential Information to any other Party without the express prior written consent of the Disclosing Party or in compliance with applicable law (except that a receiving Party may disclose the other's Confidential Information to those of its employees and agents to the extent reasonably necessary for the receiving Party to fulfill its duties and exercise its rights under this Agreement, provided such employees and agents are bound by the confidentiality terms of this Agreement). Each Receiving Party shall safeguard the other's Confidential Information against unauthorized use and disclosure with means at least as stringent as it employs to safeguard its own Confidential Information, and in no event with less than reasonable means. The obligations of confidentiality under this Section 11 are in addition to and not in lieu of the parties' underlying legal and equitable confidentiality obligations, and shall survive the termination or expiration of this Agreement for so long as information continues to meet the definition of Confidential Information. Each Party is responsible to the other for any breach of the obligations of this Section 11 12 by any of its employees or agents to the same extent as if the breach was committed by the Party.

11.3 Remedies. Each Party acknowledges that the other Party will not have an adequate remedy if it breaches the provisions of this Agreement regarding Confidential Information and that such Party will suffer irreparable damage and injury in such event. The breaching Receiving Party agrees that the non-breaching Disclosing Party, in addition to seeking any other available rights and remedies as may apply, will be entitled to seek an injunction restraining the breaching Receiving Party from committing or continuing such violation without the necessity of posting a bond or other security.

11.4 Return of Confidential Information. Promptly upon the written request of the Disclosing Party or upon termination of this Agreement, the Receiving Party will, at the Disclosing Party's option, return to the Disclosing Party or destroy all copies of the Disclosing Party's Confidential Information. Each Party may, however, maintain a copy of any Confidential Information necessary to support its work under this Agreement for reference and archive purposes, in accordance with applicable law or the professional standards applicable to either party.

11.5 Disclosure of Potential Conflicts. Prior to disclosure of its Confidential Information to agents of Customer, Customer or its agents must disclose any potential conflicts of interest that such agents may have with Proxios, including, without limitation, commission, reseller, referral or other arrangements that such agents may have under which they would benefit from selling or recommending products or services to Customer or any other party that are competitive with the System Services as provided to Customer by Proxios.



## 12. Indemnity.

12.1 Proxios' Indemnity Obligations. Proxios, at its own expense, will indemnify, defend, and hold harmless Customer and its directors, officers, employees, shareholders and agents from and against any third Party claim, loss, demand, cause of action, debt or liability, including attorneys' fees, arising out of or related to any of the following claims:

12.1.1 Actual, alleged, or contributory patent or copyright infringement, misappropriation of Confidential Information or violation of other intellectual or proprietary rights or licenses, including, without limitation, trademark or trade secret rights related to the System (excluding the Hosted Applications and the Hosted Hardware) or the Services provided under this Agreement;

12.1.2 Personal injury or property damage proximately caused by the fault or negligence of Proxios;

12.1.3 Breach or alleged breach of its obligations under this Agreement, including, without limitation, the representations and warranties set forth in Sections 9 and 10, above, the data security provisions set forth in Section 5.12 or any willful, intentional or negligent action or failure to act by Proxios, Proxios employees, or Proxios' agents;

12.2 Customer's Indemnity Obligations. To the extent permitted by law, customer at its own expense, will indemnify, defend, and hold harmless Proxios and its directors, officers, employees, members and agents from and against any third Party claim, loss, demand, cause of action, debt or liability, including attorneys' fees, arising out of or related to any of the following claims:

12.2.1 Actual, alleged, or contributory patent or copyright infringement, misappropriation of Confidential Information or violation of other intellectual or proprietary rights or licenses, including, without limitation, trademark or trade secret rights related to the Customer Content provided under this Agreement;

12.2.2 Personal injury or property damage caused by the fault or negligence of Customer;

12.2.3 Breach or alleged breach of its obligations under this Agreement, including, without limitation, the representations and warranties set forth above or any willful, intentional or negligent action or failure to act by Customer, its employees, or agents (excluding any claims of malpractice against Customer);

### 12.3 Process. With respect to third party claims:

12.3.1 The indemnifying Party shall notify the indemnified Party promptly in writing of such claim,

12.3.2 The indemnified Party shall give the indemnifying Party sole control of the defense thereof and any related settlement negotiations, and

12.3.3 The indemnified Party shall cooperate with the indemnifying Party in such defense (including, without limitation, by making available to the indemnifying Party all documents and information in the indemnified Party possession or control that are relevant to the third party claim, and by making the indemnified Party's personnel available to testify or consult with the indemnifying Party or its attorneys in connection with such defense). The indemnifying Party will not agree to any settlement that does not release the indemnified Party of all liability.

12.4 Limitation of Liability. Except as provided in Section 12.5 below, neither Party shall be liable, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), for indirect, incidental, consequential, exemplary, punitive or special damages even if such Party has been advised of the possibility of such damages in advance. Except as provided in Section 12.5 below, each



Party's total liability to the other under this Section 12, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to the lesser of (a) \$1,000,000.00 or (b) the amount of fees paid or payable to Proxios by Customer during the three (3) full months immediately preceding the event giving rise to the claim.

12.5 Exceptions to the Limitation of Liability. The limitations of liability set forth herein shall not apply with respect to:

12.5.1 third party claims that are the subject of indemnification based on infringement of a third party's intellectual property rights, or

12.5.2 Customer's payment obligations set forth elsewhere in this Agreement.

12.6 THE FOREGOING PROVISIONS OF THIS SECTION REPRESENT A REASONABLE AND MUTUALLY AGREED ALLOCATION OF RISK OF BETWEEN THE PARTIES AS REFLECTED IN THE FEES HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF BARGAIN BETWEEN THE PARTIES.

### 13. Insurance.

13.1 Proxios agrees to acquire policies of insurance or, in its discretion, insure itself against losses, claims, demands, damages, costs, charges, and expenses for injury or damage to any person or property which are the result of the fault or negligence of Proxios and its employees, subcontractors or any other Proxios agents, with base limits in at least the following amounts:

- Worker's Compensation - As required by law
- Employer's Liability Coverage - \$1,000,000
- Public Liability - \$1,000,000
- Property Damage - \$1,000,000 (plus extra expense coverage with a limit of not less than 10% of the value of the System Hardware covered by the policy).
- Professional/Product Liability - \$2,000,000
- E&O Coverage - \$1,000,000
- CyberLiability Coverage
  - Network and Information Security – \$5,000,000
  - Technology Errors and Omissions -- \$2,000,000

13.2 As of the Effective Date and, thereafter, upon Customer's written request, Proxios will provide Customer with a certificate or certificates of insurance evidencing that the above-noted insurance requirements have been satisfied and specifying that Customer will receive thirty (30) days advance notice of any cancellation or reduction in coverage. Proxios will obtain the insurance coverage set forth in this provision from an insurance carrier with a minimum A.M. Best's rating of A-.

13.3 Customer agrees to acquire policies of insurance against losses, claims, demands, damages, costs, charges, and expenses for injury or damage to any person or property which are the result of the fault or negligence of Customer or Proxios and their respective employees, subcontractors or any other agents, with base limits in at least the following amounts:

- CyberLiability Coverage
  - Network and Information Security – \$3,000,000
  - Technology Errors and Omissions -- \$1,000,000

13.4 Both Proxios and Customer will cause their respective CyberLiability policies to be issued with the other listed as an additional named insured, and with provisions prohibiting subrogation.



Notwithstanding anything to the contrary in this Agreement, neither party will be liable to the other beyond the policy limits of the liable party's applicable coverage.

#### 14. Term and Termination.

14.1 Initial and Renewal Terms. The Term of this Agreement includes the Initial Term (defined below) and any Renewal Terms (defined below). The Initial Term begins on the earliest Acceptance Date (the "Initial Acceptance Date") under any Statement of Work and continues for the duration set forth on Exhibit A (the "Initial Term"). Within the first ten (10) business days of the final calendar quarter of each Contract Year during the Term, the parties will meet or confer by other means to conduct a formal review of the Services. The parties will complete this review within ten (10) business days (the "Review Period") unless they agree to extend such Review Period for a period not to exceed an additional ten (10) business days. Within the ten (10) business days following the end of the Review Period (the "Notice Period"), either party may notify the other in writing that it will not extend the Agreement for a Renewal Term of the duration set forth on Exhibit A (each a "Renewal Term"). Unless a party notifies the other in writing within the Notice Period that it will not extend the Agreement, a new Renewal Term will be deemed to have commenced on the first day following the close of the immediately preceding Contract Year. The first "Contract Year" begins on the Initial Acceptance Date. Thereafter, each Contract Year shall commence on each subsequent anniversary of the Initial Acceptance Date. If Customer fails or declines to meet or confer with Proxios during the first ten (10) business days of the final calendar quarter of a given Contract Year, the Agreement will be extended for a new Renewal Term.

14.2 Termination. Either Party may terminate this Agreement by giving written notice to the other upon the occurrence of an Event of Default on the part of the other Party. An "Event of Default" means:

14.2.1 a material breach by the other Party of any of its obligations under this Agreement if such material breach remains uncured for a period of thirty (30) days following receipt of written notice of material breach from the non-defaulting Party, if such breach is curable within such period;

14.2.2 a material breach by the other Party which, by its nature, is not curable within thirty (30) days, but as to which the other Party has not begun good faith and diligent efforts to cure within thirty (30) days following receipt of written notice from the non-defaulting Party;

14.2.3 a material adverse change, as reasonably determined by the non-defaulting party, in the financial condition or status of the defaulting party and/or the failure of the defaulting party to provide, at the non-defaulting party's request, in a form reasonably satisfactory to the non-defaulting party, assurances of its ability to continue performing in accordance with terms and conditions set forth in this Agreement or such other security as may be reasonably acceptable to the non-defaulting party.

#### 14.3 Suspension of Service.

14.3.1 Suspension Generally. Customer acknowledges and agrees that Proxios must pay its vendors within the terms of their respective service agreements, and that failure to pay any vendor may result in immediate and automatic suspension or termination of service. Customer further acknowledges and agrees that Proxios is not responsible for extending financing to Customer, e.g. by continuing to pay vendors in the absence of payment from Customer. Accordingly, Customer agrees that Proxios will not be responsible for any service outage attributable to Customer's failure to make timely payment to Proxios in accordance with this agreement. Proxios may suspend all or any portion of the System Services, Professional Services, Help Desk Services or any other services it provides under this Agreement or any Statement of Work upon five (5) business days prior written notice to Customer if:

A. Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.



14.3.2 Effect of Suspension. Suspension of Service under Section 14.3 may not be asserted as a breach of Proxios's obligations under this Agreement. If Proxios suspends all or any part of the System Services or other services provided by Proxios:

A. Customer will remain responsible for all fees during the period of suspension; and

B. No credits will be issued under any Statement of Work or Service Level Agreement for any period of suspension.

14.4 Cooperation/Transition. Upon any expiration or termination of this Agreement for any reason, both parties agree to cooperate reasonably in the transfer of Customer Content to another system chosen by Customer. Proxios will provide Customer with commercially reasonable assistance in transitioning Customer's Content and other Confidential Information hosted, stored or otherwise maintained by Proxios to an alternate platform. Proxios may invoice Customer for the services provided during such period, with the fees for such services to be billed at the rates set forth in this Agreement.

14.5 Take or Pay Obligation During Transition Period. In the event of any termination of this Agreement, in recognition of the substantial commitments of both parties and of the need for continuity of service and payment, and without limiting the foregoing paragraph 14.3, Proxios agrees to continue to make System Services available to Customer for a period of no less than fifteen (15) months after the parties determine that the Agreement will be terminated, to facilitate the "ramp down" of the services and Customer's transition to a different platform (the "Transition Period"), and Customer agrees to pay for such System Services availability during the Transition Period. During the Transition Period, the terms and conditions of this Agreement, including all service level obligations and payment obligations, will remain in full force and effect.

14.6 Post Termination or Expiration. Upon any expiration or termination of this Agreement for any reason, Customer shall pay to Proxios when due all outstanding charges hereunder, and, at Customer's expense, cause to be returned to Proxios all Proxios materials, hardware, equipment, software, manuals, or other materials provided by Proxios (and all copies thereof). Each Party shall return to the other all of the other's Confidential Information (including Customer Content, in the case of Customer), or where such information cannot by its nature be returned, either erase such Confidential Information in a manner that prevents un-erasure or provide, upon request, written certification that the Confidential Information has been returned or destroyed or purged, and no longer is in use. Upon any termination or expiration of this Agreement for any reason, Proxios shall return to Customer all equipment, hardware, software, applications, manuals, or other materials provided to it by Customer including backup tape or other copies of the Customer Content and shall provide, upon request, certification that no copies of such materials have been retained.

14.7 Bankruptcy. If either Party admits or is declared to be insolvent, or if a voluntary or involuntary petition in bankruptcy is filed by or against either Party and is not dismissed or withdrawn within sixty (60) days thereafter, then in order to preserve fully the solvent Party's rights under Section 365(n) of the Bankruptcy Code of the United States (11 U.S.C. Section 365 (n)) (the "Bankruptcy Code"), the following provisions shall apply:

14.7.1 The parties agree that it is their intent:

A. To obtain for the solvent Party the broadest possible interpretation of the protection afforded licensees under the provisions of Section 365(n) of the Bankruptcy Code; and

B. That the solvent Party's business operations not be disrupted in any manner.



14.7.2 If a bankruptcy proceeding is commenced and this Agreement is rejected by the bankrupt Party or, as appropriate, the trustee in bankruptcy, upon such rejection the solvent Party shall have the right either to terminate this Agreement or to elect to retain its licensed rights to the System and the Application Software under the terms of this Agreement, subject to its applicable payment obligations for the remainder of the Term. Without limiting the foregoing and notwithstanding any provision to the contrary, in the event of a Bankruptcy or other Default by Proxios, Customer has the right to exercise exclusive access to and control of:

- A. (i) The Customer Content and other Confidential Information of Customer;
- B. (ii) The Customer-specific virtual operating environment embedded within the System; and
- C. (iii) All relevant administrative information (passwords, Authorized User profiles, permissions) such that Customer can continue to operate the System for its own benefit without the assistance of Proxios.

## 15. General.

15.1 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to its subject matter. This Agreement supersedes all prior or contemporaneous written or oral agreements or representations among the parties with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except by written instruments executed by duly authorized officers of both parties.

15.2 Waiver. The failure to exercise or delay in exercising any rights or remedies under this Agreement shall not operate as a waiver of such right or remedy, nor shall it give rise to any equitable defense of waiver, laches, estoppel, or acquiescence.

15.3 Compliance with Applicable Laws. Each Party shall comply with all applicable laws and shall secure any license, permit or authorization required by applicable law or industry practice in connection with that Party's responsibilities under this Agreement.

15.4 Relationship Between the Parties. The relationship between the parties is that of independent contractors. Nothing herein is intended or will be construed to establish any agency, employment, partnership, or joint venture relationship among the parties. Each Party is solely responsible for the direction, control, and management of its subcontractors, agents and employees.

15.5 Notices. Notices hereunder shall be in writing signed by an officer of the notifying Party and delivered personally or sent by registered or certified mail, charges prepaid, or overnight courier service and will be deemed given when so delivered or four days after the date of mailing, whichever occurs first. All notices to the parties shall be sent to the following addresses:

Proxios:  
701 East Byrd Street, 17th Floor  
Richmond, VA 23219  
ATTN: Frank E. Butler, President

Customer:  
See Exhibit A



15.6 Assignment. Neither Party may assign or delegate its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, the rights and obligations under this Agreement will be binding upon and inure to the benefit of the successor-in-interest of a party as the result of (i) a merger or consolidation, or (ii) the sale or transfer of all or substantially all of its business or assets to which this Agreement relates, regardless of whether such sale or transfer is to an affiliated entity or an unrelated third party.

15.7 Headings. The headings in this Agreement are for convenience of reference only and have no legal effect.

15.8 Contract Interpretation. Ambiguities, inconsistencies or conflicts in this Agreement will not be strictly construed against either party, but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time this Agreement is entered into and common practice in the industry.

15.9 Force Majeure. Neither party shall have liability, monetary or otherwise, for a failure to perform or a delay in performing an obligation under this Agreement caused by events beyond its reasonable control, including but not limited to:

15.9.1 Acts of nature,

15.9.2 Governmental actions,

15.9.3 Fire,

15.9.4 Civil disturbances,

15.9.5 Interruptions of power supply or Communications

15.9.6 Natural disasters,

15.9.7 War, riot, insurrection, or acts of terrorism,

15.9.8 Malicious hacking, denial of service attacks, zero day events or other acts of third parties exploiting vulnerabilities in software, communications protocols or systems upon which the System depends but which are not within the control of Proxios or Customer, or

15.9.9 Other acts, events or circumstances beyond a party's reasonable control;

A party suffering a Force Majeure event shall give prompt notice to the other party of such event, and shall be excused only to the extent of loss or delay attributable to such Force Majeure event, and provided further that, if such Force Majeure event prevents a party's performance by more than thirty (30) days, the other party may terminate this Agreement without liability to either party, except as specifically provided herein. Notwithstanding the foregoing, nothing in this provision will excuse Proxios from complying with its Disaster Recovery Plan and related obligations under this Agreement.

15.10 Governing Law/Jurisdiction. This Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts made and to be performed entirely within Virginia. Each of the parties submits to the jurisdiction of any state or federal court sitting in the City of Richmond, Virginia, in any action or proceeding arising out of or relating to this Agreement.

15.11 Severability. Should any provision or portion of a provision of this Agreement be finally determined by a court of competent subject matter jurisdiction be void, invalid, unenforceable or otherwise



contrary to law or equity, the parties agree that this Agreement shall be reformed automatically to the extent necessary to cure such offending provision, or if necessary by deleting such offending provision, and the remainder of this Agreement that can be given effect without such provision shall be given effect.

15.12 Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one Agreement.

15.13 Publicity. The parties may issue a press release or other public announcement regarding the establishment of the relationship set forth in this Agreement; provided, however, that the timing and content of any such press release or announcement is subject to the prior written consent of both parties.

15.14 Survival. All provisions in this Agreement which would reasonably be expected to be performed after the termination or expiration of this Agreement shall survive and be enforceable after such termination or expiration, including without limitation provisions relating to confidentiality, ownership of materials, representations and warranties, indemnification, limitations of liability, audit rights, effects of termination, and governing law

15.15 Time Limit for Claims. No claim for damages may be asserted by either party more than one year after the occurrence of an event or circumstances giving rise to a claim, or the discovery of such event or circumstances, if such were not readily apparent at the time of their occurrence.



## Exhibit A

### System Applications, Customer Contacts, Price List

<p>Customer Name:</p> <p><b>Richmond Regional Planning District Commission</b></p>	<p>Customer Address:</p> <p><b>9211 Forest Hill Avenue, Suite 200</b></p> <p><b>Richmond, Va 23235</b></p>
<p>Customer Key Contact:</p> <p>Name: <b>Martha Shickle</b></p> <p>Title: <b>Executive Director</b></p> <p>Telephone: <b>(804)-323-2033</b></p> <p>E-Mail: <b>mshickle@richmondregional.org</b></p>	<p>Proxios Key Contact:</p> <p>Name: <b>Frank Butler</b></p> <p>Title: <b>President</b></p> <p>Telephone: <b>(804)-342-1202</b></p> <p>Fax: <b>(804)-342-1209</b></p> <p>E-Mail: <b>fbutler@Proxios.com</b></p>
<p>Effective Date, Initial and Renewal Terms</p> <p>Effective Date: <b>December 1, 2018</b></p> <p>Initial Term: <b>Acceptance date to June 30, 2024</b></p> <p>Renewal Terms: <b>3 Years</b></p>	<p>Licensed Facilities:</p> <p>Max. Concurrent Users: <b>Unrestricted</b></p> <p>Max. Concurrent Login: <b>Unrestricted</b></p> <p>Authorized Sites: <b>All Business Locations</b></p> <p>Remote Access Rights, if any: <b>Unrestricted for Authorized Users with login IDs.</b></p>
<p>Standard Applications:</p> <p><b>Include all applications listed on Proxios' list of approved Standard Applications</b></p>	<p>Hosted Applications:</p> <p><b>Hosted applications include all applications not on Proxios' list of approved Standard Applications.</b></p>
<p>Deposit</p> <p>Deposit: <b>Last month's usage fee payable upon Acceptance Test signing and applied to final invoice as payment for services upon termination of Agreement.</b></p> <p>Software Fees: <b>None</b></p>	<p>Implementation and Upgrade Fees:</p> <p>Installation Fee Estimate: <b>See Statement of Work</b></p> <p>Maximum Hourly Rate for Professional Services:</p> <p><b>The maximum rate that will be charged for services rendered according to the terms of Exhibit B or any "Statement of Work" developed under the terms of this Agreement will be \$250/hour unless otherwise agreed to in writing.</b></p>



## System Services Pricing

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1. Proxios will calculate standard monthly fees for the Services for the period from the Initial Acceptance Date through June 30, 2019, based on the agreed pricing set forth below.
2. Customer will pay Proxios a flat \$6,200 per month (pro-rated for partial months) beginning in the month of the Initial Acceptance Date and through June 30, 2019. Proxios will accrue the balance of the standard monthly fees referenced in paragraph 1 (the "Accrued Fees") for delayed payment under paragraph 3 below.
3. The Accrued Fees will be amortized and paid by Customer ratably in monthly additions to standard monthly fees over the period from July 1, 2019 through June 30, 2024.
4. The Installation Fee is estimated to be \$12,000 +/- 10 % and will be financed at a rate of 5% and amortized beginning July 1, 2019 evenly over the initial term. Should Customer terminate the agreement early for any reason the remaining balance for the Installation will be due immediately. *No penalty for early payment.*
5. During the course of the Installation planning and process. Proxios has authorized an additional 4 hours of time from our security officer (CISO) to understand data security requirements and align with RRPDC best practices.



Item Number	Name	Description	Quantity	Price	Total Price
<b>Infrastructure</b>					
<b>Servers</b>					
I1401	Server Management Fee	Server Management Fee - IaaS	0.00	\$620.00	\$0.00
I1001	IaaS CPU Core	Infrastructure Virtual Processor	0.00	\$35.00	\$0.00
I1101	IaaS CPU Memory	Infrastructure Virtual Machine RAM Memory (in GB)	0.00	\$17.00	\$0.00
I1201	Virtual Machine Storage	Virtual Machine Disk Storage - IaaS Servers	0.00	\$0.19	\$0.00
I1301	File Storage	File Storage (per GB)	1000.00	\$0.18	\$180.00
<b>SQL Licenses</b>					
A1012	SQL Standard vCore	Microsoft SQL Standard vCore License	0.00	\$200.00	\$0.00
A1013	SQL Enterprise vCore	Microsoft SQL Enterprise vCore License	0.00	\$780.00	\$0.00
			<b>Total</b>		<b>\$180.00</b>
<b>Hosted Desktop</b>					
<b>User Fee</b>					
H1505	Hosted Desktop Authorized User Fee	Hosted Desktop User Fee (per user)	13.00	\$110.00	\$1,430.00
H1506	Hosted Desktop Light User	Hosted Desktop Light User	11.00	\$60.00	\$660.00
<b>Servers</b>					
H1401	Server Management Fee	Server Management Fee - DaaS	2.00	\$620.00	\$1,240.00
H1001	DaaS CPU Core	Hosted Desktop Virtual Processor	8.00	\$33.00	\$264.00
H1002	DaaS CPU NetScaler CPU Add-on	NetScaler CPU Add-on for Multi-tenant desktops	8.00	\$5.00	\$40.00
H1101	DaaS CPU Memory	Hosted Desktop Virtual Machine RAM Memory (in GB)	64.00	\$18.00	\$1,152.00
H1102	DaaS CPU NetScaler Memory Add-on	NetScaler Memory Add-on for Multi-tenant desktops	64.00	\$3.00	\$192.00
H1201	Virtual Machine Storage	Virtual Machine Disk Storage - DaaS Servers	200.00	\$0.00	\$0.00
			<b>Total</b>		<b>\$4,978.00</b>
<b>Network &amp; Data Center</b>					
<b>Local Network</b>					
N1001	WAN Equipment Monitoring	Per device cost for monitoring of firewalls/routers	1.00	\$15.00	\$15.00
N1002	LAN Equipment Monitoring	Per device cost for monitoring of switches	4.00	\$15.00	\$60.00
N1003	AP Equipment Monitoring	Per device cost for monitoring of access points	0.00	\$15.00	\$0.00
N1004	WAN Equipment Management	Per site cost for management of firewalls/routers	0.00	\$243.00	\$0.00
N1005	LAN Equipment Management	Per site cost for management of switches	0.00	\$109.00	\$0.00
N1006	AP Equipment Management	Per site cost for management of access points	0.00	\$36.00	\$0.00
N1007	Managed VPN	Site to Site Provisioning of VPN Across the Internet	0.00	\$50.00	\$0.00
			<b>Total</b>		<b>\$75.00</b>
<b>Standard Applications</b>					
<b>Office 365 User Fee</b>					
A2001	Office 365 Authorized User Fee	Office 365 Authorized User Fee	24.00	\$19.00	\$456.00
<b>Office 365</b>					
A2102	Office 365 Enterprise E3	Office 365 Enterprise E3	24.00	\$20.00	\$480.00
<b>QuickBooks</b>					
A4001	QuickBooks Hosting User Fee	QuickBooks Hosting Fee (customer furnished license)	3.00	\$7.50	\$22.50
<b>Citrix</b>					
A3020	NetScaler VPX 10 Mbps Platinum	NetScaler VPX 10 Mbps Platinum	0.00	\$400.00	\$0.00
			<b>Total</b>		<b>\$958.50</b>
<b>Endpoints</b>					
<b>Endpoints</b>					
E1020	EMS CORE	Anti-virus and patch management	24.00	\$10.00	\$240.00
E1021	EMS CORE+	CORE, Self-Healing, Advanced Monitoring, etc.	0.00	\$23.00	\$0.00
E1022	EMS Monthly Image Maintenance	Image updates, required for CORE+ customers	0.00	\$195.00	\$0.00
			<b>Total</b>		<b>\$240.00</b>

<b>Infrastructure</b>	\$180.00
<b>Hosted Desktop</b>	\$4,978.00
<b>Network &amp; Data Center</b>	\$75.00
<b>Standard Applications</b>	\$958.50
<b>Endpoints</b>	\$240.00
<b>Grand Total</b>	<b>\$6,431.50</b>

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## Exhibit B

### Support Services, Service Desk, Service Level Guarantee, and Virtual Desktop Response Time Warranty

#### 1. Support Services.

**Customer Initials** MO

(By initialing above Customer agrees that Customer has read and understood what will and will not be included in the standard monthly charges and Customer acknowledges that monthly fees over and above the standard fees may be billed for services specifically defined in paragraphs III and IV below or in Exhibit A to this Agreement)

a. Proxios shall provide Customer with different types of Support for different elements of the System. These different types of Support are more fully described below:

- I. Infrastructure Engineering and Support Services – For payment of the Monthly Usage Fee, Proxios will provide all services related to the selection, acquisition, implementation and on-going operation of all System Hardware and System Software for Customer operation of any Standard Application software. The activities related to this include data center management and administration, data center network troubleshooting, application server, File server, Standard server maintenance and Upgrades, data backup and restore activities, System security, login administration and other activities pertaining to System Hardware and System Software operations and support.
- II. Standard Applications Support – Support of a Standard Application for a particular use to accomplish a particular objective, if any, generally shall be available only from the original vendor of such Standard Applications, and subject to the terms and conditions of such vendor's licenses or other agreements. Proxios may provide limited user assistance for Standard Applications on an as-available basis, but does not provide any Support for Standard Applications other than to assure that the Standard Applications are operational. Support for Standard Applications for a particular use to accomplish a particular objective will be provided for a fee based on Proxios' standard rates in effect at the time Support is provided.
- III. Hosted Application Support – Support for Hosted Applications will only be provided so long as Customer has a maintenance agreement with the vendor of the Hosted Application that entitles Customer and Proxios to full access to the vendor's helpdesk personnel and other support resources that may be available and that also entitles Customer to receive, and have Proxios or the vendor install, the latest versions of the Hosted Application as it becomes available. Proxios does not include maintenance or support for Hosted Application in its standard offering. Provision of such services will be provided for a fee based on Proxios' standard hourly rates in effect at the time Support is provided or upon terms more specifically described in Exhibit A of this Agreement.
- IV. Consulting, Programming, Hosted Hardware, Data Communications and On-Site Equipment or Software Installation or Support – Proxios does not include in its standard offering: a) Consulting or Programming services; b) services related to the installation, maintenance or support of Hosted Hardware; c) services related to the installation or support of Data Communications for a specific Customer location even if such Data Communications are acquired from one or more of Proxios' Data Communications providers; or d) installation, support or maintenance of On-Site Software or Equipment including but not limited PCs,



routers, switches, wiring, etc. Provision of such services will be provided for a fee based on Proxios' standard hourly rates in effect at the time service is provided or upon terms more specifically described in the Coversheet to this Agreement; e) remediation of security incidents.

2. Service Desk.

- a. Service Desk – Proxios will provide certain Support Services as outlined in Exhibit "B" Section 1 above to Customer through a Service Desk. Proxios will publish Service Desk Policies and Procedures that provide detailed descriptions of the methods of contact and general operating procedures that both Proxios and Customer will follow with respect to Service Desk Support. Customer acknowledges that it has received and read the current copy of Proxios' Service Desk policies and procedures (Exhibit C) and Customer agrees to abide by and conduct its business with Proxios in accordance with them. Should Proxios choose to modify these policies and procedures, which Proxios may do at any time, revised copies will be supplied to the Customer and will supersede those policies and procedures previously provided; provided that if any provision of such policies and procedures conflicts with the terms of this Agreement, the terms of this Agreement shall control.
- b. Service Desk Acknowledgement Times – Proxios will receive Support inquiries from the Customer from the following channels: phone, email, and client portal. Depending on the channel the amount of time that may elapse before the Customer receives notification from Proxios ("Acknowledgement") that it is in receipt of the Customer's Support inquiry will differ according to the following table:

Channel	Acknowledgement (Normal Hours)	Acknowledgement (After Hours)
Phone	15 minutes	1 hour
Email	2 hours	No guarantee
Client Portal	2 hours	No guarantee

- c. Service Desk Acknowledgement Completion – Proxios' obligation to acknowledge a Support inquiry will be considered complete: i) when Proxios conveys to Customer verbally or in writing either by telephone, voice mail, e-mail or by any other means that may be appropriate that Proxios is aware of the request, or ii) if Proxios is aware of the issue in advance of Customer making the Support inquiry, when Proxios places a status message on the alert system(s) in use at the time.
- d. Service Desk Acknowledgement Guarantee – Proxios guarantees that, within any calendar quarter, it will acknowledge not less than 95% of all Support inquiries within the specified time frames in Exhibit "B" Section 2(b) above, provided that the Support inquiry concerns a new occurrence of an issue not previously reported to and/or acknowledged by Proxios. Any failure to acknowledge a Support inquiry by Proxios that is due to the actions or failure to act on the part of any Customer or third party not under Proxios' reasonable control or due to the occurrence of a Force Majeure event shall not be counted against the Response Time requirement above. This guarantee is in no way meant to convey or imply an intent on Proxios' part to resolve any Support inquiry of any kind within any time frame whatsoever, nor does it obligate Proxios in any way to do so. Proxios' sole obligation under this guarantee is to acknowledge its receipt of the Support inquiry back to Customer.

3. Service Level Guarantees.



- a. Proxios reserves the right to shut down the System or components of the System for Upgrades, enhancements or other issues related to providing optimal performance ("Scheduled Downtime"). When practical Scheduled Downtime will occur only outside of normal business hours. Proxios will use its best efforts to schedule such Service Disruptions at a time that will minimize the impact on Customer's ability to conduct business. Except in the event of an emergency, when Scheduled Downtime occurs during normal business hours Proxios will give Customer two (2) business days prior written notice.
- b. Subject to the limitations and exceptions set forth in this Agreement, Proxios warrants that, exclusive of Scheduled Downtime for System maintenance or Upgrades, the System Hardware, the System Software and the Standard Applications will be available 99.75% of the time on a 24 hour a day, 7 days a week, 365 days a year (24x7x365) basis. To determine whether Proxios has met this performance level, Proxios will track all unplanned downtime in excess of thirty (30) minutes in duration ("Unscheduled Downtime") beginning with the date the first Testing Period begins. Proxios will not track all unplanned downtime that is less than thirty (30) minutes in duration ("Service Disruptions"). If during any Contract Year, Proxios fails to meet this service level set forth above, Customer's remedies are as follows:
  - I. For every hour of Unscheduled Downtime in excess of .25% of the total number of hours in a Contract Year (8,760 hours), Proxios will credit Customer on its next bill fees equal to the hourly value of Proxios' services (monthly usage billings/(30 x 24)) multiplied by the number of hours of excess Unscheduled Downtime plus any additional penalties specific to elements of the System itemized in the Cover.
  - II. Service level credits will be in addition to any other monetary and non-monetary remedies available to Customer under the Agreement, at law, or in equity with respect to a failure to meet a service level or the events that result in a failure to meet a service level; provided, however, that if Customer asserts any claim for damages arising from, or in connection with, a service level failure Customer agrees that the amount of damages payable to Customer in respect of the claim will be reduced by the amount of any service level credit given by Proxios with respect to that service level failure. This Service Level Guarantee is inapplicable to downtime caused by third party Communications failures, network or bandwidth insufficiencies that are not within the control of Proxios, hardware, software or human failures under the control of Customer, hardware or software failures caused by third parties or the failure of "hosted applications" not under Proxios' reasonable control, or any Force Majeure event.
- c. Proxios makes no guarantees with respect to third party Communications, On-Site Hardware or end user software operating on the On-Site Hardware, and the foregoing warranty shall not apply if the event of failure or nonperformance is due to any of the foregoing.

4. Virtual Desktop Response Time Warranty.

- a. Proxios warrants that the benchmark Workstation located at the offices of Proxios and connected to the System over Proxios' Communications lines will, under normal operating conditions when running Standard Applications, have an average Response Time equal to a standalone PC running Windows 7 with a dual core 2ghz processor and 3 gigabyte of RAM.
- b. In the event of a breach of the Response Time warranty, Customer shall give written notice of such breach to Proxios, providing all available evidence of breach, and Proxios shall



exercise commercially reasonable efforts to correct any failure to meet the performance criteria set forth above at no cost to Customer and within ten (10) business days. The parties agree that Customer's sole remedy for any such failure shall be that Proxios shall provide additional hardware or software to remedy such shortcoming at no additional cost to Customer.

- c. This Response Time warranty shall not apply if the failure to meet stated performance levels arises from Hosted Applications where Proxios has met or exceeded the hardware and software specifications provided to Proxios by the Customer at the time the Hosted Applications were installed, or any other circumstances beyond Proxios' reasonable control.



## Exhibit C

### Service Desk Policies

#### 1. Service Desk Hours of Operation.

- a. Normal Hours Support – Proxios telephone and email support will be provided during Normal Business Hours (7am – 8pm EST weekdays excluding holidays) by System Administrators and Technical Specialists who are familiar with the Customer's System as well as On-Site Hardware.
- b. After Hours Support – Outside of Normal Business Hours an answering service is available for all calls. Callers will receive a response from our support representative within an hour after reaching the answering service. The answering service will not respond to email inquiries.

#### 2. Terminology.

- a. Service Request: A user's request for information or advice, for a standard change, or for access to an IT service.
- b. Incident: Any event that causes, or may cause a service interruption or a reduction in the quality of a service.
- c. Problem: The unknown root cause of one or more incidents, causing significant business impact.

#### 3. Priority Levels.

- a. The Service Desk will assign a priority to all incidents and service requests. The individual priority levels are described as follows:
  - I. 1 (Catastrophic) – Incidents related to a total loss of a critical resource such that multiple companies are unable to use the System and where business operations are highly impaired.
  - II. 2 (Critical) – Incidents related to partial or total loss of a critical resource such that an office of the company or the company as a whole is unable to use the System and where business operation is highly impaired.
  - III. 3 (Very Important) – Incidents related to impaired access to a resource such that one or more users of the company are unable to utilize a specific capability of the system, and where business operation is significantly impaired; or Service Requests that are extremely time-sensitive in nature and require prompt attention.
  - IV. 4 (Important) – Incidents related to impaired access to a resource such that one or more users of the company view a capability as being sub-optimal, but where the System is otherwise functioning and business operations is minimally affected; or Service Requests that are time-sensitive in nature.
  - V. 5 (Routine) – Incidents or Service Requests that are non-time sensitive and are related to questions of an operational or support nature, or requests for assistance to complete specific tasks such as Hosted Application upgrades, the updating or creation user accounts, the installation of new technology resources, etc.
- b. Both the Customer and Proxios acknowledge that the purpose of prioritizing tickets is to insure that the most time-sensitive and disruptive incidents and service requests are responded to

and resolved before ones less time-sensitive and disruptive, and that response to and resolution of lower priority tickets may be impeded at certain times.

- c. At any point during the handling of the incident or service request, the ticket priority may be evaluated and changed.

#### 4. Incident and Service Request Management.

- a. Whenever an incident or service request occurs Customers must notify the Service Desk as soon as possible by making a telephone call, sending an e-mail, or using the client portal (if available), following the procedures outlined below:
  - I. Telephone Call - All incidents and service requests sent to Proxios by phone must be called into the Service Desk Support Line: (804) 342-1204.
  - II. E-mail Notification - All incidents and service requests sent to Proxios by e-mail must be sent to [support@proxios.com](mailto:support@proxios.com) and will initially be assigned a priority of level 5 (Routine). When composing their email, Proxios asks that the Customer comply with the following policies:
    - The subject line of the e-mail should indicate the nature of the incident or service request.
    - In the body of the e-mail, the incident or service request should be described in detail.
    - Included in the email body or signature should be the company name, the name of the sender, and contact phone number.
  - III. Client Portal – The client portal is a capability of Proxios' ticketing tool. When the online client portal is used to submit an incident or service request, all appropriate fields must be filled out and the ticket must be recorded by being appropriately saved by the submitter.
- b. When a ticket is created, the Customer will be selected as the Ticket Contact unless otherwise noted and will be sent a confirmation email containing a ticket number, which should be referenced whenever the Customer returns a call back from the Service Desk.
- c. As part of the troubleshooting/request fulfillment process, the Customer may be asked to provide or verify some or all of the following data that will be recorded on the ticket:
  - Customer Name
  - Customer Location
  - Customer Contact Number and Email
  - Product (Hardware or Software) Name
  - Feature/Capability Affected
  - Screen shot of Error Message
  - Narrative description of the incident
  - Frequency of incident
- d. The Customer will be expected to provide as much of this information as possible when submitting an incident or service request. The more data that the Customer can provide the less time it will take to achieve resolution.
- e. Tickets that require greater technical expertise or levels of access will be escalated to the appropriate Technical Specialist or Platform Engineer. Tickets may also be escalated



hierarchically to the appropriate Service Delivery Manager/Associate. Escalations will be acknowledged using a warm hand-off in person, over chat, email, or phone.

5. Call Handling.

- b. The Service Desk will be polite and courteous throughout the duration of every call, will attempt to make the caller feel comfortable and will do everything possible to ensure that all issues are solved as quickly as possible. It is expected that the Customers are also polite and courteous throughout the duration of the call.
- b. The Service Desk may record calls at random for training purposes. Any abusive calls from a Customer will be reported or escalated to the Director of Customer Service. Should a Service Desk member's attitude or performance cause any offense to a Customer then the Customer should contact the Director of Customer Service or the Service Delivery Manager/Associate.

6. Callback and Feedback from Proxios to Customer.

- a. The Service Desk will provide regular updates to the Customer on the status of their ticket. If there are any concerns regarding failures on behalf of the Service Desk to provide a timely update then the Customer should escalate their concern to the Service Delivery Manager/Associate for internal follow-up.

7. Callbacks and Feedback from Customer to Proxios.

- a. For incidents or service requests of higher priority to be resolved as rapidly as possible, the Service Desk may require information from the Customer or the Customer's agents, e.g., software vendors, communications suppliers, etc. The Customer agrees to use its best efforts to reply, and to get its agents to reply to inquiries from the Service Desk in a timely fashion. If there are any concerns regarding failures on behalf of the Customer to provide a timely response then the Service Desk will escalate their concern to the Service Delivery Manager/Associate for follow-up with the appropriate Customer contact.

8. Closure of Incidents and Service Requests.

- a. An incident or service request is completed when the Customer is satisfied with the solution and agrees that the ticket can be closed. As part of the ticket closure process Customer Service will summarize the description of the incident or service request, explain the solution, ask if the Customer if he or she has any more questions. Upon closure the Customer may also be asked to complete a survey in order to obtain feedback on his or her experience.
- b. If resolution or ticket closure is waiting on additional information or a response from the Customer, the Service Desk will attempt to contact the Customer three times by either phone or email. If after the third time the Customer does not respond, however, the Service Desk will close the ticket.

9. Reporting on Incidents and Service Requests.

- a. Ticket reports will be provided to the Customer on a routine basis mutually acceptable to the Customer and Proxios. These reports will summarize all Customer Services inquiries during a defined period and provide other information as may be appropriate.

10. Problem Management.

- a. Proxios may decide to open a problem ticket so as to diagnose the root cause of a particular recurring or major incident. The ticket contacts for any incidents associated with the problem ticket will be notified that a problem ticket has been opened.