

# Inertia Software Solutions, LLC

## SERVICE AGREEMENT

This Service Agreement is made and entered into on the date specified below by and between **Inertia Software Solutions, LLC** ("Vendor") and \_\_\_\_\_ ("Customer").

- A. Vendor is in the business of providing services pertaining to computer systems, hardware, software, networks, customized reporting software, and other related items, including but not limited to setup, configuration, maintenance, troubleshooting, training, and consulting;
- B. Customer desires Vendor to provide services to Customer;

THEREFORE, the parties agree to terms as follows:

1. **Duties.** Vendor and its representatives shall be available to service Customer in response to reasonable requests for service from Customer. Requests for service may be made as: (a) oral requests via telephone, including voice mail messages; or (b) written requests, including electronic communications (e-mail), to Vendor representatives. All reasonable requests for service made in the above manner by Customer, including requests made by persons representing themselves as employees and/or agents of Customer, will be deemed as authorized by Customer and services performed for said request will be compensated as specified in Section 2 of this Agreement. The Customer will provide, in writing, a listing of Customer's employees and/or agents NOT authorized to request service from Vendor, if applicable. Vendor warrants that the services performed hereunder will be carried out with due care and attention by qualified personnel.
2. **Hourly Compensation.** The Customer agrees to pay Vendor fees at the rate of \$200.00 per hour for development and consulting services and a rate of \$175.00 for all other services. After hour service is charged at a rate of time-and-a-half with a one-hour minimum. Time shall be billed in increments of one-tenth of an hour. Each service call made by a Vendor representative on behalf of Customer, which involves travel to a location specified by Customer during the service request, shall be billed a minimum charge equivalent to one hour. Time billed for a service call shall include actual one-way travel time to Customer's requested location. Vendor may adjust this rate by giving written notice to Customer of new rates; request for services after such notice shall be deemed to be acceptance of the revised hourly rate.
3. **Flat Fee Services.** Vendor may offer certain services on a flat fee basis. In such event, Vendor shall provide Customer with a written description of its flat fee services ("Flat Fee Schedule"). Upon Customer's approval and request, and pursuant to the terms of this Agreement, Vendor shall perform the requested flat fee services for the fees set forth in the Flat Fee Schedule. Any hardware or software not specifically described in the Flat Fee Schedule shall be billed separately as "Costs" (as defined below). Any services provide outside the scope of the services described in the Flat Fee Schedule shall be billed at the hourly rate set forth above.
4. **Costs.** The Customer agrees to compensate Vendor for any computer hardware components, systems, and/or software that Vendor provides at Customer's request, including sales tax and, if applicable, shipping charges on said components, systems and/or software ("Costs"). Such charges are separate from, and in addition to, charges for service provided on an hourly basis in accordance with this section for installation, setup, configuration, modification, consulting, training, or any other services related to said components, systems and/or software, unless explicitly stated otherwise in writing.
5. **Invoicing.** Vendor shall periodically provide Customer with an invoice detailing all sums due and payable by Customer. All invoices are due and payable upon receipt and are considered past due 30 days after the invoice date. Any outstanding balance not paid within 30 days of the invoice date will accrue a late charge of eighteen percent (18%) per annum until paid in full. Vendor reserves the right to decline at any time to perform further services to Customer until any and all outstanding balances have been paid in full.

6. **Quotes and Estimates.** From time to time, Vendor may provide to Customer written quotations or estimates for parts and/or services to be performed. Such quotations or estimates are not invoices, and are non-binding to either party and subject to modification. Vendor reserves the right to require fee and cost advances as it deems appropriate.

7. **Term and Termination.** The term of this Agreement shall commence as of the date specified below and shall continue until terminated. Vendor or Customer may terminate this Agreement at any time by providing notice to the other party in writing. Vendor will provide to Customer a final invoice and/or statement at the time of termination. Upon termination, Customer shall make all payments owed to Vendor on any and all outstanding invoices. No fees shall become due or payable to Vendor after termination of this Agreement.

8. **Limitations on Liability.** Vendor shall not be held liable, in whole or in part, for any damages, direct or indirect, arising out of or related to the following:

8.1. **Third Party Hardware/Equipment.** Vendor disclaims liability for any malfunction, failure, loss, damage, error, or issue related to hardware and/or equipment not provided to Customer by Vendor including, but not limited to, network cabling and termination, switches, modems, routers, servers, workstations, hard disks, backup hardware, and peripherals. The Customer agrees to compensate Vendor in accordance with Section 2 of this Service Agreement for any services performed and any components, systems, or other equipment provided by Vendor as a result of an issue related to hardware and/or equipment not provided by Vendor, notwithstanding the fact that said services, components, systems, or other equipment may be warranted by a third party.

8.2. **No Warranties Other Than Manufacturer's Warranty.** From time to time, Vendor may provide computer hardware components and/or systems to Customer as required. Such hardware components and/or systems carry a manufacturer's warranty unless otherwise specified. Vendor provides no further warranties to Customer with respect to labor, hardware components or hardware systems provided to Customer. Under no circumstances will Vendor be obligated to honor a warranty on hardware components and/or systems in cases where the manufacturer's warranty has expired or does not apply. No warranties are made by Vendor with respect to services related to the installation, configuration, maintenance, or troubleshooting of software, except as set forth in Section 1 of this Service Agreement. **Vendor hereby disclaims, and Customer waives, any and all implied warranties of merchantability or fitness for a particular purpose.**

8.3. **Backups.** The Customer assumes sole responsibility and liability for backing up electronic data residing on Customer's computer systems. The Vendor shall not be responsible for assisting with or ensuring timely completion of reliable backups of Customer's electronic data. Customer assumes all risk inherent in electronic data storage, including, but not limited to, the risk of partial or total data loss as a result of physical destruction, fire, theft, hardware failure, malicious software, software defect/error, user error, or intentional deletion. Any hardware, component, and/or software provided by Vendor to Customer for backup purposes is subject to Section 8.2, above, and Vendor makes no warranties related thereto except as set forth in Section 1 of this Service Agreement. Under no circumstances will Vendor be liable for direct or consequential damages related to malfunction or failure of such backup hardware, component, or software.

8.4. **Software Licensing.** The Customer assumes sole responsibility and liability for ensuring that any and all software residing on Customer's computer systems, whether installed by Vendor, Customer, or a third party, complies with applicable licensing requirements and laws. The Vendor may, from time to time, load or install software using installation media and/or installation key codes provided by Customer. The Customer represents that such software is legally acquired and complies with applicable licensing requirements.

8.5. **Liability Disclaimed by a Software EULA.** Use of software is often governed by an End User License Agreement ("EULA"), an agreement between Customer as an "End User" and a software manufacturer. The Customer agrees, for any and all EULAs applicable to software in use or purchased by Customer, notwithstanding whether said software was provided to Customer by Vendor, that provisions within the EULA pertaining to limitations on liability, disclaimer of warranties, or exclusions or restrictions on damages or remedies, shall apply with equal force to Vendor in addition to the software manufacturer granting the EULA. In no event shall Vendor assume a liability disclaimed by a software manufacturer under a EULA.

8.6. **Indemnification of Vendor with Respect to Third Party Claims.** To the extent that Vendor's liability to Customer is limited pursuant to Sections 8.1 through 8.5 of this paragraph, Vendor shall be indemnified, defended and held harmless by Customer for, from and against any and all third party losses, claims, damages, liabilities, expenses (including attorneys' fees and costs), judgments, fines, settlements, demands, actions, or suits relating to or arising out of the performance of work under this Agreement.

9. **Intellectual Property.** All materials, designs, renderings, schematics, software, object code, source code, hard files, electronic files, data, text, copy, scripts, and other intellectual property created by Vendor before, during or after the performance of this Agreement, and all U.S. and international patents, copyrights and rights to derivative works (hereinafter collectively "Work Product"), shall remain the sole and exclusive property of Vendor. Upon payment in full of all sums due hereunder, Vendor hereby grants to Customer an irrevocable, perpetual, worldwide, fully paid, non-exclusive, non-transferable license to use the Final Work Product (as defined below) for its intended purpose. Vendor shall comply with all reasonable requests by Customer to further substantiate Customer's license to the Final Work Product. The term "Final Work Product" as used herein shall mean only that part of the Work Product finally delivered to Customer at the completion of the project. These terms shall be in addition to and Supplement any end user agreement applicable to any software provided by vendor.

10. **Nature of Relationship.** The parties hereto acknowledge that Vendor's relationship arising under this Agreement is that of an independent contractor and not that of an officer, employee, agent or partner of Customer. The Vendor shall take no action beyond the scope of the authority specifically conferred upon it by this Agreement.

11. **Notices.** All notices provided for by this Agreement shall be made in writing either (a) by actual delivery of the notice into the hands of the parties thereunto entitled ("Hand Delivery") or (b) the mailing of the notice in the United States' mail to the address, as stated below (or at such other address as may have been designated by written notice) of the party entitled hereto, by certified or registered mail, return receipt requested ("Mail Delivery") or (c) by any electronic means, including fax or email ("Electronic Delivery"). Notices provided by Hand Delivery or Mail Delivery shall be deemed to be received on the date of actual receipt by the party entitled thereto. Notices given by Electronic Delivery shall be deemed received on transmission.

12. **Default.** Failure to perform under this Agreement shall be deemed a default under this Agreement only in accordance with the provisions of this section. With respect to any failure to perform other than the payment of money, no default shall be deemed to occur until thirty (30) days after receipt by a party of written notice of non-performance. The party receiving such notice shall not be in default if, within a commercially reasonable period under the circumstances, such party commences and proceeds to complete performance with due diligence and in good faith. During said thirty (30) day period, the parties agree to work cooperatively to allow the party receiving notice to cure the described non-performance. If non-performance cannot reasonably and with due diligence and in good faith be cured within said thirty day period, and if the party in receipt of said written notice of non- performance promptly commences and proceeds to complete the cure of the noticed non-performance, with due diligence and in good faith, the thirty-day period with respect to such non-performance shall be extended to include such additional period of time as may be reasonable necessary to cure such non-performance. Failure to make any monetary payment required under this Agreement shall be deemed an event of default if such payment is not made within five (5) business days of any demand for payment specifically referencing this Section.

13. **Miscellaneous.**

13.1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

13.2. **Waiver.** No waiver or modification of this Agreement shall be valid unless in writing and duly executed by the party to be charged therewith. Waiver by either party hereto of any breach or default by the other party of any of the terms and provisions of this Agreement shall not operate as a waiver of any other breach or default, whether similar or to different from the breach or default waived.

13.3. **Severability.** All agreements, provisions, representations, warranties and covenants contained herein are severable, and in the event that any one or more of them shall be held to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected hereby, and this Agreement shall be interpreted as if such invalid, illegal or unenforceable agreements, provisions, or covenants were not contained herein.

13.4. **Entire Agreement.** This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings and agreements, whether oral or in writing. This Agreement may not be amended by any course of action or oral agreement. Vendor may modify or amend this agreement by written notice to Customer; request for services after receipt of such notice shall be deemed to be acceptance of the revised terms.

13.5. **Parties.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, their legal representatives, heirs and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy, or claim under or in respect of, or by virtue of, this Agreement or any provision contained herein.

13.6. **Titles and Captions.** The titles and captions in this agreement are for convenience only and shall not be deemed to modify or alter the meaning of the language contained in the sections to which the title or caption applies.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Customer: \_\_\_\_\_

Vendor: **Inertia Software Solutions, LLC**

By: \_\_\_\_\_

By: Aaron J. Fritz

Title: \_\_\_\_\_

Title: Principal Consultant

Address: \_\_\_\_\_

Address: P.O. Box 32505

\_\_\_\_\_

Phoenix, AZ 85064

Phone: \_\_\_\_\_

Phone: 602.456-0770

Email: \_\_\_\_\_

Email: aaron@inertia-solutions.com

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_