



## Terms and Conditions

**1. Definitions:** the terms below shall have the following meanings assigned to them:

“Acknowledgement” means the “Acknowledgement and Acceptance” of the Estimate and/or Proposal and/or Quote.

“Additional Terms and Conditions” means the terms and conditions that are attached to the Estimate and/or Proposal and/or Quote as an additional item and that are in addition to the terms and conditions contained in this agreement.

“Affiliates” means employees, members, managers, directors, officers, trustees, partners, affiliates, subsidiaries, agents, contractors, sub-contractors, consultants, advisors, and owners.

“Agreement” means collectively this Contract, the Estimate and/or Proposal and/or Quote, the Additional Terms and Conditions, and all Exhibits and Attachments thereto.

“Business Day” means any Day that is a Monday, Tuesday, Wednesday, Thursday, or Friday, except when that Day is a federal bank holiday or a holiday recognized by Crunchsoft, in which case “Business Day” means the next Business Day following the federal bank holiday.

“Client” means the company or individual set forth on the Estimate and/or Proposal and/or Quote.

“Contract” means the “Acknowledged and Accepted” Estimate and/or Proposal and/or Quote regulated by these Terms and Conditions.

“Crunchsoft” and “Crunchsoft.tech” means PUREINVO, LLC, a Wisconsin limited Liability Company, and its successors.

“Day” means the period beginning at 10:00 a.m. Central Clock Time on one calendar day and ending at 10:00 a.m. Central Clock Time on the following calendar day.

“Delivery Date” has the meaning ascribed to it in Section 5.A. of this Agreement.

“Evergreen Term” means each monthly continuation of the Agreement, after the expiration of the Initial Term.

“Export Control Laws” means all customs and export control laws and regulations of the United States of America (including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, and all regulations and orders administered by the U.S. Department of Treasury, Office of Foreign Assets Control), as well as any laws and regulations governing or restricting any direct or indirect disclosure, shipment, transport, sale, or export to a foreign person, location, or government.

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“Hardware” means hardware, computers, equipment, peripherals, cabling, servers, machines, components, drives, electronics, components, and devices.

“Hourly Fees” means the then current fees set forth by Crunchsoft for the provision of Hourly Services.

“Hourly Services” means any effort, service, task, or assistance provided or supplied by Crunchsoft, including, without limitation, any design, delivery, support, engineering, installation, repair, maintenance, technical, consulting, or professional services, other than the Managed Services and the Professional Services.

“Initial Term” means a period of time beginning on the date the Client signs the Acknowledgment and continuing for the time frame set forth in the Estimate and/or Proposal and/or Quote.

“Loss” means losses, damages, liabilities, costs, expenses, fees, penalties, fines, and judgments (whether in tort, contract, warranty, indemnity, contribution, or otherwise).

“Managed Services” means those services outlined on the Estimate and/or Proposal and/or Quote.

“Monitored Services” means those services that are to be monitored by Crunchsoft, as agreed under the Estimate and/or Proposal and/or Quote.

“Month” means the period beginning at 10:00 a.m. Central Clock Time on the first Day of a calendar Month and ending at 10:00 a.m. Central Clock Time on the first Day of the succeeding calendar Month.

“Monthly Fee” means the monthly fee for the Managed Services set forth on the Estimate and/or Proposal and/or Quote or in the Fee Schedule, attached to the Estimate and/or Proposal and/or Quote as an additional item.

“Professional Services” means any services set forth on the Estimate and/or Proposal and/or Quote that are not Managed Services.

“Purchased Equipment” means the Hardware and Software to be purchased by the Client, as more particularly described in the Estimate and/or Proposal and/or Quote.

“Estimate and/or Proposal and/or Quote” means the list of Managed Services, and pricing for such services, offered by Crunchsoft to the therein named Client.

“Restricted Programs” has the meaning ascribed to it in Section 2B(iii)(h) of the Contract.



“Software” means operating systems, settings, scripts, code, permissions, registries, programs, software, processes, systems, files, data, records, and options.

“Term” means collectively the Initial Term and any Evergreen Term.

“Work” means any one or more of the Managed Services, Professional Services, or Hourly Services.

## **2. Managed Services.**

**A. Crunchsoft Obligations.** During the Term and subject to the terms and conditions contained in the agreement, Crunchsoft shall:

i. perform the Managed Services in accordance with reasonable respective industry practices; provided, however, such Managed Services will only be performed on the Hardware and Software described in the Estimate and/or Proposal and/or Quote; and if Client breaches any of its obligations under Section 2B, or the Additional Terms and Conditions, then Crunchsoft’s performance of the Managed Services will be excused until such time as Client has cured such breach, including making any repairs, at Client’s expense, to the Hardware and Software resulting from such breach.; and

ii. periodically (but only as frequently as Crunchsoft deems necessary in its sole and absolute discretion) check all Monitored Services for any alerts or notifications, and if Crunchsoft receives an alert or notification as part of the Managed Services, then Crunchsoft shall notify Client, within a reasonable time thereafter, of such alert or notification using any means of communication that Crunchsoft may deem acceptable.

**B. Client Obligations.** Each Day during the Term, Client shall:

i. provide adequate space and facilities for any Hardware that must be installed, including but not limited to the Hardware included in the Managed Services;

ii. permit, or cause, Crunchsoft to be permitted to enter into and access the physical location where any Hardware and/or Software (including co-located servers not in Client’s physical location) included in the Managed Services or any other Work are located;

iii. not do or permit its Affiliates to do any of the following:

(a) gain, use, or attempt to access administrator rights or privileges on any Hardware included in or associated with the Managed Services;

(b) block, limit, restrict, disable, override, alter, or diminish Crunchsoft’s ability to remotely update the Software or provide the monitoring included in the Managed Services;



(c) change, use, run, install, uninstall, disable, override, alter, modify, end, stop, add, delete, or remove any Software on any Hardware included in or associated with the Managed Services unless authorized by Crunchsoft;

(d) change, write over, disable, uninstall, alter, override, modify, end, stop, delete, or remove any Software that were installed by Crunchsoft on any Hardware that is included in or associated with the Managed Services;

(e) use any network or Hardware in a way that unnecessarily interferes with the normal operation of such Hardware or network, or that consumes a disproportionate share of resources for such Hardware or network;

(f) attempt to probe, scan, penetrate, or test the vulnerability of any Hardware, Software, or network included in or associated with the Work or Crunchsoft;

(g) attempt to breach the security or authentication measures, whether by passive or intrusive techniques on or for any Hardware, Software, or network included in or associated with the Managed Services;

(h) knowingly or recklessly install, add, use, run, or permit any viruses, errors, defects, malware, spyware, or invasive software ("Restricted Programs") on any Hardware that is included in or associated with the Managed Services; or

(i) permit any Restricted Programs to be installed on any Hardware or Software that is associated, connected to, or networked with any Hardware that is included in the Managed Services;

(j) attempt to use or gain unauthorized access to Crunchsoft's or to any third party's networks or equipment;

(k) interfere or attempt to interfere with service to any user, host or network related to the Work, Crunchsoft, or any of its Affiliates or other clients;

(l) restrict, inhibit, disrupt, interfere with, or otherwise cause a performance degradation of the ability of any other person (including Crunchsoft, its Affiliates, and its other clients), regardless of intent, purpose or knowledge, to use or enjoy Crunchsoft's networks, Hardware, or Software (except to the extent the same is expressly intended for Client's sole use); or



(m) restrict, inhibit, interfere with, disrupt, or otherwise cause a performance degradation to any Crunchsoft (or any of Crunchsoft's Affiliates) Hardware or Software.

### **3. Professional Services.**

**A. Crunchsoft Obligations.** During the Term, and subject to the terms and conditions of the Agreement, Crunchsoft shall perform the Professional Services in accordance with reasonable industry practices; provided, however, such Professional Services shall only be performed on the Hardware and Software described in the Estimate and/or Proposal and/or Quote. If Client breaches any of the provisions contained within Section 3B of this Contract, then Crunchsoft's performance of the Professional Services will be excused until such time as Client has cured such breach, including making any repairs, at Client's expense, to the Hardware and Software resulting from such breach.

**B. Client Obligations.** During the Term, Client shall:

- i. provide adequate space and facilities for any Hardware that must be installed, including but not limited to the Hardware included in the Professional Services;
- ii. permit, or cause, Crunchsoft to be permitted to enter into and access the physical location where any Hardware and/or Software (including co-located servers not in Client's physical location) included in the Professional Services or any other Work are located, and
- iii. not do or permit its Affiliates to do any of the following:
  - (a) gain, use, or attempt to access administrator rights or privileges on any Hardware included in or associated with the Managed Services;
  - (b) block, limit, restrict, disable, override, alter, or diminish Crunchsoft's ability to remotely update the Software or provide the monitoring included in the Managed Services;
  - (c) change, use, run, install, uninstall, disable, override, alter, modify, end, stop, add, delete, or remove any Software on any Hardware included in or associated with the Managed Services unless authorized by Crunchsoft;
  - (d) change, write over, disable, uninstall, alter, override, modify, end, stop, delete, or remove any Software that were installed by Crunchsoft on any Hardware that is included in or associated with the Managed Services;



(e) use any network or Hardware in a way that unnecessarily interferes with the normal operation of such Hardware or network, or that consumes a disproportionate share of resources for such Hardware or network;

(f) attempt to probe, scan, penetrate, or test the vulnerability of any Hardware, Software, or network included in or associated with the Work or Crunchsoft;

(g) attempt to breach the security or authentication measures, whether by passive or intrusive techniques on or for any Hardware, Software, or network included in or associated with the Managed Services;

(h) knowingly or recklessly install, add, use, run, or permit any viruses, errors, defects, malware, spyware, or invasive software ("Restricted Programs") on any Hardware that is included in or associated with the Managed Services; or

(i) permit any Restricted Programs to be installed on any Hardware or Software that is associated, connected to, or networked with any Hardware that is included in the Managed Services;

(j) attempt to use or gain unauthorized access to Crunchsoft's or to any third party's networks or equipment;

(k) interfere or attempt to interfere with service to any user, host or network related to the Work, Crunchsoft, or any of its Affiliates or other clients;

(l) restrict, inhibit, disrupt, interfere with, or otherwise cause a performance degradation of the ability of any other person (including Crunchsoft, its Affiliates, and its other clients), regardless of intent, purpose or knowledge, to use or enjoy Crunchsoft's networks, Hardware, or Software (except to the extent the same is expressly intended for Client's sole use); or

(m) restrict, inhibit, interfere with, disrupt, or otherwise cause a performance degradation to any Crunchsoft (or any of Crunchsoft's Affiliates) Hardware or Software.

#### **4. Hourly Services.**

**A. Request for Hourly Services and Fees.** During the Term, Client may request Crunchsoft to perform Hourly Services; provided, however, the provision of any Hourly Services shall be in Crunchsoft's sole and absolute discretion. If Client makes a request for Hourly Services, and



Crunchsoft agrees to perform the Hourly Services, then Crunchsoft shall perform such Hourly Services in accordance with the provisions of the Agreement. Client agrees to pay Crunchsoft the Hourly Fees, which may change from time-to-time, for any Hourly Services performed by Crunchsoft. For the avoidance of doubt, nothing in the Agreement shall obligate Crunchsoft to accept any Client request for Hourly Services. If Crunchsoft revises its Hourly Fees during the Term of the Agreement, then Crunchsoft shall provide Client with an updated Fee Schedule at thirty (30) Days prior to any such change in Hourly Fees.

**B. Invoice for Hourly Services.** If Client requests, and Crunchsoft agrees to perform, Hourly Services, Crunchsoft shall not be obligated to provide a Estimate and/or Proposal and/or Quote for any requested Hourly Services prior to performance of such Hourly Services; provided, however, Crunchsoft may, in its sole and absolute discretion, do so as a courtesy to Client. Any Estimate and/or Proposal and/or Quotes provided by Crunchsoft for the Hourly Services shall not be binding and Client acknowledges that the final invoice may exceed the Estimate and/or Proposal and/or Quote and Client agrees to pay the entire amount specified on the invoice. Client shall pay for any Hourly Services in accordance with the provisions of the Agreement.

**C. Repairs/Replacements.** If any part of the Hourly Services involve repair of any Hardware or Software, Client acknowledges that repair may not be reasonable or practical, and in such case, Crunchsoft may require that Client replace such Hardware or Software at its sole cost and expense.

## **5. Purchased Equipment and Limitations.**

**A. Delivery.** Subject to the terms of the Agreement and Section 20(b) of this Contract, Crunchsoft shall deliver the Purchased Equipment within a commercially reasonable period of time after Crunchsoft's receipt and configuration of such Purchased Equipment, or at such other time as mutually agreed upon by the Client and Crunchsoft. Any Estimate and/or Proposal and/or Quoted shipping or initial delivery dates are provided as estimates only and the date that Crunchsoft physically delivers the Purchased Equipment to Client shall be the "Delivery Date".

**B. Purchased Equipment and Compliance with Manufacture's Terms.** Client agrees that Crunchsoft is ordering the Purchased Equipment specifically for Client. Client shall abide by all of the original equipment manufacturer's terms of sale. Additionally, Client may not exchange, return, or seek refund from Crunchsoft for the Purchased Equipment. If Client does not comply with all of the original manufacturer's terms of sale, then Crunchsoft shall be relieved of its performance obligations hereunder.

**C. Title.** Title to the Purchased Equipment passes to Client upon shipment of such Purchased Equipment to Client. If Client selects the shipping or delivery carrier for the Purchased Equipment, Client assumes all risk of loss for such Purchased Equipment when such carrier takes possession of such Purchased Equipment. If Crunchsoft selects the shipping or delivery



carrier for the Purchased Equipment, Client assumes all risk of loss for such Purchased Equipment when such carrier delivers such Purchased Equipment to Client's facility (regardless of whether or not Client actually receives, inspects, signs for, discovers, is present for, or is notified of such delivery). Client must notify Crunchsoft within seven (7) Days of the Delivery Date if such Purchased Equipment is missing, wrong, or damaged.

**D. Availability of Equipment and Modifications.** Client acknowledges that Crunchsoft's suppliers and vendors are continually updating and revising their Hardware and Software availability, that the Purchased Equipment may become unavailable without prior notice even after an order is placed, and that the Purchased Equipment may be delivered with minor differences as long as they meet or exceed the material specifications of the Purchased Equipment. Client acknowledges that the Purchased Equipment may include reconditioned or equivalent-to-new parts or components.

**E. Additional Costs.** Client acknowledges that taxes, shipping and handling charges ("Additional Costs") are not included in the Purchased Equipment prices unless expressly indicated at the time of sale and that all such Additional Costs shall be paid by Client.

**F. Approval Prior to Purchase of Hardware and Software.** If at any time during the Term, new or replacement Hardware or Software is needed, Client agrees to seek written approval from Crunchsoft prior to purchasing or installing such Hardware or Software. Alternatively, Client may request to purchase such new or replacement Hardware or Software from Crunchsoft. If Client purchases or installs new or replacement Hardware or Software without the prior written approval of Crunchsoft, then Crunchsoft, in its sole and absolute discretion, may either (i) terminate the Agreement; or (ii) provide Support Services for such Hardware and Software at the Hourly Fee.

**G. Limitations.** Client acknowledges that Crunchsoft may not be able to provide service for certain Hardware and Software due to proprietary and other reasons. Client agrees to seek information about support and service availability offered by Crunchsoft for all of Client's Hardware and Software.

## **6. Licenses, Audit, and Other Agreements.**

**A. Power of Attorney.** Crunchsoft may enter into licenses and other agreements with third parties on Client's behalf, as Client's agent and attorney-in-fact for the use of Hardware and Software in conjunction with the Work (including Software updates). The Client agrees to be bound by such licenses and agreements and shall abide by their terms, regardless of whether Client actually executes or reviews such licenses or agreements. Client agrees to sign any additional documents as may be required by Crunchsoft or a third party vendor to document Crunchsoft's ability to act on behalf of Client, including but not limited to the Limited Power of Attorney, attached to the Estimate and/or Proposal and/or Quote as an additional item.





**B. Licenses.** The Purchased Equipment (if any) may include Software or Hardware on which Software is pre-installed. Client agrees to all licenses and other agreements associated with such Software. The Client agrees to be bound by such licenses and agreements and shall abide by their terms, regardless of whether Client executes or reviews such licenses or agreements.

**C. Compliance with Intellectual Property Laws.** Client shall at all times comply with any applicable copyright, patent and intellectual property laws, codes, rules and regulations associated with the Work, the Purchased Equipment, and any Hardware and Software associated with the Work. Client acknowledges that, unless otherwise specified therein, all licenses are non-exclusive and it shall not reverse engineer, copy, share, transmit, or modify any licensed intellectual property, or otherwise violate any such copyrights or licenses.

**D. Audit.** Crunchsoft may, from time to time and during normal business hours, audit the books and records of Client to verify compliance with this Section 6. Client shall cooperate with such audit and make such books and records readily available.

**E. Use Rights.** Crunchsoft may, from time to time, obtain, receive, or collect data or information, including system-specific data as part of its performance of the Work. Client hereby grants Crunchsoft: (i) a worldwide, royalty-free, perpetual, non-revocable license to copy, maintain, use, compile, aggregate, distribute, display, store, process, reproduce or create derivative works of such data solely for those purposes; and (ii) a worldwide, royalty-free, perpetual, non-revocable license to copy, maintain, use, compile, aggregate, distribute, display, store, process, reproduce, or create derivative works of such data in an anonymous manner and to facilitate Crunchsoft's marketing and sales activities. Client represents and warrants that it owns and holds all rights, permissions and consents necessary to: (a) grant the foregoing licenses; and (b) use and transfer such data within and outside of the country in which Client is located or in which the Work is performed.

## **7. Down Time; Data Back Up; Data Migration.**

**A. Down Time.** Client acknowledges that, from time to time, the networks, website, Hardware, and Software may be or become inaccessible, unusable, down, unavailable, interrupted, damaged, obsolete, or malfunctioning due to many causes, which may include, but are not limited to, weather patterns, infrastructure damage, network provider or carrier outages, Client's facility conditions, service provider errors, above-average use or traffic levels, Hardware or Software obsolescence, utility outages, or outside interference. Client additionally acknowledges that such occurrences are normal, that accessibility or 'up time' is not guaranteed by Crunchsoft, and that such occurrences may be for extended periods of time. All such occurrences are subject to the limitations of liability in the Agreement.

**B. Business Interruption.** Crunchsoft may, from time to time, make networks, website, Hardware, and Software inaccessible, unusable, unavailable, interrupted, or otherwise taken down as part of its performance of the Work. Crunchsoft shall make commercially reasonable



efforts to do so outside of normal business hours. Client additionally acknowledges that such occurrences are normal, that accessibility or 'up time' is not guaranteed by Crunchsoft, and that such occurrences may be for extended periods of time. All such occurrences are subject to the limitations of liability in the Agreement.

**C. Risk of Loss of Information and Data Migration.** If data migration or transfer is included in the Work, Client acknowledges that such data migration or transfer may result in data loss, degradation, distortion, damage, or other problems, and that such occurrences may be the result of many factors or causes, including (but without limitation) the following: (i) Client's existing Hardware or Software; (ii) network outages or malfunctions; (iii) Hardware or Software malfunctions; (iv) incompatible or unreasonable network, Hardware, or Software settings, configurations, permissions, registries, or options; (v) the obsolescence of Client's existing systems; or (vi) other factors beyond Crunchsoft's control. Client additionally acknowledges that such occurrences are normal, and that error or loss free data transfer or migration is not guaranteed by Crunchsoft. All such errors and losses are subject to the limitations of liability specified in the Agreement.

**D. Data Back Up/Replication.** If data back up or replication is included in the Work, Client acknowledges that such data back up or replication is not guaranteed to prevent or restore data loss, degradation, distortion, damage, or other problems, and that such occurrences may be the result of many factors or causes, including (but without limitation) the following: (i) Client's existing Hardware or Software; (ii) network outages or malfunctions; (iii) Hardware malfunctions; (iv) incompatible or unreasonable network, Hardware, or Software settings, configurations, permissions, registries, or options; (v) the obsolescence of Client's existing systems; (vi) computer hacking or other security breaches; (vii) malware, viruses, and other malicious data or Software; (viii) Client's negligence or misplacement of files such that they are not covered by the back up or replication settings; or (ix) other factors beyond Crunchsoft's control. Client additionally acknowledges that such occurrences are normal, and prevention of or restoration from such occurrences is not guaranteed by Crunchsoft. Crunchsoft does not guarantee or warrant that such data backup or replication will have effective security measures, or that any data backed up or replicated will be secure. All such security breaches, data errors, and data losses are subject to the limitations of liability in the Agreement.

## **8. Email Hosting.**

**A. Restrictions.** If email hosting is included in the Estimate and/or Proposal and/or Quote, then Client shall not use the hosted email to:

- i. engage in, foster, or promote illegal, abusive, or irresponsible behavior;
- ii. solicit, phish, scam, or otherwise inappropriately obtain passwords or other information;



- iii. include any false, misleading, or deceptive TCP-IP packet header information;
- iv. engage in, foster, or promote mail bombing, flooding, or deliberate attempts to overload a system;
- v. violate any acceptable use policies or other terms mandated by hosting services through which Crunchsoft provides email hosting;
- vi. attempt to probe, scan, penetrate or test the vulnerability of such email system or network, or to breach the security or authentication measures, whether by passive or intrusive techniques;
- vii. violate the CAN-SPAM Act of 2003 or any other law or regulation applicable to bulk or commercial email;
- viii. publish, distribute, transmit, or store any content or link that:
  - (a) constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, or non-consensual sex acts;
  - (b) is excessively violent, incites violence, threatens violence or contains harassing content or hate speech;
  - (c) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
  - (d) is defamatory or violates a person's privacy;
  - (e) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security or interferes with a investigation by law enforcement;
  - (f) improperly exposes trade secrets or other confidential or proprietary information of another person;
  - (g) is intended to assist others in defeating technical copyright protections;
  - (h) infringes on another person's copyright, trade or service mark, patent or other property right;
  - (i) promotes illegal drugs, violates export control laws, relates to illegal gambling or illegal arms trafficking;



(j) is otherwise illegal or solicits conduct that is illegal under laws applicable to Client or to Crunchsoft; or

(k) is otherwise malicious, fraudulent or may result in retaliation against Crunchsoft by offended parties.

**B. Bulk or Commercial Email.** If Client uses the hosted email for bulk or commercial email, Client understands and agrees that Client, or Crunchsoft, on Client's behalf, may be required to add additional bulk or commercial email services if Client's usage exceeds the initial allotted usage. Client shall be responsible for all fees and charges incurred with such bulk and commercial email usage additions. Additionally, with respect to bulk or commercial email services, the Client must comply with, and cause its Affiliates to comply with, the following:

- i. the intended recipients must give their consent to receive e-mail via some affirmative means, such as an opt-in procedure;
- ii. Client's procedures for soliciting consent include reasonable means to ensure that the person giving consent is the owner of the e-mail address for which the consent is given;
- iii. Client must retain evidence of the recipient's consent in a form that may be promptly produced on request, and honor the recipient's and Crunchsoft's requests to produce evidence of consent within 72 hours of receipt of the request;
- iv. Client must have procedures in place that allow a recipient to revoke their consent — such as a link in the body of the email, or instructions to reply with the word "Remove" in the subject line;
- v. Client must honor revocations of consent within 48 hours, and notify recipients that the revocation of their consent will be implemented in 48 hours;
- vi. Client must post an email address for complaints (such as [abuse@yourdomain.com](mailto:abuse@yourdomain.com)) in a conspicuous place on any website associated with the email, must register that address at [abuse.net](http://abuse.net), and must promptly respond to messages sent to that address;
- vii. Client must have a privacy policy posted for each domain associated with the mailing;
- viii. Client must have the means to track anonymous complaints;
- ix. Client must not obscure the source of its e-mail in any manner and must include the recipient's e-mail address in the body of the message or in the "TO" line of the e-mail;



x. Client must not attempt to send any message to an email address if three (3) consecutive delivery rejections have occurred and the time between the third rejection and the first rejection is longer than fifteen days.

**C. Bandwidth Restrictions.** Crunchsoft may, from time to time, set restrictions on Client's use or consumption of bandwidth, storage space, or other system resources of such hosted email systems, or Crunchsoft's Hardware or networks. Crunchsoft shall give Client commercially reasonable prior notice of such restrictions, and in any event at least three (3) Days prior to such restrictions being imposed. Crunchsoft shall not be responsible for any losses incurred due to such bandwidth restrictions being imposed.

**9. User Training.** If user training is a service provided and included on the Estimate and/or Proposal and/or Quote ("User Training"), Client acknowledges that the User Training is only for those users who have a reasonable level of proficiency in operating systems (and computers generally), and then only for a reasonable period of time necessary to perform such training. Such training only includes basic operation and troubleshooting of the equipment and software installed by Crunchsoft and does not include remedial or basic computer training.

#### **10. Support Services and Exclusions.**

**A. Support Services.** Crunchsoft's systems specialists shall provide Client with supplemental support for the Hardware and Software as described in the Agreement ("Support Services"). Support Services shall be provided via telephone during Crunchsoft's regular hours of operation or, at Client's request and subject to the availability of Crunchsoft's systems specialists, at Client's Premises. Unless included as part of the Managed Services or Professional Services, Support Services shall be billed to Client at Crunchsoft's standard Hourly Fees then in effect and upon the terms provided herein. Notwithstanding the foregoing, Crunchsoft shall only be responsible for providing Support Services on Software and Hardware (including telephones) for which Client has obtained active support services with the vendor of such Software and Hardware.

**B. Exclusions.** Client acknowledges that Crunchsoft shall not be responsible for managing any leased or large multifunction printers ("Printers"), nor shall Crunchsoft be responsible for disposal or maintenance of any Printers or associated items such as printer cartridges, etc.

#### **11. Payments.**

**A. Monthly Fee.** During the Term, Client shall pay by Month, for services to be provided in the following month, the Monthly Fee; this includes but is not limited to Recurring Monthly Fees.

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**B. Purchased Equipment.** Client shall pay all fees, charges, expenses, and amounts due for the Purchased Equipment upon execution of the Acknowledgement.

**C. Professional Services Fee.** Client shall pay all fees, charges, expenses, and amounts due for the Professional Services according to the following schedule:

i. Client shall pay all hardware, software, and other product amounts upon execution of the Acknowledgement; and

ii. Client shall pay the remainder of such fees, charges, expenses, and amounts upon the earlier of: (A) 30 days from the date of execution of the Acknowledgement; or (B) substantial completion of the Professional Services.

**D. Payment Date.** Client shall pay all fees, charges, expenses, and amounts accruing under the Agreement (except as otherwise provided in this Section 10) within thirty (30) Days of receipt of Crunchsoft's invoice therefor.

**E. Hourly Fee.** For any Hourly Services performed by Crunchsoft for Client, Client shall pay Crunchsoft the Hourly Fee. Payment for such Hourly Services shall be due within thirty (30) days of Client's receipt of Crunchsoft's invoice therefor. Notwithstanding the foregoing, Crunchsoft may request, as part of its acceptance of any Hourly Services, that Client pay a deposit or a pre-payment ("Advanced Payment") prior to Crunchsoft's performance of such Hourly Services. If Crunchsoft request such Advanced Payment, then Client shall pay the Advanced Payment at the time specified by Crunchsoft.

**F. Taxes and Other Charges.** Unless expressly noted otherwise, the amounts due from Client as shown on the Estimate and/or Proposal and/or Quote are exclusive of applicable fees, taxes, tariffs, duties, and assessments imposed by local, state, and federal authorities, all of which are Client shall pay at its sole expense. If Client is entitled to an exemption from any governmental fees, taxes, tariffs, duties, and assessments, Client shall provide Crunchsoft with valid and accurate tax-exemption certificates or other applicable documentation within 10 days of the date of the Contract. If Client fails to provide such certificates or documentation within such time, Client will be responsible for, and Crunchsoft may collect, all such fees, taxes, tariffs, duties, and assessments.

**G. No Setoff.** Client may not offset, credit, or reduce any amounts due from Client, whether or not Crunchsoft may owe any sums to Client. Crunchsoft is not responsible for pricing, typographical, invoicing, or other errors in any offer, Estimate and/or Proposal and/or Quote, estimate, invoice, bill, or the Agreement, and Crunchsoft may cancel any document or offer which contain such errors.

#### **H. Service Charges and Reinstatement Fees for Late Payment.**

- i. If Client fails to make any payment in a timely manner, then Crunchsoft may charge Client an additional fee of 1% of the amount due administrative service charge to cover the additional expenses incurred by Crunchsoft due to non-receipt of Client's payment.
- ii. If Client is paying the Monthly Fee via automatic bill pay (i.e. credit/debit card automatic draft), and Client's credit/debit card is declined, then Crunchsoft will have the right to suspend Client's account, in its sole and absolute discretion. Prior to suspending Client's account, Crunchsoft will place one (1) call to Client in order to try to resolve the non-payment, prior to suspension of Client's account. Client will be required to pay Crunchsoft a reinstatement fee of \$250.00, if Client's account is suspended.

**I. Associated Fees.** Unless expressly set forth in the Agreement, the amounts due from Client for any of the services provided by Crunchsoft are exclusive of any charges, costs, fees, and expenses for:

- i. Any parts, equipment, or Hardware;
- ii. Any Software, licenses, software assurances, renewals, or upgrades;
- iii. Any shipping, handling, couriers, or postage;
- iv. Any third party vendor, OEM, or other manufacturer support or warranties;
- v. Any premise wiring services;
- vi. Training of any person in any context;
- vii. Travel, travel time, gas or gas mileage, per diem or accommodations, when applicable, when visiting Client offices or any other third party site on Client's behalf;
- viii. Any non-information technology materials needed to provide services or requested by Client, including but not limited to office supplies or media;
- ix. Any type of service, repair, reconfiguration, maintenance or management occasioned or made necessary by the alteration of systems, devices, software or other resources, with or without administrative access to such resources, by anyone other than Crunchsoft personnel;



- x. Any change or service occasioned by acts or omissions by the Client's Affiliates, subcontractors, third party vendors, or any other third parties who may have or have had physical, logical or remote access to Client's resources;
- xii. Maintenance of third party applications, software, software packages or add-ons, whether acquired through Crunchsoft or any other source; or Any software programming, altering, scripting, or maintenance.

**12. Representations and Warranties.** Client represents and warrants to Crunchsoft that:

- i. Client is in good standing to transact business in the State of Wisconsin;
- ii. Client has not relied upon any prior or contemporaneous proposal, term sheet, letter of intent, or other similar document in entering into the Agreement, that it has not relied upon any prior or contemporaneous written or oral representation, warranty, statement, promise, or guaranty not contained in the Agreement, that no representations, warranties, statements, promises, or guarantees exist that are not contained in the Agreement, and that it has made its own investigation into its technology requirements in making the Agreement;
- iii. the Agreement will not cause Client to violate any law, code, ordinance or court order; Client is not purchasing the Purchased Equipment for resale or on behalf of any other person or entity;
- iv. nothing in Client's facility or any other location of the Hardware will prevent, restrict, or interfere with Crunchsoft's performance of the Work, or will damage or injure Crunchsoft, or its Affiliates or equipment (including, but not limited to, construction defects, insect infestation, environmental hazards, fire code violations, mold, structural problems, or the existence of anything or anyone whatsoever that violates any law of the State of Wisconsin or the United States);
- v. the Agreement will not violate any other agreement or restriction binding Client;

**13. Acknowledgments.** Client acknowledges and understands all of the following:

- i. if the Estimate and/or Proposal and/or Quote includes any email hosting, such hosting will be performed through the use of a third party hosting service;
- ii. additional Hardware and Software may be necessary to perform the Work, and all such Hardware and Software will be obtained at Client's sole expense;
- iii. although the Managed Services detect and protect against many threats to Client's systems, the Managed Services are not designed to, and may not, detect or protect





against all threats to Client's networks, Hardware, and Software, including viruses, malware, spyware, bugs, data degradation, errors, problems, vulnerabilities, defects, bugs, Hardware failures or malfunctions, malicious attacks, malicious software, email scams, or other hazards;

iv. absolute security against all information or computer-related threats is not realistically achievable and security breach, information release or disclosure, privacy breach, or similar occurrences may occur from time to time;

v. without limiting any other provision of the Agreement, any change, use, run, installation, uninstallation, disabling, override, alteration, modification, end, stoppage, addition, deletion, or removal of any Hardware or Software on any Hardware or Software included in the Work is at the Client's own risk;

vi. the Work and the Purchased Equipment are not fault-tolerant, may fail from time to time, and are not designed or intended for use in hazardous environments requiring fail-safe performance (including, but without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the products, software or services could lead directly to death, personal injury, or severe physical or property damage);

vii. if Client, or a third party, possesses, requests, or accepts any administrative privileges to any of the Hardware or Software, Client is solely responsible for such Hardware, and Crunchsoft may remove such Hardware from the Managed Services (without a decrease in the Monthly Fees); and

viii. if Client or any third party possesses, requests, or accepts any administrative privileges to any of the Hardware or Software, Crunchsoft no longer has sole control of such equipment, and may not be able to identify who has operated such equipment, or what such persons have done to such equipment.

#### **14. Limitation of Liability.**

**A. Remedies.** CLIENT WAIVES ALL RIGHTS AND CLAIMS TO, AND CRUNCHSOFT WILL NOT BE LIABLE FOR, ANY OF THE FOLLOWING:

i. PUNITIVE, TREBLE, INDIRECT, EXEMPLARY, SPECIAL, AND CONSEQUENTIAL LOSSES AGAINST CRUNCHSOFT AND ITS AFFILIATES;

ii. LOST REVENUES AND PROFITS, LOST OR CORRUPTED DATA, LOSS OF ACCESS, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, OR SYSTEM DOWNTIMES;

iii. LOSSES OF ANY KIND OR TYPE RELATED TO THE INACCESSIBILITY, UNUSABILITY, DOWN TIME, UNAVAILABILITY, INTERRUPTION, DAMAGE, OBSOLESCENCE, OR MALFUNCTION OF THE NETWORKS, HARDWARE, AND SOFTWARE SERVICED BY, PROVIDED BY, OR RELATED TO, THE WORK, THE HOSTED EMAIL, OR THE PURCHASED EQUIPMENT;



iv. LOSSES OF ANY KIND OR TYPE ARISING FROM OR RELATED TO ANY DATA INTERCEPTION, SECURITY BREACH, HACKING, INFORMATION RELEASE OR DISCLOSURE, PRIVACY BREACH, OR SIMILAR OCCURRENCE; OR

v. LOSSES OF ANY KIND OR TYPE RELATED TO ANY DATA MIGRATION, DATA TRANSFER, DATA REPLICATION, DATA BACK UP, OR SIMILAR SERVICES.

**B. Limitation on Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, CRUNCHSOFT'S AGGREGATE LIABILITY FOR ALL OF CLIENT'S LOSSES (WHETHER IN TORT, CONTRACT, WARRANTY, INDEMNITY, CONTRIBUTION, OR OTHERWISE) ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY GOODS OR SERVICES PROVIDED THEREUNDER (INCLUDING THE WORK) MAY NOT EXCEED THE TOTAL COMPENSATION THAT CLIENT PAID TO Crunchsoft DURING THE TERM.

**C. No Warranty.** EXCEPT FOR ANY WARRANTIES EXPRESSLY PROVIDED IN THE AGREEMENT OR ANY WARRANTIES GIVEN BY AN ORIGINAL EQUIPMENT MANUFACTURER, THE GOODS AND SERVICES DELIVERED UNDER THE AGREEMENT (INCLUDING THE PURCHASED EQUIPMENT AND WORK) ARE PROVIDED "AS IS", "WHERE IS", "AS AVAILABLE", "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CRUNCHSOFT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF SUITABILITY, MERCHANTABILITY, GOOD AND WORKMANLIKE QUALITY, TITLE, NON-INFRINGEMENT, RELIABILITY, TIMELINESS, QUITE ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

**D. Additional Waivers.** CLIENT WAIVES ALL RIGHTS AND CLAIMS AGAINST CRUNCHSOFT FOR ALL LOSSES WHICH ARISE FROM, OR RELATE TO ANY OF THE FOLLOWING:

- i. CLIENT'S BREACH OF THE AGREEMENT;
- ii. HARDWARE OR SOFTWARE ON WHICH CLIENT OR ANY THIRD PARTY HAS ADMINISTRATOR PRIVILEGES;
- iii. THE NATURE OR CONDITION OF CLIENT'S FACILITIES, OR THAT OF ITS CO-LOCATION SERVICE;
- iv. HARDWARE OR SOFTWARE THAT CLIENT OR ANY THIRD PARTY HAS CHANGED, INSTALLED, UNINSTALLED, DISABLED, OVERRIDDEN, ALTERED, MODIFIED, ENDED, STOPPED, ADDED, DELETED, OR REMOVED; OR
- v. ANY HARDWARE OR SOFTWARE NOT SERVICED BY CRUNCHSOFT.

**15. Indemnity.**



**A. Clients Indemnities.** CLIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CRUNCHSOFT AND ITS AFFILIATES FROM ALL LOSSES, ACTIONS, SUITS, AND CLAIMS ARISING FROM, OR RELATED TO:

- i. CLIENT'S BREACH OF THE AGREEMENT;
- ii. ANY BREACH OF ANY SOFTWARE OR HARDWARE LICENSE BY CLIENT OR ITS AFFILIATES;
- iii. ANY BREACH OF ANY AGREEMENT, POLICY, OR RESTRICTION IMPOSED ON CRUNCHSOFT OR ITS AFFILIATES DUE TO THE ACTION OR INACTION OF CLIENT OR ITS AFFILIATES;
- iv. ANY REPRESENTATION OR WARRANTY OF CLIENT BEING UNTRUE OR BECOMING UNTRUE; **V.** ANY USE OF ANY SOFTWARE OR HARDWARE INCLUDED IN THE WORK BY CLIENT, CLIENT'S AFFILIATES, OR ANY THIRD PARTY WHATSOEVER;
- v. THE NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, MALFEASANCE, OR INTENTIONAL ACT OF CLIENT OR ANY AFFILIATE OF CLIENT; AND
- vi. ANY OTHER ACT OR OMISSION OF CLIENT OR ANY AFFILIATE OF CLIENT WHATSOEVER.

THE INDEMNITIES IN THIS SECTION 15 INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHETHER ADMINISTRATIVE, CIVIL, CRIMINAL, INVESTIGATIVE, APPELLATE, MEDIATIVE, ARBITRATIVE, OR LEGISLATIVE. THE INDEMNITIES IN THIS SECTION 15 ALSO INCLUDE, BUT ARE NOT LIMITED TO, COVERAGE WHETHER SUCH CLAIMS, SUITS, ACTIONS, OR PROCEEDINGS ARE DECIDED ON THE MERITS OR OTHERWISE, AND FOR ALL SETTLEMENT OF SUCH CLAIMS, SUITS, ACTIONS, OR PROCEEDINGS, REGARDLESS OF WHETHER FAULT IS DESIGNATED IN SUCH SETTLEMENTS.

**B. Client's Duty to Defend and Attorney's Fees.** Client's duty to defend in this Section 15 includes the prompt payment of all attorney's fees, and other costs and expenses related to such defense. Client shall, upon request from an indemnified party and within three (3) days of such request, pay such attorney's fees, and other such costs and expenses whether as an advancement, payment or reimbursement. Without limiting the foregoing, an indemnified party may maintain counsel of its choosing, and Client's duty to defend shall extend to the payment of such counsel's fees, costs and expenses. An indemnified party is not required to provide Client with anything more than a summary invoice from its counsel. The provisions of this Section 15 will survive the termination of the Agreement.

**16. Non-Solicitation.** During the Term and for a period of three years thereafter, Client shall not, directly or indirectly, solicit, offer, discuss with, approach, cause, or attempt to cause any



Affiliates of Crunchsoft to discontinue their relationship with Crunchsoft or to become Affiliates of Client.

## **17. Default, Termination, and Remedies.**

**A. Client Default.** Client will be in default under the Agreement if any of the following occur:

- i. Client fails to make any payment of money in a timely manner;
- ii. Client violates, permits any violation of, or acts in a manner inconsistent with, any licenses, agreements, or intellectual property rights related to the Agreement, any Hardware or Software serviced under the Agreement, or any Purchased Equipment;
- iii. Client fails or refuses to perform each and every covenant in the Agreement;
- iv. Client fails to maintain consistent communication with Crunchsoft; Crunchsoft sends courtesy notice after 23 days of absent communication between Client and Crunchsoft. Client then has 7 days to contact Crunchsoft; should there be no contact from the Client to Crunchsoft and its staff for longer than the indicated 30 days, the services outlined in the Agreement, Estimate and/or Proposal and/or Quote are considered satisfactory and completed. Any and all payments made to Crunchsoft are non-refundable from Crunchsoft for any reason.
- v. any representation or warranty of Client is untrue or becomes untrue during the Term;
- vi. Client or its Affiliates commit or permit any other default under or breach of the Agreement or any other agreement between Client and Crunchsoft; or
- vii. Client does not provide adequate access to Client's facilities or takes any other action that causes Crunchsoft to not be able to perform their obligations under this Agreement;
- viii. commences a voluntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in any involuntary case under any such Applicable Law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Defaulting Party or for substantially all of its property or the Defaulting Party makes any general assignment for the benefit of its creditors; or
- ix. passes a resolution, or has proceedings commenced against it (which are not stayed within 60 days of service thereof) in the nature of bankruptcy or reorganization



resulting from insolvency or for its liquidation or for the appointment of a receiver, trustee in bankruptcy or liquidator of its undertaking or assets;

**B. Termination by Crunchsoft.** If Client is in default under the Agreement, then, in addition to the rights specified under Paragraph 18. B., Crunchsoft may do any one or more of the following:

- i. immediately stop performance of the Work (without affecting Client's obligation to continue to pay for such Work, even if it remains unperformed);
- ii. terminate the Agreement;
- iii. turn off or otherwise cease any website, email, network, telephone, or other hosting or similar service;
- iv. seek injunctive relief or specific performance regarding such default; or
- v. exercise any other right or remedy under the Agreement, at law, or in equity.

**C. Termination by Client.** Client may terminate the Agreement if:

- i. Crunchsoft fails to perform any of its material commitments, responsibilities or obligations under this Agreement and such failure to perform is not due to or excused by Force Majeure, and
- ii. such failure is not cured by Crunchsoft within 120 Days after receipt by Crunchsoft of written notice from Client of such failure or such longer period of time as may be reasonably required to cure such failure.

**D. Remedies.** In the event of termination of this Agreement by Crunchsoft:

- i. Client shall cease all further use of the Hardware and Software, or any portion thereof, in all forms and on all media and Client shall immediately: (i) surrender and deliver the Hardware and Software to Crunchsoft; and
- ii. Client shall pay all fees and amounts owed to Crunchsoft under the Agreement, through the date of expiration of the Term.

## **18. Security Agreement.**

**A. Security Interest.** To secure all sums owed by Client under the Agreement, whether such sums are heretofore, now, or hereafter accrued, payable, or existing, Client hereby irrevocably assigns, transfers, pledges and grants to Crunchsoft a security interest ("Security Interest") in any of the following, whether now owned or hereafter after acquired (collectively, "Collateral"): (i) the Purchased Equipment; (ii) any other Hardware delivered,

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Marshfield, WI 54449  
715-502-3155  
[sales@crunchsoft.com](mailto:sales@crunchsoft.com)



sold, provided, installed, purchased, or serviced by Crunchsoft under the Agreement; and (iii) the proceeds from any of the foregoing.

**B. Default and Security Interest.** If Client defaults under this Agreement, Crunchsoft may (i) enter upon the Client's property and take possession of all Collateral, without liability for trespass or conversion; (ii) keep, or sell at public or private sale, such Collateral in accordance with Chapter 409 of the Wisconsin Business and Commerce Code (the "UCC"); and (iii) take any other action permitted to a secured party under the UCC. The proceeds from any such sale, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including attorneys fees), will be credited against the indebtedness secured by the Security Interest.

**C. Purchase Money Security Interest.** If the Security Interest constitutes a purchase money security interest against any of the Collateral, Crunchsoft may exercise its rights hereunder against such purchase money security interest Collateral after all other Collateral has been exhausted. Any surplus will be paid to Client or as otherwise required by law. Client shall promptly pay any deficiencies.

**D. Waiver of Notice.** Except as provided in the Agreement, Client waives all rights to notice of default, notice of intent to accelerate, notice of acceleration, notice of sale, or any other notice whatsoever. This Agreement constitutes a security agreement under the UCC. Crunchsoft may file this Agreement, a UCC Financing Statement, and a fixture filing as necessary, to perfect the Security Interest.

## 19. Export Compliance.

**A. No Export and Relief from Performance Obligation.** Notwithstanding anything in the Agreement to the contrary, Crunchsoft is not obligated to perform the Work or deliver any Purchased Equipment if doing so would constitute an export under, would require licensure under, or would otherwise violate any Export Control Law. Client shall not use, disclose, ship, transport, sell, or export, directly or indirectly, any Hardware, Software, Purchased Equipment, networks, and other equipment (or any Hardware or Software on or through which the Work will be performed, as well as any component or product of the Work or any of the foregoing) that is the subject of the Agreement, to any destination or person if such disclosure, shipment, transport, sale, or export is prohibited by any Export Control Law. Client shall notify Crunchsoft of any export of any Purchased Equipment, products or components thereof, or any products of the Work.

**B. Compliance with Laws.** Client, and its Affiliates, shall comply with all United States export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. Client shall obtain the appropriate licenses or other approvals, if required, for exports of Hardware, technical data, and Software, or for the provision of the Work or other technical assistance.



**C. No Export by Client of Hardware or Software.** Client, and its Affiliates, shall not use, disclose, ship, transport, sell, or export its Hardware, Software, Purchased Equipment, networks, and other equipment (or any Hardware or Software on or through which the Work will be performed, as well as any component or product of the Work or any of the foregoing) that is the subject of the Agreement in any way involving military end-customers or foreign government anywhere, including (but without limitation) any of the following:

- i. any foreign army, navy, air force, militia, or other agency of defense;
- ii. defense contractors;
- iii. agencies, corporations, or similar organizations of foreign governments;
- iv. resellers who may sell to any of the foregoing; or
- v. foreign persons who may be associated with any of the foregoing.

**D. Record Keeping Requirements.** Client, and its Affiliates, shall comply with all regulatory record keeping requirements associated with all Export Control Laws. Crunchsoft may inspect the books and records of Client from time to time to confirm compliance with Export Control Laws. Upon request from Crunchsoft, Client shall promptly provide Crunchsoft with information pertaining to the particular end customer, the particular destination and the particular intended use of the Work, the Purchased Equipment, and all other goods and services provided by Crunchsoft.

**E. Client Representation and Warranties.** Client, and its Affiliates, represents and warrants that the Hardware, Software, Purchased Equipment, networks, and other equipment (or any Hardware or Software on or through which the Work will be performed) that is the subject of the Agreement is not designed with security and access management for the processing or storage of the following categories of data:

- i. data that is classified and or used on the U.S. Munitions list, including software and technical data;
- ii. articles, services and related technical data designated as defense articles and defense services;
- iii. data related to, or subject to any Export Control Laws; or
- iv. other data that is subject to heightened security requirements as a result of Client's internal policies or practices or by law.

## **20. Miscellaneous.**



**A. Use of Words, Section References.** Whenever the context requires, the gender of all words used in the Agreement included the masculine, feminine, and neuter. Unless otherwise provided, all references to Sections refer to sections of the Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes. Unless expressly provided otherwise, the word “includes” (and all variations of its tense) and other words of specific enumeration are not limited by or to the items that follow them. The words "herein", "hereof", "hereunder" and words of like import refer to the Agreement as a whole and not to any particular Section or provision of the Agreement.

**B. Headings.** The headings and titles of each Section are for convenience only and do not amplify, modify, or limit such Section.

**C. Joint Efforts.** The Agreement will be construed without regard to any presumption or rule requiring that it be construed against the party causing the Agreement or any part hereof to be drafted.

**D. Governing Law.** THE AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE. Any action arising out of, or related to, the Work or the Agreement must be brought in Harris County, Wisconsin. The parties agree that the UN Convention for the International Sale of Goods will have no force or effect on the Agreement.

**E. Severability.** If any provision in the Agreement is invalid or unenforceable, that provision will be construed, limited, amended, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of the Agreement will remain in full force.

**F. Assignment.** Client may not assign the Agreement without the prior written consent of Crunchsoft.

**G. Force Majeure.** Neither party shall be liable to the other by reason of any failure of performance hereunder (except obligations to pay) if such failure arises out of causes beyond such party's reasonable control, despite the reasonable efforts, and without the fault or negligence of such party (“Force Majeure”). “Force Majeure” shall include but not be limited to labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, Hardware or Software, earthquake, fire, natural disasters, accidents, governmental restrictions, or other causes beyond the reasonable control of a party.

**H. No Partnership or Joint Venture.** Except as expressly provided in the Agreement, Crunchsoft is an independent contractor (not a partner, joint venturer, employee, or agent) of Client. The Agreement is not a contract for personal services. Crunchsoft may engage subcontractors to perform the Work.





**I. No Waiver of Future Rights.** No waiver is effective unless in writing signed by the waiving party. No waiver of any past or present right is a waiver of any future right.

**J. Entire Agreement.** The Agreement sets forth the entire agreement between the parties regarding its subject matter. If these Terms conflict with the Contract, these Terms will control. The Agreement supersedes all communications, oral or written, between the parties relating to its subject matter. Any prior or contemporaneous proposal, term sheet, letter of intent, or similar document is not binding on Crunchsoft, and that Crunchsoft disclaims any representations, promises, warranties, or guarantees made thereunder.

**K. Amendments.** No modification is binding unless in writing and signed by both parties.

**L. Notices.** Any notice shall be sent by hand delivery, fax, email, overnight courier, or postage pre-paid certified mail, return receipt requested, to the address or other contact of the receiving party set forth in the Contract (unless such party notifies the other of a change of address by notice in accordance with this Section at least 3 days prior).

**M. No Third Party Beneficiaries.** Except for an Affiliate of Crunchsoft, no third party beneficiary exists under the Agreement.

**N. Expiration of Offer.** The Estimate and/or Proposal and/or Quote expires as a contractual offer 10 days from the date of the Contract, unless signed and accepted by Crunchsoft and Client within such time or otherwise extended in writing by Crunchsoft.

**O. Disputes.** If a Dispute occurs that the senior representatives of the Crunchsoft and Client have been unable, in good faith, to settle or agree upon within a period of five (5) Business Days after receipt of written notice by a party of the dispute sent by the other party, each of the parties shall nominate and commit one of its senior officers to meet at a mutually agreed time and place not later than ten (10) Business Days after receipt of that notice to attempt to resolve the dispute. If senior management has been unable to resolve the dispute within a period of five (5) Business Days after their meeting, or if the meeting has not occurred within ten (10) Business Days following the receipt of notice of Dispute, then either party may, by written notice to the other party, pursue its remedies in a court of law.