

SOFTWARE LICENSE AND HOSTING AGREEMENT

This SOFTWARE LICENSE AND HOSTING AGREEMENT ("Agreement") is entered into this ____ of July, 2025 by and between Chenosa Systems Corporation, a New Jersey corporation doing business as "ProPhoenix," with its principal place of business at 502 Pleasant Valley Avenue, Moorestown, NJ 08057 ("ProPhoenix"), and Mower County, a County Corporation with its principal place of business at 201 1st St NE, Austin, MN 55912 ("Licensee").

In consideration for the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that ProPhoenix will provide, and Licensee will accept, the software and services described in the proposal and attached to this Agreement as Appendix A (the "Proposal"), and Appendix B (the "Hosting Services Addendum") in exchange for the fees set forth in the Proposal and pursuant to the terms and conditions set forth in this Agreement.

THE PROPOSAL INCORPORATED INTO THIS AGREEMENT IS:

Title: AWS Cloud CAD,RMS,WDA, CMS

Proposal: 24.000432

Date:07/18/2025

PAYMENT TERMS:

Payment Milestones	Payment	When Invoiced
1. Project Initiation	30%	Beginning of Initiation Phase
2. Project Planning Stage 1	15%	Completion of Planning Stage 1
3. Project Planning Phase Complete	15%	Planning Stage Phase Completed
4. AWS Hosting Fee	AWS FEE	Provision of Hosting Servers
5. Implementation Phase Stage 1	15%	Implementation Stage 1 Completed
6. Implementation Phase Complete	15%	Implementation Phase Complete
7. Go-live Ready	10%	Go-live Ready Phase Complete
Total Project Costs with 1 st Year AWS Fee		

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Subsequent Year Software and Support Fees begin (1) one year from date shown below

Support Year	Annual Support Fee & Hosting Fees	When Invoiced
Year 1		Included in Purchase
Year 2		1 st Anniversary of Software Install
Year 3		2 nd Anniversary
Year 4		3 rd Anniversary
Year 5		4 th Anniversary
Year 6		5 th Anniversary
Each year thereafter	Limited to 5% maximum increase over prior year's total.	

The parties agree to the terms and conditions of this Software License and Support Agreement as of the date set forth above.

PROPHOENIX CORPORATION:

CUSTOMER:

By: _____ By: _____

Name: Paul Hoppe

Name: _____

Title: Executive Vice President

Date: _____

Title: _____

Date: _____

TERMS AND CONDITIONS

(Licensed model with hosting services)

PART I. SOFTWARE LICENSE TERMS

Capitalized terms (shown in bold at their first use in this Agreement) are defined in Section 13.

1.0 LICENSE; HOSTING AND RELATED RESTRICTIONS

1.1 ProPhoenix grants Customer a non-exclusive license to install and use the **Software** in object code form only and to use the **Documentation**, as described in this Section 1. The Software is being licensed, not sold, to Customer by ProPhoenix for use only under the terms of this Agreement, and ProPhoenix reserves all rights not expressly granted to Customer. Customer may:

- A. Use the Software to process information internally for the governmental and public safety functions assigned to Customer by the relevant governmental authorities, subject to the limitations on the number and type of **Concurrent Users** specified in the in the proposal that forms the basis of this Agreement (the "**Proposal**") or in an exhibit, amendment or schedule hereto.
- B. Permit Customer's employees and agents to use the Software and Documentation on Customer's behalf if they agree in writing to comply with the terms and conditions of Sections 1 and 11 of this Agreement or substantially similar terms; Customer will remain responsible for the compliance with these terms by third parties using the Software or Documentation with Customer's permission.

If Customer desires to use any Software or Documentation for purposes that exceed the restrictions set forth in this Agreement, then an additional license will be required.

1.2 Hosted Solution. If Customer has elected to purchase hosting services from ProPhoenix as set forth in the Proposal, ProPhoenix will provide the Server on which the Software will operate, which Customer will access and control remotely through electronic communications. These hosting service are governed by the additional terms of the Hosting Services Addendum, attached hereto as **Appendix B**.

1.3 On-Premises (Not Hosted) Use. If Customer has not elected to purchase hosting services from ProPhoenix, or if ProPhoenix's hosting services ever terminate, Appendix B will not apply and Customer may:

- A. Install the Software on a single **Server** (or any additional number specified in the Proposal or in an exhibit, amendment or schedule hereto), using only one (1) production database and/or unlimited training databases (unless otherwise specified in the Proposal,

on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto).

- B. Make one (1) backup copy of the Software to protect against malfunction or damage to Customer's computer systems or the media on which the Software is stored.
- C. Physically duplicate the Documentation for archival purposes and for individuals employed by Customer who are directly responsible for the daily ongoing operation of the Software.
- D. Make an appropriate number of copies of the Software and Documentation for internal training and testing purposes.
- E. The training database should not contain production data as it may be reset or moved without notice.

1.4 Whether or not the Software is hosted by ProPhoenix, Customer may not:

- A. Use the Software for any purpose other than for the governmental and public safety functions assigned to Customer by the relevant governmental authorities.
- B. License, sell, rent, lend, sublicense or lease the Software or Documentation to, or permit the use of the Software by or for the primary benefit of, any third party.
- C. Modify or attempt to modify the Software or any part of it.
- D. Reverse engineer, decompile or disassemble the Software (or attempt to do so) under any circumstances.
- E. Copy any part of the Software or Documentation unless this Agreement permits it.
- F. Merge, associate or combine, or attempt to merge, associate or combine, the Software with or into any third party software other than the **Third Party Software**.
- G. Remove or destroy any proprietary markings or legends, including copyright and trademark notices, appearing on or contained within any Software or Documentation.
- H. Export or re-export the Software and/or associated documentation in violation of the United States export rules and regulations.

The Software, documentation and any other materials accompanying this Agreement may be provided by ProPhoenix, at its option, on disk, in read only memory, via an FTP website download, or on any other media or in any other form

1.5 ProPhoenix and its **Third-Party Software Providers** (if any) retain all right, title and interest in the Software and Documentation (including copies made by Customer), except for those rights expressly granted to Customer under this Agreement. Customer acknowledges that ProPhoenix, its Third-Party Software Providers (if any), and their successors and assigns own all proprietary rights in the Software and Documentation, including copyrights and valuable trade secrets.

1.6 The Third-Party Software Providers are beneficiaries of this Agreement and may enforce this Agreement to protect their rights in the Third-Party Software. Customer acknowledges the right of the Third Party Software Providers in their respective software and related data and materials, including, but not limited to, trademarks and copyrights. Each party to this Agreement expressly indemnifies and holds the other party harmless against all claims, suits and damages by Third Party Software providers arising out of or caused by that party's breach of such Third Party Software license agreements.

1.7 If requested by ProPhoenix, Customer will submit an annual certification, signed by an officer or authorized representative, specifying the number of users and number and location of all copies of the Software that Customer has. ProPhoenix may also, once annually, upon reasonable notice and during regular business hours, audit compliance with the license restrictions; to that end, Customer shall permit ProPhoenix to inspect Customer's computer system on which Customer is operating the Software upon forty-eight (48) hours' prior written notice to Customer.

2.0 PROFESSIONAL SERVICES

2.1 Customer is responsible for the installation and configuration of the Software, training, on-site services and other professional services, unless either (a) those services are described in the Proposal or (b) Customer has agreed in writing to purchase those professional services from ProPhoenix pursuant to a separate agreement, at ProPhoenix's standard rates in effect at the time. If on-site services (or training anywhere other than at an ProPhoenix facility) are requested, Customer will also reimburse ProPhoenix for its reasonable travel expenses. .

2.2 If Customer initially elects to purchase hosting services and ProPhoenix's hosting services subsequently terminate, professional services to implement the Software on a Server controlled by Customer and to transfer Customer's data are available at ProPhoenix's then-current rates.

PART II. SUPPORT AND MAINTENANCE TERMS

3.0 SOFTWARE SUPPORT

3.1 During the term of any Software Support period in effect, ProPhoenix will provide Customer with the following Software Support:

A. **Enhancements** and related documentation made generally available at no additional charge to all licensees of ProPhoenix who have purchased support and maintenance. Nothing herein shall be construed as requiring ProPhoenix to provide Enhancements that are generally not available to other clients of ProPhoenix.

Any product that is designated by ProPhoenix as a new product will not be included in Software Support. Where ProPhoenix makes a new product available, Customer may obtain such product from ProPhoenix pursuant to its regular purchasing practices.

- B. Telephone, online and e-mail consultation services, for up to one **Support Environment** including problem solving, bug reporting, documentation clarification and technical guidance for the Software. Telephone and e-mail consultations will be available during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, exclusive of ProPhoenix holidays, and pager support for **Critical Errors** will be available at all other times.
- C. Online support options are available on a 24 hours-a-day, 7 days-a-week basis through the Internet at <http://support.prophoenix.com>. The information available at this website will, at ProPhoenix's option, include, timesaving technical tips, online support, a download library of Enhancements, and Documentation associated with the Software. ProPhoenix will endeavor to post its latest technical notes on this website.

3.2 ProPhoenix will endeavor to respond to Customer within two (2) hours after contact by Customer's authorized personnel for any **Critical Errors**, within two (2) business hours for any **High Errors** and within two to three (2-3) business days for all other issues. ProPhoenix will expend commercially reasonable efforts to provide an **Error Correction** designed to solve or bypass a reported **Error**. ProPhoenix will reasonably determine the priority level of Errors and use the following protocol for **Critical or High Errors**: (1) promptly assign specialists to correct the Error on an expedited basis; (2) provide ongoing communication on the status of an Error Correction; and (3) commence efforts to provide a temporary workaround or fix.

3.3 Requests for support outside normal support hours may be made by leaving a voicemail on the ProPhoenix support number, or by sending an email, fax or online request to ProPhoenix. ProPhoenix will use commercially reasonable efforts to respond to requests for Software Support outside of normal hours within eight (8) business hours of its actual receipt and knowledge of such voice, email, fax or online request. After hour support for non-critical issues is provided for an additional cost calculated at ProPhoenix's then-current hourly rate (presently \$125 per hour), per support issue.

3.4 Software Support will be provided remotely via an online connection. Software Support, including all diagnostic and remedial assistance at Customer's facilities or other remote locations is not included within the Software Support provided hereunder. Such diagnostic and remedial assistance at Customer's facilities or other remote locations may be obtained by Customer by purchasing separate consulting services from ProPhoenix at ProPhoenix's then-existing rates, plus expenses.

4.0 TERMS OF PERFORMANCE OF SOFTWARE SUPPORT SERVICES

4.1 ProPhoenix will be obligated to perform Software Support for the Software only if it remains unmodified, or modified only by ProPhoenix or its agents.

4.2 ProPhoenix will not provide Software Support with respect to problems with the Software or other Product which results from any negligent conduct or misuse by Customer, its employees or agents, or any other third party, including without limitation, (1) damages caused by accidents, relocation or other movement; (2) neglect; (3) a failure to maintain proper environmental conditions; or (4) a failure to use the Software in accordance with the applicable Documentation.

4.3 If Customer is not purchasing hosting services from ProPhoenix, Customer will be responsible for the following:

- A. Installing the Software as well as any Enhancements to the Software, unless Customer has retained ProPhoenix to complete the installation. Where Customer installs any software or performs any installation activities, it must confirm the compatibility of such software prior to installation.
- B. Keeping its hardware and network in proper working order and running the latest releases of all Third Party Software and other operating software.
- C. Maintaining trained designated representatives with a working knowledge of Customer's programs and system hardware;
- D. Promptly notifying ProPhoenix of suspected Errors or needs for service, and upon request, providing to ProPhoenix written documentation with respect to any such Errors. In order to maintain its right to obtain Software Support, including remote troubleshooting and other diagnostic and repair functions, Customer must provide ProPhoenix with access (via secure Internet connection) to servers running the Software whenever necessary to troubleshoot or fix a specific problem that has arisen and for which assistance has been requested pursuant to this Agreement. Customer will communicate with ProPhoenix with respect to the Software Support only through its designated representative.
- E. All maintenance and support of any network linked to the CPU containing the Software.

4.4 If Software Support is terminated, then (a) support of all types, including but not limited to Enhancements, operational support and telephone or email support will only be available on a non-priority basis at ProPhoenix's time and material rates as then in effect, and (b) ProPhoenix reserves the right to enter into a new Software Support agreement with Customer only on re-negotiated terms. In the event that Customer terminates its Software Support, and Customer thereafter wishes to reinstate those Software Support (and ProPhoenix agrees to such reinstatement), in addition to the then-existing rate for Software Support, ProPhoenix may require Customer to pay a Reinstatement Fee equal to thirty five percent (35%) of such then-existing rate.

4.5 In the event that Customer has (i) elected to discontinue Support services or (ii) breached Customer's payment obligations under this Agreement or any other agreement between the parties, ProPhoenix may elect to withhold Software Support, and this action by ProPhoenix would not

constitute a breach of this Agreement or a waiver of Customer's breach.

4.6 A version of the Software will be deemed obsolete one hundred twenty (120) days following receipt by Customer of a new Enhancement superseding the prior version of the Software. ProPhoenix will not support obsolete versions of the Software, provided, however, that if installation of the new version requires Customer to pay a new purchase price, Customer may choose not to purchase the new version and shall receive support through the end of the current Software Support period. In no event, however, shall ProPhoenix be required to support an obsolete version of the Software for more than twelve (12) months from the date of release of an Enhancement superseding the prior version of the Software.

4.7 No action by ProPhoenix in the performance of Software Support shall be deemed to expand the scope of Software Support as defined herein.

4.8 Customer is responsible for the installation and configuration of the Software, training, on-site services and other professional services. See Section 2.1 of these Terms and Conditions. Ongoing or follow up training is not considered Support and Maintenance. Additional training will be provided and invoiced at the standard rates in effect at the time.

PART III. PAYMENT AND OTHER GENERAL TERMS

5.0 FEES AND INVOICES

5.1 The payments set forth in the Proposal, on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto are due within thirty (30) days of an accomplished milestone. Unless the Software is found defective in a live production environment with a critical issue causing the Software to be down or preventing Customer from performing critical functions of the Software necessary to Customer's operations, after an uncured event of default under section 7.2 of this Agreement, Customer shall be responsible for the payment of all installation charges, as set forth in the Proposal, on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto, as well as all incidental expenses associated with such installation, including travel and materials. If Customer makes an advance payment for installation or configuration of the Software, training, on-site services or other professional services pursuant to the Proposal, that amount will be credited to fees for such services (and not Software license or maintenance fees) and will become non-refundable if Customer does not permit ProPhoenix to commence performance of the services within one (1) year of the payment.

5.2 The license fee for additional Sites or Concurrent Users will be billed at the then current rate, unless a different rate is contained in this Agreement. Customer must notify ProPhoenix no later than thirty (30) days after the number of Sites or Concurrent Users exceeds the contracted number. The license fee for additional Sites and Concurrent Users added will be due and payable within 30 days after the number of Concurrent Users exceeds the contracted number.

5.3 All invoices are due and payable in US dollars upon receipt. Late payment charges will be imposed at the rate of 1.5% per month, including any fees overdue for an increase in

the number of Concurrent Users.

5.4 Software Support for any Software Support periods that Customer agrees to purchase after the initial 12-month Software Support period (to the extent set forth in the Proposal, on the initial pages of this Agreement or in an exhibit, amendment or schedule hereto) will be invoiced annually and will be paid in full upon Customer's receipt of invoice.

5.5 Software Support Fees for any additional Site or Concurrent Users will be subject to negotiation and will be prorated for any partial year from the date on which the number of Sites or Concurrent Users exceeded the contracted number.

5.6 All fees and charges listed in the Proposal, on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto do not include sales, use, value-added and similar taxes, which are Customer's responsibility. In addition, the costs of Third-Party Software may increase outside the control of ProPhoenix; if this occurs, ProPhoenix will invoice Customer for such increase. Without limiting the foregoing, Customer shall promptly pay to ProPhoenix an amount equal to any such items actually paid or required to be collected or paid by ProPhoenix.

6.0 TERM

Software Support may be terminated by either party after a 12-month Software Support period by providing at least 90 days written notice before the end of the period. If not terminated, Parts II and III of this Agreement will continue in effect for 12 additional months, and Customer will be obligated to pay the fee specified in the Proposal, on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto, or if none is specified, ProPhoenix's then-current annual Software Support fee.

7.0 TERMINATION

7.1 This Agreement may be terminated as set forth in this Section 7 (or Section 9 below).

7.2 If either party defaults in the performance of any material obligations under this Agreement, and such default is not corrected within forty five (45) days after receipt of written notification of the default from the non-defaulting party, then the non-defaulting party may terminate this Agreement (or, if applicable, individual Software license(s)) immediately upon delivery of the written notice of termination to the defaulting party. The following, without limitation, shall constitute material events of default under this Section 7.2:

- A. any failure by Customer to make payment in full when due;
- B. any failure by ProPhoenix to provide any products or services to Customer which it is required to provide pursuant to the terms of this or any associated agreement between these parties; or
- C. any attempted assignment, sublicense or transfer of this Agreement by Customer without the prior written

consent of ProPhoenix.

7.3 ProPhoenix may terminate this Agreement and any license granted under Part I immediately if Customer materially violate Section 1 or 11 of this Agreement.

7.4 This Agreement and license granted under Part I shall terminate, immediately and without notice, if Customer: (a) files in any court pursuant to any statute of the United States or any individual state, a petition in insolvency or for the appointment of a receiver or trustee of Customer or of Customer's assets; (b) proposes a written agreement for the composition or extension of Customer's debts; (c) is served with an involuntary petition against Customer, filed in any insolvency proceeding, and such petition shall not be dismissed within 60 days after the filing thereof; (d) proposes or becomes a party to any dissolution or liquidation; or (e) makes an assignment for the benefit of creditors.

7.5 Within one month after the date of termination of this Agreement and/or license granted under Part I, Customer will return to ProPhoenix or destroy (at ProPhoenix's option) the original and all copies, in whole or in part as then remaining, in any form, of all Software, Documentation and other **Confidential Information** that are the subject of such termination, and an officer of Customer will certify to the foregoing in writing delivered to ProPhoenix.

7.6 Customer will pay all charges required under this Agreement incurred prior to the date of termination.

8.0 ASSIGNMENT

8.1 Without the prior written consent of ProPhoenix, Customer's rights to any Software and Documentation under this Agreement may not be assigned, sublicensed, or otherwise transferred, voluntarily or otherwise, by Customer.

8.2 ProPhoenix may assign its rights to receive payment under this Agreement, or grant a security interest in this Agreement or such payment right to any third party without Customer's consent. Otherwise, without Customer's prior written consent, ProPhoenix's obligations under this Agreement may not be assigned or otherwise transferred, voluntarily or otherwise, except in connection with the sale of its business by merger, stock sale or transfer of a substantial portion of its assets.

9.0 WARRANTY AND INDEMNITY

9.1 ProPhoenix warrants that the Software will operate in substantial conformity with the Documentation for ninety (90) days after the date of Delivery of the relevant Software to Customer. Customer's exclusive remedy and ProPhoenix's sole liability under this warranty will be for ProPhoenix to attempt through reasonable efforts to correct any material failure of any such copies of the Software to perform as warranted, if such failure is reported to ProPhoenix within the warranty period and Customer, at ProPhoenix's request, will make reasonable efforts to provide ProPhoenix with sufficient information (which may include access to such copies of the Software on Customer's computer system by ProPhoenix personnel) to reproduce the defect in question. This warranty does not apply to the Software or any Third Party Software

that has been altered or modified in any way by Customer or someone other than ProPhoenix or its authorized agents.

9.2 ProPhoenix warrants that the Software, when used within the scope of this Agreement, does not infringe any United States patent, copyright or trade secret. ProPhoenix will defend at its expense any action brought against Customer to the extent based on a claim that the Software, when used within the scope of this Agreement, infringes a U.S. patent, copyright or trade secret. ProPhoenix will pay any costs and damages finally awarded against Customer in such action that are attributable to such claim, provided that Customer promptly notifies ProPhoenix in writing of the claim, allows ProPhoenix to control the defense, provides ProPhoenix with the information and assistance necessary for the defense and/or settlement of the claim, and does not agree to any settlement without ProPhoenix's prior written consent. Should the Software become, or in ProPhoenix's opinion be likely to become, the subject of any claim of infringement, ProPhoenix may at its option (i) procure for Customer the right to continue using the Software, (ii) replace or modify the Software so as to make it non-infringing, or, if (i) and (ii) are not commercially reasonable, (iii) terminate the license granted hereunder and refund the remainder of the amounts paid for such license, using straight-line depreciation based on a five (5)-year useful life. ProPhoenix will have no liability for any claim of infringement based upon (i) use of other than the latest unmodified release of the Software available to Customer if such infringement would have been avoided by the use of such release, (ii) use or combination of the Software with other programs or data if such infringement would not have occurred without such use or combination, or (iii) use of the Software after receiving notice from a third party, or having reason to believe, that the Software infringes a patent, copyright or trade secret right of a third party unless prompt written notice thereof is given to ProPhoenix. The foregoing states the exclusive remedy of Customer and ProPhoenix's entire liability with respect to infringement of patents, copyrights, trade secrets or other proprietary rights.

10.0 LIMITATIONS

10.1 OTHER THAN THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, PROPHOENIX NEITHER MAKES NOR GRANTS ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED. PROPHOENIX EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS, INCLUDING SPECIFICALLY ANY AND ALL IMPLIED WARRANTIES, REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY, QUALITY, ACCURACY, QUIET ENJOYMENT OR FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE. PROPHOENIX DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

10.2 EXCEPT FOR ANY MATERIAL VIOLATION OF SECTION 9.2 OR SECTION 11, LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGE OR LOSS IN ANY WAY CONNECTED WITH THE SOFTWARE, THIS AGREEMENT, SOFTWARE SUPPORT OR ANY OTHER MATERIAL, INFORMATION OR SERVICES FURNISHED BY PROPHOENIX HEREUNDER, WHETHER OR NOT CAUSED BY PROPHOENIX'S BREACH OF WARRANTY,

NEGLIGENCE OR ANY BREACH OF ANY OTHER DUTY, SHALL BE, AT PROPHOENIX'S OPTION, REPLACEMENT OF THE SOFTWARE, DOCUMENTATION OR ENHANCEMENTS, REPERFORMANCE OF THE SOFTWARE SUPPORT OR SERVICES, OR RETURN OR CREDIT OF THE APPROPRIATE PORTION OF ANY AMOUNTS RECEIVED BY PROPHOENIX FROM LICENSEE. IN NO EVENT SHALL PROPHOENIX'S LIABILITY EXCEED THE AMOUNTS RECEIVED BY PROPHOENIX FOR THE SOFTWARE AND DOCUMENTATION OR FOR SOFTWARE SUPPORT OR OTHER SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING LICENSEE'S CLAIM FOR RECOVERY, EVEN IF PROPHOENIX IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR INSTANCES OF INTENTIONAL VIOLATION OF THE OTHER PARTY'S CONFIDENTIALITY OR INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF USE OR THE LOSS OF DATA OR INFORMATION OF ANY KIND, HOWEVER CAUSED, OR ANY LIABILITY TO END-USERS OR TO THIRD PARTIES (EXCEPT AS SET FORTH IN SECTION 9.2), INCLUDING WITHOUT LIMITATION LOSS OF PROPERTY, PERSONAL INJURY OR LOSS OF LIFE. THE LIMITED WARRANTY AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN PROPHOENIX AND CUSTOMER. PROPHOENIX WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE WITHOUT SUCH LIMITATIONS. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO THE LICENSEE. PROPHOENIX HAS NO LIABILITY TO LICENSEE UNDER THIS AGREEMENT FOR ANY CLAIM BASED UPON LICENSEE'S USE, COMBINATION OR OPERATION OF THE SOFTWARE WITH ANY SOFTWARE NOT SUPPLIED BY PROPHOENIX, OR BASED UPON ALTERATION OF SOFTWARE BY LICENSEE OR ANYONE OTHER THAN AN PROPHOENIX-AUTHORIZED REPRESENTATIVE.

11.0 CONFIDENTIALITY

11.1 Each party agrees to treat as confidential and not to disclose, publish, release, transfer or otherwise make available to third parties (except as provided in this Agreement or required by law) any information that the other designates as confidential or proprietary ("Confidential Information"). ProPhoenix's Confidential Information includes, without limitation, its technology, processes, specifications, developments and software programs (including the Software and Documentation), whether or not designated as Confidential Information. In addition, any Third Party Software shall be included as Confidential Information, whether or not designated as Confidential Information. This Section 11 does not negate or supersede the terms of any other confidentiality agreement between Customer and ProPhoenix. Neither party may disclose the financial terms of this Agreement to any third party other than its counsel or accountants or as required by law.

11.2 Unless otherwise agreed in advance and in writing, in the event that Customer or any employee or agent of Customer suggests any improvements or modifications to the Software, Customer acknowledges and agrees that, whether such improvements and/or modifications are implemented by ProPhoenix in whole or part, it assigns all right, title and interest, including all copyrights, patents, trade secrets, and all other intellectual property rights, in any such suggestions, improvements and modifications to ProPhoenix without payment or compensation of any kind, and that it will execute any reasonable documentation requested by ProPhoenix to memorialize such assignment. Customer further acknowledges and agrees that any audio or visual recording or broadcast of ProPhoenix training sessions, for any purpose is prohibited without express written consent from ProPhoenix. To the extent permitted by law, Customer agrees to take all reasonable precautions, including those that may be reasonably requested by ProPhoenix, to protect its Confidential Information.

11.3 ProPhoenix agrees that all records and data entered into the database or imported from previously-used computer systems operated by Customer are and shall remain the sole property of Customer. Customer shall not provide, and ProPhoenix shall not, without Customer's written consent, copy or use such records except insofar as is necessary to carry out work on behalf of or for Customer or as otherwise pursuant to this Agreement.

11.4 Any use or attempted use of the Software or disclosure of Confidential Information in violation of the restrictions of this Section 11 is a material breach of this Agreement that will cause irreparable harm, entitling the violated party to injunctive relief in addition to all legal remedies. The obligations set forth in this Section 11 shall survive the termination of this Agreement for any reason for a period of two (2) years; provided, however, that such obligations shall not be deemed to survive only to the extent such information: (i) was a matter of public knowledge or available in published literature at the time ProPhoenix communicated this to Customer; (ii) becomes a matter of public knowledge or available in published literature through no fault of Customer subsequent to the time of communication thereof to Customer; (iii) was in Customer's possession free of any obligation of confidence at the time of the ProPhoenix communication thereof to Customer; (iv) was rightfully communicated by a third party to Customer free of any obligation of confidence subsequent to the time of the ProPhoenix communication thereof to Customer; (v) was developed by officers, employees or agents of, or consultants to Customer independently of and without reference to the Software or associated materials or documentation; or (vi) as otherwise required by law.

12.0 GENERAL

12.1 This Agreement constitutes the entire understanding between the parties with respect to its subject matter and supersedes any and all other prior understandings, statements, warranties, representations and agreements, oral or written, relating to them, except that the terms of any earlier nondisclosure or confidentiality agreement shall remain in full force and effect. Customer is not relying on any representations about the Software or any future releases of the Software other than the Documentation, unless such

representations are attached in writing to this Agreement. Any amendment to this Agreement must be in writing and signed by both parties. Printed or standard terms on any order form submitted by Customer shall not apply if, and to the extent that, they are inconsistent with this Agreement. This Agreement may be executed in multiple counterparts, which may be exchanged via electronic facsimile machines or electronic signature devices.

12.2 This Agreement will be governed by and interpreted in accordance with the laws of the State of New Jersey, excluding its principles relating to conflicts of laws.

12.3 Except for actions initiated by either party to this Agreement for injunctive relief to enforce its rights pursuant to Section 11 above or, at the election of the party seeking collection, for the collection of any payments due in the normal course of business, any dispute or claim arising in connection with this Agreement will be adjudicated in the appropriate courts located in the State of New Jersey. It is the expressed desire of both parties, however, that a good faith effort be made to resolve all disputes prior to the resort to judicial proceedings. Accordingly, it is agreed that any dispute arising under this Agreement, including without limitation, any dispute regarding the operation of the Software, or payments due hereunder, shall be expressed to the other party in a writing that describes each dispute in detail and includes documentation sufficient to evidence the nature of the dispute. The writing shall be delivered to the other party at the address set forth herein. The party receiving the dispute shall respond in writing within thirty (30) days and shall provide documentation supporting its response. Following such delivery and response, the parties shall engage in direct, good faith negotiations for the following thirty (30) days in an effort to resolve all disputes. If the parties are unable to reach an agreement, and in the absence of a written agreement to extend the negotiation period, either party may seek judicial relief. The existence of a dispute shall not, however, be cause for either party to avoid any obligation under this Agreement or any associated agreement, including without limitation, any payment or support obligation.

12.4 Customer will comply with, and at all times cooperate promptly with ProPhoenix to enable ProPhoenix to comply with, the provisions of the United States Export Administration Act, War Powers Act, or other law or Executive Order relating to control of exports or transfer of technology, and the regulations of the United States Departments of State, Commerce and Defense relating to them (in present form or as they may be amended in the future). In particular, but without limitation, the Software may not be exported or re-exported (a) into (or to a national or resident of) any U.S. embargoed countries (currently Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria), or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of any such country or on any such list.

12.5 Notices delivered under the terms of this Agreement will be in writing and sent by prepaid certified mail, return receipt requested, or by a nationally recognized overnight courier service to the respective addresses of the parties set

forth in the recitals and signature page to this Agreement. In the case of ProPhoenix, such notices will be directed to the attention of the President; and, in Customer's case, such notices will be directed to the attention of the individual named above executing this Agreement on Customer's behalf. Notices will be effective on the date received.

12.6 No term or provision of this Agreement will be deemed waived and no breach of this Agreement will be deemed consented to or excused, unless such waiver, consent or excuse will be expressed in writing and signed by the party claimed to have so waived, consented or excused such term or provision.

12.7 The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

12.8 After expiration or termination of this Agreement, all provisions relating to payment shall survive until completion of required payments. In addition, all provisions regarding scope of the license granted in Part I, audit, indemnification, warranties, liability and limits thereon, assignment and confidentiality or protection of proprietary rights and trade secrets, shall survive indefinitely.

12.9 No failure or omission by either party to carry out or observe any of the Terms or Conditions of this Agreement shall give rise to any claim against that party or be deemed to be a breach of this Agreement if such failure or omission arises, without limitation, due to act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of any government authority or third party, industrial disputes, fire, lightning, explosion, inclement weather, or other causes beyond the control of either party.

13.0 DEFINITIONS. For purposes of this Agreement, the following terms shall be defined as follows:

"CAD Client" means a single computer terminal at a licensed Site, which may be used by one Concurrent User at a time but may be used by several Concurrent Users at different times.

"Concurrent User" means any individual user using or having access to the Software at a single point in time.

"Confidential Information" is defined in Section 11.

"Critical Error" means an Error that causes the Software production system to go down or prevents Customer from working in the Software.

"Customer Data" means all electronic data or information submitted to the Hosting Service by Customer or its Affiliates (if applicable).

"Delivery" occurs when ProPhoenix has first delivered the Software and Documentation on CD-ROM to a common carrier, by ESD (electronic delivery), or personally by an authorized employee or agent of ProPhoenix at Customer's address set forth above.

"Designated Representatives" shall mean Customer's employee who is trained and continues to keep updated with

the ongoing product details in the Software and capable of providing support to their users.

"Documentation" means the user guide and technical guide related to the Software, any related support material specified in an exhibit, addendum or schedule, and the functionality described at the ProPhoenix website at www.prophoenix.com, as may be modified from time to time by ProPhoenix as permitted by this Agreement. Documentation may, at the option of ProPhoenix, be provided in paper or electronic form.

"Enhancements" are new releases and versions, error corrections, minor updates and modifications of the Software.

"Error" means a failure of the Software to conform to the specifications therefor as set forth in the Documentation resulting in the inability to use or a considerable restriction in use of the Software.

"Error Correction" means either a software modification or addition that, when made or added to the Software, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Error on Customer.

"High Error" means an Error which represents a failure of expected functionality that causes serious degradation to Customer's use of the Software production system.

"Maintenance Release" means a subsequent version of the Software that includes Error Corrections and/or Enhancements.

"Server" means a single CPU or multi-core server (physical or virtual). A Server may be located at a different location than the Customer's permitted Site.

"Site" means a single facility or other physical location at which Customer's users operate the Software.

"Software" means the Phoenix-Law and Fire CAD, RMS and WDA software modules listed on the initial page(s) of this Agreement (or an exhibit, amendment or schedule hereto), as it may be upgraded, enhanced, and/or modified by ProPhoenix (unless such upgrade is accompanied by a separate license agreement, in which case the terms of that license agreement will govern the Software as upgraded), in machine-readable, object code form only. The Software includes any Third-Party Software products and related documentation listed in the Proposal, on the initial pages of this Agreement, or in an exhibit, amendment or schedule hereto.

"Source Code" means the human-readable version of the Software, comprised of a text listing of commands to be compiled or assembled into an executable computer program, along with any associated developers' notes.

"Support Environment" means up to two (2) Software instances (typically one production instance and one QA instance) at Customer's site location.

"Third-Party Software" means software of companies other than ProPhoenix that ProPhoenix has licensed to Customer

under this Agreement.

"Third-Party Software Provider" means a company, other than ProPhoenix, that has licensed Third Party Software to

ProPhoenix, which ProPhoenix sublicenses to Customer under this Agreement.

APPENDIX A
[ATTACH THE DEFINITIVE PROPOSAL]

APPENDIX B

HOSTING SERVICES ADDENDUM

TERMS AND CONDITIONS: This Addendum sets forth the terms and conditions for the provision of web hosting services ("Hosting Services") by ProPhoenix to Customer, consisting of application management and web hosting services for ProPhoenix software programs and modules licensed by Customer and listed in the Proposal (the "Software"). The terms and conditions set forth herein are intended to supplement the terms and conditions of the Proposal and the Agreement. With regard to the Hosting Services, in the event of a conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall prevail. All other terms of the Agreement shall remain in full force and effect.

1. LICENSE AND SYSTEM USE:

(a) In consideration of the Hosting Services Fees set forth in the Proposal, ProPhoenix grants to Customer a non-exclusive, nontransferable (except as provided herein) license to access and use, through ProPhoenix's Hosting Services, all of the Software listed on the Proposal, as may be upgraded, enhanced, and/or modified, and to access, use and copy the user assistance materials provided in digital or in print form with the Software (the "Documentation"), subject to the terms of this Addendum.

(b) Customer may access and use the Software and access, use and copy the Documentation through ProPhoenix's website on which the Hosting Services are provided ("Hosting Website") for its own internal use only, in accordance with this Addendum and the Agreement.

(c) At all times during the term of the Agreement, Customer has the right to have the Software be hosted and served by a third-party host.

(d) Customer, and not ProPhoenix, will provide and manage the data which is processed via the Software and the Hosting Services (the "Content"). As such, ProPhoenix does not guarantee the accuracy, integrity or quality of the Content and under no circumstances will ProPhoenix be liable in any way for any loss or damage of any kind incurred as a result of the use of any Content.

(e) Customer agrees that it will only use the Hosting Website in a manner that is consistent with the terms of this Addendum and will only use the Hosting Website in such a way as to ensure compliance with all applicable laws and regulations.

(f) Customer is responsible for maintaining the confidentiality of any user names and passwords assigned to it and shall be fully responsible for all activities which occur under them. Customer shall notify ProPhoenix immediately of any unauthorized use of which it becomes aware.

(g) Customer shall be responsible for the establishment, maintenance and payment of fees for communication lines, Internet access and/or other charges necessary to access and use the Hosting Website.

(h) Customer agrees that the material and content contained within or provided by the Hosting Website is subject to the licenses specifically granted in this Addendum and in the Agreement and may not be used for commercial purposes or distributed commercially without ProPhoenix's permission. Customer's use of the Hosting Website carries with it no rights in relation to copyright, trademarks or other intellectual property

rights of ProPhoenix other than as specifically provided in this Addendum and in the Agreement.

(i) Customer (for itself and on behalf of its agents) agrees not to use the Hosting Website or the services made available to it on or via the Hosting Website in any manner that (i) causes or may cause the whole or any part of the Hosting Website or such services to be interrupted, damaged, rendered less efficient or is in any way impaired, or (ii) causes or may cause loss or damage to any person. Customer agrees to indemnify and hold harmless ProPhoenix, its officers, directors, stockholders and agents from and against any losses or damages suffered by ProPhoenix arising out of or relating to a breach of this Section 1(i), including any legal, administrative or technical costs.

(j) Subject to the terms and conditions of this Agreement, ProPhoenix shall use commercially reasonable efforts to (i) operate the Hosting Services twenty-four hours a day, seven days a week, but Customer acknowledges that from time to time the Hosting Services may be inaccessible or inoperable for various reasons, including periodic maintenance procedures or upgrades, service malfunctions and other causes which may be outside of ProPhoenix's control; (ii) have support for the Hosting Services available from 8am to 5pm Eastern Time, Monday – Friday (except standard holidays); (iii) minimize any disruption, inaccessibility and/or inoperability of the Hosting Services, whether due to scheduled maintenance or upgrade procedures or due to malfunctions or to problems outside the control of ProPhoenix; and (iv) ensure the security and confidentiality of its Content transmitted through the Hosting Services.

2. SUPPORT AND MAINTENANCE TERMS: In addition to the maintenance provided under the Agreement, ProPhoenix shall provide the following maintenance during the term hereof: (i) database performance tuning and (ii) hardware maintenance (iii) Upgrade of OS software and ProPhoenix licensed software.

2.1 HOSTED SUPPORT SERVICES

A. Telephone, online and e-mail consultation services, for up to one **Support Environment** including problem solving, bug reporting, documentation clarification and technical guidance for the Software. Telephone and e-mail consultations will be available during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, exclusive of ProPhoenix holidays, and pager support for **Critical Errors** will be 24 hours-a-day, 7 days-a-week.

B. Online support options are available on a 24 hours-a-day, 7 days-a-week basis through the Internet at <http://support.prophoenix.com>. The information available at this website will, at ProPhoenix's option, include, timesaving technical tips, online support, a download library of Enhancements, and Documentation associated with the Software. ProPhoenix will endeavor to post its latest technical notes on this website.

F. ProPhoenix provides 98.5% scheduled uptime on hosted AWS government servers.

G. Business Resiliency.

1) ProPhoenix shall develop and comply with all plans relating to data backup, operational business continuity and recovery, pandemic preparedness, and technical disaster recovery, (collectively "Plans"), and may rely on any such Plans employed by Amazon Web Services ("AWS"). Upon request, ProPhoenix shall provide or make available for review to Customer copies of its and/or AWS's Plans and business continuity program policies. Such Plans must include, at a minimum: (i) a description of the procedures necessary to recover from an outage, failure, or service degradation (collectively "Disruption Events"); (ii) definitions of dedicated roles and responsibilities to execute recovery procedures; and (iii) guidelines describing communications that will be made to Customer if Disruption Events occur. ProPhoenix shall identify a primary and alternate contact and provide information sufficient for Customer to reach such contacts whenever a Disruption Event occurs.

2) ProPhoenix (or AWS) shall test said Plans at ProPhoenix's (or AWS's) expense and at intervals reasonably acceptable to Customer, but in no event less than once per year.

3) ProPhoenix shall notify Customer of a Disruption Event within thirty (30) minutes of the commencement of the Disruption Event and then provide Customer with periodic updates of the disruption impact and recovery progress until Services are restored. ProPhoenix shall have, at a minimum, a secured recovery solution containing sufficient trained operating personnel, all hardware, software, communications equipment, and current copies of data and files necessary to restore any technical and/or operations services that have experienced a Disruption Event within one (1) hour or less (the "RTO") of its commencement using a recovery point objective (RPO) of 15 minutes or less. Technical recovery services shall comply with the RTO. Customer data backup must be replicated to an alternate site. Data backup shall occur hourly (the "RPO"), with a full backup once a day and a daily database retention period of thirty (30) days or more.

2.2 ProPhoenix will endeavor to respond to Customer within thirty (30) minutes after contact by Customer's authorized

personnel for any **Critical Errors**, within one hundred twenty (120) minutes for any **High Errors** and within two to three (2-3) business days for all other issues. ProPhoenix will expend commercially reasonable efforts to provide an **Error Correction** designed to solve or bypass a reported **Error**. ProPhoenix will reasonably determine the priority level of Errors and use the following protocol for **Critical or High Errors**: (1) promptly assign specialists to correct the Error on an expedited basis; (2) provide ongoing communication on the status of an Error Correction; and (3) commence efforts to provide a temporary workaround or fix.

2.3 Requests for support outside normal support hours may be made by leaving a voicemail on the ProPhoenix support number, or by sending an email, fax or online request to ProPhoenix. ProPhoenix will use commercially reasonable efforts to respond to requests for Software Support outside of normal hours within eight (8) business hours of its actual receipt and knowledge of such voice, email, fax or online request. After hour support for non-critical issues is provided for an additional cost calculated at ProPhoenix's then-current hourly rate (presently \$125 per hour), per support issue.

2.4 Software Support will be provided remotely via an online connection. Software Support, including all diagnostic and remedial assistance at Customer's facilities or other remote locations is not included within the Software Support provided hereunder. Such diagnostic and remedial assistance at Customer's facilities or other remote locations may be obtained by Customer by purchasing separate consulting services from ProPhoenix at ProPhoenix's then-existing rates, plus expenses.

3. FEES AND INVOICES: Customer shall pay ProPhoenix the Hosting Services Fees as set forth in the initial Proposal. ProPhoenix may increase the Hosting Services Fees once annually solely to the extent necessary to cover any annual increase in the hosting fees it pays to its third-party hosting provider (currently Amazon Web Services) attributable directly to Customer. In addition, Customer is responsible for payment of any taxes resulting from or imposed upon this Addendum or the use of the Software or Documentation or services delivered hereunder or permitted to be made by Customer, except taxes based on ProPhoenix's income. No refunds shall be payable upon any termination of this Addendum except as specifically provided herein.

4. TERM: The initial term of this Addendum shall be as set forth in the Proposal. Thereafter, this Addendum shall automatically renew for consecutive annual terms, at the then current Hosting cost, unless, more than ninety (90) days prior to the end of a term, either party provides the other party with written notice of its intent not to renew the Addendum.

5. TERMS OF HOSTING SERVICE:

5.1. Customer Must Have Internet Access. DSL, cable or another high-speed Internet connection is required for proper transmission of the Hosting Services. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Hosting Services, including, but not limited to, "browser" software that supports protocol used by ProPhoenix, including Secure Socket Layer

(SSL) protocol or other protocols accepted by ProPhoenix, and to follow logon procedures for services that support such protocols. ProPhoenix is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by ProPhoenix. ProPhoenix assumes no responsibility for the reliability or performance of any connections as described in this Section.

5.2. Hardware provisioned is based on the terms provided. Any modification of the hardware for increased performance or any extra software or hardware tools may incur additional charges.

5.3. Email and Notices. Customer's email address for communication and notice purposes relating to this Agreement is set forth in the Proposal (or subsequent email addresses as advised by Customer). Customer agrees to accept emails from ProPhoenix at the stated e-mail address specified under this Section 5.3. ProPhoenix may provide any and all notices, statements, and other communications to Customer through either e-mail, posting on the Hosting Services (or other electronic transmission) or by mail or express delivery service. ProPhoenix recommends that the main and billing contact mail addresses be group addresses so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, ProPhoenix may rely and act on all information and instructions provided to ProPhoenix from the above-specified e-mail address.

5.4. Users: Passwords, Access and Notification. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Hosting Services or under Customer's account. ProPhoenix will act as though any electronic communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Hosting Services and shall promptly notify ProPhoenix of any unauthorized access or use of the Hosting Services and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

5.5. Customer's Lawful Conduct. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Hosting Services, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Hosting Services and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Hosting Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported

from the United States and the country in which its Users are located. Customer will not send any electronic communication from the Hosting Services that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Hosting Services may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Hosting Services by any means other than through the interfaces that are provided by ProPhoenix. Customer shall ensure that all access and use of the Hosting Services by Users is in accordance with the terms and conditions of this Agreement, including but not limited to those Users that are contractors and agents, and Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by Customer and Customer waives all of those defenses that Customer may have as to why Customer should not be liable for Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

5.6. Transmission of Data. Customer understands that the technical processing and transmission of Customer's electronic communications is fundamentally necessary to use of the Hosting Services. Customer expressly consents to ProPhoenix's interception and storage of electronic communications and/or Customer Data, and Customer acknowledges and understands that Customer's electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by ProPhoenix. ProPhoenix is not responsible for any electronic communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by ProPhoenix, including, but not limited to, the Internet and Customer's local network.

5.7. Security. ProPhoenix shall maintain reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data.

6. TERMINATION:

(a) This Addendum may be terminated by either party in the event of a material default by the other which is not cured within thirty (30) days after written notice of such breach is given by the non-defaulting party.

(b) This Addendum may be terminated immediately by ProPhoenix if Customer violates or threatens to violate any term of this Addendum relating to the limited scope of the right to use Hosting Services granted herein.

(c) This Addendum will be terminated immediately upon the termination or expiration of the Agreement.

(d) Upon termination of this Addendum, ProPhoenix will immediately cease providing the Hosting Services and upon its request, except in the case of termination under paragraph (c) of this Section, shall facilitate a transition to its direct use of the Software as provided in the Agreement or to a third-party hosting arrangement, including delivering to Customer or the third-party host the then-current version of the Software and its data, entering into an amendment to the Agreement with Customer to allow third-party hosting if applicable, and providing implementation, installation, configuration and other services that may be required or requested by Customer to facilitate the transition, at ProPhoenix's standard rates in effect at the time.

7. DISCLAIMER OF WARRANTIES:

(a) Although ProPhoenix will use commercially reasonable efforts to provide virus-free downloads, ProPhoenix makes no representation or warranty that any such downloads will be virus-free and will not cause interruptions with its computer systems.

(b) PROPHOENIX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO HOSTING SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. PROPHOENIX DOES NOT WARRANT THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

8. LIMITATIONS:

(a) If either party terminates this Addendum in accordance with Section 5(a) or (b), it may, where appropriate, bring an action for any moneys due hereunder (including, in any termination by Customer, the unused portion, determined on a pro rata basis, of the Hosting Services Fees, and, in any termination by ProPhoenix, all unpaid Hosting Services Fees for the initial term described in Section 4). Neither party shall have any liability for damages to the other for any violation of the terms of this Addendum except for moneys due hereunder. The limitation of remedies in this Section will not apply to claims concerning enforcement of rights regarding confidentiality, patents, copyrights, trade secrets, trademarks or trade names or indemnification hereunder.

(b) ProPhoenix may from time to time provide links to other websites or resources. ProPhoenix neither endorses the content of, nor bears any responsibility for, such links and resources.

(c) EXCEPT IN THE EVENT OF A THIRD-PARTY CLAIM OR A BREACH OF CONFIDENTIALITY OR

PROPRIETARY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS RIDER, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. GENERAL:

(a) All notices shall be in writing and given by personal delivery, overnight delivery service with confirmation of delivery, or certified mail to the recipient's address set forth above, return receipt requested. Notice shall be deemed given the date of personal delivery or the next business day after delivery to an overnight delivery service. Mailed notice shall be deemed given the fifth business day after mailing or the date of delivery recorded on the return receipt, whichever is earlier.

(b) This Addendum (including the Exhibits hereto) constitutes the entire agreement between the parties with respect to Hosting Services; except for the Agreement and any mutual non-disclosure or confidentiality agreement signed by the parties, all other representations, statements, negotiations, undertakings and prior agreements are terminated and superseded hereby.

(c) After expiration or termination of this Addendum, all provisions relating to payment shall survive until completion of required payments. In addition, all provisions regarding liability and limits thereon shall survive indefinitely.

(d) This Addendum shall be deemed to have been made in the State of New Jersey, and shall be governed by and construed in accordance with its laws as a contract made and performed therein. All amounts hereunder shall be payable in US dollars.