

AGREEMENT
SOFTWARE AS A SERVICE AND END USER LICENSE AGREEMENT

This **Agreement** is made as of **DATE**, by and between the following parties:

VENDOR: ConcernCenter, Inc.
9 Carolina Cherry Ct.
Fairport, New York 14450
hereinafter called "Vendor"

-and-

CUSTOMER: **Name of Customer**
Address
City, State Zip Code
hereinafter called "Customer."

WITNESSETH:

WHEREAS, Vendor is in the business of supplying software applications and related services to organizations, institutions, and companies, including, among other things, ConcernCenter System© software and User Interface (UI) of support services for specified concerns of end users; and

WHEREAS, Customer is an **organization/institution/company** that desires the use of ConcernCenter software application products and services; and

WHEREAS, Customer desires to have Vendor provide Cloud Hosting with Vendor providing Installation Qualification ("IQ") and the Customer retaining responsibility for Operational Qualification ("OQ") and User Acceptance/Production Qualification ("UAT/PQ"); and

WHEREAS, Vendor and Customer desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Vendor will provide to Customer the Services for a fee,

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

Definitions

- a. "aaS" is an acronym for "As A Service" and means the combined hosting and support services provided in this Agreement.

- b. **“aaS Materials”** means the written materials relating to the operation and use of the Vendor Software including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Vendor Software provided as part of the Service, and any other materials prepared in connection with any Vendor Software modification, correction, or enhancement, and shall include any updated versions of aaS Materials as may be provided by Vendor from time to time (1) in the course of providing the Service; (2) as part of an online tutorials or help files provided with the Service; or (3) in the course of providing web seminars in which Customer or Customer’s Users enroll.
- c. **“Application Support Services”** shall mean the support not included in the Product Support Services and defined in Schedule C.
- d. **“Base Components”** means the ConcernCenter System© software, and hosting environment as specified in Schedule D that Vendor makes available for use by Customer as part of the Service.
- e. **“Cloud Hosting”** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- f. **“Vendor Software”** means Vendor proprietary software applications and user interfaces as defined in Schedule A and made available to Customer by Vendor as part of the Service. Vendor Software may contain third-party components licensed to Vendor.
- g. **“Customer Content” or “Content”** means all data and materials provided by Customer to ConcernCenter for use in connection with the SaaS Services, including, without limitation, customer applications, data files, and graphics.
- h. **“Customer Data”** means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by Customer relative to Customer Users.
- i. **“Electronic Communications”** means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- j. **“Infrastructure Support Services”** means the support provided by Vendor for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- k. **“Product Support Services”** means the support provided by Vendor to remediate, correct, or abate errors in the out of the box Vendor Software that is provided as part of the Service as defined in Schedule B. Support for customer specific configurations and customizations (if any) are handled by Application Support Services defined in schedule C.
- l. **“Purchase Order Form(s)”** refers to a Customer document, in either electronic or written form, issued by Customer to confirm Customer’s purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.
- m. **“Service”** means the software and infrastructure in a hosted environment provided and maintained by Vendor to which Customer is being granted access under this Agreement

Commented [ML1]: Is Vendor Software ConcernCenter Systems? As there more than one?

via a web site or another designated IP address. Service or Services includes Product Support Services and Application Support Services described in this Agreement.

- n. **“Term”** means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- o. **“Third Party Products”** means application software products provided by third party vendors, including operating system and application software with which the Vendor Software interfaces and which provides certain functionality essential to the operation of the Vendor Software. Third Party Products are licensed to Vendor for incorporation and use in the hosted environment as part of the Service. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Vendor Software.
- p. **“User(s)”** means Customer’s employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user authentication method by Customer or on Customer’s behalf.

1 PROVISION OF SERVICES

In consideration of the fees paid by Customer under this Agreement, Vendor agrees to provide Customer access to the Service as outlined in the Schedules annexed hereto.

2 INSTALLATION SCHEDULE

Vendor will implement the infrastructure described in Schedule D upon receipt of payment, to provide Customer the Services described in this Agreement.

This schedule is contingent on:

- (i) SaaS implementation by Vendor and acceptance of the SaaS by Customer. If no objection is made within 10 Days of implementation, Vendor will assume acceptance by Customer;
- (ii) Customer providing all data required by Vendor to implement the infrastructure.
- (iii) Customer completing all tasks and activities required as a prerequisite for the system to be placed into production use as articulated in the Set Up Guide.

Failure of Customer to achieve all the contingencies described above as well as all other reasonable tasks required of Customer will require an adjustment in the schedule and may require the payment of additional fees by Customer.

3 LICENSE GRANTS

Subject to the terms and conditions of this Agreement, Vendor grants to Customer during the Term of this Agreement the nontransferable, nonexclusive, revocable worldwide right to permit Users to use the Service, including the Base Components thereof and display and print Customer Data. Customer promises and agrees to use the SaaS Materials solely in connection with the Service, all solely for Customer’s own internal business operations. Internal business operations means the use of the SaaS Materials by Customer’s employees or students, provided such internal business operations shall not include commercial time-sharing, rental,

outsourcing, service bureau or similar use. For purpose of this license grant, "Customer" shall include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer's direction and for whom Customer is fully responsible hereunder. Customer acknowledges and agrees that the license granted, for the items listed in Schedule A herein, is not a concurrent user license and that the rights granted to Customer in this Agreement are subject to all of the following agreements and restrictions: (i) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the aaS Materials available to any third party other than an authorized User; (ii) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Vendor Software and or aaS Materials that are provided as a part thereof, or access the Service or aaS Materials in order to build a similar or competitive product or service; (iii) Customer shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (iv) except as expressly stated herein, no part of the Service or aaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (v) Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (vi) Customer acknowledges and agrees that Vendor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the aaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Users relating to the Service or the aaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (vii) unauthorized use, resale or commercial exploitation of any part of the Service or aaS Materials in any way is expressly prohibited; (viii) Customer does not acquire any rights in the Service or aaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Customer are reserved by Vendor and Third Party Vendors; and (ix) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Vendor Software, Third Party Products, or aaS Materials to Customer. This license shall remain in effect until and unless terminated by Vendor.

4 LICENSES FROM CUSTOMER

Subject to the terms and conditions of this Agreement, Customer grants to Vendor and its Third Party Vendors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer Data solely to the extent necessary to provide the Service and aaS Materials to Customer, and (b) any trademarks that Customer provides Vendor for the purpose of including them in Customer's user interface of the Service ("Customer Trademarks"). Customer acknowledges and agrees that Customer Data and information regarding Customer and Customer's Users that is provided to Vendor and its Third Party Vendors in connection with this Agreement may be (a) processed by Vendor and its Third Party Vendors to the extent necessary to provide the Service and (b) transferred outside of the country or any other jurisdiction where Customer and Customer's Users are located. In addition, Customer acknowledges and agrees that it is Customer's obligation to inform Customer's Users and customers of the processing of Customer Data and information

regarding Customer and Customer's Users pursuant to this Agreement and to ensure that such Users and customers have given any necessary consent to such processing as required by all applicable data protection legislation. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and information regarding Customer and Customer's Users. Customer agrees that the license to the Customer Data shall survive termination of this Agreement solely for the purpose of storing backup Customer Data in accordance with the terms of this Agreement.

By providing Customer with the Services, Vendor does not acquire any right, title and/or interest in the content material (including but not limited to text, Customer-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Customer makes available for use by Users by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of Vendor, Customer is solely responsible for all Content.

5 PROPRIETARY RIGHTS

Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Vendor, nothing in the Service, theaaS Materials, or the Agreement shall be construed to confer any license to any of Vendor's (or its third-party manufacturer's, author's, developer's, vendor's, and service provider's ("Third Party Vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Vendor Software listed on Schedule A and other Vendor service marks, logos and product service names are marks of Vendor (the "Vendor Marks"). Customer agrees not to display or use the Vendor marks, or the marks of any Third Party Vendor, in any manner without the owner's express prior written permission. Vendor reserves the right to subcontract any or all services provided hereunder to third parties.

6 LICENSE FEE, TERM AND PAYMENT

The initial term ("Initial Term") of this Agreement will commence on the Effective Date and will terminate on the anniversary of the Effective Date. Each twelve (12) month period after the Effective Date will be defined as a "Service Year", e.g., Months 1-12 will constitute Service Year 1 and months 13-24 will constitute Service Year 2, etc.). The initial fee is \$ [REDACTED] to be paid in one (1) annual installment beginning [REDACTED] DATE [REDACTED]. Following the expiration of the Initial Term, the Agreement shall continue at a cost of \$ [REDACTED] for year 2; thereafter, unless otherwise modified in a mutually agreed upon manner, renewal shall be subject to inflationary adjustments not to exceed 5% annually and will continue until such time as either party provides thirty (30) days' written notice to the other party of its intent to cancel the Agreement. For the Initial Term Customer shall pay fees within thirty (30) days of execution of this agreement. Invoices shall be payable within thirty (30) days after receipt thereof. In addition to any remedies Vendor may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use the

Service. In the event Vendor incurs any costs (including reasonable attorney's fees) from efforts collecting overdue fees from Customer, Customer agrees to pay such costs. Customer further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Customer's access to, use, or receipt of the Service.

7 TERMS OF SERVICE

7.1 Service Extensions or Updates

Customer further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by Customer pursuant to an amendment accepted by Vendor referencing this Agreement will be subject to this Agreement.

7.2 Customer Must Have Internet Access

In order to use the Service, Customer must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. Customer must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in Schedule D.

7.3 Email and Notices

Customer agrees to provide Vendor with Customer's e-mail address (es), and to accept emails (or other Electronic Communications) from Vendor at the e-mail address Customer specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of Customer is not required with respect to e-mail communications pertaining to the Customer's routine use of the Service, including without limitation communications relating to the support, maintenance, or the updating of the Service. Customer further agrees the Vendor may provide any and all required notices including legal notices to Customer through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

7.4 Passwords, Access, and Notification for Customer Account with Vendor

Customer is responsible for identifying no more than five (5) authorized account contacts ("Account Contact") to facilitate communication about the account and Services. Customer acknowledges and agrees that Customer is responsible for the assigning unique identifiers to each authorized User and authenticating users, and for prohibiting Account Contacts from sharing passwords and or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its Account Contacts') passwords and usernames. 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 Service or under Customer's account. Vendor will act as though any Electronic Communications it receives under Customer's passwords, Username, and/or account number will have been sent by Customer. Customer agrees to notify Vendor if Customer becomes aware of any loss or theft or unauthorized use of any of

Customer's passwords, usernames, and/or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the Customer for further User licenses.

7.5 Customer's Responsibilities

Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will ensure that any use of the Service by Customer's Users is in accordance with the terms of this Agreement. Customer agrees to notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data. Customer acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. Customer agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Customer must comply with the list as it exists in fact. Customer certifies that neither Customer nor any Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

In addition to its responsibilities in this Agreement, Customer is responsible for all Customer responsibilities indicated in the Schedules attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of Vendor.

Customer is solely responsible for obtaining all licenses and permissions necessary related to the Content, including without limitation licenses for any third-party software included in the Content.

Customer shall not resell the Services directly or indirectly to third parties.

7.6 Transmission of Data

Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to Vendor'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 Vendor. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further understands that Electronic Communications may be accessed by

unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that Vendor is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Vendor.

7.7 Vendor's Support

Vendor will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing Customer with user guides and on-line help, and product support as set forth in Schedule B. Infrastructure Support Services shall be provided as set forth in Schedule D. Infrastructure Support Services pertain to the maintenance of the hosting environment provided as part of the Service. Vendor will also provide Product Support for Vendor Software employed as part of the Service as set forth in Schedule B annexed hereto. Product Support pertains to support designed to remedy errors in Vendor Software that cause it to deviate from the specifications as described in the aaS Materials.

7.8 Confidential Information

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Customer's Confidential Information shall include, but not be limited to, Customer Data. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, Customer acknowledges and agrees that Vendor may disclose Customer's Confidential Information to its Third Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose

the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent Vendor has any access to Content in the course of providing the Services, Vendor's entire obligation to keep Content confidential is stated in this Section below. Vendor shall not, intentionally (i) access Customer's Content or (ii) disclose Customer's Content to any third party, except to the extent: (a) Customer makes its Content publicly available, (b) as necessary for Vendor to provide, or obtain third-party supplier support for the Services or to provide information requested by Customer, or (c) as specifically authorized by Customer in writing. Vendor's obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard Vendor security policies and standards applicable to the Services as practiced at the service locations from which Vendor is providing the Services to Customer.

The obligations in this Section shall not apply to the recipient of Confidential Information and/or Vendor with respect to Content to the extent disclosure of Confidential Information or Content is required to comply with laws or respond to requests by a regulatory or judicial body and/or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, and/or Vendor with respect to Content, reserves the right to charge the other party on a time-and-materials basis for recipient's/Vendor's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

Vendor does not store any personal identifiable information (PII) and any that is obtained through providing the service to Customer is deleted at frequent intervals as customary practice of the Vendor.

8 SUSPENSION/TERMINATION

8.1 Suspension for Delinquent Account

Vendor reserves the right to suspend Customer's access and/or use of the Service for any account for which any payment is due, but remains unpaid after thirty (30) day's written notice of such delinquency. Customer agrees that Vendor shall not be liable to Customer, or to any third party, for any suspension of the Service resulting from Customer's non-payment of the fees as described in this Section.

8.2 Suspension for Ongoing Harm

Customer agrees that Vendor may, with reasonably contemporaneous telephonic or electronic mail notice to Customer, suspend Customer's access to the Service if Vendor reasonably concludes that Customer's use of the Service is causing immediate and ongoing harm to Vendor or others. Vendor will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that Vendor will not be liable to Customer or to any third party for any suspension of the Service under such circumstances as described in this Section.

8.3 *In the Event of a Breach*

Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service.

8.4 *Handling of Customer Data In the Event of Termination*

Customer acknowledges and agrees that following termination of this Agreement, and Vendor may immediately deactivate Customer's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, Vendor shall remove or overwrite all applicable Content from Vendor's systems following the effective date of termination or cancellation, in accordance with Vendor's standard procedures. Prior to any such deletion or destruction, however, Vendor shall either (1) grant Customer reasonable access to the Service for the sole purpose of Customer retrieving Customer Data or (2) transfer all Customer Data to other media for delivery to Customer. Customer agrees that Vendor shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Vendor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Vendor from maintaining one copy of Customer Data if required by law.

8.5 *Handling of Application In the Event of Termination*

Customer data, Customer license keys used in hosting and Customer application documentation updated during the hosting period by application support would be returned to the Customer as defined in the Disentanglement section of this Agreement.

8.6 *Refunds*

Given the nature of digital content, Vendor does not offer a refund or credit on purchase unless one of the promises contained in this agreement has been breached, or as required by law. If billed on an annual basis and cancellation occurs in writing within thirty (30) days of annual installment received by Vendor, a prorated amount will be refunded to Customer.

9 MODIFICATION/DISCONTINUATION/MAINTENANCE

9.1 *Modification to or Discontinuation of the Service*

Vendor reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the Customer on which the Customer materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, Vendor shall use commercially reasonable efforts to notify Customer prior to any such modification; further, Vendor shall consider the Customer's validation needs and requirements in connection with any modification of the Service and, except as otherwise noted in Section 9.3, shall validate the Service as modified to the same extent provided in the Schedules. Customer acknowledges that Vendor reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that Vendor will not be liable to Customer or any third party for any modification or discontinuance of the Service as described in this Section 9.

9.2 *Modification to Third Party Software and Support Cost*

In the event that Vendor incur any increased cost from Third party software licenses or annual support fees during the term of this agreement, Vendor reserves the right to pass these costs onto the Customer, not to exceed \$250 in one year. Application support as described in Schedule C is available to Customer for additional cost beyond this agreement.

9.3 *Maintenance*

To perform maintenance, including infrastructure and application upgrades, routinely scheduled down time will occur. Vendor reserves the right to issue new releases in which Vendor adds functionality to the Service on approximately a quarterly basis. Customer acknowledges these periodic major releases can take several hours to complete (up to eight hours). The time necessary to provide such periodic releases shall not be counted in any System Availability calculations. Customer shall be apprised of software upgrades and or patch releases to the Service; in addition, Vendor shall perform IQ validation with respect thereto. In the event of a patch release, a full IQ validation may not be undertaken. If Vendor, in its sole discretion, determines any unscheduled maintenance is necessary, Vendor will use commercially reasonable efforts to notify Customer as soon as it becomes aware of such need.

10 WARRANTIES

10.1 *Warranty of Functionality*

Vendor warrants to Customer the Service will comply with the material functionality described in the aaS Materials and such functionality will be maintained in all material respects in subsequent upgrades to the Service during the Term of this Agreement. Customer's sole and exclusive remedy for Vendor's breach of this warranty shall be that Vendor shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the aaS Materials within a reasonable period of time. However, Vendor shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, Vendor shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Vendor's Product Support Center. Vendor does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

10.2 *Data Maintenance and Backup Warranty*

Vendor warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures listed in Schedule D. In the event of a breach of this provision, Vendor will use commercially reasonable efforts to correct Customer Data or restore Customer Data within three (3) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer). Provided Vendor complies with the procedures set forth in Schedule D, it shall be deemed to have satisfied its obligation with respect to this warranty.

10.3 *Non-Infringement Warranty*

Vendor warrants it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to

the Service and neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

11 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, VENDOR DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VENDOR OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VENDOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

12 LIMITATIONS OF LIABILITY

12.1 *No Consequential Damages*

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICE, THE USE OF THE SERVICE OR THE INABILITY TO USE SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING HERIN SHALL LIMIT CUSTOMER'S ABILITY TO RECOVER THE PROCEEDS OF INSURANCE POLICIES MAINTAINED BY VENDOR THAT OTHERWISE WOULD RESPOND TO LIABILITY FROM ANY CLAIM HEREUNDER.

12.2 *Direct Damage Limitations*

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF VENDOR OR ANY THIRD PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP.

EXCEPT FOR A FAILURE OF VENDOR TO COMPLY WITH ITS OBLIGATIONS WITH RESPECT TO BACKUP SERVICES, VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

12.3 *Exclusions*

THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 12.1 AND 12.2 SHALL NOT APPLY WITH RESPECT TO:

- (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY,
- (II) (BREACHES BY CUSTOMER OF LICENSE TERMS APPLICABLE TO VENDOR PROVIDED SOFTWARE AND THIRD PARTY PRODUCTS AS SET FORTH IN SECTION 2 ABOVE,
- (III) CUSTOMER'S UNAUTHORIZED USE OF VENDOR'S OR THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS;
- (IV) DAMAGES INCURRED AS A RESULT OF A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 7.8 THAT RESULT IN THE DISCLOSURE OF CONFIDENTIAL INFORMATION OF THE OTHER PARTY, OR
- (V) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 13 (WHICH ARE SUBJECT TO THE LIMITS, IF ANY CONTAINED THEREIN).

DAMAGES AS LIMITED BY THIS SECTION 12 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

13 INDEMNIFICATION

13.1 *Personal Injury and Property Damage*

Each party (the "**Indemnifying Party**") agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an "**Indemnified Party**"), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and

expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, “**Losses**”) arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

13.2 *Infringement*

Vendor will indemnify, defend and hold harmless Customer for Losses Customer incurs as a direct result of any unaffiliated third party claim asserting the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from (i) Customer’s modification of the Service or combination by Customer the Services with other products or services if the Service would not have been infringing but for such combination or modification, (ii) Customer’s use of the Service in a manner not authorized herein or for which it was not designed, (iii) Customer’s failure to use an updated non-infringing version of the applicable intellectual property to the extent Customer was notified that the update cured an infringement, (iv) changes to the Service made by Vendor at the direction of the Customer or (v) Customer Data. If any item for which Vendor has an indemnification obligation under this Section becomes, or in Vendor’s reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Vendor will, in addition to indemnifying Customer as provided in this Section, promptly take the following actions, at no additional charge to Customer, in the listed order of priority: (a) secure the right to continue using the item or (b) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by Vendor using commercially reasonable efforts, and only in such event, Vendor will remove the item from the Service and the applicable Service fee will be equitably adjusted to reflect such removal. This Section 13.2 states Customer’s sole and exclusive remedy for Vendor’s infringement or misappropriation of intellectual property of a third party.

13.3 *Customer’s Indemnity*

Customer shall defend and indemnify Vendor and its Third Party Vendors against any and all Losses incurred by Vendor and its Third Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the Customer Data or the Customer Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Customer’s breach of Sections 7.5 and 7.8.

Customer will indemnify, defend, and hold harmless Vendor, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys’ fees Vendor incurs from any third-party claim arising from Customer’s Content or Customer’s or any end user’s use of the Services.

13.4 *Indemnification Procedures*

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party’s failure to provide notification shall not affect the indemnifying party’s indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party’s ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall

have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

14 NOTICES

Except as otherwise provided in Section 7.4 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email whose receipt is acknowledged by an officer of the receiving Party. If to Vendor, a notice shall be forwarded to ConcernCenter, Inc., at 9 Carolina Cherry Ct. Fairport, New York 14450, Attn. President, and if to Customer, a notice shall be forwarded to Customer at the address provided above. Notices shall be considered to have been given at the time of actual delivery in person, five (5) business days after posting if by mail, one (1) business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

15 SURVIVAL

The following provisions shall survive any termination of this Agreement: Sections 5, 7.8, 11, 12, 13, 14, 15, 20 and 21.

16 NO ASSIGNMENT

Customer may not assign this Agreement without the prior written approval of Vendor. Any purported assignment in violation of this section shall be void.

17 U.S. GOVERNMENT RESTRICTED RIGHTS

Any use of the Service by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

18 FORCE MAJEURE

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other party

hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's (Impacted Party") reasonable control, directly or indirectly, including, without limitation, the following force majeure ("Force Majeure Event(s)") that frustrates the purpose of this Agreement: acts of God; flood; fire; earthquake or explosion; war; invasion; hostilities (whether war is declared or not); terrorist threats or acts; riot or other civil unrest; insurrection; rebellions or revolutions; government order or law; actions, embargoes or blockades in effect on or after the date of this Agreement; action by any governmental authority; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); emergency state; shortage of power, communications line, or transportation facilities; and other similar events beyond the reasonable control of the Impacted Party.

19 SECURITY AND SECURITY POLICIES

Vendor is not responsible for (i) unauthorized access to Customer's Content, or (ii) damages arising out of unauthorized access.

Customer acknowledges that some of the Services may be performed by Vendor or its third-party suppliers outside the country where the Services are obtained, and information pertaining to Customer's use of the Services may be incorporated into Vendor's global database(s) to assist Vendor in providing the Services. Customer shall be solely responsible for obtaining any required consents to such off-shore support from Customer's employees and other end users of the Services.

20 GENERAL PROVISIONS

Any action related to this Agreement will be governed by New York law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in New York. This Agreement, together with the Schedules annexed hereto, represents the parties' entire understanding relating to the use of the Service and supersedes any prior or contemporaneous, conflicting, or additional, communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Vendor and Customer as a result of this Agreement or use of the Service. The failure of Vendor to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing. Vendor reserves the right to assign its right to receive and collect payments hereunder.

Any rights not expressly granted herein are reserved by Vendor.

IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties as of the Effective Date.

VENDOR

By: _____
Date: _____

CUSTOMER

By: _____
Date: _____

SCHEDULE A – VENDOR LICENSED SOFTWARE

The licenses set forth below shall be available to Customer during the term of the agreement.

Licensed Software	Number of Servers/Prod Systems (Instances)	
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ConcernCenter	One (1)	
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SCHEDULE B – PRODUCT SUPPORT

During the Term of this Agreement and for so long as Customer is entitled to receive the Service hereunder, Vendor shall provide the following Product Support Services

- ConcernCenter software (ADA, WCAG 2.1 compliant, A/AA)
- Limited language translation of concerns and resources
- Access to the front end and back end of the software
- Creation of URL for each instance
- Implementation of ConcernCenter software
 - Server set up
 - Initial set up of instances including pre-populated concerns and categories
- Creation of back end users as indicated by client
- Product upgrades and bug fixes
- Excel document for the adding of concerns, categories, resources, and prioritization
- Up to 5 hours of training within the first year of purchase
- Phone and email support as you work to enter your resources into the back end of ConcernCenter
- Minimum list of assets to be gathered by client for the successful operation of ConcernCenter
- Email template for client to send to resources entered into ConcernCenter
- List of marketing suggestions
- Email support during business hours

SCHEDULE C – APPLICATION SUPPORT

1. SUPPORTED SOFTWARE

The Support Services includes application support for the solution comprised of the following Software:

Software
Software defined in Schedule A
Third party software integrated with the Software

2. APPLICATION SUPPORT SCOPE

Application support activities are defined as the activities required to support and maintain a solution which are excluded from the scope of standard product support (Schedule B).

The Application Support scope consists of the following activities. Other related activities may be considered in scope as agreed in writing by Vendor and Customer.

- Google Analytics training and report creation
- Initial upload of all resources and categories entered into Excel sheet by client
- Creation of additional resource stickers

SCHEDULE D – INFRASTRUCTURE

Vendor and Customer have agreed on the following services and architecture, which is based on data from Customer, industry and vendor software architecture sizing worksheets, and Vendor Cloud Hosting procedures and sizing worksheets.

BASE COMPONENTS:

ConcernCenter SaaS for access to and the management of Concerns, Resources, and Related Categories.

Assumptions:

- Vendor assumes that Customer will provide the required user licenses to support the project (i.e. Google Analytics and Google Maps APIs).
- Vendor assumes that Customer will provide the required resource information to support the project.
- Customer users will access the service via the Customer network.

Configuration Workbook

The specific environment and services purchased by Customer under this Agreement is as described in Attachment 1 to this Schedule D.

INFRASTRUCTURE SERVICE LEVEL AGREEMENTS

Customer's Availability SLAs are set forth in this section.

The hosting architecture shown in this Agreement has been designed to achieve the following Availability SLA: The Availability SLA for ConcernCenter is 99% uptime.

Availability will be based on a Customer's cumulative outages over a calendar month.

The Availability SLA(s) stated above will be effective once installation of the Services indicated in Attachment 1 “Customer Configuration” is complete.

Excused Downtime From SLA Calculations

The Customer’s Site shall be considered available to the extent any downtime is due to:

- Regularly scheduled maintenance or service upgrades;
- Intentional shutdowns due to emergency interventions and/or responses to security incidents;
- Problems with third-party components for which fixes have not been provided by the vendor;
- Content residing on the Customer’s hosting environment;
- Customer-managed hardware or software;
- Configuration changes initiated by the Customer;
- The Customer’s failure to observe Vendor Hosting security and upgrade policies; or
- Any outages caused by Vendor application support described in Schedule B
- Any cause outside of Vendor’s control.

ATTACHMENT 1 – CUSTOMER CONFIGURATION

ConcernCenter provisions use of a virtual server environment which grants access to a client's version of the ConcernCenter software. This server is hosted by Amazon Web Services on a EC2 t3.medium instance with a RDS t3 database instance. Database backups are generated daily and stored for 5 days in a AWS EC2 instance. ConcernCenter will be updated to operate in current standards and with new features to enhance the ConcernCenter software. ConcernCenter provides and utilizes Mailgun, a secure email api service to transmit emails from the ConcernCenter software to the clients mail server using TLS security.

EC2 t3.medium instances provide at least 2 - 2.5 GHz Intel Scalable Processors, at least 4 GB Memory, and up to 5 GBp/s network speed. All AWS instances are scalable based on the clients usage.

More information on AWS EC2 T3.medium instances can be found here: <https://aws.amazon.com/ec2/instance-types/>