



APPLICATION SERVICE PROVIDER AGREEMENT

This APPLICATION SERVICE PROVIDER AGREEMENT ("Agreement") is by and between: Internal Systems Corporation, a Georgia corporation ("ISC") and [customer] ("Customer").

- 1. License.** ISC grants Customer a limited, nonexclusive and nontransferable license to use ISC's software, including documentation, as identified in Exhibit A-1 (the "Software" or "Trackstar"), during the Term specified. Customer shall not reverse assemble or reverse compile the Software in whole or in part or use, copy, modify, create derivative works, sublicense, lend, share or otherwise transfer the Software except as provided herein.
- 2. Hosting Service.** ISC will host the Software (the "Service") so that Customer and its authorized users will have access during the Term specified, subject to the terms hereinafter set forth. The Service shall be accessible as defined in the Service Level Agreement, attached as Exhibit E. Customer may use the Service only on computers of the types and specifications described on Exhibit B, for the purposes of serving the internal needs of Customer's business. Customer may not use the Service in a resale capacity or process and/or analyze third-party data in a commercial service, bureau environment.
- 3. ISC Services.** ISC shall provide to Customer the following services (the "Services"):

 - a. Provide the setup and optional services as selected on Exhibits A-2 and A-3;
 - b. Provide the training services as selected on Exhibit A-4;
 - c. Maintain a telephone hotline that allows Authorized Callers identified on Exhibit C to report system problems and seek assistance, subject to the Service Call Quota, in use of the current and previous release of the Software during Normal Working Hours of Monday through Friday, 9:00 a.m. to 5:00 p.m., EST, excluding ISC's holidays; and
 - d. Assist Customer to operate any new releases, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in Exhibit D.
- 4. Customer Responsibilities.** Customer shall:

 - a. Select, tailor and maintain the Software using the maintenance and setup facilities of the Software to achieve Customer's intended results;
 - b. Obtain the maintenance, training, service, and support to utilize the Software in the manner Customer desires, including the training of at least one Customer employee to act as System Administrator and be an Authorized Caller;
 - c. Procure, install and maintain all equipment, telephone lines, communication interfaces, and other hardware necessary to operate the Software and access the Service;
 - d. Use the Software in a manner consistent with any and all applicable federal, state, and local law; and
 - e. Be solely responsible for the accuracy and content of information provided by Customer and for determining whether the Software and Service meets Customer's needs.
- 5. Fees and Payment.**

 - a. Fees. Customer shall pay the fees set forth in Exhibit A-1, as billed by ISC. Fees outlined on Exhibit A-1 are due upon contract signing. Renewal billings shall be invoiced on or around the first day of the renewal period. Payment terms for subsequent billings are net thirty (30) days from the date of the invoice. Invoices will be delivered to Customer via electronic mail to the Accounting Contact listed on Exhibit C. If delivery via US Mail is requested, Customer agrees to pay a ten (10) dollar handling fee per invoice.
 - b. Excess Storage. Customer will be notified monthly if its data storage quota is exceeded. Customer may store unlimited history of application data, however attachment data

uploaded to the system is limited. The standard is two megabytes per Active User (which generally will accommodate one attachment and one picture per Active User). Excess disk usage is only measured for uploaded files, including pictures, attachments, and any other uploadable file type stored in the database. Tools are provided in the software to monitor disk usage and alert Customer when overages occur. Customer will be billed in arrears for disk usage in excess of its quota. Customer shall have the right to reduce its usage of the Services to avoid excess storage fees.

c. **Taxes.** Customer shall be responsible for all taxes, levies and any other fees, other than taxes on ISC's net income, incurred as a result of this Agreement. Fees specified herein are exclusive of taxes, levies and fees. If any State Government, City, County, or other taxing authority deems this transaction to be taxable, Customer agrees to pay to ISC or to the taxing authority all sales, use, excise, duties, value added and similar taxes (collectively, "Taxes") on the Software or services licensed pursuant to this Agreement. Customer shall be solely responsible for personal property taxes or use taxes, if any, on the Software or services.

d. **Late Payment.** If Customer fails to pay any amount by the due date, Customer shall owe interest on the unpaid balance at a rate of 18% per annum. In the event that Customer has a past due balance for more than 30 days, ISC reserves the right to suspend the Service until payments are received in lieu of termination of this Agreement. Customer will be notified of any such suspension, in writing, via Email. ISC shall promptly enable access to Service upon payment of all past due balances (including a re-activation fee specified in Exhibit D).

f. **Rate Changes.** ISC reserves the right to change its standard rate schedule as shown on Exhibit D from time to time, provided that no such change will be effective until at least 30 days after ISC has given Customer written notice of change, and provided that increases in fees do not exceed 10% in any one year. Such written

notice may be in the form of a posting on ISC's support web site.

g. **Increasing License Counts.** Customer may request additional Active Users or modules to be added to the Agreement by one of the Authorized Callers making the request in writing or via electronic mail to ISC. ISC will provide a quote for the increased number of licenses. Upon acceptance of the quote by one of the Authorized Callers, ISC will enable access for the additional users, and invoice Customer accordingly. Customer will be invoiced for the number of months remaining on the current term, starting on the first day of the month. The fee charged for additional users will be based upon the fee schedule effective at the time of the Agreement or contract extension. If new modules are requested, fees will be quoted at the then current rate. If fewer than 20 additional licenses are added, an administration fee will be charged for the upgrade as set forth in Exhibit D.

6. **Ownership of Software.** ISC retains title and full ownership rights to the Software, including all modifications, enhancements and future releases.
7. **Ownership of Data.** All Customer information shall be exclusively owned by Customer. Customer shall have the ability to export its data at any time using the Software's tools and reports. Within thirty (30) days after termination, ISC will destroy any copies of Customer information in its possession. Under no circumstances shall ISC be Customer's record keeper.
8. **Warranty; Disclaimers.**
 - a. **Limited Warranty.** ISC warrants that the Software substantially conforms to the Documentation.
 - b. **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN 7.a. ABOVE, ISC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, COMPATIBILITY OR UNINTERRUPTED ACCESS.

c. Limitation of Liability. ISC'S LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY SHALL NOT EXCEED MONETARY DAMAGES EQUAL TO THE TOTAL OF THE FEES PAID BY CUSTOMER TO ISC WITHIN THE PRIOR YEAR. IN NO EVENT SHALL ISC BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION, LOST DATA, EVEN IF ISC HAS BEEN ADVISED OF THE POSSIBILITY OF SAME. ISC HAS NO RESPONSIBILITY FOR CUSTOMER'S MISUSE, MISUNDERSTANDING OR MISAPPLICATION OF THE SOFTWARE.

d. Representations. No person has been authorized to make any oral representations regarding the Software or Service, and no written representations may be made with respect thereto or relied upon by Customer except in writings or documents authorized and provided by ISC.

9. Term; Termination.

a. Term. The Term of this Agreement shall be for the period specified on Exhibit A-1 (the "Initial Term"), which shall automatically renew for additional periods of equal duration ("Renewal Term(s)"), unless either party provides written notice of intent not to renew at least thirty (30) days prior to the end of the Term then in effect.

b. Termination for Cause. This Agreement may be terminated:

1) by either party if the other party breaches any of the terms or conditions of this Agreement and fails to cure within thirty (30) days after receipt of written notice thereof;

2) by ISC if Customer shall (i) apply for or consent to the appointment of or the taking of possession by receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) fail, or admit in writing its failure or inability, or be generally unable to pay its debts as such debts become due, (iii) make a

general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code or any other similar federal or state law, or (v) take any corporate action for the purpose of effecting any of the foregoing.

c. Effect of Termination. On the date of termination, all Customer's payment obligations (including any termination charges) shall become due and payable, and the license, Service and Services shall cease. Customer shall destroy all copies of the Documentation and Software within ten (10) days after the date of termination.

10. Infringement Remedy. If the Software is by competent judicial or administrative authority held to infringe any U.S. Patent, trademark, or copyright, ISC shall at its sole option and expense, (i) replace or modify the Software and any component or part thereof to abate the infringement, (ii) procure for the benefit of Customer from the holders of the patent, trademark or copyright infringed or alleged to be infringed, the right to continue use of the Software and any component or part or portion thereof, or (iii) reimburse to Customer the monthly Fees paid by the Customer to ISC for any remaining months on the current Term.

11. General.

a. Governing law. This Agreement shall be governed by and construed under, the laws of the State of Florida without reference to its conflicts of law provisions.

b. Arbitration. Any claim, controversy, or dispute arising out of or related to this Agreement shall be settled by the Commercial Arbitration Rules of the American Arbitration Association in Jacksonville, Florida. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

c. References. Titles and paragraph headings herein are for reference purposes only.

d. Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions

hereof and no waiver shall be effective unless made in writing.

e. Notices. Unless expressly provided otherwise in this Agreement, all notices which either party hereto is required or may desire to give to the other party shall be in writing and shall be given by sending such notice to the address for the party set forth on the signature page of this Agreement (or such replacement address as such party may supply in accordance with this notification provision) by either (i) personal delivery, (ii) recognized overnight delivery service, or (iii) depositing such notice in the U.S. mail, properly addressed and postage prepaid, for delivery by registered or certified mail. Notices so sent by mail shall be deemed received on the third business day following the date of such deposit.

f. Force Majeure. If ISC is unable to perform any of its obligations hereunder, or Customer is unable to enjoy a benefit hereunder (including without limitation loss of or failure to provide the Software), due to any event beyond the reasonable control of ISC, including without limitation weather and all other Acts of God, war, fire, heat, cold, explosion, flood, power or telephone failures, acts or omissions of any government or agency thereof, compliance with requirements, rules, regulations or orders of any governmental authority or any instrumentality thereof, labor difficulty, supplier failure or delay, civil disorder, or breakdown or malfunction of machinery, transportation facilities or other equipment of any nature, then ISC's performance shall be excused for the pendency of such event.

g. Independent Contractor. The relationship between the parties established by this Agreement shall be solely that of independent contractors and does not designate either party as the agent, legal representative, partner or joint venture of the other party for any purpose whatsoever. Neither party is granted any right to create any obligation or responsibility or make representations, express or implied, on behalf of

or in the name of the other party or to bind the other party in any manner or thing whatsoever.

h. Entire Agreement. This Agreement is the full and final expression of the parties' agreement. This Agreement supersedes any and all other agreements, either oral or in a writing, between the parties. This Agreement may be amended or modified only in a writing signed by both parties.

i. Severability. In the event that any provisions of this Agreement shall be held invalid or otherwise unenforceable, such provisions shall be severed and the remaining provisions of this Agreement shall continue in full force and effect.

j. Assignment. Customer may not assign any of its rights or obligations hereunder without the prior written consent of ISC. This Agreement shall be binding upon the parties and their successors and permitted assigns.

[CUSTOMER]

By: _____

Name: [contract signer]

Title: [title]

Date: _____, 20__

INTERNAL SYSTEMS CORPORATION

By: _____

Name: J. David Alessi

Title: President

Date: _____, 20__