

THIS IS AN AGREEMENT for the term of one year with automatic yearly renewals effective as of the acceptance date of the initial statement of work ("Effective Date") between the customer ("customer") and Square-9 Softworks ("Square 9") (each a "Party" and collectively the "Parties"). Square 9 agrees to provide services to the customer for advanced capture, document management and education services as described within the Statement of Work.

THE CUSTOMER AND SQUARE 9 FURTHER AGREE AS FOLLOWS:

## **1. Basic Agreement**

Square 9 shall provide, or cause to be provided, document management, capture automation and/or educational services. Each project performed by Square 9 will be described in a Quote and a separate Statement of Work that will be attached and become a part of this agreement (the "Agreement"). The customer shall pay Square 9 for such Services as set forth in this Agreement.

## **2. Order Placement**

All orders shall be placed on Customer's purchase orders referencing this Agreement. Should there be any language in said purchase orders which negates, qualifies, contradicts or limits the terms and conditions of this Agreement, then said language shall be deemed to be without force and effect and the terms and conditions for this Agreement shall take precedence. All purchase orders are subject to written acceptance by Square 9.

## **3. Project Scheduling.**

All project based orders which include Professional Services or Education will be scheduled based on a first come, first serve basis. Project purchase orders must include all product(s) to be installed or configured, all applicable support and the total number of Professional Service days.

## **4. Pricing and Payment Policies**

Projects may be invoiced based on a fixed price basis or time & materials basis depending on the method indicated on the accompanying Statement of Work.

With Fixed price projects, a deposit of 25% is required upon initiation of the Statement of Work with payments of 50% upon delivery of the software and the final 25% due upon completion of the User Acceptance Testing (UAT).

With Time & Material based projects, product invoices terms are NET 30 with Professional Services billed monthly based on consumption. Terms for service invoices are Due Upon Receipt.

With Educational Services all services are fixed price and payment must be received 5 business days prior to the commencement of any onsite or offsite classes.

## **5. Dispute Resolution**

Any dispute between the Parties arising under or pertaining to this Agreement shall be referred to a senior representative of each Party for informal dispute resolution discussions as soon as practicable. In the event that the designated representatives do not reach a mutually acceptable

resolution of the dispute within ten (10) business days of such referral, then the dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity hereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be submitted to and finally determined by arbitration in the State of Connecticut before a sole arbitrator who is an attorney with experience in the software industry. The arbitrator shall be selected, and the arbitration shall be conducted, in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS. The arbitrator will enforce the terms of the Agreement and will have no authority to award punitive damages, non-compensatory damages or any damages other than direct damages, or to award direct damages in excess of the limitations and exclusions set forth in this Agreement. The arbitrator's decision shall be final and binding. Judgment on the award of the arbitrator may be entered in any court having jurisdiction. The losing Party (as determined by the arbitrator, in his or her sole discretion) shall bear all costs and attorneys' fees related to the arbitration, including the costs of the arbitrator appointed under JAMS and the reasonable costs and attorneys' fees of the prevailing Party related to the arbitration.

## **6. Termination**

Each Party shall have the right to terminate this Agreement upon reasonable cause by giving fifteen (15) business days written notice of such cause to the other Party. Upon receiving notice of termination, Square 9 shall discontinue the work on that date to the extent specified in the notice and place no further orders for sub services except as needed to continue any portion of the work that was not terminated. Square 9 shall also make reasonable efforts to cancel, upon terms satisfactory to the customer, all orders or subcontracts related to the terminated work. Customer will be liable for all reasonable costs, charged in accordance with this Agreement, the applicable Statement of Work and Purchase Order that were actually incurred up to and including the point of termination.

## **7. Cancellation of scheduled engagements**

Cancellations for scheduled Professional Service project dates must be made with a minimum of 5 business days' notice. Lost time to the assigned technician due to insufficient notice will be invoiced at 25% the prevailing per diem rate and client will be subject to any applicable travel expenses. In the event that the customer for any reason cancels the Project Services work once S9S has commenced work the customer will be liable for all costs incurred up to and including the point of cancellation.

## **8. Limitation of Liability**

THE SERVICES ARE PROVIDED "AS IS." ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ARE HEREBY EXCLUDED AND DISCLAIMED. IN NO EVENT WILL SQUARE 9 BE LIABLE FOR LOST REVENUE, PROFITS, BUSINESS OR DATA, OR FOR ANY COSTS OF COVER, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SQUARE 9 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SQUARE 9'S TOTAL LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID TO SQUARE 9 BY CUSTOMER PURSUANT TO THE APPLICABLE ORDER FORM FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM OVER THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.

This section shall survive the termination of the Agreement for any reason.

## **9. Confidentiality**

The Parties acknowledge that in the course of this Agreement they will have access to, and/or will be in possession of confidential information of the other. "Confidential Information" shall mean information expressly identified by that party as confidential, including information relating to its past, present or future research, development or business affairs; future project purchases; and any proprietary products, materials, or methodologies.

To the extent permitted by law each Party shall hold in confidence, in the same manner it holds its own confidential information of like and kind, all Confidential Information of the other to which it may have access hereunder. To the extent permitted by law, access to Confidential Information shall be restricted to those of the Party's personnel with a need to know and engaged in a permitted use. To the extent permitted by law, each Party's reports and work papers marked confidential shall neither be exhibited nor distributed in any way to parties external to the other Party.

The foregoing shall not prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it, (ii) independently developed by it, (iii) acquired by it from a third party without continuing restriction on use, (iv) which is, or becomes, publicly available through no breach of this Agreement, or (v) as may be required by law under the Connecticut Freedom of Information Act, similar state law requirements, or otherwise.

In the event that either Party is (i) requested to provide or disclose any Confidential Information claiming the applicability of the Connecticut Freedom of Information Act or similar state law requirements, or (ii) requested or required, by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, to disclose any Confidential Information, it is agreed that the receiving Party shall give prompt notice of the service of process or other documentation that underlies such requirements and use its best efforts to assist the disclosing Party if the disclosing Party wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. The disclosing Party reserves the right to obtain a protective order or otherwise protect the confidentiality of its Confidential Information.

This section shall survive the termination of the Agreement for any reason.

## **10. Non Solicitation**

During the Term of this agreement and for one (1) year following nonrenewal or termination, neither party will, directly or indirectly solicit or recruit any employee of the other party to be an employee or independent contractor of such party. Any violation of this provision shall result in the breaching party promptly paying to the other party one (1) year's salary of the affected employee plus the recruitment costs of replacing such employee.

## **11. Intellectual Property**

Square 9 shall retain ownership of its Intellectual Property and in no case shall the delivery of services under this agreement be subject to work for hire or other ownership by Customer. To the extent that Square 9 Intellectual Property are incorporated in the delivery of services under this

agreement, Square 9 grants to Customer a royalty-free, irrevocable, worldwide, non-exclusive, perpetual right to use works of such Square 9 Intellectual Property in accordance with the purpose of this agreement.

## **12. Miscellaneous**

**Force Majeure** – Neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to; acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties.

**Relationship of Parties** – The parties are independent contractors under this Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor and neither party shall bind the other party.

**No Third Party Beneficiaries** – Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Reseller and Square 9 any rights, remedies or other benefits under or by reason of this Agreement.

**Cumulative Remedies** – Unless otherwise specified herein, the rights and remedies of both parties set forth in this Agreement are not exclusive and are in addition to any and all other rights and remedies available to either party.

**Notices** – Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), by first class mail (certified or registered) or by email with confirmation of receipt, to the Project Manager of the other party. Notices will be deemed effective (i) three (3) working days after deposit, postage prepaid, if mailed, or (ii) the next day if sent by overnight mail or email with confirmation of receipt.

**Assignment** – Customer shall not assign its rights or delegate its obligations to any party without first obtaining the written consent of Square 9. For purposes of this Section, a fifty percent (50%) change in control of Reseller shall constitute an assignment. Square 9 may assign its rights or delegate its obligations hereunder, either in whole or in part, without any prior consent of Reseller. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

**Waiver and Modification** – Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amended or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.

**Severability** – If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible by law so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

**Controlling Law and Jurisdiction** – The Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Connecticut.

**Headings** – Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

**Entire Agreement** – This Agreement, including all exhibits that are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.

**Counterparts** – This Agreement may be executed in two counterparts, each of that shall be an original and together which shall constitute one and the same instrument.