

# Services Agreement

## WITNESSETH:

WHEREAS, Acts360 is a company that provides computer network maintenance, information technology ("IT") management, IT consulting, and telecommunications services, such as, ActsCLOUD ("Services") and wishes to offer the Services to Client in accordance with the terms and conditions set forth herein; and

WHEREAS, Client wishes to retain the Services provided by Acts360 in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

### 1. SERVICES

1.1 **Services and Orders.** ACTS360 agrees to provide the services set forth in **Exhibit A** (the "Services"), subject to the terms and conditions of this Agreement, the Overall Performance Expectations agreed to by the parties set forth in **Exhibit B**, and contingent upon ACTS360's acceptance of any subsequent Orders received from Client for additional services. **Exhibit A** and **Exhibit B** are annexed hereto and incorporated by reference herein.

a. "Services" means those services set forth in **Exhibit A** and any subsequent services contained in Orders submitted by the Client and accepted by Acts360.

b. "Orders" means written requests for additional services submitted to and accepted by Acts360 after the due execution of this Agreement by the parties.

1.2 **License granted by Acts360 to Client.** ACTS360 grants Client a limited, revocable, non-exclusive, non-transferrable license during the Term to access and use the Services solely in accordance with this Agreement. ACTS360 may reject any Order in its reasonable discretion, and Client-issued purchase orders will not constitute an Order or modify the terms of any Order or this Agreement. Only ACTS360's provisioning of the Services described in an Order or Acts360's written acceptance of an Order shall be deemed Acts360's acceptance of an Order.

1.3 **Excluded Services.** All other services are specifically excluded from this Agreement, including, but not limited to, those listed in **Exhibit C**, which is annexed hereto and incorporated by reference herein.

a. The parties agree that any and all Services requested by Client that fall outside of the terms of this Agreement will be considered Projects or Out of Scope on-site adds, changes or moves, and will be quoted and billed as separate, individual Services. Likewise, should services by a Third-Party Vendor be necessary in order to resolve any issue, Acts360

will inform Client and obtain its authorization for those services, which will then be invoiced directly to Client.

**1.4 Support Coverage.** As set forth in greater detail in **Exhibit A**, ACTS360 will provide support coverage to designated representative(s) of the Client for the Services. Client is responsible for providing training and any other support to its end users, and ACTS360 shall have no responsibility whatsoever for such support. Client also has the option to purchase additional support programs from Acts360 or other vendors.

a. Remote Helpdesk and Vendor Management of Client's IT networks will be provided to the Client by ACTS360 through remote means between the hours of 8:00 am — 5:00 pm Monday through Friday relative to their time zone, excluding public holidays. Network Monitoring Services will be provided 24/7/365. All services qualifying under these conditions, as well as Services that fall outside this scope will fall under the provisions of **Exhibit A**.

**b. Support and Escalation**

ACTS360 will respond to Client's Trouble Tickets under the provisions of Section 1.5, and with best effort after hours or on holidays. Trouble Tickets must be opened via Acts360's customized portal, or by phone if internet is unavailable. Each call will be assigned a Trouble Ticket number for tracking. Acts360's escalation process is detailed in Section 1.5.

**c. Service outside Normal Working Hours**

Emergency services performed outside of the hours of 8:00 am — 5:00 pm Monday through Friday, relative to time zone, excluding public holidays, shall be subject to provisions of **Exhibits B and C**.

**1.5 Service Request Escalation Procedure:**

- a. Support Request is Received.
- b. Trouble Ticket is Created.
- c. Issue is Identified and documented in Help Desk system.
- d. Determine if the Issue can be resolved through Tier 1 Support. If the issue can be resolved through Tier 1 Support:
  - i. Level 1 Resolution - issue is worked to successful resolution.
  - ii. Quality Control–Issue is verified to be resolved to Client's satisfaction.
  - iii. Trouble Ticket is closed, after complete problem resolution details have been updated in Help Desk system.
- e. **If the issue cannot be resolved through Tier 1 Support:**
  - i. Issue is escalated to Tier 2 Support.

- ii. Issue is qualified to determine if it can be resolved by Tier 2 Support.

**f. If issue can be resolved through Tier 2 Support:**

- i. Level 2 Resolution - issue is worked to successful resolution.
- ii. Quality Control–Issue is verified to be resolved to Client’s satisfaction.
- iii. Trouble Ticket is closed, after complete problem resolution details have been updated in Help Desk system.

**g. If issue cannot be resolved through Tier 2 Support:**

- i. Issue is escalated to Tier 3 Support.
- ii. Issue is qualified to determine if it can be resolved through Tier 3 Support.

**h. If issue can be resolved through Tier 3 Support:**

- i. Level 3 Resolution - issue is worked to successful resolution.
- ii. Quality Control–Issue is verified to be resolved to Client’s satisfaction.
- iii. Trouble Ticket is closed, after complete problem resolution details have been updated in Help Desk system.

**i. If issue cannot be resolved through Tier 3 Support:**

- i. Issue is escalated to Onsite Support.
- ii. Issue is qualified to determine if it can be resolved through Onsite Support.

**j. If issue can be resolved through Onsite Support:**

- i. Onsite Resolution - issue is worked to successful resolution.
- ii. Quality Control–Issue is verified to be resolved to Client’s satisfaction.
- iii. Trouble Ticket is closed, after complete problem resolution details have been updated in Help Desk system.

**k. If issue cannot be resolved through Onsite Support:**

- i. I.T. Manager Decision Point – request is updated with complete details of all activity performed.

**1.6 Access to the Services.**

Client may access the Services online through Acts360’s virtual desktop interface. To access the Services, Client must create an Acts360 account with a valid e-mail address. Client may only create one account per email address. Client is responsible for all activities that occur under Client’s account, regardless of whether

the activities are undertaken by Client, Client's employees or a third party (including Client's contractors or agents). ACTS360 is not responsible for any unauthorized access to Client's account, except to the extent it results directly from the breach of this Agreement by Acts360. Client will contact Acts360 immediately if Client believes that an unauthorized third party is using Client's account or if Client's account information is lost or stolen.

## **1.7 Additional Maintenance Services**

### **a. Hardware/System Support**

ACTS360 shall provide support and replacement of all hardware and systems specified in **Exhibit A**, provided that all Software is Genuine, Currently Licensed, and Vendor-Supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this Service Agreement. Should 3<sup>rd</sup> Party Vendor Support Charges be required in order to resolve any issues, these will be passed on to the Client after first receiving the Client's authorization to incur them.

### **b. Monitoring Services**

ACTS360 will provide ongoing monitoring and security services of all critical devices as indicated in **Exhibit A**. ACTS360 will provide monthly reports as well as document critical alerts, scans and event resolutions to Client. Should a problem be discovered during monitoring, ACTS360 shall attempt to resolve the problem in a manner consistent with the Client's chosen service plan. Depending upon the nature of the problem, if resolution of the problem requires services, products, or equipment that are outside of the scope of the Client's chosen service plan, including, but not limited to, the Excluded Services listed at **Exhibit C**, any such services, products or equipment will be quoted and billed to Client separately at Acts360's hourly rates **and in addition to** the ongoing charges associated with Client's chosen service plan.

## **2. Client's Responsibilities.**

### **2.1** Client agrees that it will:

- a. Comply with this Agreement, applicable laws, and ACTS360's policies and procedures;
- b. Pay all fees and applicable Taxes for the Services;
- c. Use reasonable security precautions in conjunction with use of the Services, including encrypting any personally identifiable information or other sensitive, non-public information transmitted, stored or processed using the Services, and ensure that its End Users do the same;
- d. Provide reasonable cooperation with ACTS360's investigation of outages, security problems, and any suspected breach of the Agreement;
- e. Keep billing, credit card, notices and other account information up to date; and

- f. Immediately notify ACTS360 of any suspected unauthorized use of Client's account or the Services or any other breach of security. ACTS360's reasonable determination shall control if there is a dispute regarding the interpretation of applicable laws or Acts360's policies and procedures.

**2.2 Suitability of Existing Environment - Minimum Standards Required for Services.** In order for Client's existing environment to qualify for ACTS360's Services, Client must comply with Acts360's **Site Location Guidelines and Requirements** set forth in **Exhibit D**, annexed hereto and incorporated by reference herein. In addition, Client must meet the following requirements:

- a. All Servers with Microsoft Windows Operating Systems must be running Windows 2008 Server or later, and have all of the latest Microsoft Service Packs and Critical Updates installed.
- b. All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running Windows XP Pro or later, and have all of the latest Microsoft Service Packs and Critical Updates installed.
- c. All Server and Desktop Software must be Genuine, Licensed and Vendor-Supported.
- d. The environment must have a currently licensed, up-to-date and Vendor-Supported Server-based Antivirus Solution protecting all Servers, Desktops, Notebooks/Laptops, and Email.
- e. The environment must have a currently licensed, Vendor-Supported-Server-based Backup Solution that can be monitored, and send notifications on job failures and successes.
- f. The environment must have a currently licensed, Vendor-Supported Hardware Firewall between the Internal Network and the Internet.
- g. All Wireless data traffic in the environment must be securely encrypted.
- h. There must be an outside static IP address assigned to a network device, allowing VPN access.

**Costs required to bring Client's current environment up to these Minimum Standards are not included in the ACTS360® Equipment Proposal. In the event that Client needs upgrades to bring Client's environment up to these Minimum Standards, Acts360 can assist Client with any necessary upgrades for an additional charge, which will be quoted and billed to Client separately at Acts360's hourly rates and in addition to the ongoing charges associated with Client's chosen service plan.**

**2.3 Chronically Failing Equipment.** Experience has shown that equipment belonging

to clients which has initially passed Minimum Standard Requirements for Service can later reveal itself to become chronically failing. This means that the equipment repeatedly breaks down and consistently causes user and business interruption even though repairs are accomplished. Should this occur, Client agrees to work constructively and positively with ACTS360 to replace and upgrade Client's equipment at Client's additional cost through ACTS360®. Any such replacements and upgrades shall be subject to the Order and Amendment processes contemplated by the parties in this Agreement.

## 2.4 ACTS360® Equipment Agreement

- a. Client agrees that all hardware and software (the "Equipment") listed on **Exhibit A** will remain the sole property of ACTS360 which retains a 100% security interest in the Equipment. Client will not attempt to sell, re-sell, tamper with, troubleshoot, repair, move, add, or change the Equipment without the express written permission of ACTS360.
- b. Should this Agreement be terminated by either party, within ten (10) days after the final termination date, Client agrees to return to ACTS360 the Equipment listed on **Exhibit A**, in addition to any additional hardware or software that Client may have acquired from Acts360 and used during the Term, and any subsequent Renewal Terms, of this Agreement. Client further acknowledges and agrees to compensate ACTS360 for expenses accrued in conjunction with the recovery of the Equipment, in addition to all amounts due and owing under the remainder of the Term of the Agreement.
- c. Client agrees and understands that ACTS360 Equipment is to be maintained only by ACTS360. Notwithstanding any other provisions herein, in the event that Client tampers with, attempts to repair or service, or has repairs completed by another party on the Equipment, Acts360 has the right to immediately terminate this Agreement.
- d. Client agrees to make all logical and earnest attempts to keep the Equipment safe, secure and protected while in Client's possession. If Client does not already have a general commercial liability insurance policy currently in force and effect, Client agrees to obtain a general commercial liability with mobile equipment coverage to insure the Equipment supplied by ACTS360 that is in Client's possession. Client shall have ACTS360 listed as an additional insured on such insurance coverage. Client shall further provide proof of such coverage to ACTS360 in the form of either a current copy of its insurance declaration sheet or an insurance coverage certificate showing ACTS360 as an additional insured. Client further agrees to be responsible for any and all costs for the repair or replacement of the Equipment while the Equipment is in Client's possession should it be damaged or repaired by an unauthorized third party.

**2.5 Security and Backup.** Client acknowledges that it is responsible for taking steps to maintain appropriate security, protection and backup of its content, which may include the use of encryption technology to protect Client's content from unauthorized access and routinely archiving Client's content. Log-in credentials and any ACTS360-provided security keys, including Third Party Licensor (as defined below) keys, are for Client's internal use only, and Client is responsible for keeping them available and secure. Lost security keys will result in permanently lost or inaccessible data, for which ACTS360 and its Third Party Licensors shall have no liability whatsoever.

**2.6 End Users.** Client is responsible for End Users' content and use of the Services. Client will ensure that all End Users comply with Client's obligations under this Agreement and that the terms of any agreement that Client may have with each End User are consistent with this Agreement. If Client becomes aware of any violation of its obligations under this Agreement by an End User, Client will immediately terminate such End User's access to the Services. For purposes of this Agreement, any content of or use of the Services by End Users will be deemed to be Client's content or use of the Services. "End Users" means Client's members, affiliates, employees, agents, contractors, customers or any other third parties who utilize or access the Services or the ACTS360 infrastructure through Client's Services or Client's account.

### **3. Third Party Licensors and Products.**

3.1 Acts360 may provide use of or access to software or technology from a third party vendor who licenses or otherwise grants a right to Acts360 or Client to access or use its Licensor Products in connection with Acts360 Services (a "**Third Party Licensor**"). For purposes hereof, "**Licensor Products**" means any Third Party Licensor software, service, or technology and all intellectual property rights associated therewith, including without limitation, any worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights that are made available in connection with the Services.

3.2 If Client has a separate agreement with a third party which permits Client to use a Licensor Product, Client represents and warrants that such agreement is in effect and applicable to Client's use of the Licensor Products with the Services. If Client does not have a separate license agreement with a Third Party Licensor for the relevant Licensor Product, then, in addition to the terms of this Agreement, Client agrees that Client's use of a third party vendor's software is subject to and governed by the terms set forth in the remainder of this Section.

- a. Prior to using the relevant Licensor Products, Client agrees that Client has reviewed any applicable Third Party Licensor agreements and has accepted the third party vendor's terms and conditions. Upon request by Acts360, Client agrees that Client will provide Acts360 with evidence of such licensing and Client's agreement to it as Acts360

may reasonably require prior to the commencement of the Services, and from time to time as necessary to update the status of the license.

- b. If Client fails to provide the required evidence of licensing, Acts360 has the option to:
  - i. Suspend the Services that were to include such software until Client provides the requested evidence;
  - ii. Provide the Services in reliance on Acts360's licensing agreement with the vendor, and charge Client its standard fee for the use of the software until such time as the required evidence is provided; or
  - iii. Terminate this Agreement.

3.3 Subject to Client's compliance with the terms of this Agreement and Client's payment of all fees and charges due hereunder, Client has a non-perpetual, non-exclusive, terminable, non-transferable, and limited license during the Term of this Agreement to copy, install, access, display, run, or otherwise interact with the Licensor Products solely as required to obtain the benefits of the Licensor Products connection with the Services provided by Acts360. Each Third Party Licensor retains and reserves all rights in its intellectual property not expressly granted to Client herein.

- a. If Client downloads any Licensor Product, Client is permitted to:
  - i. install and use Licensor Products on a computer or other storage device; or
  - ii. install and use Licensor Products on a networked file server for the purposes of permanent installation onto hard disks or other storage devices or the use of the Licensor Products over Client's network; and
  - iii. make backup copies of the Licensor Products, solely to permit Client to obtain the benefits of the Licensor Products in connection with the Services provided by Acts360.

3.4 To the extent Licensor Products include third party technology, Client has a non-exclusive, non-transferable, limited sublicense to use the third party technology solely in connection with the related Licensor Products during the Term of this Agreement and the provision of Services by Acts360.



3.5 Client's license rights specified herein and any other rights that Client may have to any Licensor Products pursuant to this Agreement will automatically terminate upon the expiration or termination of this Agreement. Client agrees to promptly delete all Licensor Products, and any copies thereof, and all Third Party Licensor confidential information in Client's control or possession, including on any computer system or storage media, upon any expiration or termination of this Agreement. Client further agrees to destroy any other materials related to the Licensor Products in Client's possession or control, regardless of its format or containing medium, within thirty (30) days of the date of termination or expiration.

3.6 Client acknowledges that Licensor Products constitute valuable trade secrets of the Third Party Licensor and/or its suppliers. If Client engages in any activity in violation of this section, all profits and proceeds from such unauthorized activity, if any, will accrue to the Third Party Licensor and/or its suppliers, who will be the owner of same whether or not made in compliance with this Agreement.

- a. Client, and Client on behalf of its employees, and agents, agrees as follows:
  - i. Client will not modify, translate, decompile, create or attempt to create by reverse engineering or otherwise, the source code from the object code of any Licensor Product, or adapt a Licensor Product in any way to create a derivative work;
  - ii. Client will not, and will not authorize any third party to use, reproduce, sublicense, distribute or dispose of a Licensor Product in whole or in part to enable such third party to benefit from the use or functionality of the Licensor Product, including, without limitation, via timesharing, service bureau arrangements or otherwise; and
  - iii. Client will comply with all reasonable requests made by a Third Party Licensor in relation to the protection of its intellectual property rights hereunder.

3.7 The Licensor Products and any worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights relating thereto are the exclusive property of the Third Party Licensor and its suppliers and licensors. Third Party Licensor owns and exclusively retains all rights in and title to the Licensor Products and all future functionality and product developments thereto, if any. Client has no right to modify, duplicate or reverse-engineer any aspect of the Licensor Products.

3.8 Client is expressly prohibited from removing, modifying or obscuring any copyright, trademark, patent or other proprietary rights notices that are contained in or on any Third Party Licensor products and services. Client has no rights under

this Agreement to use any Third Party Licensor logos in any manner whatsoever. Client must not undertake any action that will interfere with or diminish any right, title or interest in the trademark(s) or trade name(s) of any Third Party Licensor.

3.9 Client shall not offer, market, resell or otherwise provide any Licensor Products made available in connection with the Services to any third parties. Client is not authorized, solely by virtue of this Agreement, to act as a service provider in connection with or a reseller of any Licensor Products, or similarly make available Licensor Products for commercial profit.

3.10 Client acknowledges and agrees that the restrictions set forth in this Section are reasonable in the circumstances and that Client's violation of any of the provisions of this Section will result in immediate and irreparable harm and damage to the Third Party Licensor. Therefore, in the event of any violation of any provision of this Section, Client agrees that the Third Party Licensor will be entitled to equitable relief by way of temporary or permanent injunction or specific performance, and to such other relief as any court of competent jurisdiction may deem just and proper. Client hereby expressly submits to the personal jurisdiction of any such court in an action seeking such relief.

3.11 Client must cooperate with Acts360 in the event that any Third Party Licensor requests Acts360's participation in an audit of the Licensor Products. Client agrees that Acts360 can provide a Third Party Licensor with a list of the Licensor Products which run on Client's Services provided by Acts360 and the relevant volume of such Licensor Products (*e.g.*, number of licenses, users, etc.) provided to Client by Acts360. If a Third Party Licensor determines that Client is non-compliant with its licensing terms or program requirements, and Client does not cure the non-compliance within a reasonable time period specified by such vendor, then Acts360 may terminate this Agreement, suspend the provision of any or all Services to Client, or both.

3.12 Third Party Licensors are intended third party beneficiaries to the terms in this Section and as such may assert any applicable rights set forth herein as may be necessary to protect their intellectual property rights or other confidential or proprietary material. For greater clarity, Client acknowledges and agrees that Third Party Licensors are also intended beneficiaries of the rights, remedies and disclaimers of Acts360 under this Agreement and any reference to "Services" or "Equipment" in the Agreement shall also mean "Licensor Products".

3.13 In the event of a conflict between the terms of the Agreement and any other Third Party Licensor end user agreement, the terms of this Agreement will prevail. In addition, in order to access or use Licensor Products in connection with Acts360's Services and the Equipment, Client acknowledges and agrees that it may be required to accept Third Party Licensor's terms, including, but not limited to, pricing, termination, payment, and service levels.

**4. NO HIGH RISK USE.** Client agrees that it will not use the Services, the Equipment, or any Licensor Products in any situation where failure or fault of the Services, the Equipment, or Licensor Products could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Client agrees that it may not use, or permit any other person to use, the Services or Licensor Products in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.

**5. Intellectual Property.**

**5.1 Retention of intellectual property rights.** The parties agree that each retains all right, title and interest to each's respective trade secrets, inventions, copyrights, and other intellectual property. Except for the rights expressly granted herein, nothing in the Agreement shall convey, license, or otherwise transfer any right, title, or interest in any intellectual property or other proprietary rights held by Acts360 or the Third Party Licensors. Acts 360's intellectual property and proprietary rights include any skills, know-how, modifications or other enhancements developed or acquired in the course of configuring, providing, or managing the Services.

**5.2 Restrictions.** Neither Client nor any End User may, or may attempt to do any of the following:

- a. modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services;
- b. reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services;
- c. access or use the Services in a way intended to avoid incurring fees or exceeding usage limits, or otherwise in violation of law.

**5.3 Client's license rights are conditional.** All licenses granted by this Agreement are conditional on Client's continued compliance this Agreement and will immediately and automatically terminate if Client does not comply with any term or condition of this Agreement. During and after the Term, Client will not assert, nor will Client authorize, assist, or encourage any third party to assert, against Acts360 or any of Acts360's affiliates, customers, vendors, business partners, or Third Party Licensors, any patent infringement or other intellectual property infringement claim regarding any Services that Client has received from Acts360.

**5.4 Feedback.** If Client provides any feedback to Acts360 or its affiliates regarding the Services, Acts360 will own all right, title, and interest in and to such

feedback, even if you have designated the feedback as confidential. Acts360 and its affiliates will be entitled to use the feedback without restriction. Client hereby irrevocably assigns to Acts360 all right, title, and interest in and to Client's feedback and agrees to provide Acts360 with any assistance required to document, perfect, and maintain Acts360's rights in the feedback.

**6. Term of Agreement**<sup>[BL1]</sup>. This Agreement between Client and Acts360 is effective upon the date signed, shall remain in force for a period of three (3) years ("Initial Term"), and shall be reviewed monthly by Acts360 to address any necessary adjustments or modifications. Should Acts360 in its sole discretion determine that adjustments or modifications are required that affect the monthly fees paid for the services rendered under this Agreement, the monthly fees to be paid for services to be rendered by Acts360 thereafter will be negotiated and agreed to by the Client and ACTS360 in advance. This Agreement does not automatically renew for a subsequent three (3) year term following the end of the Initial Term. Instead, Client and Acts360 shall negotiate and duly execute a new agreement prior to the end of the Initial Term, if Client and Acts360 wish to continue their relationship.

- a. This Agreement may be terminated by either party upon **ninety (90) days' written** notice if the other Party:
  - I. Fails to comply in any material respect with the terms, conditions, covenants set forth in this Agreement, and/or its obligations under this Agreement, and fails to fully cure any such failure within ninety (90) days' of the issuance of such written notice.
  - II. Breaches any material term or condition of this Agreement and fails to remedy such breach within ninety (90) days' of such written notice.
  - III. Becomes a debtor in bankruptcy proceedings, is adjudicated insolvent, or placed under receivership.
  - IV. Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.
- b. If Client terminates this Agreement for any other reason, other than the grounds provided in subsection (a) (I)-(IV) of this Section 6, Client will be liable to Acts360 for an early termination fee in an amount equal to (i) four months' worth of recurring charges plus (ii) an additional four months' worth of recurring charges for each year left in this Agreement. This payment is due contemporaneously with Client's notice of termination.
- c. Notwithstanding the foregoing, in the event that Acts360 and Client cannot reach agreement on the nature or the scope of the Services that Client is to receive under this Agreement, Acts360 may terminate this Agreement on five (5) days' written notice to Client. In such circumstances, Client is not liable to Acts360 for an early termination fee as specified in subsection (b) of this Section 6, provided that Client: (i) has not breached this Agreement or engaged in conduct which tends to discredit, dishonor, reflect adversely upon or injures the reputation of Acts360; or (ii) has not engaged in conduct violative of any law, order of any court of competent jurisdiction, or rule, regulation, order or policy of the FCC, a State Commission, or any other governmental agency, which conduct could adversely affect Acts360. In no event, shall Acts360 be liable to Client for any early termination fees in conjunction with exercising this termination right, including, but not limited to, a refund

of any monthly recurring charges paid for by Client prior to such termination by Acts360.

- d. If either party terminates this Agreement, ACTS360 will assist Client in the orderly termination of services, including transfer of the services to another designated provider. Client agrees to pay ACTS360 the actual costs of rendering such assistance. Actual costs could include but are not limited to: training, data transfer, license transfers or equipment de-installation.
- e. Client agrees to allow ACTS360 to assign, delegate, and subcontract services to third party competent contractors approved by ACTS360, without Client's advance written permission.
- f. Nothing herein prevents Acts360 from suspending service from time to time for routine maintenance, giving Client notice thereof when feasible, and keeping any such interruption as short as practicable.

## 7. Fees and Payment<sup>[BL2]</sup>.

7.1 Fees plus applicable taxes are invoiced to Client on a monthly basis, and will become due and payable on the first day of each month. Services, including but not limited to Network accessibility, may be suspended if payment is not received within forty-five (45) days following the date due. **Exhibits A and E** annexed hereto contain the ACTS360 Services covered by the monthly fee charged to Client under the terms of this Agreement, as well as information about additional fees to be charged for optional services and for Excluded Services (Excluded Services are listed in **Exhibit C**). Failure by Client to remit any payment within sixty (60) days of the invoice date will be deemed an immediate and material breach. Acts360, in its sole discretion, may then either terminate this Agreement and the provision of all Services to Client or suspend all Services to Client until such time as Client's account is brought current.

**7.2 It is understood that any and all Services requested by Client that fall outside of the terms of this Agreement, including, but not limited to, those set forth in Exhibit C annexed hereto, will be considered Excluded Services or Projects, and will be quoted and billed to Client by Acts360 as separate, individual Services.**

### **7.3 Billing.**

- a. Acts360 runs reports on the 25<sup>th</sup> of each month that show user counts. Client must submit deletions of users on or before the 25<sup>th</sup> of the month, or Client will be billed for that user for the following month. If Client has licensing changes to report back to ACTS360 via the "Client Monthly Use Report" it is also due on or before the 25<sup>th</sup> of the month.
- b. ACTS360 may charge Client a late fee of \$20 or interest on any overdue amounts that have been billed to Client at the rate of 1.5% per month, whichever is greater.
- c. Any "credit" that Acts360 may owe Client, will be applied on Client's

next bill towards the fees due from Client for Services, and will not be paid to Client as a refund, unless the "credit" is due to Client during the final month of the Term of the Agreement, in which case any "credit" due to Client will be either applied to Client's final bill or issued in a separate check to Client after Client has paid all amounts due to Acts360, to be determined by Acts360 in its discretion.

- d. If ACTS360 must bring a legal action to collect past due amounts, Client is also liable for ACTS360's reasonable costs of collection, including attorneys' fees and court costs.
- e. Client authorizes ACTS360 to obtain Client's credit report at any time during the Term of the Agreement.

**7.4 Payment Methods.** Payment by credit card or ACH is preferred. If Client executed either a Credit Card Authorization form or an ACH Authorization Form, payment will be processed on their chosen day of either the 5th or 20th of each month. In case of payment by check, a check processing fee will be added, to the greatest extent permitted by law, up to a maximum of \$25.

**7.5 Taxes.** It is understood that any Federal, State or Local Taxes applicable to the Services shall be added to each invoice for services or materials rendered under this Agreement. Client shall pay any such taxes unless a valid exemption certificate is furnished to ACTS360 for the state of use.

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

- a. [BL3]Acts360 is neither a hardware manufacturer nor a software developer, and makes no warranty whatsoever about any hardware or software's merchantability or fitness for a particular purpose. Acts360 warrants only that its own services will be performed in a manner consistent with customary practices in the IT industry. Acts360 does not warrant that the operation or other use of Client's IT systems will be uninterrupted, error-free, or free from damage or disruption to its data. Acts360 will have no responsibility with regard to the quality, completeness or integrity of Client's data. Acts360 further disclaims all warranties whatsoever, whether express or implied, written or oral, including, but not limited to, any warranty of fitness for a particular purpose; non-infringement; that customer will achieve a particular return on investment or a particular outcome; warranty arising by statute, course of dealing or use of trade; any warranty with respect to the security of the managed services and/or networks; and/or that hosted data will not be destroyed, lost, intercepted or altered by unauthorized persons.
- b. Acts360 shall not be liable to Client in any way for any losses, including but not limited to, loss of business due to mistakes, omissions, interruptions, delays, errors, defects or otherwise occurring in the course of furnishing the Services.
- c. In no event shall ACTS360 and its suppliers be held liable for any indirect, special, incidental, consequential, punitive, economic or property

damages of any kind arising out of this contract, including, but not limited to, loss of business, lost profits or revenue, business interruption, loss of use of equipment, lost data, loss caused by the interruption or failed operation of the internet, costs of substitute equipment, or other pecuniary losses or costs. Client recognizes that the charges and fees hereunder are based in part on the disclaimer of warranty and limitation of liability provisions set forth herein, and that in the absence of Client's agreement to such terms, Acts360's charges would be significantly higher.

- d. Acts360's maximum liability arising out of this Agreement shall not exceed the value of one month's charges and fees paid by Client to Acts360 under this Agreement in the twelve (12) month period prior to the events that gave rise to the applicable claim. In the event that Client has not paid a standard, recurring, monthly charge or fee to Acts360 during the twelve (12) month period prior to the events that gave rise to the applicable claim, Acts360's maximum liability arising out of this Agreement shall not exceed the average value of one month's services provided by Acts360 to Client, to be determined by dividing by twelve (12) the total value of all services rendered by Acts360 to Client during the twelve (12) month period prior to the events that gave rise to the applicable claim. [BL4] The limitations and exclusions of this section shall not apply to the extent that they are determined to be contrary to law by a court of competent jurisdiction. If any action, litigated or otherwise, is necessary to enforce the terms of this Agreement, ACTS360 shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which it may be entitled.

**9. Service Disclaimer.** Client grants ACTS360 authorization to view any data within the regular routine of the repair or system improvement. Client also authorizes ACTS360 to reasonably delete, change, and/or rewrite any necessary information to complete the system repair or improvement that is consistent with the standards and practices in the industry.

**10. Confidentiality.**

- a. The terms and conditions of this Agreement and the information and materials provided by the parties pursuant to this Agreement, are disclosed in confidence, solely for use by the parties to carry out the terms and conditions of this Agreement. Each of the parties hereto agrees to keep confidential and not to disclose, directly or indirectly, during the term of this Agreement or after its termination, any information regarding the other party's business, including without limitation, information with respect to business plans and projections, operations, procedures, methods, accounting, technical data or existing or potential customers, price quotes, or any other information which the other party has designated as confidential. Neither party to this Agreement shall disclose the existence of this Agreement in any communication, written or verbal without express consent of the other party.
- b. Acts360 and its agents may use Client information as necessary to and consistent with providing the Services selected by Client.

Acts360 will use commercially reasonable efforts to protect against unauthorized use or access. All Client data stored off-site, if applicable, remains Client's property. When data is transferred and preserved, Acts360 will use protocols and technology that are standard in the IT industry to protect Client's data. Additionally, it is Acts360's policy to notify Client of any attempt by any person or entity to access Client's data. If such attempt is through a legal process (e.g. subpoena), Acts360 will afford Client the opportunity to oppose that legal process before complying with it. Client shall be responsible for any expense and time incurred by Acts360 in complying with the aforementioned legal process, including any defense costs.

**11. Acceptance of Service Agreement.** This Service Agreement covers the Services and Equipment as set forth herein and in the Exhibits annexed hereto, or as subsequently modified by the parties in a duly executed Amendment, which may result in an adjustment to the Client's monthly charges. Should Client wish to acquire additional equipment or services, prior written approval from ACTS360 must be obtained.

**12. Indemnification:** Client shall indemnify Acts360 against, and hold Acts360 harmless from all liabilities, claims, demands, costs, and judgments (including reasonable attorneys' fees and costs) and causes of action arising out of or in connection with this Agreement caused by the failure of Client to abide by the terms and conditions of this Agreement or by the negligence or willful misconduct of Client or of Client's employees, agents or invitees.

### **13. Dispute Resolution**

- a. In case a dispute arises between the Parties arising out of or related to this Agreement, the following process must be followed, except in a case of non-payment by Client:
  - i. The Party alleging default or breach (the Claiming Party) will send the other Party (the Responding Party) Notice (the Notice of Breach), by certified mail, stating in specific details what act, conduct, or omission constitutes the alleged breach or default.
  - ii. The Responding Party will have thirty (30) days from the receipt of the Notice of Breach to cure the alleged breach or default. During these 30 days, the Parties will cooperate and engage in substantive, good-faith negotiations to resolve their differences.
  - iii. If the differences between the Parties are not resolved within 30 days after the Responding Party receives the Notice of Breach, the Parties will engage in pre-litigation mediation, with the cost of mediation to be shared equally between them. Mediation must take place within ninety (90) days after the Responding Party received the Notice of Breach.
  - iv. If mediation fails, the Claiming Party may take legal action. In this



case, the Parties agree to litigate in, and subject themselves to the jurisdiction of Florida State Courts in Hillsborough County, Florida, and that this Agreement is governed by Florida law. In case litigation is necessary, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs incurred in litigation and on appeal.

**14. Non-Solicitation.** Acts 360 spends considerable amounts of resources, time, and energy training and developing the skills of its employees. In recognition thereof, during the term of this Agreement, and for a period of 12 months after its termination, Client agrees not to directly or indirectly solicit, recruit, or employ any of Acts360's employees without acts360's prior written consent. Client acknowledges that its failure to comply with this Article could result in Acts360 suffering irreparable harm, and that the exact amount of damages cannot be readily quantified. Therefore, upon a breach of any provision in this Article, Client shall pay to Acts360, as liquidated damages (and not a penalty), a sum equal to 200% of the solicited employee's total compensation package in the fiscal year preceding the breach. Neither the existence of this liquidated-damages provision, nor payment of such liquidated damages, in any way limits Acts360's right to seek injunctive or any other equitable remedies. Likewise, during the term of this Agreement, and for a period of twelve (12) months after its termination, Acts360 agrees not to directly or indirectly solicit, recruit, or employ any of Client's employees without Client's prior written consent.

**15. Force Majeure:** Neither party shall be liable for delays in performing, or failure to perform this Agreement or any obligations hereunder, which are directly attributable to causes beyond the reasonable control of the party so delayed or failing to perform, including but not limited to, acts of God, acts of third parties not under the parties' control, acts of any governmental body, fires, floods, strikes or other labor disturbances, war, failure of a common carrier, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts), inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services, equipment or suppliers or acts or intervention of any governmental authority. However, the party whose performance is so delayed shall use good faith efforts to minimize the effects of such delay.

**16. Notices:**

- a. All notices or other communications permitted or required hereunder shall be in writing and mailed by certified mail, return receipt requested, or sent by receipted overnight courier, addressed as follows:

<u>Client:</u>	<u>ACTS360</u>
Attn:	Attn: Greg Sweers, CEO/Steward P.O. Box 1193 Brandon, FL 33509

- b. Notices shall be deemed given five (5) days after deposit in the US Mail postage prepaid, if sent by certified mail, or shall be deemed given when

received or when receipt is refused if sent by receipted overnight courier.

**17. Assignment/Survivability:** Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any such assignment consented to by the parties, shall inure to the benefit of and be binding upon the assignee. Notwithstanding the foregoing, this Agreement and the rights and obligations of the parties hereunder shall survive any change of ownership or control of either party, whether by statutory merger, consolidation, death or otherwise. Additionally, this Agreement shall survive the death of any shareholders of either party.

**18. Parties.** This Agreement binds the parties thereto, their officers, directors, affiliates, successors and assigns.

**19. Survivability.** Where necessary to enforce the parties' intent under this Agreement, its provisions are meant to survive its termination.

**20. Interpretation and Governing Law:** This Agreement shall be deemed to have been executed and delivered in the State of Florida and it shall be governed by and construed in accordance with the laws of the State of Florida. Any action with respect hereto shall be brought only in a court of competent jurisdiction in Hillsborough County, City of Tampa, Florida. The parties acknowledge that they have read this Agreement, that they understand its terms, and that they agree to be bound by it. Each has had the opportunity to consult with an attorney. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly, and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of authorship.

**21. Headings.** The paragraph headings used in this Agreement are for purposes of convenience only and shall not be deemed a part of this Agreement for purposes of construction or interpretation.

**22. Singular and Plural.** Where the context so indicates or requires, each term stated in the singular includes the plural, and each term stated in the plural includes the singular.

**23. Severability.** In the event that any term or provision of this Agreement shall be deemed or rendered void or unenforceable, the remainder of this Agreement shall remain in full force and effect.

**24. Waiver.** No failure or delay by any party in exercising any right hereof shall operate as a waiver. The failure of either party to insist on the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as waiving any other term or condition at any other time.

**22. Counterparts.** This Agreement may be executed in counterpart originals, all of which shall constitute one and the same Agreement.

**23. Authority.** The persons executing this Agreement represent and warrant that they are duly authorized by the respective Parties to do so.

**24. Amendment.** This Agreement shall not be amended except by a duly executed written agreement signed by both parties.

**25. Entire Agreement.** This Agreement and all attachments hereto, embody the entire agreement and understanding between the parties and supersedes all prior oral and written, and contemporaneous oral, agreements and understandings relating to the Agreement between Client and Acts360. No representation, promise, inducement or statement or intention has been made by either party which is not embodied herein.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

**Client**

**Acts360:**

By:

By: \_Greg Sweers

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_

Title: CEO/Steward

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_