

## SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (hereinafter referred to as “Agreement” or “SaaS Agreement”) is made and entered when fully executed by signatures of both parties (“Effective Date”) by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5200 Rings Road, Dublin, Ohio 43017, USA, (hereinafter referred to as “Northwoods”), and Ashe County Department of Social Services (hereinafter referred to as “You” “Your” or “Subscriber”).

1. Scope of Agreement. This Agreement states the terms and conditions under which Northwoods will:
  - a) Grant You access to certain software programs and related documentation on a non-exclusive basis; and
  - b) Provide services such as project management, installation, training, infrastructure hosting, and support to You.
  - c) In the event there is a conflict between this Agreement and the attached Statement of Work, the terms of this Agreement shall govern.
2. Definitions. As used in this Agreement, the following definitions apply to capitalized terms:
  - a) “Aggregate/Anonymous Data” means: (i) data generated by aggregating Your Data with other data so that the results are non-personally identifiable with respect to You or your customers; and (ii) anonymous learning, logs, and data regarding the use of the Services.
  - b) “Charges” means the amounts to be paid by You for the right to use any of the applicable Software, Services and/or hardware or other Third Party Products under the terms of this Agreement. The Charges are described in Attachment A and the payment schedule for these Charges are defined in Schedule A1.
  - c) “Documentation” means Northwoods’ electronic user guides, documentation, and help and training materials, as updated from time to time.
  - d) “Northwoods Software” means the Compass®, Traverse®, or other proprietary Northwoods-branded, computer programs, in object code form, and their associated documentation. Attachment A lists separately the various modules and quantities (where applicable) of Northwoods Software made available to You and Attachment B contains the terms of use applicable to the Northwoods Software.
  - e) “Service Level Agreement” or “SLA” defines the terms under which Northwoods will offer the Services, as defined in Schedule C1.
  - f) “Services” means the professional services that are ordered by and paid by You.
  - g) “Software” means collectively Northwoods Software and any Third Party Products.
  - h) “Statement of Work” means the detailed work plan for the initial implementation, attached hereto as Attachment D.
  - i) “Subscription Date” means the date that equals the first day of the month following the Effective Date.
  - j) “Support Services” means the maintenance and support services to be provided by Northwoods in accordance with Attachment C.
  - k) “Third Party Products” means any product or software program acquired by Northwoods from an outside vendor on Your behalf under the terms of this Agreement. Attachment A lists separately the various Third Party Products made available to You.
  - l) “Your Data” means electronic data and information submitted by You or for You to the Services or collected and processed by or for You using the Services.
  - m) “Your Database” means a collection of data records that are maintained as a single logical area that is used, accessed, or acted upon by You.
3. Northwoods’ Responsibilities. Northwoods will (i) make the Software available to You pursuant to this Agreement; (ii) provide Services for the initial implementation of this project, as described more fully in Attachment D; and (iii) provide our Support Services to You, as described more fully in Attachment C.
4. Term. The term of this Agreement is for a period of three (3) years from the Subscription Date (“Initial Term”). This Agreement may be terminated by either Party as provided in Section 12. At the expiration of the Initial Term, this Agreement will be automatically renewed on an annual basis on the anniversary of the Subscription Date for additional three (3) year terms (“Option Terms”). Either Party may terminate this Agreement as of the



last day of the Initial Term or any Option Term by giving the other Party not less than sixty (60) days' written notice of termination prior to the last day of the Initial Term, or the last day of any Option Term.

5. Initial Implementation. Northwoods will furnish only such staff, materials, supplies, and labor for the initial implementation as detailed in the Statement of Work for this Project. Upon execution by both parties, any subsequent Statement of Work will become part of this Agreement. The Parties may modify the requirements of any Statement of Work through a written change order, and such written change order will become part of the respective Statement of Work when executed by authorized representatives of both parties.
6. Charges and Payment Terms.
  - a) You agree to pay Northwoods the Charges at the times and in the amounts set forth in Schedule A1.
  - b) Invoices are payable net thirty (30) days after receipt of invoice. Failure to remit timely payment of any invoice may result in Northwoods ceasing work on the initial implementation and/or ceasing to provide the Software or the Services.
  - c) Any delay in the project that is the direct result of Your failure to comply with the terms of this Agreement and any of its Attachments or Schedules may result in Northwoods ceasing work on the initial implementation and will require You to reimburse Northwoods' actual costs incurred as a result of said delay.
7. Taxes. Fees are exclusive of taxes and You will promptly pay or reimburse Northwoods for all taxes arising out of this Agreement, whether or not Northwoods provided prior notice of, or invoiced, any such taxes to You. For purposes of this Agreement, "taxes" means any sales, use, and other taxes (other than taxes on Northwoods' income), export and import fees, customs duties, and similar charges applicable to the transactions contemplated by this Agreement that are imposed by any government or other authority. If You are required to pay or withhold any tax in respect of any payments due to Northwoods hereunder, You will gross up payments actually made such that Northwoods receives sums due hereunder in full and free of any deduction for any such tax. If You are legally entitled to an exemption from the payment of any taxes, You will promptly provide Northwoods with legally sufficient tax exemption certificates for each taxing jurisdiction for which it claims exemption.
8. You acknowledge and understand that the output of Northwoods Software is not intended to replace human discretion, decision-making or research, but is to be used as a guidance tool only.
9. Ownership.
  - a) Your Data shall be considered Confidential Information and remains Your sole and exclusive property. Notwithstanding the foregoing, and subject to Section 10 below, You grant Northwoods a limited, revocable, royalty-free license to use Your Data only for the purpose of providing and continually improving and refining the Services. The license grant includes a license to store, transmit, maintain, and display Your Data only to the extent necessary to provide the Services to You.
  - b) Customizations. Any customization of Northwoods Software specifically for You or at Your request is owned by You, with all rights, title, and interest to such customization being assigned to You. For such customizations, You grant Northwoods a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and distribute such customization(s) for its own business purposes and for use with other customers.
  - c) Aggregate/Anonymous Data. You agree that Northwoods will have the right to generate Aggregate/Anonymous Data. Notwithstanding anything to the contrary herein, the Parties agree that Northwoods may use Aggregate/Anonymous Data for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Northwoods' products and services and to create and distribute reports and other materials). Northwoods will not distribute Aggregate/Anonymous Data in a manner that personally identifies You or your customers.
  - d) Feedback. If You elect to provide any feedback, suggestions, comments, improvements, ideas, or other information to Northwoods regarding the Service(s) ("Feedback"), you acknowledge that the Feedback is not confidential and you authorize Northwoods to use that Feedback without restriction and without payment to you. Accordingly, you hereby grant to Northwoods a nonexclusive, royalty-free, fully-paid,



perpetual, irrevocable, transferable, and fully sublicensable right to use the Feedback in any manner and for any purpose.

10. Privacy. You are aware and agree that Northwoods may, as part of the normal operation and support of the Northwoods Software, collect information related to the use of the Northwoods Software, through tracking and other technologies. Northwoods does so to gather usage statistics and information about the effectiveness of our products for the purpose of improving user experience.
11. Publicity. You authorize Northwoods to identify You as a client, and to use Your name and logo in any of Northwoods' mutually agreed to advertising copy, promotional material, and/or press releases.
12. Termination.
  - a) If either Party is in default of any of its material obligations hereunder, and has not commenced cure within ten (10) days and effected cure within thirty (30) days of receipt of written notice of default from the other Party, then this Agreement may be terminated.
  - b) In the event of termination, You shall be responsible for payment for all Software and Services rendered by Northwoods through the date of termination.
  - c) Upon termination of this Agreement for any reason, You shall immediately (i) discontinue any and all use of the Software and Documentation; and (ii) either (A) return the Documentation to Northwoods, or (B) with the prior permission of Northwoods, destroy the Documentation and certify in writing to Northwoods that You have completed such destruction. Further, upon termination of this Agreement, Northwoods may immediately deactivate Your account.
  - d) Upon receipt of a termination notice and within thirty (30) days of the date of termination of this Agreement by either Party, Northwoods will make Your Data available to You for export or download. Specifically, within 30 days of the date of termination, Northwoods will provide You with an encrypted hard drive containing 1) all data stored in the database in a format that is comparable to a relational database backup; and 2) all other content in the original format in which it was collected (e.g., jpeg or mp3) at no additional cost to You.
13. Warranties.
  - a) Each party represents and warrants that it has the legal power to enter into this Agreement. Northwoods warrants: (i) the Software will substantially conform in all material respects with the applicable Documentation; (ii) Northwoods further represents and warrants that it has all rights required to provide the Software to You and that to the best of Northwoods' knowledge the Software does not infringe upon or violate the United States patent rights of any third party or the copyright or trade secret right of any third party; and (iii) the functionality of the Software will not be decreased from that available as of the Effective Date.
  - c) If any modifications, additions, or alterations of any kind or nature are made to the Software by You or anyone acting with Your consent or under Your direction, all warranties will immediately terminate.
  - d) NORTHWOODS HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, WHETHER IN RELATION TO THE SOFTWARE, HARDWARE, OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING.
14. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT APPLY TO LIMIT LIABILITY IN CONNECTION WITH CLAIM FOR INDEMNIFICATION. In no event shall either Party be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever (including, but not



limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the Software or Services even if Northwoods has been advised of the possibility of such damages.

15. Indemnification.

- a) *Cyber/Security Breach Indemnification.* In the event of any claim by a third party against You (the “Cyber Claim”), alleging that You and/or Northwoods caused a breach of the security, confidentiality, or integrity of Your Data, You will notify Northwoods of the Cyber Claim in writing within five (5) business days of the receipt of the Cyber Claim and tender sole control of the Cyber Claim to Northwoods and/or its insurer(s) and Northwoods will defend such Cyber Claim in Your name at Northwoods’ expense, and will indemnify You against any liability actually paid by You, including but not limited to reasonable attorneys’ fees and disbursements arising out of such Cyber Claim, to the extent that Northwoods’ insurance policies provide coverage for such indemnification obligation. Northwoods’ indemnification obligation set forth in this section is strictly limited to the coverage afforded such indemnification obligation pursuant to the terms of Northwoods’ insurance policies. In the event such a breach is found, then Northwoods may terminate this Agreement. Notwithstanding the foregoing, Northwoods shall have no obligation to defend or indemnify You, and Northwoods will be defended and indemnified by You with respect to any Cyber Claim, to the extent that the Cyber Claim is based upon the sole negligence or willful misconduct of You. If You and Northwoods are both at fault in connection with the data breach, Northwoods’ obligation to defend and indemnify shall be limited and proportional to the parties’ relative fault.
- b) *IP Indemnification.* In the event of any claim by a third party against You (the “IP Claim”), alleging that the use of the Northwoods Software infringes upon any intellectual property rights of such third party, You will notify Northwoods and/or its insurer(s) of the IP Claim in writing within five (5) business days of the receipt of the IP Claim and tender sole control of the IP Claim to Northwoods and/or its insurer(s) and Northwoods will defend such IP Claim in Your name at Northwoods’ expense, and will indemnify You against any liability actually paid by You, including but not limited to reasonable attorneys’ fees and disbursements arising out of such IP Claim, to the extent that Northwoods’ insurance policies provide coverage for such indemnification obligation. Northwoods’ indemnification obligation set forth in this section is strictly limited to the coverage afforded such indemnification obligation pursuant to the terms of Northwoods’ insurance policies. In the event such an infringement is found and Northwoods cannot either procure the right to continued use of the Northwoods Software, or replace or modify the Northwoods Software with a non-infringing program, then Northwoods may terminate this Agreement. Notwithstanding the foregoing, Northwoods shall have no obligation to defend or indemnify You, and Northwoods will be defended and indemnified by You with respect to any IP Claim, to the extent that the IP Claim is based upon (i) the negligence or willful misconduct of You; (ii) the use of the Northwoods Software in combination with other products or services not made or furnished by Northwoods, provided that the Northwoods Software alone is not the cause of such IP Claim; or (iii) the modification of the Northwoods Software or any portion thereof by anyone other than Northwoods, provided that the Northwoods Software in unmodified form is not the cause of such IP Claim.

16. Confidentiality.

- a) Each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party that is disclosed during negotiation or performance of this Agreement.
- b) You will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Northwoods and/or the owner of the Third Party Products. This includes, but is not limited to: (i) instructing Your employees that have access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; and (iii) maintaining proper control of passwords and security procedures to prevent unauthorized access to Your Database.

17. Notices. All official notifications, including but not limited to, termination of this Agreement must be sent to the other Party’s authorized representative. All notices required under this Agreement will be in writing and



deemed delivered upon: (1) personal delivery; (2) three (3) days subject to being posted with the U.S. registered or certified mail, return receipt requested; or (3) two (2) days after deposit with a commercial express air courier specifying next day delivery, with verification of receipt.

Northwoods' authorized representative for the purpose of administration of this contract is:

Name: Sarah Edwards, General Counsel and Chief Administrative Officer  
Address: 5200 Rings Road  
Dublin, OH 43017  
Telephone: (614) 781-7800  
Email: [Sarah.Edwards@teamnorthwoods.com](mailto:Sarah.Edwards@teamnorthwoods.com)

Your authorized representative for the purpose of administration of this contract is:

Name:  
Address:

Telephone:  
Email:

18. Neither Party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other Party hereto. Any such assignment without the prior written consent of the other Party hereto shall be void.
19. This Agreement shall be binding upon all parties hereto and upon their respective heirs, executors, administrators, successors, and permitted assigns.
20. This Agreement shall not be modified in any manner except by an instrument, in writing, executed by all parties to this Agreement.
21. This Agreement and any claim, action, suit, proceeding, or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Ohio without regard to its conflicts of laws provisions. Venue and jurisdiction for any action, suit, or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction in Franklin County, Ohio.
22. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
23. Nothing in this Agreement is intended to, or shall be deemed to constitute a partnership, association or joint venture between the parties in the conduct of the provisions of this Agreement. Northwoods shall at all times have the status of an independent contractor.
24. If by reason of *force majeure* either party is unable in whole or in part to act in accordance with this Agreement, the party shall not be deemed in default during the continuance of such inability. The term "*force majeure*" as used herein shall include without limitation: acts of God; strikes or lockout; acts of public enemies; insurrections; riots; epidemics; lightning; earthquakes; fire; storms; flood; washouts; droughts; arrests; restraint



of government and people; civil disturbances; and explosions. Each party, however, shall remedy with all reasonable dispatch any such cause to the extent within its reasonable control which prevents the party from carrying out its obligations contained herein.

25. Any waiver by either party of any provision or condition of this contract shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.
26. This Agreement may be executed in one or more identical counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument. This Agreement may also be executed electronically. Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.
27. This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof.

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IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original, as of the date first above written.

**Northwoods Consulting Partners, Inc.**

By: \_\_\_\_\_

Nick Patel, Chief Financial Officer

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

**Ashe County Department of Social Services**

By: \_\_\_\_\_

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



## Attachment A

**Quote** | 5200 Rings Rd.  
Dublin, OH 43017



### Quote

**Prepared For:** Ashe County DSS (NC)  
**Project Title:** Ashe County DSS (NC) - Traverse  
**Prepared By:** Chris Mease  
**Effective From:** 06/04/2020  
**Expiration Date:** 09/04/2020

### Project Scope Summary

This firm fixed price quote is for Northwoods to implement Traverse within Ashe County's Department of Social Services. The following table(s) contain applicable software and professional services costs necessary for a successful implementation.

Subscription Software	Total Cost
Traverse ( 25,001-50,000 Population)	\$77,000.00
<b>Subtotal</b>	<b>\$77,000.00</b>

Firm Fixed Professional Services	Total Cost
Professional Services	\$134,000.00
<b>Subtotal</b>	<b>\$134,000.00</b>

Pricing Summary	Cost
Subscription Software, Initial Term	\$77,000.00
Professional Services	\$134,000.00

*\*Sales tax not included.*

Unless otherwise agreed to in a signed, written agreement, payment in full is due within 30 days of acceptance of the cost quotation.



SCHEDULE A1  
Payment Terms

DESCRIPTION	AMOUNT DUE
<b>Northwoods Software Subscription (Initial Term)</b>	
Year 1 – Due upon execution of Agreement	\$77,000.00
Year 2 – Due on anniversary of Subscription Date	\$77,000.00
Year 3 – Due on anniversary of Subscription Date	\$77,000.00
<b>Northwoods Software Subscription (Option Term(s))*</b>	
<b>Services</b>	
30% due upon completion of the Startup Phase of the Project	\$40,200.00
20% due upon completion of the Design Phase of the Project	\$26,800.00
20% due upon completion of the Test Phase of the Project	\$26,800.00
20% due upon completion of the Deploy Phase of the Project	\$26,800.00
10% due upon completion of the Closeout Phase of the Project	\$13,400.00

\* Northwoods Software subscription payments are subject to fee increases for each Option Term.

**ATTACHMENT B**  
Terms of Service

**1. USAGE GRANT:**

- (a) Northwoods grants to You, for the term of this Agreement, a non-exclusive, non-assignable (except as herein provided), non-transferable, right to use the Northwoods Software (as defined in the Software as a Service Agreement), solely for use by You internally, and only for capturing, storing, processing and accessing Your Data. You shall not make any use of the Northwoods Software in any manner not expressly permitted in this Attachment B.
- (b) You acknowledge and understand that the Northwoods Software is available for use only during the term of this Agreement (as defined in the Software as a Service Agreement).
- (c) You agree: (1) not to remove any Northwoods' notices in the Northwoods Software or Documentation; (2) not to sell, transfer, rent, lease or sub-license the Software or Documentation to any third party; (3) not to alter or modify the Northwoods Software or Documentation; and (4) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Northwoods Software; and 5) not to prepare derivative works from the Northwoods Software or Documentation.
- (d) You may not assign, transfer or sublicense all or part of Your rights without the prior written consent of Northwoods; provided that Northwoods agrees that such consent shall not be unreasonably withheld in the case of any assignment by You of Your rights in their entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of Your assets that assumes in writing all of Your obligations and duties under this Attachment B.
- (e) The Northwoods Software may be bundled with software owned by third parties. Such third party software is available for use solely within the Northwoods Software and is not to be used on a stand-alone basis. Notwithstanding the above, You acknowledge that the Northwoods Software may include open source software governed by an open source license, in which case the open source license may grant you additional rights to such open source software.

**2. OWNERSHIP:**

- (a) Notwithstanding the ownership of any customization made to the Northwoods Software for Subscriber or at Subscriber's request, Northwoods and its licensors retain all right, title, and interest in and to the Northwoods Software and related documentation and materials, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Northwoods Software. The Northwoods Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Northwoods Software are transferred to You. You agree that nothing in this Agreement or associated documents gives You any right, title or interest in the Northwoods Software, except for the limited express rights granted herein.
- (b) You are (i) responsible for the accuracy, quality, and legality of Your Data (as defined in the Software as a Service Agreement) and the means by which You acquired Your Data, and (ii) must use commercially reasonable efforts to prevent unauthorized access to or use of the Northwoods Software, and notify Northwoods promptly of any such unauthorized access or use.

**3. INTERNET ACCESS:**

In order to use the Northwoods Software, You must have or must obtain access to the World Wide Web, either directly



or through devices that access Web-based Content. You must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web.

**4.      PASSWORDS, ACCESS, AND NOTIFICATION:**

You will provide and assign unique password and user names to each authorized user. You acknowledge and agree that You are prohibited from sharing passwords and or user names with unauthorized users. You will be responsible for the confidentiality and use of Your (including Your employees') passwords and user names. You agree to notify Northwoods if You become aware of any loss or theft or unauthorized use of any of Your passwords, user names, and/or account number.

**ATTACHMENT C**  
Ongoing Support

**ONGOING SUPPORT.**

- a. Support Center Access. Ongoing support services are provided via Northwoods Support Center and generally will be available during the hours of 7:00 a.m. to 5:00 p.m., in the applicable time zone for the Subscriber, Monday through Friday, excluding Northwoods' holidays, or as otherwise provided by Northwoods to its end users in the normal course of its business, either by telephone or web portal.
- b. Traverse Documentation and Videos. Where applicable, all Traverse product documentation is available through the application's help feature. Fully searchable and regularly updated, product documentation provides customers with specifics around Traverse features, functionality, configurable settings, and product updates. Northwoods University is a web-based LMS available to all Traverse customers. It contains Traverse-specific videos and training courses designed to strengthen a worker's skills and familiarity with their solution.
- c. Exclusions. Northwoods is not responsible for providing, nor obligated to provide, support services under this Agreement if County requested integration services and changes are made to the source data subsequent to Northwoods performing the integration services. This includes, but is not limited to, (i) making changes to the format of the source data; (ii) changing, removing, or introducing new APIs; (iii) changing, removing, or introducing an enterprise service bus; and (iv) changing, removing, or introducing direct database access. Any request by County for Northwoods to support such an instance is available at the sole discretion of Northwoods and Northwoods reserves the right to bill for any such request on a time and materials basis at Northwoods' then-current rates.



## **SCHEDULE C1**

### **Service Level Agreement**

#### **Service Commitment**

This Service Level Agreement (SLA) applies to You because you have contracted for web-based software and/or infrastructure hosting services (“Hosting Services”).

Northwoods will use commercially reasonable efforts to make its Hosting Services available with a monthly System Availability Percentage (defined below) of at least 99.9% (“Service Commitment”).

#### **Definitions**

“System Availability Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Hosting Services were Unavailable to You. System Availability Percentage measurements exclude downtime resulting directly or indirectly from any Hosting Services Exclusion (defined below).

“Scheduled Downtime” equals the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, operating system, network, database, application software maintenance, repair, upgrades, and updates. Northwoods will work with You to determine and use commercially reasonable efforts to schedule any such downtime after regular business hours, during times that minimize the disruption to operations. The amount of Scheduled Downtime may vary from month to month depending on the level of change to the system.

“Unavailable” and “Unavailability” mean all of your running instances have no external connectivity.

#### **Service Credits**

Service credits are calculated as a percentage of the total charges paid by You annually for the Hosting Services, divided by twelve (12) to determine the credit for the month in which the Unavailability occurred.

In the event Northwoods does not meet the Service Commitment, You may be eligible to receive a 10% service credit. Northwoods will apply any such service credit only against future Hosting Services payments otherwise due from You. Service credits will not entitle You to any refund or other payment from Northwoods. Service credits may not be transferred or applied to any other account You may have with Northwoods. Unless otherwise provided, Your sole and exclusive remedy for any Unavailability, non-performance, or other failure by Northwoods to provide the Hosting Services is the receipt of a service credit in accordance with the terms of this SLA.

#### **Credit Request and Payment Procedures**

To receive a service credit, You must submit a claim by contacting the Director of Northwoods Support Center. To be eligible, the credit request must be received by us by the end of the calendar month after which the incident occurred and must include:

- The words “SLA Credit Request” in the subject line;
- The dates and times of each Unavailability incident that you are claiming;
- Your request logs that document the errors and corroborate your claimed outage.

If the System Availability Percentage of such request is confirmed by Northwoods and is less than the Service Commitment, then Northwoods will issue the service credit to You and will apply such credit against your next annual invoice for Hosting Services. Your failure to provide the request and other information as required above will disqualify You from receiving a service credit.

**Hosting Services Exclusions**

The Service Commitment does not apply to any Unavailability, suspension, or termination of Hosting Services: (i) caused by factors outside of our reasonable control, include any force majeure event or internet access or related problems beyond the demarcation point of the hosting data center; (ii) that result from any actions or inactions of You or a third party, including failure to acknowledge a recovery volume; (iii) that result from Your equipment, software, or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); or (iv) that are due to any Scheduled Downtime (collectively, the “Hosting Services Exclusions”). If availability is impacted by factors others than those used in our System Availability Percentage calculation, then we may issue a service credit considering such factors at our discretion.



**ATTACHMENT D**

Statement of Work

*See Attachment*