

Master Subscription Agreement

JOBPROGRESS, LLC

MASTER SUBSCRIPTION AGREEMENT

IMPORTANT: READ THIS LICENSE CAREFULLY. BY ELECTRONICALLY SIGNING THE AGREEMENT (AS DEFINED BELOW), BY CLICKING ON A BOX INDICATING YOUR ACCEPTANCE, BY EXECUTING A LICENSE & SIGNATURE PAGE THAT INCORPORATES THE TERMS OF THIS AGREEMENT BY REFERENCE, OR BY ACCESSING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT SIGN AND RETURN THE AGREEMENT, CLICK ON THE BOX TO INDICATE YOUR ASSENT OR EXECUTE AND RETURN THE LICENSE & SIGNATURE PAGE. This Master Subscription Agreement ("Agreement") is legal agreement between you ("Customer") and JOBPROGRESS, LLC, a Delaware based limited liability company with its principal place of business at 480 Sidney Road Piscataway, NJ 08854 ("JOBPROGRESS"), made and entered into as of the date Customer indicates its acceptance to the terms and conditions of this Agreement, concerning your use of the JOBPROGRESS software for which you have subscribed. You and JOBPROGRESS hereby agree to bound by the following terms and conditions. The terms and conditions of this Agreement will apply to your use of the "Software" (as defined below) pursuant to our 30 day free trial and/or if you actually license the use of the Software.

1. Fees.

1.1 In consideration of the performance by JOBPROGRESS of its obligations under this Agreement, Customer will pay the fees outlined in the License & Signature Page (the "Schedule") that you completed as part of your subscription for the Software, and any other fees which are mutually agreed to by the parties and incurred by Customer pursuant hereto (collectively, "Fees"), in accordance with the terms of this Agreement and the Schedule.

The Fees listed on the Schedule entitle Customer to the data storage and file storage capacity listed on [Exhibit A](#) hereto. Additional data or file storage capacity is available at the rates listed on [Exhibit A](#) hereto. JOBPROGRESS reserves the right to modify its Fees for any subsequent "Renewal Term" (as defined in Section 5.1) by giving Customer no less than 30 days prior notice of such change. The Fees may be subject to change from time to time, as determined solely by JOBPROGRESS, provided, however, such Fees shall not increase more than twenty percent (20%) in any one (1) calendar year, and any increases shall not be any less than 90 days apart from each other, unless agreed to in writing by JOBPROGRESS and Customer. Additionally, price increase notifications will be made no less than 30 days prior to the expiration of the then current Term.

1.2 Except as otherwise provided in the Schedule, undisputed Fees will be paid by Customer within 30 days after receipt of the relevant invoice by Customer. Customer will pay interest in the amount of 1.5% per month (or the highest rate permitted by law, whichever is lower) on any undisputed Fees not paid within thirty (30) days of such due date. If Customer disputes any invoice (such dispute to be in good faith), Customer shall pay the undisputed portion and will notify JOBPROGRESS in writing, specifying the amount in dispute and its reason for disputing such amount and both parties shall use reasonable efforts to resolve such dispute. Nonpayment by Customer of any disputed fees and amounts will not be deemed to be a breach of this Agreement by Customer and the license to use the Software shall continue during such dispute resolution period. Notwithstanding anything contained herein to the contrary, the only Fees that may be disputed by Customer pursuant hereto are the Fees that are charged for the number of Authorized Users (as defined in [Section 2.1](#)) (e.g., JOBPROGRESS has mistakenly charged the Customer for 10 Authorized Users and the Customer has only five Authorized Users pursuant to the terms hereof).

1.3 All Fees are exclusive of sales tax and other applicable taxes, which Customer will be responsible to pay (except that JOBPROGRESS will pay income tax on its own income under this Agreement).

1.4 If credit card payments are selected on the Schedule, all Fees will be paid on or around each due date by debiting Customer's credit card issuer. If ACH is selected on the schedule, all Fees will be paid on or around each due date by debiting the Customer's bank processor. To effect such payment, Customer has completed the **Schedule**, and will complete such other documentation as the JOBPROGRESS may reasonably request from time to time.

2. Software License.

2.1 **License Grant.** Subject to the terms and conditions contained in this Agreement, JOBPROGRESS grants to Customer a non-exclusive, non-transferable, non-sublicensable license for the term of this Agreement, and only for purposes of operating its business and for its own business management, to access and use, through the maximum number of employees or agents listed on the **Schedule**(collectively, the "Authorized Users") (a) the Software made available by JOBPROGRESS via the Internet, together with any modifications, enhancements, or corrections thereto that JOBPROGRESS may make generally available to its customers from time to time (collectively, the "Software"); and (b) any user manuals and on-line help information for the Software, that JOBPROGRESS may create and make generally available to its customers from time to time, whether in print, or in digital form over the Internet ("Documentation"). Notwithstanding anything contained herein to the contrary, Customer may download, copy, view and print content created using the Software for Customer's internal use only; provided, that all trademark, service mark, logos or other intellectual property notices are not removed or altered in any way.

2.2 **License Exclusions.** Except as expressly authorized by this Agreement, Customer will not itself, nor through any parent, subsidiary, affiliate, or third party: (a) Copy, modify or create derivative works based upon the Software or Documentation; (b) Decompile, disassemble, or reverse engineer the Software in whole or in part; (c) Defeat, disable or circumvent any protection mechanism related to the Software or the Documentation; (d) Sell, license, sublicense, lease, rent, or distribute to any third party, or disclose, permit access to, or transfer to any third party, any portion of the Software or the Documentation; (e) Use the Software or the Documentation to operate a service bureau or to perform service department management services for any third party; or (f) Export, access or use the Software in violation of any U.S. Department of Commerce export administration regulations or other applicable laws or regulations.

2.3 **Ownership** (a) Except for the rights expressly granted in this Agreement, this Agreement does not transfer to Customer any right, title, or interest (including any copyright, patent, trademark, trade secret or other intellectual property or proprietary right) in or to the Software or the Documentation. Customer acknowledges that JOBPROGRESS retains sole and exclusive title to all portions of the Software, the Documentation and any copies thereof, and hereby assigns to JOBPROGRESS all right, title, and interest in and to any modifications made to the Software or the Documentation by or on behalf of Customer, whether or not such modifications are permitted under this Agreement. (b) Upon learning of any unauthorized possession or use of or access to the Software or the Documentation, Customer will promptly notify JOBPROGRESS and, will promptly furnish details of such occurrence, and in any event in each instance, within 10 days of learning of such unauthorized possession, use or access. Customer shall implement measures reasonably requested by JOBPROGRESS to prevent any such unauthorized access to the Software or the Documentation and shall provide assistance (at JOBPROGRESS's sole cost and expense) as reasonably requested by JOBPROGRESS to protect JOBPROGRESS's rights against any third parties relating to such unauthorized use. (c) Customer will retain all right, title and ownership interest in and to all data, content and materials entered and updated using the Software and that is stored in the Software ("Customer Data"). (d) The terms of this [Section 2.3](#) will survive termination of this Agreement.

2.4 Customer will permit only its Authorized Users in a total number not to exceed the numbers set out in the **Schedule** to have access to the Software or the Documentation. Customer will take reasonable steps to protect against use of the Software and Documentation other than as authorized by this Agreement. The number of Authorized Users may be decreased by Customer only at the beginning of a new Renewal Term and only if Customer has provided JOBPROGRESS with no less than 45 days prior written notice of such decrease. Any decrease in the number of Authorized Users in compliance with this [Section 2.4](#), will result in an appropriate decrease in the Fees. Customer is responsible for insuring that each Authorized User complies with the terms of this Agreement.

2.5 Each Authorized User will be able to access the Software and the Documentation solely through a user identification and a password (together, a "Password") that will be issued to the Customer by JOBPROGRESS.

CUSTOMER IS RESPONSIBLE FOR KEEPING ALL AUTHORIZED USER PASSWORDS STRICTLY CONFIDENTIAL AND TAKING OTHER REASONABLE PRECAUTIONS TO PREVENT THEIR UNAUTHORIZED USE. Customer will notify JOBPROGRESS promptly of any unauthorized use of a Password of which it becomes aware. Until Customer notifies JOBPROGRESS in writing that a Password is being used improperly, JOBPROGRESS will presume that all use of the Software using a Password is authorized by Customer, and

Customer will remain liable for any damages or losses that are caused by access to the Software using such Password. **Customer will be charged a monthly access fee for any unauthorized user who gains access to the Software without approval from JOBPROGRESS.**

2.6 To access the Software and the Documentation via the Internet, Customer must have available to it the Internet browser and software applications listed on Exhibit B.

2.7 **Mobile Licenses** Subject to the terms and conditions contained in this agreement, JOBPROGRESS grants to Customer mobile license(s) meant only to be used on the JOBPROGRESS mobile application. Customer acknowledges that mobile licenses have limited functionality compared to platform licenses and that the mobile applications are to be used on tablet and smart phones in order to extend platform functionality in the field.

3. **Subscription.**

3.1 During the term of this Agreement and provided that Customer has paid all applicable fees, JOBPROGRESS will use commercially reasonable efforts to provide access to the Software via the Internet. Subject to the terms of Exhibit C, the Software and Customer Data shall be available and shall perform in accordance with the Documentation 99.00% of the time during each calendar month ("Uptime Availability") and if JOBPROGRESS fails to meet this Uptime Availability, JOBPROGRESS shall provide to Customer the credits as set forth in Exhibit C.

3.2 JOBPROGRESS reserves the right to perform maintenance from time to time in connection with the Software and its website; JOBPROGRESS will provide written notice to Customer prior to such maintenance if any downtime is expected to result. Downtime in connection with maintenance and/or upgrades do not count against Uptime Availability and credits will not be issued in connection with downtime resulting from either scenario.

4. **Support.**

4.1 **Support Desk.** Customer can telephone JOBPROGRESS's hotline, which is available during JOBPROGRESS's standard business hours, Monday to Friday from 8:30 a.m. to 5:00 p.m. EST (excluding national holidays or other days banks are closed in New Jersey) ("Business Hours") to notify the JOBPROGRESS that the Software fails to perform in accordance with the Documentation. During those days, and between the hours of 5:00 p.m. to 8:00 p.m. EST Customers in the Central, Mountain and Pacific time zones may leave a message for the support staff. JOBPROGRESS's support staff will use commercially reasonable efforts to resolve an identified problem promptly meeting the service levels set forth in Exhibit C; provided, Customer provides JOBPROGRESS with sufficient information that is available to Customer, to reproduce the defect in question. If JOBPROGRESS is unable, after repeated efforts to remedy any Severity 1 or Severity 2 service level issues, JOBPROGRESS may terminate this Agreement by giving Customer written notice to such effect and refunding to Customer a pro rata portion of the prepaid monthly fee paid by Customer based on the amount of such month that the Software is not available; provided, however, if the Software is the subject of a "Severity 1" or "Severity 2" service level issue (as defined on Exhibit C hereto), then if such defect is not remedied within five days of JOBPROGRESS learning of such defect, the Customer shall have the right to terminate this Agreement by giving JOBPROGRESS written notice to such effect and JOBPROGRESS will refund to Customer a pro rata portion of the prepaid monthly fee paid by Customer based on the amount of such month that the Software is not available.

4.2 **Training.** JOBPROGRESS shall provide to one person designated by Customer (the "Administrator") on line training on the use of the Software and the Documentation via webinar or online video sessions at such times and in such manner as the parties mutually agree. Such on line training will be provided to the Administrator free of charge. Any additional training (e.g., via telephone or in person) will be provided at such time and in such manner as the parties mutually agree and at JOBPROGRESS's then applicable hourly rates.

4.3 **Off-hours Support.** Requests for support outside of Business Hours will be provided subject to availability and the JOBPROGRESS's then applicable hourly rates.

4.4 Customization. JOBPROGRESS is not obligated to customize or modify the Software for Customer. If JOBPROGRESS does agree to customize or modify the Software for JOBPROGRESS, such work will be done on terms and conditions as mutually agreed to by the parties.

5. General Terms and Conditions.

5.1 Term and Termination.

(a) Subject to the terms of Sections 4.1, 5.1(b), 5.1(c), 5.1(f), 5.2(b), 5.2(g) and 5.4(j), the term of this Agreement shall be as set forth in this Section 5.1. The initial term of this Agreement will be for one (1) year (the "Initial Term"). After the Initial Term, this Agreement will automatically renew for successive one year terms (each, a "Renewal Term" and together with the Initial Term, the "Term") unless and until either party gives the other party at least 30 days prior written notice of its intent to terminate the Agreement at the end of the then current Term. JOBPROGRESS shall provide 3 written notices to Customer reminding the Customers of the expiration date of the Agreement and the requirement on part of Customer to provide to JOBPROGRESS at least 30 days notice in the event Customer wishes to terminate the Agreement. Such notices shall be provided by JOBPROGRESS at no less than the following time frames: 90 days, 60 days and 30 days prior to the expiration of the Initial Term or any Renewal Term.

(b) Notwithstanding anything contained in Section 5.1(a) to the contrary, JOBPROGRESS may terminate this Agreement immediately upon written notice if (i) Customer breaches any obligation under this Agreement (other than as provided in subsections (iii) and (iv) below), and fails to remedy such breach within 30 days of receiving written notice of such breach from JOBPROGRESS; provided, however, if the same breach occurs more than once in any 12 month consecutive period, the cure period for each such additional breach will be only five days, (ii) Customer ceases operation as a going concern, is the subject of any voluntary or involuntary filing in any bankruptcy or insolvency proceeding, makes an assignment for the benefit of creditors, is subject to the appointment of a receiver, and in each case only if Customer defaults in making any undisputed payments, or admits in writing its inability to pay the Fees, (iii) Customer breaches any of the terms of the SFDC Service Agreement, or (iv) Customer breaches any of its obligations under Sections 2.2(b), 2.2(c), 2.2(f) or 5.3.

(c) Upon nonpayment due to credit card or ACH access denial or non-payment, the customer will be notified electronically and given 10 days from the date of receipt of such written notice to rectify the problem and make full payment of all undisputed amounts. In the event, Customer fails to make payment of all undisputed amounts within such 10 day period the Customer's license and all access to the Software will be suspended. If full payment of all undisputed amounts is not received within 30 days from the date Customer receives such written notice, JOBPROGRESS may terminate this Agreement pursuant to Section 5.1. For avoidance of doubt, if such nonpayment occurs more than once in any 12 month consecutive period, the Customer will have only five days to make full payment of all undisputed amounts for each such additional occurrence and if such payment is not made in full within such five day period, JOBPROGRESS may terminate this Agreement pursuant to Section 5.1.

(d) If this Agreement is terminated by JOBPROGRESS pursuant to Section 5.1(b), Customer will remain liable for the immediate payment in full of all Fees which would have become due during the remainder of the then current Term.

(e) Within 30 days following the termination of this Agreement for any reason, (i) Customer will return all copies of the Documentation or certify in writing that they have been destroyed, and any outstanding undisputed Fees will immediately become due and payable upon termination.

(f) Subject to the terms of Sections 4.1, 5.1(a), 5.2(g), and 5.4(j) and as set forth in the last sentence of this section 6.1(f), Customer shall have the right to immediately terminate this Agreement in the event JOBPROGRESS breaches any obligation under this Agreement and fails to remedy such breach within 30 days after receiving notice of such breach from Customer. Customer shall have the right to terminate this Agreement immediately in the event of breach of Section 5.3 by JOBPROGRESS.

(g) Customer is responsible for exporting all Customer Data from the Software prior to termination of this Agreement. Upon expiration or termination of this Agreement, JOBPROGRESS shall provide written notice to

Customer providing instructions on retrieval and export of Customer Data and will provide to Customer 10 days to export its Customer Data after receipt of such letter.

5.2 **Warranty and Disclaimer of Warranty.**

(a) During the term of this Agreement, the Software will function substantially in accordance with the Documentation. The Customer's sole remedy for any failure to conform to this warranty will be as provided in Section 5 above.

(b) JOBPROGRESS warrants that (i) unless specifically set forth on Exhibit B, the use and access of the Software in accordance with the Documentation shall not require Customer to purchase any additional third party products or any software licenses, and (ii) it has the right to enter into this Agreement and grant Customer the licenses to the Software as set forth in this Agreement (including any third party software included, embedded or provided with the Software), and (iii) it shall use industry standard firewall and security protection from any network attack and other malicious harmful or disabling data, work, virus, code or program.

(c) The services to be provided by JOBPROGRESS under this Agreement (the "Services") will be performed in a workmanlike and professional manner and consistent with the industry standards. The Customer's sole remedy for any failure to conform to this warranty is re-performance of the non-conforming Services.

(d) EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND JOBPROGRESS MAKES NO WARRANTY OF ANY KIND CONCERNING THE SOFTWARE, DOCUMENTATION, OR SERVICES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS AND JOBPROGRESS DOES NOT WARRANT THAT THE USE OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.

No

affirmation of JOBPROGRESS, by words or action, other than as set forth in this Section 5.2, will constitute a warranty.

(e) LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY. EXCEPT FOR (I) FRAUD, GROSS NEGLIGENCE, WILLFUL MISCONDUCT (II) BREACH OF OBLIGATIONS SET FORTH IN SECTIONS 2.2, AND/OR 5.3, (III) OR FOR ANY OBLIGATIONS OF JOBPROGRESS UNDER SECTION 5.2(g), (IV) ISSUANCE OF CREDITS AS SET FORTH IN EXHIBIT C IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) EXCEED THE FEES PAID UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. THE PROVISIONS OF THIS AGREEMENT CONTAIN THE ENTIRE LIABILITY OF EACH PARTY, AND THE SOLE AND EXCLUSIVE REMEDY FOR THE OTHER PARTY, FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE SOFTWARE OR THIS AGREEMENT.

(f) DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSS OF OR DAMAGE TO ANY PROPERTY OR DATA (INCLUDING PROPERTY OR DATA HANDLED OR PROCESSED THROUGH THE USE OF THE SOFTWARE OR SUPPORT SOFTWARE) OR ANY PUNITIVE DAMAGES.

(g) JOBPROGRESS shall indemnify, defend and hold harmless Customer, its officers, directors, employees, customers and agents from any and all claims, damages, expenses and costs (including attorney's fees and court costs) arising from any claim that the Software and/or Documentation infringes any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party ("Claim"); provided, that Customer promptly notifies JOBPROGRESS of the Claim, allows JOBPROGRESS to control the defense of such Claim, does not agree to any settlement of such Claim without JOBPROGRESS's prior written consent and provides, at JOBPROGRESS's expense, such information and assistance as JOBPROGRESS reasonably requests in connection with the defense of such Claim. This indemnity shall not apply to any Claim of infringement resulting from use or combination of the Software with software, hardware or other materials not approved by JOBPROGRESS; provided that such Claim would not have arisen but for the combination of the Software with such un-approved software, hardware or materials. If the Software or Documentation becomes, or in JOBPROGRESS's opinion are likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, JOBPROGRESS may, in its sole discretion and at its sole cost and expense, (i) secure the right for

Customer to continue to use the Software and the Documentation, (ii) replace or modify the Software or Documentation to make it non-infringing such that it continues to perform substantially in accordance with the Documentation or (iii) terminate this Agreement by giving Customer written notice to such effect and refunding to Customer a pro rata portion of the prepaid monthly fee paid by Customer based on the amount of such month that the Software is not available. Customer shall have the right to participate in the defense of any such Claim at its own expense. JOBPROGRESS shall not, without first obtaining Customer's prior written consent, settle any claim in any manner where Customer would be required to admit any liability. In the event the options listed in subsections (i) or (ii) are not implemented and Customer's use of the Software and/or Documentation is materially affected by the Claim or Customer's continued use of the Software would reasonably result in continued liability for Customer, Customer shall have the right to immediately terminate this Agreement by providing written notice to JOBPROGRESS.

(h) THE REMEDIES SET FORTH IN SECTIONS 5.2 (g) STATE THE ENTIRE LIABILITY OF JOBPROGRESS WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY BY THE SOFTWARE, THE DOCUMENTATION OR ANY PART THEREOF AND JOBPROGRESS WILL NOT HAVE ANY ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

(i) **Non-GA Services.** From time to time JOBPROGRESS may provide product features or services that are not generally available to all of JOBPROGRESS customers ("**Non-GA Services**"). Customer may choose not to use any Non-GA Services in Customer's sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for

evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in JOBPROGRESS's sole discretion and may never make them generally available.

(j) RELEASE OF LIABILITY. REGARDLESS OF THE APPROVAL BY JOBPROGRESS LEGAL COUNSEL ANY FORMS OR DOCUMENTATION ASSOCIATED WITH JOBPROGRESS AND FEDERAL TOXIC SUBSTANCES CONTROL ACT AND STATE LAWS, JOBPROGRESS MAKE NO GUARANTEE OR WARRANTY OF LEGAL COMPLIANCE. FURTHERMORE ANY FORMS OR DOCUMENTS PROVIDED FOR OR USED IN ACCORDANCE WITH JOBPROGRESS FEATURES ARE INTENDED TO BE OPERATIONAL IN NATURE AND ARE NOT DESIGNED TO BE LEGAL DOCUMENTS. JOBPROGRESS DOES NOT PROVIDE LEGAL ADVICE AND PRIOR TO UTILIZING ANY FORM OR DOCUMENTATION OFFERED BY JOBPROGRESS, WE RECOMMEND THAT THE CUSTOMER CONSULT WITH EXPERIENCED INDUSTRY LEGAL COUNSEL.

5.3 Confidential Information. Each party agrees that the "Confidential Information" (as defined below) of the other party will be held in confidence to the same extent and the same manner as each party protects its own Confidential Information but each party agrees that in no event will less than reasonable care be used. Each party further agrees not to use any of the Confidential Information for its own benefit (except as specifically provided herein) or the benefit of any third party. Each party will use all reasonable steps to ensure that the other party's Confidential Information received under this Agreement is not disclosed in violation of this paragraph. "Confidential Information" means: the terms of this Agreement, except as otherwise specifically provided in this Agreement; each party's trade secrets, including but not limited to, financial information, processes, formulas, specifications, programs, instructions, source code, technical know-how, methods and procedures for operations, benchmark test results, information about employees, customers, marketing strategies, services, business or technical plans and proposals, in any form; and any other information relating to either party that is not generally known to the public at large. With respect to JOBPROGRESS, the Software and Documentation, all information, drawings, specifications, documentation, software listings or code which JOBPROGRESS may have imparted and may from time to time impart to the Customer relating to the Software or Documentation, constitute Confidential Information. With respect to the Customer, the Customer Data constitutes Confidential Information of Customer and Customer shall be responsible for insuring that all Authorized Users comply with the obligations of this Section 5.3 as if they were a party hereto.

(a) Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large through no act or omission of the recipient; (ii) can be demonstrated to have been available lawfully to either party prior to the disclosure or had thereafter been furnished to either party without restrictions to disclosure or use; (iii) can be demonstrated to be independently developed by the recipient of Confidential Information without use of such Confidential Information and such independent development is proven on the basis of

either party's records related to such development; or (iv) is required to be disclosed by a court order or other governmental action.

(b) Each party agrees that disclosure of any Confidential Information of the other party will give rise to irreparable injury to the other party, or to the owner of such information, and that such injury is not adequately compensable in damages. Accordingly, such other party may seek and obtain injunctive relief against the breach or threatened breach of this section, in addition to any other legal remedies which may be available.

5.4 Miscellaneous Terms.

(a) **Other agreements.** This Agreement, the Schedule and the Exhibits hereto contain the complete agreement between the parties and supersede all other agreements between the parties relating to the subject matter of this Agreement.

(b) **Modification.** Except as provided in Section 1.1, no modification, waiver or amendment of this Agreement will be valid unless in writing and signed by both parties.

(c) **Waiver.** The waiver by either party of any default or breach of this Agreement in one instance will not constitute a waiver of any other default or breach or of the same default or breach in another instance.

(d) **Injunctive Relief.** Customer acknowledges and agrees that any violation of the rights of JOBPROGRESS under Sections 3, 5.3 or 5.4(h) of this Agreement will cause immediate and irreparable harm to JOBPROGRESS for which money damages cannot adequately compensate JOBPROGRESS. Accordingly, notwithstanding any other provision of this Agreement, Customer agrees that in the event of any such occurrence, or threat of same, JOBPROGRESS will be entitled to obtain immediate injunctive relief from any court or tribunal of competent jurisdiction, without the requirement of posting bond.

(e) **Governing law.** This Agreement will be governed and construed pursuant to the laws of the State of Delaware, without regard to its conflict of laws provisions.

(f) **Jurisdiction.** Each of the parties to this Agreement irrevocably submits to the jurisdiction of any state or federal court sitting in Delaware and further agrees that any action or proceeding arising out of or relating to this Agreement will be heard and determined in such court, except that actions for injunctive relief may be brought as provided in Section 5.4(d). Each of the parties to this Agreement irrevocably waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought, and waives any bond, surety or other security that might be required of the other party with respect thereto.

(g) **No partnership.** Nothing in this Agreement is intended to, or will be deemed to, create an employment relationship, a partnership or a joint venture between the parties, or to derogate from any relationship between the parties that may exist by virtue of any other agreement between them.

(h) **Solicitation.** During the Term of this Agreement and for one year thereafter, neither party shall either, directly or indirectly, for the benefit of itself or any other person or entity (i) induce or influence, or attempt to induce or influence, any employee of the other party ("employer") to terminate his or her employment or engagement with the employer (or not to become associated with or not to do business with employer), (ii) in any way interfere with the relationship between employer and any of its employees, or (iii) employ, or otherwise engage as an employee, independent contractor or otherwise, any employee of the employer who was employed by such employer within the 18 month period immediately preceding the termination or expiration of this Agreement.

(i) **Assignment.** Neither party may assign this Agreement in whole or in part through the operation of law or otherwise without the written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign this Agreement in whole or in part to any third party who acquires all or substantially all of such party's business without having to first acquire the prior written consent of the other party.

(j) **Force Majeure.** Neither party will be liable for any delay in performance or failure to perform, other than paying any Fees, resulting from circumstances beyond its control. JOBPROGRESS shall not be provided the benefit under this section, if the impact or delay due to such force majeure event could have reasonably been circumvented through the use of commercially reasonable alternate sources, workaround plans, disaster recovery and redundancy plans or other means. In the event any force majeure event continues for a more than 10 days, Customer shall have the right to terminate this Agreement. Fees shall be suspended for any period that Customer is unable to utilize the

Software, and Customer shall be entitled to offset such fees to the extent previously paid, against future payments due hereunder; provided that in the event of termination of the Agreement, JOBPROGRESS shall refund to Customer a pro rata portion of the prepaid monthly fee paid by Customer based on the amount of such month that the Software is not available.

(k) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be construed to apply to the extent permitted under applicable law, and the remaining provisions will remain in full force.

(l) **Notices.** All notices required under this agreement will be sent to JOBPROGRESS and Customer at their respective addresses as shown on the Schedule (or to such other address as is hereafter furnished to the other party in writing in accordance with this Section) by (i) reputable overnight courier such as Federal Express, (ii) by personal delivery or (iii) by Registered Certified Mail, postage prepaid, return receipt requested. Notice will be effective upon receipt.

(m) **Records.** Customer shall keep reasonably complete and accurate books and records of its activities hereunder to enable JOBPROGRESS to audit its compliance with the terms of this Agreement. From time to time (but not more frequently than once in any 12 month period), Customer will permit JOBPROGRESS, or its agents, to audit and analyze Customer's relevant records to ensure compliance with all the terms of this Agreement. Any such audit shall be permitted within five days of Customer's receipt from JOBPROGRESS of a written request to audit, during normal business hours, at a time mutually agreed upon. If any such audit reveals an underpayment to JOBPROGRESS hereunder, the amount of such underpayment will be paid to JOBPROGRESS within thirty (30) days of the completion of the audit. The cost of such an audit shall be borne by JOBPROGRESS unless the parties agree that an underpayment of 5% or more of the amount properly payable to JOBPROGRESS during the period that was the subject of the audit has occurred, in which case, Customer shall within thirty (30) days of written request therefore, reimburse JOBPROGRESS for the reasonable costs of the audit (as well as the amount of any such underpayment).

(n) **Coupons and promotions.** Customer may be authorized from time to time to use coupons or promotional codes, and will be individually and specifically authorized to redeem such discounts by JOBPROGRESS. Any unauthorized use of such coupons and promotions will be subject to applicable rate fees, applied from such time of discovery back to the original purchase date and all arrearage will be due immediately in a lump sum to JOBPROGRESS.

(o) **Release Event and Source Code.** As used herein, "Release Condition" means (i) if JOBPROGRESS becomes unable to support the Software by reason of insolvency, making an assignment for the benefit of creditors, having a receiver appointed to manage its affairs, ceasing to do business or being adjudicated a bankrupt under the laws of the United States, and (ii) Customer's use of the Software is likely to be seriously impaired as a result. If a Release Event occurs, Customer will give written notice to JOBPROGRESS specifying the nature of the Release Event and the reasons why Customer's use of the Software will be seriously impaired. If a Release Event occurs, Customer will be provided access to use of the Software for the remainder of time services have been paid for, and Customer shall be authorized to use such software only for the purpose of performing those support services with respect to the Software that JOBPROGRESS was to perform under this Agreement. The software source code will not be made available for any reason. Any such source code shall be treated as Confidential Information of JOBPROGRESS under this Agreement.

EXHIBIT A (TO MSA)

HOSTING SERVICES

Storage: • Data Storage per site license included with this license: 100,000 records

o Example - "Records" includes but is not limited to Prospect Records, Appointment Records, Sales Records, Project / Project Activity Records and Additional Supporting Records o Additional data storage, if needed, would incur additional charges per every 100,000 records / per month. o Please contact Account Rep for updated pricing.

File Storage per site license included with this license: 1 GB storage.

- o Example – “File Storage” includes attachments to records throughout the system including all forms of documents and pictures attached to data records.
- o Additional file storage, if needed would incur additional charges per every 5 GB of storage / per month.
- o Please contact Account Rep for updated pricing.

GEOCODING SERVICE

• GeoCoding is priced, distributed and licensed on a per Org, per product basis. • Initial setup and first-time geocoding of current prospects is charged based on the price provided on the Customer’s EULA or any agreement thereafter adding such services. • If Customer exceeds the following monthly upper limits, additional cost may apply at then current rates, per prospect. Customer is subject to auditing to ensure compliance with usage terms at any time, upon request from JOBPROGRESS. Customer is only required to provide specific information relative to ensuring compliance.

EXHIBIT B (TO MSA)

BROWSER AND SOFTWARE REQUIREMENTS

Web Browsers:

- o Apple® Safari® version 5.x and 6.x on Mac OS X
- o Google Chrome™ most recent and stable version
- o Microsoft® Internet Explorer® versions 9, 10, and 11.
- o Mozilla® Firefox® most recent and stable version

Recommendations and Requirements for All Browsers:

- o Enable JavaScript, Cookies, and SSL 3.0
- o Recommended minimum screen resolution of 1024 x 768

PDF:

- o Adobe Reader 9.x or later

Microsoft Office:

- o Microsoft Office versions only (online versions and Office for Mac are not supported)

GOOGLE ACCOUNT

EXHIBIT C (TO MSA)

SERVICE LEVEL AND CREDITS

Service Levels: **Severity**

Response Time Severity 1 2 hours Severity 2 4 hours Severity 3 8 hours Severity 4 24 hours

Response SLA Definitions: • Severity 1: Critical – Software and/or Customer Data unavailability • Data integrity issues • Login security • Severity 2: Urgent – Major functionality is impacted • Significant performance degradation • Time-sensitive feature activation • Time-sensitive data export • Severity 3: High – Software performance issue that do not impact material functionality of the Software and Customer Data • Severity 4: Medium – Inquiry regarding a routine technical issue • Information requested on application capabilities, navigation, installation, or configuration • Feature activation or data export request If JOBPROGRESS fails to satisfy the Uptime Availability for a particular month, JOBPROGRESS shall pay to Customer the Credits as set forth in the following:

Uptime Availability

Credit 99.00% and higher 25% of Monthly Fee	None 98.99% - 95.99%	15% of Monthly Fee Below 95%
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Each month, Customer will provide prompt written notice if the Software or Customer Data is unavailable or not performing in accordance with the Documentation so JOBPROGRESS can calculate the Uptime Availability for such month. Customer acknowledges that JOBPROGRESS will not be able to proactively calculate the Uptime Availability and it will be incumbent on the Customer to report any unavailability in order to become eligible to receive the Credit described above. No Credits will be issued for any outages that are caused by: • Customer's equipment, software, facility, databases, or operator error; • An interruption in Customer's connection to the Internet; • Routine maintenance of the Software of which Customer is given advance written notice.