

Service Agreement

This Information Technology Services Agreement ("Agreement") is made this _____ day of _____ 20____ between **HD View 360, Inc**, a Florida Corporation, with a principle office address of 150 SE 2nd Ave, Suite 404, Miami, FL 33131 (herein an after referred to as "HD View"), and _____, a _____ Corporation, with a principle office address of _____ ("here in after referred to as "Client").

WHEREAS, HD View is engaged in the business of providing a full range of information technology consulting services; and

WHEREAS, Client desires to retain **HD View** to perform information technology services and functions; and

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties have agreed and do agree as follows:

AGREEMENT

1. **Contracted Services:** This Agreement shall apply to the delivery of information technology services, support, and functions as further described and defined in the *Proposed Estimate ("the proposal"*, attached hereto as appendix A), that was proposed and approved by the parties. Any such approved proposal shall be incorporated herein by reference (the services and functions described in the proposal are hereafter referred to as the "Services"). In the event that the scope of the services is expanded, revised, or modified, for any proposal incorporated herein, the parties shall prepare and sign an amended or new proposal of work Statement and/or change order, which likewise shall be attached hereto and incorporated herein by reference. Absent the execution of a proposal, this Agreement does not, in and of itself, represent a commitment by client to receive any services from HD View or pay HD View any fees.

2. **Term of Agreement:**

- (a) The term of this agreement will commence on the Effective Date set forth in the proposal and will continue until such work is completed as defined by the proposal. In the event that the proposal provides for a different term, the proposal term will control for that specific proposal only.
- (b) HD View reserves the right to reschedule any installation provided a 48 hour notice has been given up to seven (7) days from the original scheduled installation.
- (c) Either party shall have the option to terminate this agreement, without cause, by providing thirty (30) day notice of its intent to terminate the agreement without cause. In the event that a proposal provides for a different termination notice period, the proposal termination clause will control for that specific proposal only.
- (d) In the event that there is a continuing need for any services identified in a proposal, after the expiration of this agreement and client requests, in writing, to have HD View complete the services, this agreement will automatically renew for the period of time that it takes for the completion of such Services.
- (e) The agreement can be terminated for cause, as defined in paragraph 14(a) herein, at any time provided the alleged breaching party is provided an opportunity to cure the alleged breach in the manner set forth in paragraph 14(a) below or a Permitted Delay, as defined in paragraph 14(d) herein, does not apply.

3. **Fees and Payment Terms:**

- (A) In exchange for the services performed by HD View, as set forth in the proposal, Client agrees to compensate HD View at the rates identified in the fee schedule set forth in the proposal. Such rates are exclusive of any federal, state, or local sales or use taxes, or any other taxes or fees assessed on, or

- in connection with any of the Services rendered herein. Client will pay all undisputed invoices within five (5) days of receipt and execution of agreement, prior to commencement of work.
- (B) In addition, Client shall reimburse HD View its actual out-of-pocket expenses as reasonably incurred by HD View in connection with the performance of Services. Additional expenses for materials, services, training and hardware may only be incurred by HD View and charged to Client if prior written approval from Client has been obtained.
- (C) A late charge of one and one-half percent (1½%) per month, or the legal maximum if less, shall accrue on past due billings unless Client notifies HD View of a billing dispute in writing prior to the payment due date. Client shall be responsible for any costs incurred by HD View in the collection of unpaid invoices including, but not limited to, collection and filing costs and reasonable attorney's fees of not less than fifteen percent (15%) of the outstanding balance due.
4. **Change Orders or Out of Scope Services:** To the extent that client requires or requests additional services or services that exceed the Services set forth in any proposal incorporated herein, HD View will charge an additional fee for such additional services or out of scope work. Fees for such additional services or out of scope work will be set forth on a Change Authorization Order (CAO), which will also provide a description of the changed or additional service(s) being requested. Once a CAO is signed by both parties, it will be incorporated into the Agreement and have the same legal effect as the proposal that is incorporated into the Agreement.
5. **Ownership of Materials Related to Services:** The parties agree that any materials prepared and delivered by HD View in the course of providing the Services shall be considered works made for hire. All rights, title, and interests of such materials shall be and are assigned to Client as its sole and exclusive property. Notwithstanding the foregoing, the parties recognize that performance of HD View hereunder will require the skills of HD View and, therefore, HD View shall retain the right to use, without fee and for any purpose, such "know-how", ideas, techniques and concepts used or developed by HD View in the course of performance of the services of this Agreement.
6. **Independent Contractor:** The parties enter into this agreement as independent contractors and nothing within this Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties. All HD View employees who are assigned to perform services at any Client owned or leased facility shall be considered to be an employee of HD View only and will not be considered an agent or employee of Client for any purpose. HD View will be solely responsible for payment of all compensation owed to its employees, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any HD View employee be eligible for or entitled to any benefits of Client.
7. **Confidential Information:**
- (a) Client understands and acknowledges that HD View may, from time to time, disclose "Confidential Information" to Client. For purposes of this Agreement, the term "Confidential Information" shall include but not be limited to any nonpublic and/or proprietary information or materials relating to HD View's promotional and/or marketing strategy and activity, HD View's pricing information (including but not limited to rates, margins, and budgets), HD View's financial and budget information, HD View's Client lists, information about the education, background, experience, and/or skills possessed by HD View employees, HD View employee compensation information, HD View's service and/or sales concepts, HD View's service and/or sales methodology, HD View's service and/or sales techniques, HD View's client satisfaction data or sales information, or any information which HD View marks or identifies as "confidential" at the time of disclosure or confirms in writing as confidential within a reasonable time (not to exceed thirty (30) days) after disclosure. Client will not disclose HD View's Confidential Information to any third party at any time without the prior written consent of HD View and shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, contractors, or consultants. Further, HD View's Confidential Information shall

include the terms set forth in this Agreement, all of which shall remain the property of HD View and shall in no event be transferred, conveyed, or assigned to client as a result of the services provided pursuant to this Agreement. The foregoing duty shall survive any termination or expiration of this Agreement.

- (b) HD View also understands and acknowledges that client may, from time to time, disclose to HD View proprietary ideas, concepts, expertise, and technologies developed by Client relating to computer application programming, installation, and operation (collectively "Client's Confidential Information"). Client may further provide to HD View documentation, reports, memoranda, notes, drawings, plans, papers, recordings, data, designs, materials, or other forms of records or information relating to Client's business operations (collectively "Confidential Trade Information"). HD View agrees (i) not to use any Client Confidential Information or Confidential Trade Information for its own use or for any purpose other than the specific purpose of completing the Services; (ii) not to voluntarily disclose any Client Confidential Information or Confidential Trade Information to any other person or entity; and (iii) to take all reasonable measures to protect the secrecy of, and avoid disclosure or use of, Client Confidential Information and/or Confidential Trade Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have such Client Confidential Information and/or Confidential Trade Information. The foregoing duty shall survive any termination or expiration of this Agreement.
- (c) In no event shall Client use HD View's Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the products or services of the Owner.
- (d) The following shall not be considered Confidential Information for purposes of this Agreement: (a) Information which is or becomes in the public domain through no fault or act of the receiving party; (b) Information which was independently developed by the receiving party without the use of or reliance on the disclosing party's Confidential Information; (c) Information which was provided to the receiving party by a third party under no duty of confidentiality to the disclosing party; or (d) Information which is required to be disclosed by law with no further obligation of confidentiality, provided, however, prompt prior notice thereof shall be given to the party whose Confidential Information is involved.
- (e) The parties agree that the disclosure of any of the foregoing Confidential Information by either party shall give rise to irreparable injury to the owner of the Confidential Information, inadequately compensable in monetary damages. Accordingly, the non-disclosing party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.

8. **Non-solicitation of Employees:** Client will not, either directly or indirectly (except through HD View) solicit, hire, or contract with any HD View employee during the term of this Agreement and for a one (1) year period following termination thereof (hereafter the "Non-solicitation Term"). In the event that Client desires to directly hire any HD View employee during the Non-solicitation Term, Client must first seek HD View's consent to directly hire the employee and to speak with the HD View employee about the employment opportunity. In the event that HD View grants Client the option to directly hire a HD View employee, and the HD View employee accepts an offer of employment from Client, the parties shall discuss issues related to the employee's transition to Client. The employee's start date will be mutually agreed upon by Client and HD View in writing. Provided the parties agree to the HD View employee's transition terms, Client shall pay HD View a placement fee of no less than 20% of offered salary prior to the HD View employee commencing work as an employee of Client. Unless the parties agree otherwise, Client shall not directly hire more than two HD View employees during the Non-solicitation Term. If Client hires a HD View employee without first obtaining the consent of HD View, Client shall pay HD View a liquidated damage equal to 100% of the employee's fair market salary, as determined by HD View in its sole discretion. This provision is considered a material term that allows for accelerated termination rights under paragraph 14 of this Agreement.

9. **Client Responsibilities:** In addition to the obligations and responsibilities described in the proposal or elsewhere in this Agreement, Client shall have shared responsibility with HD View regarding the following:

- (a) To ensure that the necessary business and application knowledge is available and conveyed from the Client's existing support team to HD View's support team.
- (b) Provide ready access to all appropriate computing platforms, documentation (e.g., program source, copybooks, tables, subroutines) and personnel (i.e., end users and technical representatives) necessary to fully understand the current business systems and environments throughout the life of the engagement.
- (c) Provide at its facility, office space and equipment for HD View's on-site employees. Access will also be provided to the Client's source libraries, test systems, and test data.
- (d) Provide external communications capability and/or access to its work facility to enable HD View's onsite project team to access the Client's information technology system for after hours or weekend Services as required.
- (e) Client shall assign an employee or representative to be present at the work facility for any after hours or weekend Services provided by HD View. In the event that Client declines or fails to assign an employee or representative to be present during such hours, Client waives any and all claims for any property damage or loss that occurs during such time that HD View's employee(s) is on the Client's work facility.
- (f) Provide passwords and job numbers to HD View employees as needed.

10. **Warranty of Services:** All **equipment** warranty is offered and provided by the manufacture in accordance to the manufactures policies and procedures. All warranty offered by HD View for **services provided** herein shall be set forth in the proposal. In the absence of any warranty language in the proposal, HD View warrants that all Services performed pursuant to this Agreement will be performed in accordance with the general standards and practices of the information technology industry in existence at the time the services are being performed. **IN THE EVENT THAT THERE IS NO WARRANTY SET FORTH IN THE PROPOSAL, THE FOREGOING EXPRESSES LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, ORAL OR WRITTEN, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT APPLICABLE.**

11. **Limitation of Liability:** Client agrees that HD View shall not be liable to client, or any third party, for (1) any liability claims, loss, damages or expense of any kind arising directly or indirectly out of services provided herein for (2) any incidental or consequential damages, however caused, and client agrees to indemnify and hold HD View harmless against such liabilities, claims, losses, damages (consequential or otherwise) or expenses, or actions in respect thereof, asserted or brought against HD View by or in right of third parties or for (3) any punitive damages. For purposes of this agreement, incidental or consequential damages shall include, but not be limited to, loss of anticipated revenues, income, profits or savings; loss of or damage to business reputation or good will; loss of clients; loss of business or financial opportunity; or any other indirect or special damages of any kind categorized as consequential or incidental damages under the law of the State of Florida. HD View liability for any damages hereunder shall in no event exceed the amount of fees paid by client to HD View as of the date the alleged damages were incurred.

12. **Indemnification:** Each party shall indemnify, defend and hold harmless the other, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents, from and against any third party claims, demands, loss, damage or expense relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused solely by the negligence or willful conduct of the indemnifying party, its personnel or agents in connection with the performance of the Services hereunder. To the extent that such claim arises from the concurrent conduct of client, HD View and/or any third party, it is expressly agreed that HD View's liability shall be limited by the terms and provisions of paragraph eleven (11) herein and that, with respect to any remaining obligations to pay any third party claims, demands, losses,

damages or expenses that are not limited by the terms and provisions of paragraph eleven (11) herein, each party's obligations of indemnity under this paragraph shall be effective only to the extent of each party's pro rata share of liability. To receive the foregoing indemnities, the party seeking indemnification must promptly notify the other in writing of a claim or suit and provide reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. The indemnifying party shall have no obligation to indemnify the indemnified party under any settlement made without the indemnifying party's written consent.

13. **Equal Opportunity Employer:** HD View is an Equal Opportunity Employer and does not discriminate in recruitment, hiring, transfer, promotion, compensation, development, and termination of its employees on the basis of race, color, sex, age, marital status, national origin, handicap, religious beliefs, veteran's status or other protected category as required by applicable Federal, State and local laws. Client likewise represents that it will not discriminate in the referral or acceptance of Consultants hereunder on the basis of race, color, sex, age, marital status, national origin, handicap, religious beliefs, veteran's status or other protected category as required by applicable federal, state and local laws.

14. **Termination.**

- (a) **Termination for Cause:** If either party believes that the other party has failed in any material respect to perform its obligations under this Agreement (including any Exhibits or Amendments hereto), then that party may provide written notice to the other party's management representative describing the alleged failure in reasonable detail. If the alleged failure relates to a failure to pay any sum due and owing under this Agreement or if Client makes an unauthorized solicitation of a HD View employee under the provisions of paragraph eight (8) herein, the breaching party shall have ten (10) business days after notice of such failure to cure the breach. If the breaching party fails to cure within ten (10) business days, then the non-breaching party may immediately terminate this Agreement, in whole or in part, for cause by providing written notice to the management representative of the breaching party. With respect to all other defaults, if the breaching party does not, within thirty (30) calendar days after receiving such written notice, either (a) cure the material failure or (b) if the breach is not one that can reasonably be cured within thirty (30) calendar days, then the non-breaching party may terminate this Agreement, in whole or in part, for cause by providing written notice to the management representative of the breaching party.
- (b) **Payments Due:** The termination of this Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due or payable.
- (c) **Permitted Delays:** Each party hereto shall be excused from performance hereunder for any period and to the extent that it is prevented from performing any services pursuant hereto in whole or in part, as a result of delays caused by the other party or an act of God, or other cause beyond its reasonable control and which it could not have prevented by reasonable precautions, including failures or fluctuations in electric power, heat, light, air conditioning or telecommunication equipment, and such nonperformance shall not be a default hereunder or a ground for termination hereof. HD View's time of performance shall be enlarged, if and to the extent reasonably necessary, in the event: (i) that Client fails to submit information, instructions, approvals, or any other required element in the prescribed form or in accordance with the agreed upon schedules; (ii) of a special request by Client or any governmental agency authorized to regulate, supervise, or impact HD View's normal processing schedule; (iii) that Client fails to provide any equipment, software, premises or performance called for by this Agreement, and the same is necessary for HD View's performance hereunder. HD View will notify Client of the estimated impact on its processing schedule, if any.
- (d) **Continuation of Services:** HD View will continue to perform Services during the notice period unless otherwise mutually agreed upon by the parties in writing. In the event that Client provides the notice of termination and directs HD View not to perform the services through the notice period, Client agrees to pay HD View an amount equal to the amount normally due to HD View for the notice period. Upon termination by either party, Client will pay HD View for all services performed and

charges and expenses reasonably incurred by HD View in connection with the services provided under this Agreement through the date of termination.

15. **Miscellaneous Clauses:**

Non-Restrictive Relationship: HD View may provide the same or similar services to other clients and Client may utilize other information technology service providers that are competitive with HD View.

- (a) **Waiver:** The rights and remedies provided to each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate this agreement or to enforce any provision of this Agreement for default or violation by the other party shall not prejudice such party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.
- (b) **Force Majeure:** Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market.
- (c) **Notices:** All notices required under or regarding this agreement will be in writing and will be considered if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), given by facsimile (confirmed by certification of receipt) or sent by courier (confirmed by receipt) addressed to the following designated parties:

To HD View 360, Inc:
 HD View 360, Inc
 Attention: Compliance Dept
 150 SE 2nd Ave, Suite 404
 Miami, FL 33131

To Client:

 Attention: _____

- (d) **Severability:** If any term or provision of this agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.
- (e) **Captions:** The section headings in this agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this agreement.
- (f) **Entire Agreement:** This agreement and the proposal (s) and/or CAO(s) incorporated herein constitute the entire agreement between the parties and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this agreement.
- (g) **Amendments:** This Agreement and the Exhibits may be amended only by an instrument in writing executed by the parties hereto. Any written work order submitted by Client shall not amend the terms of this Agreement and will only be considered (1) a statement of the work to be performed; (2) set forth any deadlines or schedules; and (3) the additional fees to be charged, if any, for any out of scope work or services stated on the work order.
- (h) **Applicable Law:** This Agreement is made under and will be construed in accordance with the laws of Florida without giving effect to that state's choice of law rules. The forum for any dispute or litigation arising out of this Agreement shall be in the Courts of Common Pleas of HD View's Home County Court or in the Federal District Court for HD View's Federal District Jurisdiction.
- (i) **Successors and Third Party Beneficiaries:** This Agreement shall inure to the benefit of HD View and Client and any successors or assigns of HD View and Client. No third party shall have any rights hereunder.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

HD View 360, Inc

Client Name

Print Name/Title

Print Name/Title

Signature

Date

Signature

Date