



## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("**Agreement**") is made on ("**Effective Date**") by and between Software InsITE, a Michigan corporation, of 8436 Homestead Dr, Suite 100, in Zeeland, Michigan ("**InsITE**" or "**we**") and \_\_\_\_\_, of \_\_\_\_\_ ("**Client**" or "**you**"). InsITE and Client may be referred to individually or collectively as a "party" or the "parties." Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

### 1. SCOPE OF AGREEMENT.

1.1.Documents. This Agreement states the terms applicable to all services for which Client hires InsITE (the "**Services**"). The services InsITE will provide are more specifically set forth in one or more of the following supplemental agreements: **(a)** a *plan agreement*, which defines the specific rates, services, and software provided, the payment terms, the service-level plan, and invoicing intervals for a base time-and-materials plan, a block plan, or a Strategic Services plan (SSP); **(b)** *quotes*, which are project-based proposals for services, hardware, software, or some combination therein that identify rates, software, hardware, payment terms, and invoicing intervals for a one-time engagement; **(c)** *service tickets*, which are statements of agreed-upon work InsITE will perform under a plan agreement; or **(d)** *change orders*, which are agreements modifying or supplementing any of the documents above. The term "**Statement of Work**" ("**SOW**"), as used herein, refers to a plan agreement, quote, service ticket, or change order, as well as licenses for software, hardware, support and maintenance services, and subscription services (collectively, the "**Product**").

1.2.Retention. Client hereby engages and retains InsITE to render Services or provide Product, as may be more particularly set forth in a SOW. Unless Client and InsITE agree otherwise in writing, all SOWs between Client and InsITE are subject to these terms. No Product or Services will be provided under this Agreement alone but require the execution of a written or electronic SOW, which will be deemed incorporated into this Agreement for all purposes. The Parties may execute multiple SOWs under this Agreement. In the event of any conflict between the terms of the SOW and those of this Agreement, the terms of the SOW will prevail.

## 2. GENERAL REQUIREMENTS.

2.1.Third-Party Service Providers. "**Third-Party Service Providers**" refers to parties other than Client and InsITe that provide services in fulfillment of the SOW subject to terms and conditions to which InsITe and Client may be legally bound.

InsITe does not own certain Third-Party Products, as defined in section 2.2 below, and the use thereof is subject to certain rights and limitations. Your right to use the Third-Party Products is subject to your Agreement with us, and to your understanding of, compliance with and consent to the terms and conditions of the agreements governing the Third-Party Products, which we do not have authority to vary, alter, or amend.

Therefore, InsITe may utilize a Third-Party Service Provider to provide the Services in accordance with this Agreement. If InsITe elects to subcontract any Services to a third party, InsITe will use reasonable efforts to assign, transfer and facilitate all warranties (if any) from the Third-Party Service Provider to Client, but will have no liability whatsoever for the quality, functionality or suitability of any Third-Party Products or Services, and InsITe will not be held liable as an insurer or guarantor of the performance, downtime, or usefulness of any Third-Party Product. The Third-Party Service Provider may require InsITe to sign a contract with the Third-Party Service Provider for its services ("**Third-Party Contract**") and the terms of the Third-Party Contract may impose certain conditions and requirements on Client. The terms and conditions of any such Third-Party Contract(s) can be provided to the Client upon their request, or otherwise attached to the applicable SOW. Client hereby agrees to review all Third-Party Contracts and consents to the terms and conditions of each Third-Party Contract which Client has hired InsITe to perform on its behalf.

2.2.Third-Party Products. "**Third-Party Products**" include all hardware, software, peripherals, component parts, and accessories Client purchases from a third party through InsITe in fulfillment of a SOW. A "**Third Party Product Vendor**" is a vendor that sells Third-Party Products.

2.3.Third-Party Support. If, at InsITe's discretion, a hardware or software issue requires vendor or original equipment manufacturer ("**OEM**") support, InsITe may contact the vendor or OEM (as applicable) on your behalf and pass through to you all fees and costs incurred in that process. If such fees or costs are anticipated in advance or substantially exceed \$500, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.

2.4.Subcontractors. "**Subcontractors**" means third-parties with which InsITe contracts to provide services indicated in a SOW directly to Client in lieu and on behalf of InsITe.

2.5.Advice and Instructions. Client agrees to promptly follow and implement any directions InsITe provides as it pertains to services, products, and systems. Implementing InsITe's advice may require additional purchases or investments in the System or the

environment in which the System is maintained, which you agree to make at your sole cost. InsITe will not be responsible for any losses (e.g., those related to System downtime, security breaches, or acts of God) caused by your failure to promptly follow our advice or directions. If, at InsITe's sole discretion, your failure to follow or implement our advice renders part or all of the Services economically or technically impracticable, we may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow InsITe's advice or directions, or your unauthorized modification of the System, as well as any services required to meet or maintain minimum requirements, are not covered under any SOW and will be out-of-scope.

3. **TERM AND TERMINATION.** This Agreement begins on the Effective Date and will remain in effect until each SOW expires or is terminated. InsITe may: (a) terminate a specific Order if Client fails to pay any applicable fees due for that Order within 30 days after receipt of written notice from InsITe of non-payment; or (b) terminate this Agreement or an Order if Client commits any other material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from InsITe; or (c) terminate this Agreement or any particular Order if Client is presented with written release of InsITe's cybersecurity liability for risks identified under paragraph 12 and after reasonable attempts at reaching a mutually agreeable release an impasse occurs. If Services are terminated, Client will promptly pay InsITe for Services it rendered and the expenses it incurred on behalf of Client through the termination date. Client acknowledges InsITe may have continuing responsibility to pay a Third Party Service Provider beyond the termination date for services available to Client under a subscription-based agreement. Client acknowledges that they are responsible for offboarding labor costs and if InsITe is not allowed to perform a complete offboarding the client accepts that they will continue to pay for installed InsITe applications until they are fully removed from the client environment. If this Agreement is terminated prior to the expiration of a Third Party Service Provider's subscription period, InsITe may accelerate the balance due to the Third Party Service Provider for the remaining subscription period and charge the accelerated balance to Client at or following the time of termination.

Client may: (a) terminate this Agreement or a specific Work Order if InsITe commits any material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from Client; or (b) terminate this Agreement for any reason upon thirty (30) days written notice to InsITe; or (c) terminate this Agreement or any particular Order if Client is presented with written release of InsITe's cybersecurity liability for risks identified under paragraph 12 and after reasonable attempts at reaching a mutually agreeable release an impasse occurs.

3.1. Notice. Either Party must send any notices by mail, return receipt requested, to the addresses below.

Notices should be sent to:

**InsITe:**  
Software InsITe, Inc.

Attn: Mike Schipper  
8436 Homestead Dr  
Suite 100  
Zeeland, MI 49464

**Client:**

4. **PAYMENT.** Client will pay InsITe all undisputed fees on any applicable invoice specifying the amounts due ("Fees") in accordance with agreed upon terms for the applicable SOW. All Fees payable under this Agreement are exclusive of sales, use, excise, and any other applicable transaction taxes, which Client will pay (excluding taxes based on the net income of InsITe). If payment is not received on or before any invoice due date, interest will begin to accrue on all unpaid amounts at a rate of seven percent (7%) per annum from the date due until paid in full. Client shall pay all expenses, including actual attorneys' fees and costs, incurred by InsITe or its representatives in enforcing its rights under this Agreement, provided that InsITe is successful on the merits. Client waives its right to set off any amount it believes InsITe owes against any sums due to InsITe. Unless otherwise stated in a SOW, Client agrees to pay or reimburse InsITe for all actual, necessary, and reasonable expenses incurred by InsITe in performance of such SOW that are capable of verification by receipt. Client will only dispute payment if there is a good faith basis for dispute and InsITe must work in good faith to resolve such dispute. InsITe will submit invoices to Client for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable SOW.

5. **MATERIALS AND SERVICES.** If onsite work is required, Client agrees to timely furnish, at its own expense, all personnel, computer hardware, computer software, related computer components, and appropriate and safe work spaces for InsITe or its subcontractors. Client will also provide InsITe or its subcontractors access to all information, passwords and facilities requested by InsITe that are necessary for InsITe or its subcontractors to perform the Services. Client retains the right to deny InsITe or its subcontractors access, but Client understands that its denial of access will likely preclude adequate or timely performance.

5.1. In consideration of the services and software provided, the client acknowledges and agrees that any software or tools purchased through InsITe (SMS Platform) may be subject to an annual increase without explicit acknowledgement from the client if the increase is 10% or less. If an increase is greater than 10% per annum, due to prevailing market conditions and operational considerations, the client will be notified before the increase. The client understands that any such rate adjustments within the 10% threshold shall be deemed accepted and effective without the requirement for explicit client consent.

6. **WORKING ENVIRONMENT.** Client must provide a suitable working environment at its facility in accordance with InsITe's recommendations. Such environment includes, but is not limited to the appropriate temperature, static electricity protection, humidity controls, protections from water exposure, and a properly conditioned electrical supply for the System. Client bears the risk of loss for the System and all its components.

7. **EMPLOYEES, AGENTS OR SUBCONTRACTORS.** Client acknowledges that InsITe has incurred substantial recruitment, screening, training, and administrative expenses with respect to its agents, including its employees, vendors, and independent contractors. From the Effective Date of this Agreement until one (1) calendar year after the date of termination of this Agreement, Client shall not hire or contract directly or indirectly with any of InsITe's employees, agents or subcontractors who have communicated with or provided any Service to Client. Client and InsITe mutually acknowledge and agree that it would be impractical and extremely difficult to ascertain the amount of monetary damages InsITe would incur if Client were to breach this provision. Therefore, Client and InsITe mutually agree that in the event of a breach by Client in any way of this section, client shall pay to InsITe as liquidated damages, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00). This amount is an effort by both parties to properly and reasonably assess the damages that Service Provider would suffer as a direct result of a breach by Client, taking into account the following facts and circumstances: (a) an average employee working for Service Provider will generate significant net revenue for the Service Provider and remain employed by the Service Provider for an extended period of time; (b) Service Provider will lose significant revenue and incur significant costs in connection with attempting to replace such employee; (c) there is no guarantee that such employee can be replaced; and (d) accurately assessing the value of such employee to the Service Provider upon such breach is virtually impossible. In light of these circumstances, Client and Service Provider mutually agree that this liquidated damages provision represents reasonable compensation to Service Provider for the losses that it would incur due to any such breach. Client and InsITe further acknowledge and agree that nothing in this paragraph shall limit InsITe's rights to obtain injunctive relief or any other damages including, but not limited to punitive, consequential, special, or any other damages, as may be appropriate in connection with Client's breach of this section.

8. **RESPONSIBILITY FOR EQUIPMENT.** Client acknowledges that (a) InsITe may identify additional items that need to be purchased by Client, and (b) changes in Client's System may be required in order for InsITe to meet Client's requirements. Client agrees to work in good faith with InsITe to effectuate such purchases or changes. In the event that InsITe is required to purchase any assets, including computer hardware or software, in connection with InsITe providing the services, all such assets will remain the sole property of InsITe, except that assets sold by InsITe to Client or procured by InsITe on Client's behalf shall be the sole property of Client. Client will take such reasonable precautions to ensure the quality, completeness and workmanship of any item or service it furnishes, and to ensure that the materials provided to InsITe or its contracted subcontractors do not infringe or violate the rights of any third-party. Client will maintain adequate backup for all data and other items furnished to InsITe.

9. **CLIENT DATA.**

9.1. Integrity and Right to Use. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and right to use any data, information, or tangible property Client submits to InsITe. Client is responsible for backing up its computer software and data regularly in a manner that is acceptable to InsITe. Client must back-up its software and data before InsITe performs any work on Client's computer system or network.

9.2. Reliance on Client Expertise. Client may conduct business in an industry or possess a type of data that is subject to additional laws, rules, or regulations concerning the access, storage, use, and protection of such data, either in Client's industry or generally. Client acknowledges InsITe will rely on Client's expertise in complying with all requirements for data management in Client's specific industry. It is Client's duty to inform InsITe in writing of all industry-specific laws, regulations, restrictions, and guidelines that apply to its data management. InsITe shall have no liability for any fine, sanction, expense, loss, or damage arising from non-compliance with an industry-specific data requirement for which Client did not give InsITe written notice and a reasonable opportunity to comply. CLIENT RECOGNIZES AND AGREES THAT: (a) INSITE HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) INSITE'S SERVICES AND PRODUCTS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.

### 9.3 Confidentiality

(a) The parties (and their employees, agents and subcontractors) shall maintain the confidentiality of all pertinent medical information, in accordance with all applicable state and federal laws and regulations, regarding the confidentiality of such information, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") InsITe (and its employees, agents and subcontractors) shall not divulge such information to any third parties. InsITe will execute Client's Business Associate Agreement simultaneously with execution of this agreement.

(b) InsITe acknowledges that the patient lists, strategic plans, certain techniques and know-how of the Client are confidential and unique and constitute its exclusive property and trade secrets. InsITe further acknowledges that any use of property other than for the sole benefit of Client would be wrongful and cause irreparable harm to Client. Accordingly, InsITE agrees that neither it nor its agents shall, at any time during or subsequent to this Agreement, publish, disclose, or divulge to any person, firm or corporation or use, directly or indirectly any such property of Client learned or obtained from Client, including but not limited to, the information and items set forth above. The obligations under this Confidentiality Section shall survive expiration or termination of the Agreement. (c) **Client agrees to allow InsITe to use name and any associated logo or likeness of Client company to promote InsITe through Client testimonials, case studies, or other marketing materials, both public and private. These marketing activities will be made known to the Client, via Client point of contact, before publishing to any media.**

10. **INTELLECTUAL PROPERTY.** Client owns all rights, title, and interest in any Intellectual Property invented, created, or composed during the course of or incident to the performance of this Agreement, as well as any software, materials, or methods created through the course of any work. InsITe acquires no interest in any such Intellectual Property, by virtue of this

Agreement or the work performed under this Agreement, unless otherwise defined in an applicable SOW.

#### 10.1. License Agreements.

(a) *License.* Subject to the terms of this Agreement, Client grants InsITe a perpetual, non-exclusive, non-transferable license to use, all programming, documentation, reports, code, and any other product developed as part of the Services. Subject to applicable Non-Disclosure agreements, InsITe may re-use any and all programming, documentation, reports, code, and any other product developed as part of the Service.

(b) *Software Installation or Replication.* If InsITe is required to install or replicate Client software as part of the Services, Client will independently verify that all such software is properly licensed. Client's act of providing any software to InsITe will be deemed Client's affirmative acknowledgement to InsITe that Client has a valid license that permits InsITe to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor its own equipment for the installation of unlicensed software unless InsITe expressly agrees to conduct such monitoring in a SOW or change order.

(c) *Pre-Existing License Agreements.* Any software product provided to Client by InsITe as a reseller for a third-party, which is licensed to Client under a separate software license agreement with such third-party, will continue to be governed by the third-party license agreement.

(d) *EULA.* Portions of the Services may require you to accept the terms of one or more third-party end user license agreements ("**EULAs**"). If the acceptance of a EULA is required in order to provide the Services, where appropriate in InsITe's sole discretion, you hereby grant InsITe permission to accept the EULA on your behalf. If InsITe deems it necessary or advisable for Client to review and accept the EULA directly, Client agrees to do so in timely fashion following InsITe's request. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs and will look only to the applicable Third-Party Vendor or Service Provider for the enforcement of the terms of such EULAs. If, while providing the Services, we are required to comply with a third-party EULA and the third-party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third-party EULA. Client agrees to hold harmless and indemnify InsITe against Client's violation of any of the terms and conditions included in the subject EULA.

10.2. Non-refundability and Transfer of Warranties. Unless otherwise stated in a SOW, all Third-Party Products Client purchases through InsITe are nonrefundable once the applicable SOW is placed in InsITe's queue for delivery. InsITe will use reasonable

efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third-Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third-Party Products. Unless otherwise expressly stated in a SOW, all Third-Party Products are provided "as is" and without any warranty whatsoever as between InsITe and Client (including but not limited to implied warranties).

**11. WARRANTY.** Unless expressly defined within a specific SOW, all Products and Services will be provided "as is" without any warranty, either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. The entire risk as to the quality and performance of the software is with the Client. Should the software prove defective, Client assumes the cost of all necessary servicing, repair, or correction. In no event, unless required by applicable law or agreed to in writing, shall the software developers or any contributors be liable for any damages, including any general, special, incidental, or consequential damages arising out of the use or inability to use the software (including but not limited to loss of data or data being rendered inaccurate or losses sustained by Client or third parties or a failure of the software to operate with any other software), even if such holder or other party has been advised of the possibility of such damages.

11.1. Notwithstanding any provision to the contrary in this Agreement, any warranty offered and provided directly by InsITe within an applicable SOW is void if the applicable product is (i) altered, modified or repaired by persons other than InsITe, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by InsITe; (ii) misused, abused, or not operated in accordance with the specifications of InsITe or the applicable manufacturer or creator of the hardware or product; or (iii) subjected to improper site preparation or maintenance by persons other than InsITe or persons approved or designated by InsITe. Notwithstanding the above, InsITe does not warrant its Products or Services beyond a reasonable standard or skill consistent with industry standards. InsITe does not guarantee or promise any cost savings, profits, or returns on investment.

**12. CYBERSECURITY.** Unless otherwise specified in a SOW, InsITe will not provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or guard against other cyber threats. If Client declines products, features or services critical to Client's protection against cyber threats, InsITe has no duty to guard against, detect, prevent, or mitigate threats due to any cybersecurity breach. From time to time, InsITe will recommend products, services, or solutions to address cybersecurity gaps. If Client declines such products, services, or solutions against InsITe's recommendations, InsITe may present Client with a written release of liability, which Client must sign to continue services with InsITe.

**13. FORCE MAJEURE.**

13.1. Political Events. In no event, including the negligent act or omission on its part, shall InsITe, whether under this Agreement, a SOW, other Work Order or otherwise in connection with any of them, be liable to Client for breach of contract, tort, liability to a



third party, breach of statutory duty or other cause of action, or for any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any act of terrorism, strike or similar labor action, pandemic, executive order, public health crisis, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom. InsITe agrees to have in place, and follow, an emergency preparedness plan.

13.2. Natural Events or Disasters. In no event, including the negligent act or omission on its part, shall InsITe or its contracted subcontractors, whether under this Agreement, a SOW, verbal instruction, or otherwise in connection with any of them, be liable to Client for breach of contract, tort, liability to a third party, breach of statutory duty or other cause of action, or for any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any failure or malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God, war, governmental action, national or global pandemic, or other physical event. InsITe agrees to have in place, and follow, their own emergency preparedness plan.

14. **DATA BREACHES.** In no event shall InsITe or its Subcontractors, whether under this Agreement, a SOW, other Work Order or otherwise in connection with any of them, be liable to Client for breach of contract, tort, liability to a third party, breach of statutory duty or other cause of action, or for any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if the Client's data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders," "spybots," "spyware," "phishing," "spear phishing," wiretapping, bugging, video cameras or identification tags, or any other malicious software.

14.1 Sms Platform. The full SMS platform is a core security feature curated through much effort and research. It is tried and true, and if you are not on it in full, or have equivalent approved solutions it limits InsITe's effectiveness and liability.

**15. RELEASE WITH LIMITATION OF LIABILITY.** THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE AND AGREE THAT INSITE WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. CLIENT AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASOR PARTIES") AGREES TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, AGREES TO RELEASE INSITE AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER OR SYSTEM FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. UNDER NO CIRCUMSTANCES SHALL INSITE'S AGGREGATE LIABILITY ARISING FROM OR OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM.

**16. MUTUAL INDEMNIFICATION AND HOLD HARMLESS.** EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY LAW, SHALL AT ALL TIMES DEFEND, INDEMNIFY, PAY, SAVE AND HOLD THE OTHER PARTY AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "MUTUALLY INDEMNIFIED PARTIES") HARMLESS FROM EACH AND ANY AND ALL LIABILITIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES), COSTS, EXPENSES, SUITS, CIVIL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, LOSSES, CLAIMS, ACTIONS, VIOLATIONS, FINES AND PENALTIES (INCLUDING WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES AND ANY OTHER REASONABLE COSTS OF LITIGATION) (COLLECTIVELY, THE "CLAIMS") THAT ANY OF THE MUTUALLY INDEMNIFIED PARTIES MAY SUFFER, SUSTAIN OR INCUR TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE MUTUALLY INDEMNIFIED PARTIES ARISING OUT OF THIS AGREEMENT.

THE PRECEDING INDEMNIFICATION OBLIGATIONS ARE CONDITIONED ON ANY OF THE INDEMNIFIED PARTIES: (I) NOTIFYING THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF SUCH ACTION; (II) REASONABLY COOPERATING AND ASSISTING IN SUCH DEFENSE; AND (III) GIVING SOLE CONTROL OF THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS TO THE INDEMNIFYING PARTY WITH THE UNDERSTANDING THAT THE INDEMNIFYING PARTY MAY NOT SETTLE ANY CLAIM IN A MANNER THAT ADMITS GUILT OR OTHERWISE PREJUDICES THE INDEMNIFIED PARTY, WITHOUT CONSENT.

17. **INSURANCE.** InsITe agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, InsITe will maintain at its own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for owned, hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

18. **CLIENT INSURANCE.**

18.1. Commercial Property Insurance. Client shall secure at its own cost and expense Property Insurance for the equipment referenced in this Agreement, procured under a SOW, or reasonably necessary for InsITe to perform this Agreement. The policy shall include the following coverages:

- Replacement cost valuation on InsITe's equipment.
- Waiver of coinsurance for the insured property.
- Insured for "All Risk"/"Special Perils" with an extension of coverage for Flood and Earthquake.

18.2. Cyber Insurance. Client shall secure and maintain for the duration of the contract Cyber Liability Insurance to insure Client's cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine your specific coverage and policy limit requirements.

18.3. Mutual Waiver of Subrogation. TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW) AND EMPLOYERS PROFESSIONAL LIABILITY GENERAL LIABILITY, PROPERTY INSURANCE, COMMERCIAL UMBRELLA/EXCESS, CYBER OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT

WILL NOT HOLD INSITE, ITS SUBCONTRACTORS, AND/OR THIRD-PARTY SERVICE PROVIDERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT THE CLIENT'S INSURANCE POLICIES REFERENCED ABOVE PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THIS AGREEMENT.

19. **DISCLAIMERS.** The express remedies set forth in this Agreement will constitute Client's exclusive remedies, and InsITe's sole obligation and liability, for any claim (a) that a Product or Service or deliverable provided hereunder does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.

EXCEPT FOR THE WARRANTIES MADE BY INSITE IN SECTION 12, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CLIENT, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." INSITE DOES NOT MAKE ANY ADDITIONAL WARRANTIES, EXPRESSED, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

INSITE DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CLIENT REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CLIENT, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

No statement by any InsITe employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way whatsoever.

20. **SEVERABILITY.** If a court determines any provision of this Agreement is illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

21. **AMENDMENT.** This Agreement may not be amended except by a writing executed by **both parties**

22. **RELATIONSHIP.** The parties are independent parties; and this Agreement does not make the parties principal and agent, partners, employer and employee; nor does it create a joint venture. It is further understood that there is no relationship, including but not limited to a

partnership, joint venture, sub-contractor or other commission-based relationship, between any party that referred InsITe or Client to the other party to this Agreement.

23. **LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without reference to principles of conflicts of laws. The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Michigan and the venue for any dispute, claim, action, or lawsuit between these parties, whether in tort, contract, or equity, arising from the terms or performance of this Agreement will be in Ottawa County, Michigan.

24. **WAIVER.** Failure by either party to insist upon strict performance of any provision herein shall not be deemed a waiver by such party of its rights or remedies, or a waiver by it of any subsequent default by the other party.

25. **ASSIGNMENT.** **Neither party may** assign its rights or obligations under this Agreement without prior written consent from both parties.

26. **COUNTERPART AND ELECTRONIC SIGNATURES.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Each party's electronic signature of this Agreement shall have the same validity and effect as a signature affixed by each party's hand.

27. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement by and between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreement of the parties, whether written or oral, with respect to such subject matter.

Provider:

SOFTWARE INSITE, INC.

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

Its: \_\_\_\_\_

Client:

\_\_\_\_\_

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

Its: \_\_\_\_\_