

CLOUD MAINTENANCE SERVICE AGREEMENT

PLEASE READ THE ENTIRE AGREEMENT

Update: September 18, 2018

By submitting the service request form, you acknowledge that you have read and understand the terms and conditions of this agreement and that you agree to be legally responsible for each and every term and condition. See Section 14 below for further information.

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

- a. "Cloud Maintenance Service" refers to the management of Client's cloud based server instance - including operating system updates, uptime monitoring, and performance monitoring - to be provided under this Agreement.
- b. "Contractor" refers to Robert Partridge and/or his designated representatives.
- c. "Client" refers to the person / entity who has requested the work to be performed.

2. CLOUD MAINTENANCE SERVICE

Contractor shall perform and deliver the Cloud Maintenance Services as set forth in the Cloud Services on Contractor's website - issued against and subject to the terms and conditions of this Agreement. Cloud Maintenance Service specifics are subject to change. Any changes to service will be preceded by a minimum of thirty (30) days notice to Client.

3. TERM OF AGREEMENT

The term of this Agreement shall commence after service request has been approved and shall continue thereafter until termination in writing by one of the parties as provided in Section 9 below.

4. PAYMENT TERMS

- a. PRICE. Cloud Maintenance Services prices are dependent upon billing period chosen by Client - where choosing a one (1) year billing period vs a one (1) month billing period affords

Client a discounted price for Maintenance Services. The monthly price for service is \$10 (US). The yearly price for service is \$100 (US). Prices are subject to change. Any changes in price will be preceded by a minimum of thirty (30) days notice to Client and take affect at the Client's next billing period.

b. TAXES. Clients located within the Commonwealth of Pennsylvania are charged sales taxes based upon their location within the Commonwealth - 8% in Philadelphia, 7% in Allegheny County, 6% for the remainder of the Commonwealth. For all other Clients, the Cloud Maintenance Services price does not include any taxes, tariffs, or any similar charges imposed upon or related to the Cloud Maintenance Service. These charges are solely the responsibility of the Client.

c. PAYMENT SCHEDULE. Client's PayPal account will be automatically billed on a recurring basis, the frequency of billing determined by chosen billing period - monthly or yearly. If billing is unsuccessful, services will be discontinued until the billing problem has been resolved. Contractor will contact Client in the event this situation occurs.

5. WARRANTIES AND REMEDIES

a. Contractor warrants services as defined in the Cloud Maintenance Service Plan during the Term of Agreement.

b. Contractor warrants that with respect to any tangible products assigned by Contractor to Client that Contractor has the right to transfer title to Client. Contractor further warrants that to its knowledge the products do not infringe any intellectual property right held by a third party.

c. Client's sole and exclusive remedy and Contractor's only obligation for breach of the warranty hereunder will be, at Contractor's option, to correct any material errors in provision of Cloud Maintenance Services. In order for Client to exercise this remedy, Client must give Contractor notice of such nonconformity within the warranty period, and Contractor must determine that any nonconformity did not arise due to any cause specified below. Contractor shall be given free and full access to make corrections. If this remedy is adjudged to have failed of its essential purpose, Contractor's total liability will be to refund the price paid to Contractor by Client for the nonconforming Cloud Maintenance Service.

The remedy provided by Contractor for breach of warranty does not include the following, which may be provided, at Contractor's sole option, at Contractor's then-current time and materials rates:

i. Repair of damage caused by events beyond Contractor's reasonable control.

ii. Repair of damage caused through Client's negligence or through alterations or changes made by Client.

e. Except for the warranties stated in this Section, Contractor DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE CLOUD MAINTENANCE SERVICES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST NON-INFRINGEMENT. Contractor expressly does not warrant that the operation of Maintenance Service which are software shall be uninterrupted or error-free; or that Maintenance Service will operate on any system, or with any software, other than the system with which the Contractor tested such Maintenance Service. Contractor does not warrant any third-party software development tools. Contractor specifically does not warrant the accuracy of any technical or subject matter content of the software that is based upon information or direction provided by Client.

6. LIMITATION OF LIABILITY

a. The total liability of Contractor to Client from any cause whatsoever, will be limited to the lesser of Client's actual damages or the Maintenance Services price paid to Contractor for those Maintenance Services that are the subject of Client's claim. In no event will either party be liable for SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, including but not limited to loss of profits, revenues, data or power, damage to or loss of the use of products, damage to property, claims of third parties, including personal injury or death, suffered as a result of provision of Cloud Maintenance Service.

b. Time for Claims. All claims against Contractor must be brought within one hundred and eighty (180) days after the cause of action arises and Client waives any statute of limitations which might apply by operation of law or otherwise.

7. INDEMNIFICATION

Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, Client agrees to indemnify and hold harmless Contractor, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

8. FORCE MAJEURE

Neither party shall be liable for failure to perform, nor be deemed to be in default, under this Agreement for any delay or failure in performance resulting from causes beyond its reasonable control, including but not limited to failure of performance by the other party, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquake, riot, insurrection, civil disturbance, sabotage, embargo, blockade, acts of war, or power failure. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

9. TERMINATION

Termination of Cloud Maintenance Services. Client reserves the right to terminate Cloud Maintenance Services in whole or in part at any time upon written notice to Contractor. In the event the Cloud Maintenance Services is terminated by Client, Contractor shall not undertake further work, incur additional expenses, or enter into further commitments with regard to the Cloud Maintenance Services after receiving such notice of termination from Client, except as mutually agreed upon by the parties. In the event of termination of Cloud Maintenance Services as described above, Contractor shall be entitled to compensation as follows:

- a. All payments due and owing under this Agreement at the time of Contractor's receipt of the written notice of termination for work completed and in progress;
- b. Reimbursement for any non-cancelable services and commitments entered into by Contractor, in connection with the Cloud Maintenance Services being terminated, provided Contractor provides Client with documentation of completion of work or expenses incurred.

In the event of termination of services by Client, Client will be entitled to reimbursement, paid within 30 days, on a pro-rated basis calculated using the non-discounted monthly billing rate. In the event of termination of services by Contractor, Client will be entitled to reimbursement, paid within 30 days, on a pro-rated basis calculated using the discounted yearly billing rate.

Termination of the Cloud Maintenance Services shall not affect either party's obligations in connection with any other ongoing Maintenance Services and the rights and obligations of all non-terminating parties to the Agreement shall remain in full force and effect.

Failure by either party to comply in any material respect with any of its obligations in this Agreement shall entitle the other party to give notice to the party in default requiring it to cure such default. If such default is not cured within five (5) days after receipt of such notice,

the notifying party shall be entitled to terminate this Agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Service Contract, as herein provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

10. DELAY OR SUSPENSION OF WORK

If Client's acts or failure to act causes Contractor to delay or suspend performance of Cloud Maintenance Services, Contractor and Client will mutually agree that Contractor will use reasonable efforts to continue performance as practicable under the circumstances and Client will continue to make all scheduled payments.

Notwithstanding the above, Contractor shall have the right to invoice Client for any work performed to date of suspension.

11. CONFIDENTIALITY

Contractor and Client acknowledge that during the course of the performance of Cloud Maintenance Services, information of a confidential nature may be disclosed between the parties. Such information shall be considered confidential information ("Confidential Information"). Neither party has the right to disclose the Confidential Information of the other, in whole or in part, to any third party, and neither party will make use of the Confidential Information of the other for its own or a third party's benefit or in any way use such Confidential Information other than for the purposes of performance of this Agreement without the prior written consent of the disclosing party. Each party agrees to take all steps reasonable to protect the other's Confidential Information from unauthorized use and/or disclosure. The parties agree not to copy in whole or in part, any Confidential Information nor modify the same in any way without prior written consent from the other party. Neither party will be liable to the other for the disclosure of Confidential Information if, as shown by clear and convincing evidence, the Confidential Information: (a) is generally known to the public at the time of disclosure by the disclosing party; or (b) becomes generally known to the public through no fault of the receiving party; or (c) was lawfully in the possession of the receiving party prior to signing this Agreement; or (d) is subject to applicable United States laws or a valid court order requiring disclosure of such Confidential Information.

In any judicial proceeding, it will be presumed that the Confidential Information in question constitutes protectable trade secrets of the disclosing party, and the receiving party shall bear the burden of proving that the Confidential Information was publicly or rightfully known or disclosed.

12. PUBLICITY

Contractor may use Client's name or mark and identify Client as a client of Contractor, on Contractor's website and/or marketing materials. Contractor may issue a press release, containing Client's name, related to any award under this Agreement. Neither party will use the other party's name or marks, refer to or identify the other party for any other reason, except as established in this section, without such other party's written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

13. SUBCONTRACTING

Contractor may, at its option, subcontract work under Cloud Maintenance Services but Contractor's use of subcontractors shall not affect its responsibilities under the applicable Maintenance Service Plan. Moreover, Contractor shall be fully responsible for work done by its subcontractors within the scope of the Cloud Maintenance Service as it is for work done by its own employees. Contractor shall have written agreement(s) with its subcontractors that contain, at a minimum, clauses that are the same as or comparable to the sections of this Agreement regarding ownership rights and confidentiality of Client's materials.

14. GENERAL TERMS

- a. JURISDICTION. This Service Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.
- b. NOTICES. All notices, requests, demands, or other communications to be given by either party required or permitted by the terms of this Agreement will be given via email to Contractor at robert@robertpartridge.com or via Contractor's help desk ticketing system and to Client via the email address provided when service was requested.
- c. SEVERABILITY AND ASSIGNMENT. The invalidity or unenforceability, in whole or in part, of any provision in this Agreement shall not affect in any way the remainder of the provisions herein. This Agreement may not be assigned by Client without Contractor's consent.
- d. ENTIRE AGREEMENT. This Agreement, together with any other materials referenced in or expressly made a part of the Agreement, constitutes the final and entire Agreement between Contractor and Client and supersedes all prior and contemporary agreements, oral or written.
- e. ELECTRONIC SIGNATURE. In order to submit the online Service Request Form, Client must check the box labeled "I acknowledge that I have read and agree to the Service Agreement." By clicking this box and clicking the "Request Service" button you are signing

this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual signature on this Agreement and consent to be legally bound by this Agreement's terms and conditions.