

## **SOFTWARE AS A SERVICE (“SaaS”) AGREEMENT**

This SOFTWARE AS A SERVICE (SaaS) AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, (“Effective Date”), by and between Evergreen Solutions, LLC, a Florida limited liability company (“Evergreen”), and the City of Madison, Alabama, a municipal corporation (“Client”) (collectively the “Parties”).

In consideration of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions contained in this Software as a Service (SaaS) Agreement.

### **1. DEFINITIONS.**

- 1.1 “Administrator User”** means each Client employee designated by Client to serve as technical administrator of the SaaS Services on Client’s behalf. Each Administrator User must complete training and qualification requirements reasonably required by Evergreen.
- 1.2 “Affiliate”** means, with respect to any entity, any other present or future entity controlling, controlled by, or under common control with such entity. For the purposes of this definition, control (and its derivatives) means, with respect to any entity, the possession, direct or indirect, of the power to solely direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.
- 1.3 “Application Platform” or “Platform”** means Evergreen’s proprietary Job Performance Tracker software and/or web-site, including all modules, functions, features identified in an Order, SOW, or otherwise generally made available by Evergreen to its clients, and all technology resources and infrastructure (e.g., hardware, third party software, etc.) supporting the Services. The Application Platform includes all updates, releases, improvements, and corrections to the Application Platform.
- 1.4 “Client Data”** means any proprietary or confidential content, information, data and materials of any kind, provided by Client to Evergreen in connection with its provision of the Services.
- 1.5 “Confidential Information”** means any and all technical, business, client or proprietary information disclosed by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), directly or indirectly, including, but not limited to, information regarding the Disclosing Party’s business strategies and practices, methodologies, trade secrets, know-how, pricing, technology, software, product plans, services, relationships with any third party, client lists and information regarding the Disclosing Party’s employees, clients, vendors, consultants and Affiliates regardless of whether such information is marked “confidential” or some other proprietary designation, but which by its nature is

information that would reasonably be considered to be confidential information of the Disclosing Party. In the case of Evergreen, Confidential Information includes the Application Platform source code. In the case of Client, Confidential Information includes all Client Data and any information relating to Client's users.

- 1.6 “Data Center”** means the secure facility(ies) in which the servers, computer equipment and ancillary hardware used to host and operate the Application Platform reside. The primary Data Center(s) is/are located in Tallahassee, Florida and the secondary Data Center(s) is/are located in Renton, Virginia and/or Sunnyvale California as of the Effective Date. Evergreen may relocate the primary and secondary Data Centers within the United States after providing Client at least ten (10) days written notice.
- 1.7 “Documentation”** means Evergreen's user guides and manuals relating to the Services and Application Platform, including on-line help, as updated and amended from time to time.
- 1.8 “Intellectual Property”** means all algorithms, application programming interfaces (APIs), apparatus, concepts, Confidential Information, data, databases and data collections, deliverables, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos and slogans), methods, models, procedures, processes, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, works of authorship, and other forms of technology.
- 1.9 “Intellectual Property Rights”** means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.
- 1.10 “Other Services”** means all technical and non-technical services performed or delivered by Evergreen under this SaaS Agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the SaaS Services. Other Services will be provided on a time and material basis at such times or during such periods, as may be specified in a separate agreement between the parties. All Other Services will be provided on a non-work for hire basis.

- 1.11** “**SaaS Services**” means the (i) limited access and use rights to the Application Platform, (ii) hosting services, and (iii) support services in connection with Evergreen’s Job Performance Tracker Software as set forth in Evergreen’s proposal to Client.
- 1.12** “**Security Event**” is an event where: (i) Client Data or Confidential Information of Client in Evergreen or its subcontractors’ possession or control is accessed or received by an individual or entity not authorized to access or receive such information, (ii) there is a reasonable basis to believe that Client Data or Confidential Information of Client in Evergreen or its subcontractors’ possession or control may have been accessed or received by an unauthorized individual or entity, (iii) an individual or entity authorized under this Agreement to use or access Client Data or Confidential Information of Client is using, or reasonably suspected of using, any Client Data or Confidential Information of Client in a manner not authorized under this Agreement, or (iv) Client Data or Confidential Information of Client in Client’s (or its third party contractors’) possession or control is accessed (or there is a reasonable basis to believe may have been accessed) through the Application Platform in a manner or for a purpose not authorized under this Agreement or permitted under applicable laws or regulations.
- 1.13** “**Services**” means, collectively, the Professional Services and SaaS Services.
- 1.14** “**Software**” means the object code version of any software to which Client is provided access as part of the Service, including any updates or new versions.
- 1.15** “**Subscription Term**” shall mean one (1) year beginning with the Effective Date during which Client will have on-line access and use of the Software through Evergreen’s SaaS Services. The Subscription Term shall renew for two (2) successive 12-month periods unless either party delivers written notice of non-renewal to the other party at least 30 days prior to the expiration of the then-current Subscription Term.

Other terms are defined in the context in which they are used throughout the Agreement.

## **2. SAAS SERVICES**

- 2.1** During the Subscription Term, Client shall have a nonexclusive, non-assignable, royalty free, worldwide right to access and use the SaaS Services solely for your internal business operations subject to the terms of this Agreement and up to the number of Subscriptions set forth in Exhibit A.
- 2.2** Client acknowledges that this Agreement is a services agreement and Evergreen will not be delivering copies of the Software to Client as part of the SaaS Services.

### 3. RESTRICTIONS

Client shall not, and shall not permit anyone to: (i) copy or republish the SaaS Services or Software, (ii) make the SaaS Services available to any person other than authorized Subscription users, (iii) use or access the SaaS Services to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based upon the SaaS Services or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the SaaS Services or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the SaaS Services, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the SaaS Services or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, Evergreen shall own all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. Client agrees to assign all right, title and interest it may have in the foregoing to Evergreen.

### 4. CLIENT RESPONSIBILITIES

- 4.1 Assistance.** Client shall provide commercially reasonable information and assistance to Evergreen to enable Evergreen to deliver the SaaS Services. Client acknowledges that Evergreen's ability to deliver the SaaS Services in the manner provided in this SaaS Agreement may depend upon the accuracy and timeliness of such information and assistance
- 4.2 Compliance with Laws.** Client shall comply with all applicable local, state, national and foreign laws in connection with its use of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Client acknowledges that Evergreen exercises no control over the content of the information transmitted by Client or the Subscription users through the SaaS Services. Client shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 4.3 Unauthorized Use; False Information.** Client shall: (a) notify Evergreen immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (b) report to Evergreen immediately and use reasonable efforts to stop any unauthorized use of the SaaS Services that is known or suspected by Client or any Subscription user, and (c) not provide false identity information to gain access to or use the SaaS Services.

- 4.4 Administrator Access.** Client shall be solely responsible for the acts and omissions of its Administrator Users. Evergreen shall not be liable for any loss of data or functionality caused directly or indirectly by the Administrator Users.
- 4.5 Client Input.** Client is solely responsible for collecting, inputting and updating all Client Data stored on the Host, and for ensuring that the Client Data does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Client shall: (i) notify Evergreen immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Evergreen immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by Client or any Subscription user, and (iii) not provide false identity information to gain access to or use the Service.
- 4.6 License from Client.** Subject to the terms and conditions of this SaaS Agreement, Client grants to Evergreen a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Client Data as necessary to provide the SaaS Services to Client. Client also grants Evergreen a non-exclusive, royalty-free, perpetual, irrevocable, and worldwide license to use, copy, modify, aggregate, and anonymize Client Data for the purpose of creating, maintaining, and improving industry benchmarks and other analytical tools and reports (the “Benchmarking Products”). Evergreen shall ensure that Client Data is not directly or indirectly identifiable or attributable to Client or any individual associated with Client in the Benchmarking Products. Evergreen shall not disclose the Client Data to any third party except as necessary to provide the Benchmarking Products or as required by law. Client acknowledges and agrees that the Evergreen owns all right, title, and interest in and to the Benchmarking Products and that the Client has no claim or interest in them.
- 4.7 Ownership and Restrictions.** Client retains ownership and intellectual property rights in and to its Client Data. Evergreen or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the Agreement. Third party technology that may be appropriate or necessary for use with some Evergreen programs is specified in the program Documentation or ordering document as applicable. Client’s right to use such third party technology is governed by the terms of the third party technology license agreement specified by Evergreen and not under the Agreement.
- 4.8 Suggestions.** Evergreen shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services any suggestions, enhancement requests, recommendation or other feedback provided by Client, including Users, relating to the operation of the SaaS Services.

## 5. ORDERS AND PAYMENT

- 5.1 Price and Payment.** The price of the SaaS Services and payment terms are set forth on Exhibit A. Client shall pay all undisputed invoices within 30 days after Client receives the invoice. Except as expressly provided otherwise, fees are non-refundable. All fees are stated in United States Dollars, and must be paid by Client to Evergreen in United States Dollars.
- 5.3 Taxes.** The parties acknowledge that the City is a tax-exempt entity and that any and all taxes applicable to the services provided in this agreement or payments made to Evergreen hereunder shall be the sole responsibility, obligation, and liability of Evergreen.

## 6. TERMS AND TERMINATION

- 6.1 Term of SaaS Agreement.** The term of this SaaS Agreement shall begin on the Effective Date and shall continue for a 12-month period unless terminated by either party as outlined in this Section. The Subscription Term shall renew for two (2) successive 12-month periods unless either party delivers written notice of non-renewal to the other party at least 30 days prior to the expiration of the then-current Subscription Term.
- 6.2 Termination.** Either party may terminate this SaaS Agreement immediately upon a material breach by the other party that has not been cured within thirty (30) days after receipt of notice of such breach. Further, in the event that the Madison City Council does not approve funding for the continuation of this SaaS Agreement the City may terminate this Agreement upon the provision of thirty (30) days' notice to Evergreen. In the event of termination, Evergreen shall be entitled to payment only for services rendered as of the date of termination, and City shall be entitled to receive only that work product created by Evergreen as of the date of termination.
- 6.3 Suspension for Non-Payment.** Evergreen reserves the right to suspend delivery of the SaaS Services if Client fails to timely pay any undisputed amounts due to Evergreen under this SaaS Agreement, but only after Evergreen notifies Client of such failure. Suspension of the SaaS Services shall not release Client of its payment obligations under this SaaS Agreement. Client agrees that Evergreen shall not be liable to Client or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services resulting from Client's nonpayment.
- 6.4 Suspension for Ongoing Harm.** Both parties reserve the right to suspend delivery of the SaaS Services if one reasonably concludes that either party or a Subscription

user's use of the SaaS Services is causing immediate and ongoing harm to either party or others. In the extraordinary case that a party must suspend delivery of the SaaS Services, the party suspending the services shall immediately notify the other party of the suspension, and the parties shall diligently attempt to resolve the issue. Neither party shall be liable to the other or to any third party for any liabilities, claims, or expenses arising from or relating to any suspension of the SaaS Services in accordance with this Section 6.4. Nothing in this Section 6.4 will limit a party's rights under Section 6.5 below.

## **6.5 Effect of Termination.**

- (a) Upon termination of this SaaS Agreement or expiration of the Subscription Term, Evergreen shall immediately cease providing the SaaS Services and all usage rights granted under this SaaS Agreement shall terminate.
- (b) Upon termination or suspension of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

## **7. SERVICE LEVEL AGREEMENT**

The Service Level SaaS Agreement (“SLA”) for the SaaS Services is set forth in Exhibit B attached hereto. The SLA sets forth Client's remedies for availability or quality of the SaaS Services including any failure to meet any guarantee set forth in the SLA.

## **8. WARRANTIES**

EVERGREEN WARRANTS THAT THE SAAS SERVICES WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. EVERGREEN DOES NOT GUARANTEE THAT THE SAAS SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT EVERGREEN WILL CORRECT ALL SAAS SERVICES ERRORS. CUSTOMER ACKNOWLEDGES THAT EVERGREEN DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY EVERGREEN (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER EVERGREEN NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED,

VIRUS-FREE OR ERROR-FREE, NOR SHALL EVERGREEN OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR ANY USER'S DATA, FILES, OR PROGRAMS.

## **9. LIABILITY**

NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF EVERGREEN) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS SAAS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. The foregoing limitations shall not apply to the parties' obligations (or any breach thereof) under Sections entitled "Restriction", "Indemnification", or "Confidentiality".

## **10. INDEMNIFICATION**

**10.1 Indemnification by Evergreen.** If a third party makes a claim against Client that the SaaS Services infringes any patent, copyright or trademark, or misappropriates any trade secret, or that Evergreen's negligence or willful misconduct has caused property damage, bodily injury, or death, Evergreen shall defend Client and its directors, officers and employees against the claim at Evergreen's expense and Evergreen shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Evergreen, to the extent arising from the claim. Evergreen shall have no liability for any claim based on (a) the Client Data, (b) modification of the SaaS Services not authorized by Evergreen, or (c) use of the SaaS Services other than in accordance with the Documentation and this SaaS Agreement. Evergreen may, at its sole option and expense, procure for Client the right to continue use of the SaaS Services, modify the SaaS Services in a manner that does not materially impair the functionality, or terminate the Subscription Term and repay to Client any amount paid by Client with respect to the Subscription Term following the termination date.

**10.2 Indemnification by Client.** If a third party makes a claim against Evergreen that the Client Data infringes any patent, copyright or trademark, or misappropriates any trade secret, to the extent allowed by law, the City will hold harmless and indemnify Evergreen from and against claims, suits, damages, losses, liabilities,



judgments, costs, and expenses resulting from willful malfeasance, bad faith, or gross negligence on the part of City or its individual employees, officials, agents and representatives in the course of receiving services from Evergreen pursuant to this Agreement.

- 10.3 Conditions for Indemnification.** A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## **11. CONFIDENTIALITY**

- 11.1 Definition. "Confidential Information"** means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be "confidential" or "proprietary" within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this SaaS Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Client Data as contemplated by this SaaS Agreement, Client Data is deemed Confidential Information of Client. Evergreen software and Documentation are deemed Confidential Information of Evergreen.

- 11.2 Confidentiality.** During the term of this SaaS Agreement and for 5 years thereafter (perpetually in the case of software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.

- 11.3 Exceptions.** Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

## **12. GENERAL PROVISIONS**

- 12.1 Non-Exclusive Service.** Client acknowledges that SaaS Services is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Evergreen's ability to provide the SaaS Services or other technology, including any features or functionality first developed for Client, to other parties.
- 12.2 Personal Data.** Client hereby acknowledges and agrees that Evergreen's performance of this SaaS Agreement may require Evergreen to process, transmit and/or store Client's personal data or the personal data of Client's employees. By submitting personal data to Evergreen, Client agrees that Evergreen and its Affiliates may process, transmit and/or store personal data only to the extent necessary for, and for the sole purpose of, enabling Evergreen to perform its obligations under this SaaS Agreement. In relation to all Personal Data provided by or through Client to Evergreen, Client will be responsible for complying with all applicable data protection or similar laws that regulate the processing of Personal Data. Client agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content and using the SaaS Services.
- 12.3 Assignment.** Neither party may assign this SaaS Agreement or any right under this SaaS Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this SaaS Agreement to an acquirer of all or substantially all of the business of such party to which this SaaS Agreement relates, whether by merger, asset sale or otherwise. This SaaS Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ subcontractors in performing its duties under this SaaS Agreement, provided, however, that such party shall not be relieved of any obligation under this SaaS Agreement.

**12.4 Notices.** Except as provided in any express provision of this Agreement, any notice, request, approval, authorization, consent, demand or other communication required or permitted to be given or made pursuant to this Agreement will be in writing (except where oral notice is specifically authorized in this Agreement) and will be deemed given upon actual receipt (or independent confirmation thereof) of notice by registered or certified United States mail, return receipt requested, postage prepaid and addressed as follows:

If to Client:           HR Director  
                              100 Hughes Road  
                              Madison, AL 35758

With a copy to:       City Attorney  
                              100 Hughes Road  
                              Madison, AL 35758

If to Evergreen:

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Evergreen Solutions, LLC  
2528 Barrington Circle, Unit #201  
Tallahassee, Florida 32308  
jeff@consultevergreen.com

A Party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date, at least twenty (20) days from the date of the notice, upon which it will become effective.

**12.5 Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.

**12.6 Waiver.** No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this SaaS Agreement shall not constitute a waiver of any other or subsequent breach.

**12.7 Severability.** If any term of this SaaS Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the

same effect as the original term, and the remainder of this SaaS Agreement shall remain in full force.

- 12.8 Entire SaaS Agreement.** This SaaS Agreement (including all Schedules and exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this SaaS Agreement. This SaaS Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.
- 12.9 Survival. Sections 3, 4, 6, and 8 through 12** of this SaaS Agreement shall survive the expiration or termination of this SaaS Agreement for any reason.
- 12.10 No Third Party Beneficiaries.** This SaaS Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners of customers or upon any other person or entity.
- 12.11 Venue & Dispute Resolution.** Any claim, whether based on contract, tort or other legal theory including, but not limited to, any claim of fraud or misrepresentation, arising out or relating to this Agreement or any Order or SOW, including its interpretation, performance, breach or termination, not resolved by good faith negotiations and escalation as specified above, will be brought only in the United States District Court for the Northern District of Alabama or, if such court would not have jurisdiction over the matter, then only in the State courts located in Madison County, Alabama, and each of the Parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.
- 12.12 Governing Law.** This SaaS Agreement shall be governed by the laws of the State of Alabama.
- 12.13 Statistical Information.** Evergreen may anonymously compile statistical information related to the performance of the Services for purposes of improving the SaaS service, provided that such information does not identify Client's data or include Client's name.
- 12.14 Compliance with Laws.** Evergreen shall comply with all applicable local, state, national and foreign laws in connection with its delivery of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data
- 12.15 Signatures.** This SaaS Agreement may be executed in multiple counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature

page of this SaaS Agreement by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart.

**12.16 Publicity.** Evergreen may include Client’s name and logo in its customer lists and on its website. Upon signing, Evergreen may issue a high-level press release announcing the relationship and the manner in which Client will use the Evergreen solution. Evergreen shall coordinate its efforts with appropriate communications personnel in Client’s organization to secure approval of the press release if necessary.

**12.17 Technical Support & Additional Services.** Basic technical support is included in the annual fee. Training or customization will be provided to Client by Evergreen for an additional consulting fee as provided in Evergreens fee schedule attached hereto as Exhibit C.

IN WITNESS WHEREOF, the Parties have executed this Master Software-as-a-Service Agreement as of the date below.

**CLIENT**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EVERGREEN**

Date: May 6, 2025

Name: Jeffrey Ling

Title: President

**EXHIBIT A**

**PRICING AND PAYMENT**

## **EXHIBIT B**

### **SERVICE LEVEL AGREEMENT**

The Single Sign-On (SSO) SaaS Services will achieve System Availability (as defined below) of at least 99.9% during each calendar year of the Subscription Term. All other SaaS Services will achieve System Availability (as defined below) of at least 99% during each calendar year of the Subscription Term. “**System Availability**” means the number of minutes in a year that the key components of the SaaS Services are operational as a percentage of the total number of minutes in such year, excluding downtime resulting from (a) scheduled maintenance, (b) events of Force Majeure in the SaaS Agreement), (c) malicious attacks on the system, (d) issues associated with the Client’s computing devices, local area networks or internet service provider connections, or (e) inability to deliver services because of acts or omissions of Client or any Subscription user. Evergreen reserves the right to take the Service offline for scheduled maintenance for which Client has been provided reasonable notice and Evergreen reserves the right to change its maintenance window upon prior notice to Client.

If Evergreen fails to meet System Availability in the year, upon written request by Client within 30 days after the end of the year, Evergreen will issue a credit in Client’s next invoice in an amount prorated to a percentage of the yearly fee for the affected SaaS Services for each percentage loss of System Availability below stated SLA per SaaS Service, up to a maximum of the Client’s fee for the affected SaaS Services. For example, a 1% loss of service would result in a 1% credit of the yearly fee, and a 5% loss of service would result in a 5% credit of the yearly fee. If the yearly fee has been paid in advance, then at Client’s election Evergreen shall provide a credit to Client to be used for additional Subscription Users or term extension. The remedy stated in this paragraph is Client’s sole and exclusive remedy for interruption of SaaS Services and Evergreen’s failure to meet System Availability.