Title of Bid: Work Order Software

Dept.: Facilities Management

Contact Person: Nathan Wade

Ext.: 7392

Description (product/service, justification and use):

Facilities Management is in need of a work order software system to replace the current paper work orders and access database system that is no longer supported. The new system, Asset Essentials by Dude Solutions, will provide the capabilities to request work orders electronically, approve through an established work flow, assign work orders to any facilities staff, track progress, track costs associated to labor, materials as well as third-party vendor costs when needed. This system will include predictive maintenance and preventative maintenance in addition to reactive maintenance. The system will track work associated with various pieces of equipment to help aid in predicting replacement time frames, which will require data gathering to obtain the necessary information regarding the equipment. Dashboard and reporting capabilities are required to ensure visibility and oversight to all work approved in the queue. Implementation and training will be included in the purchase of this system as well as the first partial year of subscription costs.

Asset Essentials is using the Sourcewell Cooperative agreement contract #110515-SDI.

The initial implementation cost of $49,890.00 will be covered under the capital account (3019800-47709-MTECH), but the subscription costs of $5,607.00 will be covered under the approved service contract amount (3019800-44370-40910). The first term in 2020 is a partial year agreement with 4, 1-year renewal options. Annual subscription costs have been included in the agreement terms.

The initial implementation cost is included in the approved 2020 capital budget. The subscription cost is less than the anticipated costs included in the approved 2020 service contract total, saving over $35,000.

Award to: Dude Solutions, Inc.

Location: 11000 Regency Pkwy, Cary NC 27518

Price: $ 55,497.00

Contract term (if applicable): Implement in 2020, 1-year subscription renewal terms for 2021-2024

Bid opening held on: 1/2/2020

Opened by: Nathan Wade

Account number to be charged for purchase: 3009800-47709 MTECH, 3019800-44370

If bid was not awarded to lowest bidder, please explain:

If paying for with grant funds, please indicate (1) grant name, (2) total grant amount, (3) what portion of purchase is being paid for by a grant, and (4) when grant period ends as applicable:
FORMAL BID – REQUEST FOR APPROVAL

Bid #: Cooperative

Additional Bids Received

The following additional bids were received:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Location</th>
<th>Meets all specifications</th>
<th>Price</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

For each vendor that doesn’t meet specifications, please explain why:

Vendor: __________________________________________

Vendor: __________________________________________

☐ Sole source justification memos from (1) dept. and (2) vendor attached.

Department Director/Elected Official must sign the request prior to routing to the Purchasing Manager.

______________________________
Department Director/Elected Official Signature

4/2/2020
Date

______________________________
Approval or Concurrence of Director of Finance

4/9/20
Date

BELOW ONLY TO BE COMPLETED FOR BIDS AT LEAST $15,000 AND LESS THAN $50,000. See instructions at the top of pg. 1.
SERVICE CONTRACT AGREEMENT

This agreement made as of the 3rd day of April the year 2020

Between the Owner: St. Charles County
201 North Second Street
St. Charles, MO 63301
636-949-7900

And the Contractor: Dude Solutions, Inc.
11000 Regency Parkway, Suite 110
Cary, NC 27518
877-868-3833

Now therefore, CONTRACTOR and COUNTY, in consideration of mutual covenant herein set forth, agree as follows:

ARTICLE 1. SCOPE OF SERVICES

The Contractor shall furnish, at its cost and expense, all tools, equipment, supplies, superintendence, transportation, and other accessories, services; and provide and perform all necessary labor in a good, substantial, and workmanlike manner to perform services at the rates stated in Contractor’s Response to the cooperative purchasing request for proposals issued by the National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies, which includes St. Charles County, as Request For Proposal (RFP) #110515 PUBLIC SECTOR ADMINISTRATIVE-RELATED SOFTWARE SOLUTIONS & TECHNOLOGY SERVICES™ on file with St. Charles County through SourceWell’s website: https://www.sourcewell-mn.gov/cooperative-purchasing/110515-sdi?domain=246#tab-contract-documents. All services shall be performed in accordance with the general conditions, supplementary conditions, instructions to bidders, proposal, and other specified documents, all of which contract documents form the contract, and are as fully a part thereof as if repeated verbatim herein, all work to be done under the direct supervision, and to the entire satisfaction of the County. Additionally, Contractor’s Response containing general conditions, maintenance schedules and rates for Implementation and Services are attached hereto as Exhibit A; and for Subscription Services are attached hereto as Exhibit B, incorporating the Online Subscription Agreement and Contractor’s Response for Subscription Services.

ARTICLE 2. WHEN SERVICES PROVIDED

The Contractor shall furnish the services per the schedules stated in the Implementation and Services attached hereto as Exhibit A; and for the Subscription Services attached hereto as Exhibit B, incorporating the Online Subscription Agreement and Contractor’s Response for Subscription Services.

ARTICLE 3. COST AND UNIT PRICES

The County shall pay the Contractor for all work done in accordance with the schedules stated in the Implementation and Services attached hereto as Exhibit A, the amount of $49,890.00; and for the Subscription Services attached hereto as Exhibit B, incorporating the Online Subscription Agreement and Contractor’s Response for Subscription Services, the amount of $5,607.00. Total amount for both sets of services is $55,497.00. The first renewal term shall remain fixed at $13,457.00 for the year beginning on
January 1, 2021. The annual fees for the second (2022), third (2023), and fourth (2024) renewal terms may increase by an amount not to exceed five percent (5%) over the immediately preceding renewal term.

**ARTICLE 4. THE CONTRACT DOCUMENTS**

The Request For Proposal (RFP) #110515 PUBLIC SECTOR ADMINISTRATIVE-RELATED SOFTWARE SOLUTIONS & TECHNOLOGY SERVICES" on file with St. Charles County through SourceWell’s website: https://www.sourcewell-mn.gov/cooperative-purchasing/110515-sdl?domain=246#tab-contract-documents, the accompanying Contract Forms, Contract Acceptance and Award, and this Agreement, including the attached “Audit Clause for Contracts” form the Contract.

**ARTICLE 5. SUPERVISION**

The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, unless Contract Documents give other specific instructions concerning those matters.

**ARTICLE 6. INDEMNITY**

To the fullest extent permitted by law, the Contractor shall indemnify and defend the County, its agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys’ fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the work itself, including loss of use resulting therefrom, but only to the extent caused by the gross negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they are liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this section. In claims against any person or entity indemnified under the above paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**ARTICLE 7. INSURANCE**

The Contractor shall provide and maintain during the life of the Contract the insurance(s) listed below, in the minimum amounts specified, with an insurance company licensed to do business in the State of Missouri. All policies must include the County as an additional insured.

Workers Compensation: Statutory limits as required by the statutes of the State of Missouri and Employer’s Liability with limits no less than $500,000.

Comprehensive General Liability (including automobile): Limits of no less than $1,000,000/2,000,000/1,000,000 per occurrence or $3,000,000CLSL.
ARTICLE 8. TERMINATION

St. Charles County reserves the right to terminate the agreement for breach of any term or condition of the agreement by giving (30) thirty days written notice of termination. Any other termination shall be in accordance with the terms of Section 7 of the Subscription Agreement attached hereto as Exhibit B.

IN WITNESS WHEREOF the parties have entered into this Agreement on the date last written below.

Executed by the County this ___ day of ____________________, 2020.

Executed by Contractor this ___ day of April, 2020.

DUDE SOLUTIONS, INC.
11000 REGENCY PARKWAY, SUITE 110
CARY, NC 27518

By: ____________________________
Name: Karen Waggener
Title: CFO

ST. CHARLES COUNTY, MISSOURI
201 N. SECOND STREET, ROOM 529
ST. CHARLES, MO 63301

By: ____________________________

ATTEST:

Secretary General Counsel

ATTEST:

County Registrar
AUDIT CLAUSE FOR CONTRACTS

Examination of Records:

The Contractor's records which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontractor files, indirect cost records, overhead allocation records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to this contract shall be open to inspection and subject to audit and/or reproduction by the County Auditor, or a duly authorized representative from the County, at the County's expense. The Contractor shall preserve all such records for a period of three years, unless permission to destroy them is granted by the County, or for such longer period as may be required by law, after the final payment. Since the Contractor is not subject to the Missouri Sunshine Law (Chapter 610, RSMo), information regarding the Contractor's operations obtained during audits will be kept confidential.

The Contractor shall require all subcontractors under this contract to comply with the provisions of this article by including the requirements listed above in written contracts with the subcontractors.

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this order is chargeable, and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet this obligation.

Robert Schnur, Director of Finance
PREPARED FOR
St Charles County
Nathan Wade
Assistant Facilities Director
300 N Second Street Suite 216
St. Charles, MO 63301

PREPARED BY
Dude Solutions, Inc.

PUBLISHED ON
January 02, 2020
Software Pricing is based on access for up to 30 users (technicians and administrators) with unlimited requesters.

**Solutions - Subscription**

- Asset Essentials Core
- Facilities/Physical Plant Module

**Subscription Term:** 9 months

5 months prorated software costs

with concessions April 1, 2020- July 31, 2020

**Subtotal:** $5,607.00

**Implementation & Services**

- Virtual Consulting Service for 2 days
- 1 Week (4 days) Onsite Consulting Package for 1 Week(s)
- Data Gathering for 760,665 Sq. Ft.
- Correctional Facility Adder
- PM Schedule Creation for 760,665 Sq. Ft.

**Subtotal:** $49,890.00

**Total Initial Investment**

**$55,497.00 USD**

Pricing for the First Renewal Term due on January 1, 2021 is $13,457.00.

Pricing is based on Sourcewell Purchasing Cooperative contract #110515-SDI

<table>
<thead>
<tr>
<th>Billing Item</th>
<th>Billing Schedule</th>
<th>Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Software Cost (access granted after contract acceptance)</td>
<td>prorated first term; billed upon contract acceptance</td>
<td>$5,607.00</td>
</tr>
<tr>
<td>Scheduling (mobilization phase)</td>
<td>20% of data gathering service</td>
<td>$5,884.46</td>
</tr>
<tr>
<td>Onsite Field Activity</td>
<td>60% of data gathering service</td>
<td>$17,653.38</td>
</tr>
<tr>
<td>Data Management</td>
<td>20% of data gathering service</td>
<td>$5,884.46</td>
</tr>
</tbody>
</table>

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Preventive Maintenance Consulting

(A draft of the preventive maintenance schedule will be presented to the client)

100% of PM service $11,067.70

Onsite and Virtual Consultation/training billed upon completion $9,400.00

*BV=Bureau Veritas (company overview attached); DSI=Dude Solutions Inc.

Legendary Support Team

Your subscription entitles you to world class support from the Legendary Support Team. From 8 am – 6 pm EST, we’re standing by ready to assist with any feature/functionality questions. We promise a live person will answer your call within 3 rings and quickly direct you to a knowledge Advisor. We’re committed to responding to all emails sent to support@dudesolutions.com within one hour. If you prefer to keep a support dialogue open at your workstation, our Advisors are also available via Chat. The Legendary Support Team is dedicated to your success. Our mission is to effectively communicate, efficiently resolve problems, and delight clients with every interaction.

Client Success Team

You have partnered with Dude Solutions because you believe we will deliver overwhelming value to you and your organization. Our Client Success team is dedicated to ensuring you meet the outcomes you and your organization expect by implementing our solutions. You will have the opportunity to work with a member of our Client Success team on an ongoing basis. Your Client Success Representative will be strategic in their efforts to drive results, keeping your success as their primary goal.

One Week On-Site Implementation Services for Work Management

System Configuration and planning

- Develop organized plan that accelerates full implementation
- Create a strategy for data collection, including preventive maintenance (PM) work orders, data transfer, and organization, naming conventions and more

Work Order Management

- Assist in creating a strategy that supports your work order management goals, such as request best practices and PM work order schedules
- Design a plan for data collection

Implementation Support

- Interview key staff for goals
- Identify objectives to focus on for best time to value

Legendary Ongoing Support

All Dude Solutions clients have ongoing support which includes:

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- Phone support answered within 3 rings
- Email support responses within 1 hour (or less) during business hours
- Immediate assistance available via chat 8 AM to 6 PM ET

Travel and lodging for Dude Solutions consultants

- Travel to your location
- Cost of lodging for Dude Solutions consultants during their stay at your location

Equipment Inventory Data Gathering Scope of Work

Purpose

Equipment Inventory Data Gathering is performed through the conduction of staff interviews and physical onsite data gathering. The following is meant to establish details of the deliverable that Dude Solutions (DSI) will provide on “Equipment Inventory” (Data Gathering) assignments. These onsite activities are done in conjunction with a Certified Dude Solutions Provider (DSI Service Provider).

Value

By leveraging DSI’s Equipment Inventory Data Gathering service, DSI clients are able to track work related to individual assets and make better data driven decisions related to those items.

Deliverables

All Equipment Inventory Data Gathering services include the following deliverables:

- Collection of major equipment items for populating your Dude Solutions Work & Asset Management solution.
- Import major Equipment Items into client’s Dude Solutions Work & Asset Management solution.
- No report will be provided.

Methodology and Approach

The collection and documentation of equipment inventory data is conducted onsite by a Dude Solutions Service Provider (Bureau Veritas). Inventory of all major building equipment will be performed capturing quantity & size along with the following attributes:

- Equipment Item Number (will be created if not existing)
- Site/Location/Building Name
- Description
- Classification/Type
- Manufacturer (where available)
- Model (where available)
Software for Smarter Operations

- Serial Number (where available)
- Barcode (where available)

Asset Inventory and Systems Table

The following table defines the standard SOW that will be followed to capture the equipment data used to build the Equipment Inventory, which will be imported into the Work & Asset Management Solution.

Table Column Header Descriptions

Individual or System Level Capture
Individual = Item will be collected individually
System = Item will be grouped by system or sub-system, location will correspond to the associated building structure

Included in Equipment Inventory? Y/N
No = Item will not be setup in the work & asset management solution

*Items captured as a system will be setup as a single equipment inventory item so that work can be tracked against it.

<table>
<thead>
<tr>
<th>Sub-System</th>
<th>Individual or System Level Capture</th>
<th>Included in Equipment Inventory (Y/N)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automatic Transfer Switch</td>
<td>Individual</td>
<td>Yes</td>
<td>Make/Model/Serial number will be captured when available</td>
</tr>
<tr>
<td>Electric Door Systems</td>
<td>Individual</td>
<td>Yes</td>
<td>Exterior Doors Only</td>
</tr>
<tr>
<td>Emergency Generators</td>
<td>Individual</td>
<td>Yes</td>
<td>Must be Permanently Installed, does not include mobile units</td>
</tr>
<tr>
<td>Main Distribution Panels</td>
<td>Individual</td>
<td>Yes</td>
<td>Primary panel bringing utility into building only</td>
</tr>
<tr>
<td>Motor Control Centers</td>
<td>Individual</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

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### Dude Solutions

**Software for Smarter Operations**

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Individual</th>
<th>Included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Switchgear</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Transformers</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Breakers, switches or starters</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Individual light fixtures (emergency, exterior, etc.)</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Motors</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Portable Generators</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Secondary Electrical Panels</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>VFDs</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Emergency Back Up Lights</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Lighted Exit Signs</td>
<td>System Level</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Equipment**

- **Commercial Laundry** (washers, dryers)
- **Commercial Trash Compactors**
- **Residential Type Appliances, Shop Tools and Equipment**

**Exterior Enclosure**

- **Garage Door & Garage Door Opener**

**Fire Protection**

- **Eyewash / Safety Showers**
- **Fire Pump**

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<table>
<thead>
<tr>
<th>System</th>
<th>Type</th>
<th>Included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Fire Panel</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Fire valves, hydrants</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>Smoke detectors, horn strobes</td>
<td>Not Included in Service</td>
<td></td>
</tr>
<tr>
<td>AEDs</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Exhaust Hood Suppression System</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Fire Alarm System</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Fire Extinguishers</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Specialty Fire Suppression System</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>Sprinkler System</td>
<td>System Level</td>
<td>Yes</td>
</tr>
<tr>
<td>HVAC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air Handling Units</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Boilers</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Building Automation System</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Chilled Water pumps</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Chillers</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Cooling Tower pumps</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Cooling Towers</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Deaerators</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Energy Recovery Units</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Exhaust Fans</td>
<td>Individual</td>
<td>Yes</td>
</tr>
<tr>
<td>Furnaces</td>
<td>Individual</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Barcode applied to Main Fire Panel
Kitchen-Style Suppression System
Includes Rooftop and Ground
Rooftop Only
Non-Residential
<table>
<thead>
<tr>
<th>Equipment Type</th>
<th>Display Type</th>
<th>Required</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heat Pumps</td>
<td>Individual</td>
<td>Yes</td>
<td>Make/Model/Serial number will be captured for both interior and exterior when accessible; otherwise it will be captured as one single cost and item.</td>
</tr>
<tr>
<td>Hot Water pumps</td>
<td>Individual</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Make Up Air Units</td>
<td>Individual</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Package AC Units</td>
<td>Individual</td>
<td>Yes</td>
<td>Includes Rooftop and Ground</td>
</tr>
<tr>
<td>Split Systems</td>
<td>Individual</td>
<td>Yes</td>
<td>Ductless Split Systems will be captured as one single item. The barcode will be located on the exterior unit.</td>
</tr>
<tr>
<td>Unit Heaters</td>
<td>Individual</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Fan Coil Units*</td>
<td>Individual</td>
<td>Yes</td>
<td>Included in the service and quantified based on client supplied data and/or drawings only. *No visual capture.</td>
</tr>
<tr>
<td>Unit Ventilators*</td>
<td>Individual</td>
<td>Yes</td>
<td>Included in the service and quantified based on client supplied data and/or drawings only. *No visual capture.</td>
</tr>
<tr>
<td>VAV Boxes*</td>
<td>Individual</td>
<td>Yes</td>
<td>Included in the service and quantified based on client supplied data and/or drawings only. *No visual capture.</td>
</tr>
<tr>
<td>Window Units</td>
<td>Not Included in Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Radiators</td>
<td>Not Included in Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thermostatic Controls</td>
<td>Not Included in Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kitchen</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dishwashers</td>
<td>Individual</td>
<td>Yes</td>
<td>Commercial-Style, non-residential</td>
</tr>
<tr>
<td>Exhaust Hoods</td>
<td>Individual</td>
<td>Yes</td>
<td>Commercial-Style, non-residential</td>
</tr>
<tr>
<td>Freezer (Walk In, Reach In)</td>
<td>Individual</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Grease Traps</td>
<td>Individual</td>
<td>Yes</td>
<td>Will not receive a barcode if barcoding services is included</td>
</tr>
<tr>
<td>Large Kitchen Equipment</td>
<td>Individual</td>
<td>Yes</td>
<td>Valued above $2,000</td>
</tr>
</tbody>
</table>

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Oven, Stoves  Individual  Yes
Refrigerator (Walk In, Reach In)  Individual  Yes  Commercial-Style, non-residential
Broilers, Grills, Fryers  Individual  Yes  Valued above $2,000
Counter Top Appliances  Not Included in Service
Cutlery  Not Included in Service
Tables, Racks  Not Included in Service

Plumbing
Domestic Hot Water Heaters  Individual  Yes  80 Gallons and Above. Does not include Instant Hot Water Heaters
Domestic Water Booster Pumps  Individual  Yes  1 HP and above
Hot Water Storage Tank  Individual  Yes
Main Backflow Preventer  Individual  Yes  Includes Domestic and Fire Suppression
Sump Pumps  Individual  Yes
Filters  Not Included in Service
Fixtures  Not Included in Service
Strainers  Not Included in Service
Valves  Not Included in Service

Vertical Transportation
Dumb Waiter  Individual  Yes
Elevators  Individual  Yes
Escalators  Individual  Yes

Assumptions
dudesolutions.com  11000 Regency Pkwy #110 / Cary, NC 27518
Software for Smarter Operations

- Average building square footage is greater than 10,000 sq. feet. If average square footage of all buildings to be included to receive the service is less than 10,000 sq. feet, custom pricing is needed.
- All buildings are located within one primary geographic zone/region (Example – School District, Higher Education, Main Campus, and Town). If multiple or scattered locations across the state are to receive the service a custom quote must be obtained. (Example – Multiple Higher Education Satellite Campuses locations, State Department Agencies)
- Residence Halls – Individual in-room collection of assets would not be provided. If desired a custom quote would be needed.
- Reconciliation of existing equipment in DSI work & asset management solutions and updating of historical records will not be performed. If reconciliation is required this is subject to additional costs depending upon the amount of changes requested.
- Capture of Data plate information is subject to readily accessible, legible information plate.
- DSI team members make final determination of whether areas housing assets are safely accessible for data collection.
- DSI team members will not move assets or interfere with asset functionality to collect nameplate information.
- All Data on SOW is captured at the asset level – subcomponents of assets listed on the SOW will not be captured.
- Equipment not in service or identified as "Run-to-Fail" are excluded from data gathering service unless inventory is required for compliance purposes.

Client Responsibility

1. Client will provide the needed input, resources, and documentation to support the tasks of the service and associated timelines for delivery of the service.

2. Any data to be migrated from client drawings or spreadsheets has to be provided to the DSI Service Provider within 15 business days of completion of onsite activity.

3. Client will review and provide any feedback related to data sent to them for review by DSI Service Provider or DSI within 15 business days or unless otherwise determined.

4. If Data is not reviewed within the 15 business day time period DSI will assume that the Data provided by the DSI Service Provider is approved and will load into the client’s software.

5. Client will be responsible for scheduling and coordinating all meetings and interviews involving other teams, departments, management teams or other necessary resources required for the success of this project.

6. Client will provide adequate access to working facilities (i.e., access badge, parking pass), if specific authorization or clearance is required client will notify DSI and/or DSI Service Provider in advance of onsite.

7. Client will ensure that the DSI Service Provider is granted accessibility to the facilities and/or systems required to conduct the necessary work defined in this SOW. If DSI Service Provider is not granted access to all areas, this could result in missed information gathering and/or delays in implementation timelines.
8. Client will ensure that the DSI Service Provider is granted accessibility to DSI Software, for Clients with Connect Authenticate/Single Sign On this may require your Technology Team to setup the DSI Service Provider in your organization’s Identity Provider service.

9. Client will provide a knowledgeable escort for work defined in this SOW and access to personnel as necessary.

10. Reconciliation of existing equipment in DSI work & asset management solutions and updating of historical records is subject to additional costs depending upon the amount of changes requested.

11. Addition of Equipment Barcode Tagging services must be purchased prior to onsite activity by the DSI Service Provider and is not included in the Standard Equipment Inventory Data Gathering SOW.

Milestone Billing - Invoice Schedule

Invoicing for the Equipment Inventory Data Gathering service will be provided as delivery milestones are completed for projects equal to or greater than 500,000 square feet. Below is the schedule for the billing milestones and the related percentage:

<table>
<thead>
<tr>
<th>Equipment Inventory Data Gathering Milestones</th>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization</td>
<td>Project acquisition template set up, Vendor kickoff call with client, Travel arrangement costs; other miscellaneous pre-visit preparation</td>
<td>20%</td>
</tr>
<tr>
<td>On-Site Field Data Capture</td>
<td>Project launch meeting with client first day of onsite, acquisition of data to Scope of Work at all locations included in project, and closing meeting at end of onsite activity to confirm completion and review next step actions.</td>
<td>60%</td>
</tr>
<tr>
<td>Data Management</td>
<td>Data activity, including quality assurance and control that occurs after field work is completed to produce the data file.</td>
<td>20%</td>
</tr>
</tbody>
</table>

*If project is greater than 1.5M Square feet additional milestones will be leveraged.

Attached is a matrix that includes detailed information related to each milestone progression.

Preventive Maintenance Schedule Creation

Purpose

dudesolutions.com  11000 Regency Pkwy #110 / Cary, NC 27518
Preventive Maintenance (PM) Schedule creation is a service offering provided in conjunction with an “Equipment Inventory” (Data Gathering) service or Facility Condition Assessment (FCA). PM Schedules will be generated off the equipment inventory collected by the DSI Service Provider during either the Data Gathering or FCA service. The intent of this service is to identify needed procedures and inspections required to maintain facilities systems in safe, reliable and efficient condition.

Value

By leveraging DSI’s PM Schedule Creation service, DSI clients are able to leverage and incorporate regular preventive maintenance best practices of their equipment. By performing regular or routine maintenance best practices, you ensure that your equipment is operating under safe and optimal conditions thus preventing the potential for downtime and shorter life expectancy.

Deliverables

All Preventive Maintenance Schedule Creation services include the following deliverables:

- Creation of PM Schedules for populating your Dude Solutions Work & Asset Management solution
- Data population within DSI Software. No report will be provided.

Methodology and Approach

DSI Service Providers leverage multiple libraries of PM standards to create PM schedules. These standards are based upon prevailing national codes and standards such as ASTM, ASHRAE, NFPA and BOMA. Procedures related to performing the tasks within the schedule will include:

- Safety Points
- Tools Required
- Estimated Time to Complete Maintenance
- Step-by-step procedure to complete maintenance work order

Prior to the import or population within the DSI Software, the DSI Service Provider will:

- Review of PM Task Check-off Lists with Client
- Setup baseline PM schedules for the equipment inventory collected
- Work with the Client to determine PM Schedule assignment. Assignment includes setting up the appropriate Technician or contractor who will be performing the related PM tasks into the master import template to ensure that the routing of work flows accordingly in the Work & Asset Management Solution. Assignment will be made at the location or craft level. Anything above and beyond this level of
assignment will be managed and maintained by the client within the software or require a custom scope of work for the DSI Service Provider to deliver. For assignment to occur, the client must have the Technician or contractor created in the software prior to onsite activity.

- Work with the Client to determine the start date, frequency and load balancing based upon client staffing. If start dates cannot be determined or agreed upon within a timely manner, the PM Schedules will be loaded into the Client’s Work & Asset Management solution as “inactive”.

Assumptions

- Client will provide feedback/review of PM Schedules within 15 business days of delivery from the DSI Service Provider. If feedback/review of PM Schedules exceeds 30 business days, DSI will provide a Deliverable Acceptance Form to the client to complete review within 30 days. If feedback is not provided during this time period, DSI will assume delivery of the service and import the PM schedules as “inactive” in the system. DSI will provide training on how updates can be made within the software or perform mass updates if needed for a fee.
- Once PM Schedules are imported into the DSI Work and Asset Management applications, any updates and/or alterations of those schedules need to be communicated to DSI within 30 days. DSI will only make updates related to the below items:
  - Discontinuation of PM Schedules created with the service
  - Alteration of frequency on existing schedules created with the service
  - Alteration of start dates for the schedules created with the service

Otherwise, any revisions beyond this 30 day period will be the responsibility of the client to perform within the software or DSI to perform at an additional fee.

- Reconciliation of existing PM Schedules in the client’s account is subject to additional costs depending upon the number of active PM’s and is not a part of the standard SOW.

Invoice Schedule

Invoicing for the PM Schedule Creation Service will be provided upon receipt of PM Schedule drafts at 100%

Special Terms for Asset Essentials:

Asset Essentials pricing is based on a maximum storage limit of 20GB of data. Data storage that exceeds 20GB is subject to an additional fee. If added before December 31, 2020 fee is $500 per 20GB. Future rates subject to the same annual increase as other software.

Terms of Service:

- Proposal has been prepared for St Charles County
- Proposal expires in 60 days
- Initial Term: 9 months
- Payment: Terms are net 30 days
- Billing frequency other than annual is subject to additional processing fees
Dude Solutions

- Automatic invoicing of annual fee will occur at the end of each term unless request for non-renewal is received in writing 30 days prior to renewal date.
- Dude Solutions, Inc. agrees the Annual Fees for the first (2021) Renewal Term shall remain fixed at the annual subscription rates provided in the Investment section of this document. The Annual Fees for the second (2022), third (2023), and fourth (2024) Renewal Terms may increase by an amount not to exceed five percent (5%) over the immediately preceding Renewal Term.
- Applicable sales taxes are in addition to the quoted price. If your organization is tax exempt, please email a copy of your Tax Exemption Certificate to accountsreceivable@dudesolutions.com
- Please address purchase order to: Dude Solutions, 11000 Regency Parkway, Suite 110, Cary, NC 27518
- Service dates are scheduled Monday-Friday
- If a service day is rescheduled or cancelled by St Charles County, then St Charles County is responsible for any cancellation fees incurred by rescheduling or cancelling travel and living fees.
- Onsite service days rescheduled less than 2 weeks before the scheduled delivery date will incur cancellation fees.
- Services will be scheduled upon written acceptance of the terms and conditions of this proposal.
- We must allow six weeks of lead time from the purchase date for booking service for travel and living purposes.
- Invoicing for onsite service days and virtual consulting will be issued as days are delivered in the case of multiple trips.
- Software portion would be invoiced upon contract acceptance.
- Dude Solutions, Inc. maintains the necessary liability coverage for their products and services. Proof of insurance can be provided upon request.
- Asset Essentials is offered based upon the terms and conditions ("Terms") set forth in the Asset Essentials Online Subscription Agreement [https://dudesolutions.com/aeterns.html](https://dudesolutions.com/aeterns.html)
- Acceptance is expressly limited to these Terms. Any additional or different terms proposed by you (including, without limitation, any terms contained in any document incorporated by reference into the Purchase Order) are objected to and rejected and will be deemed a material alteration hereof.
<table>
<thead>
<tr>
<th>Milestone</th>
<th>Milestone investment and Time Engagement</th>
<th>Definition</th>
<th>Parties Involved</th>
<th>Steps</th>
<th>Deliverable</th>
<th>Required Signed off from Client</th>
<th>Trigger for Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kickoff (Mobilization Phase)</td>
<td>BV will contact the client within 2 days of DSI project initiation to schedule the kickoff project meeting. <em>Initial Pro-rated software investment of $5,607 is invoiced upon execution of contract</em></td>
<td>Activities that occur from DSI project initiation until BV arrives at the client site to conduct the onsite facility assessment.</td>
<td>BV Program Manager &amp; Client Rep Responsible for the project</td>
<td>1. Kick-off Meeting with the BV Program Manager and the Client. All aspects of the project will be outlined with the client such as reviewing the building list, discussing what is assessed during the onsite, what the deliverable will look like, and migration of the assessment data into the client's Dude Solutions Software. 2. BV will also discuss with the client their ability to offer manpower for escorting BV inspectors around. The number of escorts will determine how quickly the complete the project.</td>
<td>Project Time-Line with onsite dates and approximate draft report dates</td>
<td>Client understands and accepts the scope of work understands the expectations of the SOW</td>
<td>Invoice for initial software cost is issued upon execution of contract</td>
</tr>
<tr>
<td>Scheduling (Mobilization Phase)</td>
<td>$5,884.46  Scheduling happens within 5 days of the kick-off meeting</td>
<td>Scheduling of the onsite inspection</td>
<td>BV Scheduling Coordinator and Client Rep Responsible for the project</td>
<td>1. BV's Scheduling Department will be in touch with the client to discuss the logistics and schedule the onsite for the Data Gathering service.</td>
<td>Agreed schedule – BV scheduling team will confirm with an email to the client stating onsite dates and name of inspector</td>
<td>Client accepts the schedule BV has provided them</td>
<td>Invoice will be issued to the client after scheduling dates and time have been confirmed with the client.</td>
</tr>
<tr>
<td>On-site Field Activity</td>
<td>$17,653.38  Estimate 1 to 2 weeks of the last day of an onsite for a typical client; longer time</td>
<td>Involves all aspects of the onsite activity while the BV inspector is at the client sites. Time of on-site field activities vary depending on the size of the project. A typical inspector can</td>
<td>BV Inspector &amp; client rep to escort inspector around facilities. Typically, the client rep is the maintenance manager or</td>
<td>1. On the first day of the on-site, BV will interview a representative of the client with the most historical knowledge of the facility that BV will be assessing. 2. BV's inspector will visually assess the facility, documenting all deficiencies and collecting make, model, serial number, current condition, and remaining useful</td>
<td>None</td>
<td>Client site staff confirms that the BV Inspector accessed all buildings</td>
<td>Invoice will be issued to the client after the last scheduled on-site is completed.</td>
</tr>
<tr>
<td>Frame for larger clients</td>
<td>get through 50,000 to 80,000 sf in one day. If the client can offer additional escorts for the on-site then BV can accommodate a larger field team. Ex. A client with multiple buildings totaling 500,000 sf will typically take 2 BV inspectors 5 days to assess or 1 BV inspector 10 days. Typically On-sites are scheduled 2 to 3 weeks out from the initial kick-off meeting.</td>
<td>tech most knowledgeable of the facility that is being inspected</td>
<td>life of building components, mechanical equipment, and site assets. 3. At the end of the onsite, BV's inspector will have a close out meeting to confirm that all critical areas were assessed and documented.</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
| Data Management | **$5,884.46**  
Twice the time of the onsite.  **Larger clients will receive a rolling delivery** | Report writing and equipment inventory, including quality assurance and control, that occurs after field work is completed to produce the data file.  
BV Project Coordinator, BV Inspector, BV QA/QC Team  
Client: Rep who is most knowledgeable to effectively review draft equipment inventory.  
Client Rep responsible for the project is required for final draft sign-off. | 1. During this phase BV will process all data collected during the onsite to produce an equipment inventory.  
2. An equipment inventory will be submitted to the client for review.  
3. BV's Program Manager will complete a draft review with the client. This includes review and vetting through the data with the client to validate that all data is accurate, consistent, complete and meets the client's expectations.  
4. At this point BV will take any draft comments from the client and amend the inventory for the Client's final endorsement. | Draft inventory  
Inventory Report in an Excel CSV format, with headers, will be provided to the client. For review.  
All drafts are delivered to the client on a rolling basis. The client typically has 3 weeks to review the drafts. Client must signoff on the draft before BV starts the final equipment inventory and draft Preventive Maintenance Schedule.  
Invoice will be issued to the client once the equipment inventory is submitted to the client for review. |
| Preventive Maintenance | **$11,067.70**  
Preventive Maintenance Schedule Creation | BV Program Manager and | 1. A draft of the preventive maintenance schedule will be presented to the client.  
Final Preventive Maintenance Schedule  
Client must sign off on the Final Preventive | |
<table>
<thead>
<tr>
<th>Consulting (A draft of the preventive maintenance schedule will be presented to the client)</th>
<th>Estimated time to create a draft PM Schedule is 2 to 3 weeks. Typical PM Consulting sessions to review draft is 2 to 3 hours with the client. Then allow a week to make any draft changes to the PM Schedule.</th>
<th>will be created from the final equipment inventory.</th>
<th>Client Project Rep.</th>
<th>2. The BV program manager and the client rep will review the schedule together to see if the schedule can accommodate the clients current or planned maintenance workflow. 3. Adjustments will be made based on this consultative phase between BV and the client.</th>
<th>Maintenance Schedule</th>
<th>client once the preventive maintenance schedule is submitted to the client for review.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handoff from BV to DSI</td>
<td>$9,400</td>
<td>All finalized deliverables will be exported to DSI team members for processing and upload to the clients software.</td>
<td>After final delivery the client’s engagement with BV is finished. DSI will re-engage with the client for software training.</td>
<td>The final deliverables will be sent to the client via email, drop box, or share file and BV will generate the final data upload and migrate it into the client’s Dude Solutions Software.</td>
<td>All collected data must be viewable and usable from within the Application with no issues. The Application must function as expected.</td>
<td>Client confirmation that they have received the final report and that all data has been migrated into the client’s DSI Software.</td>
</tr>
</tbody>
</table>
COMPANY OVERVIEW

Profile

Bureau Veritas Building Assessments and Project Management ("Bureau Veritas" or "BV") is a professional service consulting firm providing comprehensive architectural, engineering, energy, and environmental solutions. Our team includes over 700 building professionals nationwide, including Registered Architects, Professional Engineers, Certified ADA Specialists, Certified Energy Managers, Environmental Professionals, Building Systems Consultants, and Code Compliance Experts.

Annually, Bureau Veritas conducts thousands of assessments for Private, Industrial, Government, K-12 Education, and Higher Education Clients. Having successfully completed assessments of several million square feet of building space, Bureau Veritas has developed a proven and efficient methodology for the performance of field assessments, and data collection.

Bureau Veritas' recommendations are based on knowledge of property conditions, market conditions, regulations, and Client objectives. The firm's core of architectural, construction, engineering, environmental, and seismic expertise forms the foundation on which the company teams with Clients to create and implement real property management solutions. These range from complex, web-based facility and portfolio management programs, to traditional property assessments required by lenders.

SERVICES

- Facility Condition Assessments
- Space Analysis
- Educational Adequacy
- Capital Needs Assessments
- Energy Studies
- Capital Planning
- Feasibility Studies
- Project Management
- ADA Accessibility Compliance
- Construction Monitoring
- Plan and Document Review
- Inventory, Barcoding and Tagging
- Capital Planning Software
- Preventive Maintenance

What We Do

Company Information

Name of Company: Bureau Veritas Technical Assessments LLC
Year Founded: 1828
Headquarters Address: 10461 Mill Run Circle, Suite 1100 Owings Mills, MD 21117
Primary Contact: Cheyenne Irby
Associate Vice President
Telephone: (800) 733-0660, ext. 6538
Email: cheyenne.irby@bvna.com
Website: bvna.com
EXHIBIT B

SUBSCRIPTION AGREEMENT

This Online Subscription Agreement (this “Agreement”) shall govern Customer’s (as defined below) access and use of the Service (as defined below) provided by Smartware Group, Inc. (“Provider”), an Affiliate (as defined below) of Dude Solutions, Inc. (including its successors and assigns, “DSI”).

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

Section 1.0 Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Service.

1.2 “Account” means Customer’s specific account where Customer subscribes to access and use the Service.

1.3 “Account User” means each employee, consultant and contractor of Customer that has been granted Access Credentials.

1.4 “Affiliate” means, with respect to any legal entity, any other legal entity that (i) controls, (ii) is controlled by or (iii) is under common control of such legal entity. A legal entity shall be deemed to “control” another legal entity if it has the power to direct or cause the direction of the management or policies of such legal entity, whether through the ownership of voting securities, by contract, or otherwise.

1.5 “Annual Fee” means the annual fee invoiced to Customer by Provider (or its sales agent) prior to the Initial Term and each applicable Renewal Term, which is required to be paid in order for Customer to be permitted to access and use the Service and, if Customer purchases the Asset Essentials Connector Toolkit, the API.

1.6 “API Toolkit” or “API” means Provider’s proprietary application programming interface and any accompanying or related documentation, software libraries, software tools, published specifications, and other materials, as amended from time-to-time in Provider’s sole discretion.

1.7 “Asset Essentials Connector Toolkit” means Provider’s add-on module that (i) enables Provider’s customers to integrate (import/export) Customer Data with the Service in batch-mode or real-time, and (ii) consists of the “Connector Tool”, which is a client-side executable program installed locally on Customer’s computer, and the API.

1.8 “Confidential Information” means any non-public information and/or materials disclosed in writing or orally by a party under this Agreement (the “Disclosing Party”) to the other party (the “Receiving Party”), which (i) is designated in writing as confidential at the time of disclosure, or (ii) with respect to non-public information disclosed orally, the Disclosing Party sends the Receiving Party a written notice to Receiving Party within 15 days after oral disclosure identifying the non-public information that was disclosed as its confidential information, including when,
where, how and to whom such non-public information was disclosed. For avoidance of doubt, Provider’s Confidential Information shall include the source code, data structure, algorithms and logic of the Applications and Service. Notwithstanding the foregoing, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a Third Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

1.9 “Content” means all of the audio and visual information, documents, content, materials, products and/or software contained in, or made available through, the Service.

1.10 “Customer” means the legal entity identified on the Account.

1.11 “Customer Data” means all data, information and other content provided by or on behalf of Customer to the Service, including that which the Account Users input or upload to the Service, and excluding Confidential Information as defined above.

1.12 “Documentation” means the user documentation relating to the Service, including but not limited to descriptions of the functional, operational and design characteristics of the Service.

1.13 “DSI Data” means all data, information and other content provided by or on behalf of DSI customers to any of the DSI Services.

1.14 “DSI Services” means DSI’s suite of facility management software-as-a-service applications, solution and services, as updated, enhanced or otherwise modified from time-to-time.

1.15 “Highly-Sensitive Personal Information” means an Account User’s (i) government-issued identification number (including social security number, driver’s license number or state-issued identification number), (ii) financial account number, credit card number, debit card number, credit report information, in each case with or without any required security code, access code, personal identification number or password that would permit access to such Account User’s financial account; and/or (iii) biometric data.

1.16 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) and all regulations promulgated thereunder (45 C.F.R. §§ 160-164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and all regulations promulgated thereunder, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended from time to time.

1.17 “Implementation, Training and Support Program” or “ITSP” means Provider’s comprehensive implementation, training and support program provided to Provider’s customers with respect to the Service.

1.18 “Intellectual Property Rights” means all ideas, concepts, designs, drawings, packages, works of authorship, processes, methodologies, information, developments, materials, inventions, improvements, software, and all intellectual property rights worldwide arising under statutory or common law, including without limitation, all (i) patents and patent applications owned or licensable by a party hereto; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; (iii) rights related to protection of trade secrets and Confidential Information; (iv) trademarks, trade names, service marks and logos; (v) any right analogous to those set forth in
clauses (i) through (iv); and (vi) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.19 "Service" means the “Asset Essentials” SaaS-based application or the “Asset Essentials Enterprise” SaaS-based application, as applicable, which Customer subscribes to pursuant to this Agreement, in each case as updated, enhanced or otherwise modified from time-to-time.

1.20 “Third Party” means a party other than Customer, Provider or DSI.

Section 2.0 Use of the Service and the API; Proprietary Rights

2.1 Use of the Service and the API.

(a) Service Subscription. Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.1 and payment of the Annual Fees required hereunder), (i) Provider shall permit Customer’s Account Users to access and use the Service during the Term, including access and use of all of the Content contained in or made available through the Service, (ii) Customer shall be automatically enrolled in the ITSP, and (iii) Provider shall use commercially reasonable efforts to make available to Customer each of the components described in the ITSP. Customer agrees that it shall use the Service solely for internal business purposes, and access and use of the Service and the ITSP shall be limited to Account Users.

(b) API License. Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.1 and payment of the Annual Fees required hereunder), provided that Customer is purchasing the right to use the Asset Essentials Connector Toolkit, Provider hereby grants to Customer a limited, non-exclusive, non-transferable, revocable license (without the right to sublicense) to use and make calls to the API solely for the purpose of (i) extracting and transferring Customer Data from the Service to other Third Party applications used by the Customer for internal business purposes, and/or (ii) Customer’s internal development efforts to develop applications to work in conjunction with the functionality and capabilities of the Service purchased by Customer (“Customer Applications”). Customer shall have no right to distribute, license (whether or not through multiple tiers) or otherwise transfer the API to any Third Party or incorporate the API in any software, product, or technology.

(c) Account Setup. To subscribe to the Service, Customer must establish its Account, which may only be accessed and used by its Account Users. To setup an Account User, Customer must provide Provider (and agree to maintain, promptly update and keep) true, accurate, current and complete information for such Account User. If Customer or any applicable Account User provides any information that is untrue, inaccurate, not current or incomplete, Provider has the right to immediately suspend or terminate Customer’s Account and usage of the Service and the API and refuse any and all future use. Each Account User must establish and maintain personal, non-transferable Access Credentials, which shall not be shared with, or used by, any other Third Party. Customer may not transfer an Account User’s Access Credentials and/or its right to access and use the Service to a different user. Customer shall be solely responsible for any and all activities that occur under its Account, including all acts and omissions of its Account Users. Customer shall notify Provider immediately of any unauthorized use of its Account and/or any other breach of security of the Service that it suspects or becomes aware of.

(d) Customer Responsibilities. Customer shall: (i) take appropriate action to ensure that non-Account Users do not access or use the Service or the API; (ii) ensure that all Account Users comply with all of the terms and conditions of this Agreement, including the limitations and restrictions set out in Section 2.1(e); (iii) be solely responsible for the accuracy, integrity, legality, reliability and appropriateness of all Customer Data created by
Account Users using the Service; (iv) access and use the Service solely in compliance with the Documentation and all applicable local, state, federal, and foreign laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (v) allow e-mail notifications generated by the Service on behalf of Customer’s Account Users to be delivered to Customer’s Account Users; and (vi) promptly update and upgrade its system as requested or required in order to ensure continued performance and compatibility with upgrades to the Service and/or API Modifications (as defined in Section 2.1(g)). Customer shall be responsible for any breach of this Agreement by Account Users and any unauthorized access or Use of the Service by non-Account Users directly resulting from and caused by the Customer’s failure to take appropriate actions to ensure access is limited to only Account Users.

(e) Limitations and Restrictions. Customer agrees that it shall not, and shall not permit any Third Party to, directly or indirectly: (i) modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of the Service or the API; (ii) assign, transfer, lease, rent, sublicense, distribute or otherwise make available the Service or the API, in whole or in part, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Access Credentials or otherwise allow access or use the Service or the API to provide any service bureau services or any services on a similar basis; (iv) use the Service or the API in a way not intended by Provider or for any unlawful purpose; (v) use the Service or the API to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) attempt to tamper with, alter, disable, hinder, by-pass, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Service or the API; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Service; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Service or the API; (ix) interfere with or disrupt the integrity or performance of the Service, the API or the data contained therein; (x) access or use the Service or the API in order to replicate applications, products or services offered by Provider or DSI and/or otherwise build a competitive product or service, copy any features, functions or graphics of the Service or the API or monitor the availability and/or functionality of the Service or the API for any benchmarking or competitive purposes; (xi) under any circumstances, through a Third Party application, a Customer Application or otherwise, repackage or resell the Service, the API or any data received via the API; (xii) store, manipulate, analyze, reformat, print, and display the Content for personal use; (xiii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Service; and (xiv) store Highly-Sensitive Personal Information. Highly-Sensitive Personal Information should not be entered into the Service, as there are no data fields requesting this type of information.

(f) Additional Service Guidelines. Provider reserves the right to establish or modify general practices and limits concerning use of the Service, including without limitation, the maximum number of days that Customer Data shall be retained by the Service and the maximum disk space that shall be allotted on Provider servers on Customer’s behalf. Provider shall provide at least sixty (60) days’ prior notice of any such modification. Provider also reserves the right to block IP addresses originating a Denial of Service (DoS) attack or IP addresses causing excessive amounts of data to be sent to Provider servers. Provider shall notify Customer should this condition exist and inform Customer of its action. Once blocked, an IP address shall not be able to access the Service or the API and the block may be removed once Provider is satisfied corrective action has taken place to resolve the issue.

(g) API Modifications. Provider may modify, amend, change, or deprecate all or part of the API in its sole discretion at any time (an “API Modification”). Provider shall use reasonable efforts to provide notice to Customer of any such API Modifications as soon as reasonably practical. Customer acknowledges that an API Modification may have a material adverse effect on any applications utilizing or relying upon the API (including Customer Applications), including but not limited to causing such applications not to operate as designed. Provider
shall have no liability of any kind to Customer or any user of such applications with respect to such API Modifications or any adverse effects resulting from such API Modifications.

(h) **Controlled API Usage.** Provider may limit or suspend Customer’s usage of or access to the API if, in Provider’s sole discretion, Customer or Customer’s use of the API are adversely affecting the performance or operation of the API or the Service. Provider shall use reasonable efforts to provide notice to Customer of any such actions as soon as reasonably practical and cooperate with Customer to restore access as soon as possible.

(i) **Links to Third Party Websites.** To the extent that the Service links to any Third Party website, application or service, the terms and conditions thereof shall govern Customer’s rights with respect to such website, application or service, unless otherwise expressly provided by Provider. Provider shall have no obligations or liability arising from Customer’s access and use of such linked Third Party websites, applications and services.

2.2 **Proprietary Rights.**

(a) Customer acknowledges and agrees that (as between Customer and Provider) Provider retains all ownership right, title, and interest in and to the Service, the API, the Documentation and the Content, including without limitation all corrections, enhancements, improvements to, or derivative works thereof (collectively, “Derivative Works”), and in all Intellectual Property Rights therein or thereto. To the extent any Derivative Work is developed by Provider based upon ideas or suggestions submitted by Customer to Provider, Customer hereby irrevocably assigns all rights to modify or enhance the Service and/or the API using such ideas or suggestions or joint contributions to Provider, together with all Intellectual Property Rights related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Customer (or to any party claiming through Customer) any Intellectual Property Rights in or to the Service, the API, the Documentation and the Content, other than the rights expressly set forth in this Agreement.

(b) Provider acknowledges and agrees that (as between Customer and Provider) Customer retains all ownership right, title, and interest in and to the Customer Data, including all Intellectual Property Rights therein or thereto. Notwithstanding the foregoing, Customer hereby grants Provider and its Affiliates a non-exclusive, royalty-free license to: (i) access, display, copy, distribute, transmit, publish, disclose and otherwise use all or any portion of the Customer Data to improve the Service, the API and the performance of Provider, including without limitation, submitting and sublicensing the Customer Data to Third Parties for analytical purposes, provided that (x) such Third Parties have entered into a written agreement with Provider to maintain the confidentiality of the Customer Data and (y) Provider shall not specifically identify the Customer Data as originating from Customer when providing the Customer Data to such Third Parties; (ii) integrate and incorporate the Customer Data with and into the DSI Data (collectively, the “Combined Data”); (iii) access, copy, view, analyze, process and use the Combined Data for the purpose of hosting, operating and providing the DSI Services; and (iv) use, copy and publish, and disclose, transmit and re-distribute all or any portion of the Combined Data to DSI customers in connection with their access and use of the DSI Services.

**Section 3.0 Provider Responsibilities**

3.1 **Implementation, Training and Support Program (ITSP).** During the Term, Provider (or its agent, representative or designee) shall provide and maintain an ITSP. During the Term, Provider shall, as part of Customer’s Subscription Fees, provide telephone and email support (“Support Services”) during the hours of 8:00 a.m. (EST) and 6:00 p.m. (EST), Monday through Friday, excluding New Year’s Day, Memorial Day, Independence Day, Labor Day,
Thanksgiving Day, day after Thanksgiving, Christmas Eve and Christmas Day ("Business Hours"), except Community Development Services, where Business Hours means 5:00 AM – 5:00 PM PST.

3.2 **Professional Services.** Provider shall provide and perform professional, technical, consulting and/or other services (collectively, "Professional Services") that are mutually agreed upon and described in one or more statements of work that expressly reference this Agreement. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect to the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that will be developed pursuant to such statement of work, and (iii) set forth each party’s respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work. Provider represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner.

3.3 **Customer Data.** Provider shall not edit or disclose any information regarding Customer’s Account, including any Customer Data, without Customer’s prior permission, except in accordance with this Agreement. Notwithstanding the foregoing, Provider is hereby permitted to provide certain statistical information (e.g., usage, average costs or time values, or user traffic patterns) in aggregated and de-identified form to Third Parties or to other subscribers.

3.4 **Service Levels.**

(a) Provider shall use commercially reasonable efforts to make the Service available (i) 99.9% of the time during the hours of 6:00 a.m. (Eastern time) to 10:00 p.m. (Eastern time), Monday through Friday, excluding New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, and Christmas ("Business Hours"), and (ii) 99.5% of the time, determined on a twenty-four (24) hours a day, seven (7) days a week basis. Availability shall be calculated on a monthly basis. For purposes of calculating availability, the Service shall not be deemed unavailable during any period arising from: (i) routine system maintenance that is performed weekly during non-Business Hours; (ii) scheduled downtime for extended system maintenance (of which Provider shall give at least 8 hours’ prior notice and which Provider shall schedule to the extent reasonably practicable outside of Business Hours); and (iii) any unavailability caused by circumstances beyond Provider’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, non-Provider software or hardware, or denial of service attack. In the event the unavailability is caused by circumstances beyond Provider’s reasonable control, as stated herein, the Customer has the right to terminate the contract immediately, by providing written notice of the immediate termination, and shall be entitled to a refund of the prepaid fees for the remainder of the then current term.

(b) Provider shall use reasonable efforts to ensure the availability of the API in accordance with the service levels described in Section 3.4(a). Notwithstanding the foregoing, Provider does not guarantee any required uptime, performance, or integrity of any product, application or service that integrates with and/or otherwise utilizes the API (including, without limitation, any such product, application or service developed by Customer). Moreover, Provider shall not be liable to Customer or any Third Party for the unavailability of the API or the failure of the API to perform in accordance with its specifications. Customer shall not represent to any Third Party any availability or performance levels with respect to the API.

3.5 **Protection of Customer Data.** Provider shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. In addition, if Customer is a "Covered Entity" under HIPAA, Provider shall be Customer’s “Business Associate” under HIPAA, and any Customer Data provided by Customer to Provider in their capacities as a Covered Entity and Business
Associate, respectively, Provider and Customer shall enter into a Business Associate Agreement (the form of which shall be reasonably satisfactory to Provider).

Section 4.0 Third Party Interactions

4.1 Relationship to Third Parties. In connection with Customer’s use of the Service, Customer may: (i) enter into correspondence with and/or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service; (ii) purchase goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Customer’s Account, the Service, the API and a Third Party provider; (iv) be offered additional functionality within the user interface of the Service through use of the API; and/or (v) be provided content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such activity, shall be solely between Customer and the applicable Third Party. Provider shall have no liability, obligation or responsibility for any such correspondence, purchase, promotion, data exchange, integration or interaction between Customer and any such Third Party.

4.2 Ownership. Customer is the owner of all Third Party content and data loaded into the Customer Account. As the owner, it is Customer’s responsibility to make sure it meets its particular needs. Provider shall not comment, edit or advise Customer with respect to such Third Party content and data in any manner.

4.3 No Warranty or Endorsement. Provider does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by Provider as “certified,” “validated,” “premier” and/or any other designation. Provider does not endorse any sites on the Internet which are linked through the Service. Provider is providing these links to Customer only as a matter of convenience, and in no event shall Provider be responsible for any content, products, or other materials on or available from such sites.

4.4 Additional Terms. The Disclaimer of Warranties (Section 8.1) and Limitation of Liability (Section 8.3) set forth herein shall apply to all Third Party interactions.

Section 5.0 RESERVED

Section 6.0 Annual Fees

6.1 Annual Fees. Customer shall, on or before the commencement of the Initial Term of a Service subscription, pay to DSI the Annual Fee due to Provider for such Service subscription. Thereafter, DSI shall invoice Customer for each applicable Annual Fee due to Provider at least sixty (60) days prior to the commencement of the applicable Renewal Term. Unless Customer provides written notice of non-renewal in accordance with Section 7.1, Customer agrees to pay all Annual Fees due to Provider no later than thirty (30) days after the receipt of DSI’s applicable invoice therefor. Customer is responsible for providing complete and accurate billing and contact information to DSI and Provider and notifying DSI and Provider of any changes to such information.

6.2 RESERVED.

6.3 Renewal Charges. Provider maintains the right to increase Annual Fees and other applicable fees and charges in connection with each Renewal Term. Provider shall notify Customer of any such increase no less than 60 days prior to the start of the applicable Renewal Term subject to such increase.

6.4 Taxes. Provider’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases
hereunder. If Provider has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 6.4, DSI shall invoice Customer and Customer shall pay that amount unless Customer provides DSI with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer agrees, to the extent allowed or permitted by law, to indemnify and hold Provider harmless from any encumbrance, fine, penalty or other expense which Provider may incur as a result of Customer’s failure to pay any Taxes required hereunder. For clarity, Provider is solely responsible for taxes assessable against Provider based on its income, property and employees.

Section 7.0    Term and Termination

7.1    Term. This Agreement commences on the date Customer establishes its Account and continues until the Service subscription hereunder has expired or have been terminated (the “Term”). The initial term of the Service subscription shall be for a period of one (1) year (the “Initial Term”). Thereafter, the Service subscription shall automatically renew for successive one year periods (each, a “Renewal Term”) unless either party has provided written notice of its intent to not renew the Service subscription for a subsequent Renewal Term not less than thirty (30) days prior to the expiration of the then-current Initial or Renewal Term applicable to the Service subscription.

7.2    Termination of Agreement for Breach. Either party may terminate this Agreement (including its Service subscription and Account) prior to the expiration of the Term if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach is given by the non-breaching party; provided that if the breach involves a failure of Customer to pay any of the fees required under this Agreement, the cure period shall be reduced to ten (10) days. Without limiting the foregoing, in the event of a breach that gives rise to the right by Provider to terminate this Agreement, Provider may elect, as an interim measure, to suspend Customer’s access and use of the Service, the API (if applicable) and the Account until the breach is cured. Provider’s exercise of its suspension right shall be without prejudice to Provider’s right to terminate this Agreement upon written notice to Customer.

7.3    Termination for Convenience. Customer may terminate this Agreement (including its Service subscription and Account) at any time for convenience by providing DSI thirty (30) days’ prior written notice to the following email address: notice@dudesolutions.com. Upon termination by Customer pursuant to this Section 7.3, Customer may request in writing and be granted a refund in accordance with the following: (i) if Provider receives Customer’s written notice of termination within the first sixty (60) days after the commencement of the Initial Term, Provider shall refund to Customer eighty percent (80%) of the Annual Fee prepaid for the Initial Term (the “Initial Year Subscription Fee”); (ii) if Provider receives Customer’s written notice of termination during the Initial Term but after the first sixty (60) days thereof, Provider shall refund to Customer a pro rata portion of the Initial Year Subscription determined based upon the number of full months remaining in the Initial Term (based upon the effective date of termination); (iii) if Provider receives Customer’s written notice of termination during a Renewal Term, Provider shall refund to Customer a pro rata portion of the Annual Fee prepaid for such Renewal Term determined based upon the number of full months remaining in such Renewal Term (based upon the effective date of termination). For avoidance of doubt, no refund shall be granted with respect to fees for Professional Services.

7.4    Effect of Termination. Upon termination of this Agreement, (i) Customer’s access and use of the Service shall automatically cease. Within thirty (30) days of receiving the Customer’s written request, Provider will perform one (1) export of Customer Data in a generally accepted commercially reasonable format as mutually agreed upon by Customer and Provider, provided such written request is received within sixty (60) days of the termination date. Provider shall have no obligation to maintain the Customer Data or to forward the Customer Data to Customer or any Third Party for a period of more than ninety (90) days from the termination date.

7.5    Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 2.1(e), 2.2, 7.4, 8, 9 and 10. Termination of this Agreement, or any of the
obligations hereunder, by either party shall be in addition to any other legal or equitable remedies available to such party, except to the extent that remedies are otherwise limited hereunder.

Section 8.0 Disclaimers and Indemnification

8.1 Disclaimer of Warranties. TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICE, THE API, ALL SERVER AND NETWORK COMPONENTS, WEB SERVICES, SOFTWARE AND THE DOCUMENTATION, ARE PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT PROVIDER DOES NOT WARRANT THAT THE SERVICE OR THE API WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, OR THAT ANY DEFECT IN THE SERVICE OR THE API WILL BE CORRECTED. IN ADDITION, PROVIDER MAKES NO WARRANTIES THAT THE API SHALL NOT CAUSE DISRUPTIONS, ERRORS, LOSS OF DATA, LOSS OF USE, OR OTHER PROBLEMS WITH ANY THIRD PARTY APPLICATION, CUSTOMER APPLICATION AND/OR ANY COMPUTER ON WHICH ANY SUCH APPLICATION IS INSTALLED OR USED. PROVIDER IS NOT RESPONSIBLE FOR ANY DAMAGES OR HARM ARISING FROM CUSTOMER’S USE OF THE API AND/OR ANY CUSTOMER APPLICATION. NO INFORMATION OR ADVICE OBTAINED BY CUSTOMER OR OTHER THIRD PARTIES FROM PROVIDER OR THROUGH THE SERVICE OR THE API SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

8.2 Indemnification.

(a) Indemnity by Provider. Provider shall defend, indemnify and hold harmless Customer from any loss, damage or expense (including reasonable attorneys’ fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Customer, in connection with any Third Party claim (each, a “Claim”) alleging that Customer’s use of the Service as expressly permitted hereunder infringes upon any United States patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Customer (x) promptly gives Provider written notice of the Claim; (y) gives Provider sole control of the defense and settlement of the Claim; and (z) provides to Provider all reasonable assistance, at Provider’s expense. If Provider receives information about an infringement or misappropriation claim related to the Service, Provider may in its sole discretion and at no cost to Customer: (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Customer’s continued use of the Service, or (iii) terminate this Agreement (including Customer’s Service subscriptions and Account) upon prior written notice and refund to Customer any prepaid Annual Fee covering the remainder of the term of the terminated Service subscriptions. Notwithstanding the foregoing, Provider shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Service in combination with any software or hardware not expressly authorized by Provider, (B) any modifications or configurations made to the Service by Customer without the prior written consent of Provider, and/or (C) any action taken by Customer relating to use of the Service that is not permitted under the terms of this Agreement. This Section 8.2(a) states Customer’s exclusive remedy against Provider for any Claim of infringement or misappropriation of a Third Party’s Intellectual Property Rights related to or arising from Customer’s use of the Service.

(b) To the extent allowed or permitted by law, Customer shall defend, indemnify and hold harmless Provider from any loss, damage or expense (including reasonable attorneys’ fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Provider, in connection with any Claim alleging that the Customer Data, or Customer’s use of the Service or the API in breach of this Agreement, infringes upon any United States patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Provider (x) promptly gives Customer written notice of the Claim; (y) gives Customer sole control of the defense and settlement of the Claim; and (z) provides to Customer all reasonable assistance, at Customer’s expense. This Section 8.2(b) states Provider’s exclusive remedy against Customer for any Claim of...
infringement of misappropriation of a Third Party’s Intellectual Property Rights related to or arising from the Customer Data or Customer’s use of the Service in breach of this Agreement.

8.3 **Limitation of Liability.** IN NO EVENT SHALL PROVIDER, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO CUSTOMER IN EXCESS OF THE AMOUNT OF ANNUAL FEES PAID BY CUSTOMER TO PROVIDER (THROUGH DSI), FOR USE OF THE SERVICE PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE LAST ACT OR OMISSION GIVING RISE TO THE LIABILITY. UNDER NO CIRCUMSTANCES SHALL PROVIDER HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

**Section 9.0 Confidentiality**

9.1 **Protection of Confidential Information.** The Receiving Party agrees that it shall (i) hold the Disclosing Party’s Confidential Information in strict confidence and shall use the same degree of care in protecting the confidentiality of the Disclosing Party’s Confidential Information that it uses to protect its own Confidential Information, but in no event less than reasonable care, (ii) not use the Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement; (iii) not copy any part of the Disclosing Party’s Confidential Information except as expressly permitted by this Agreement, (iv) limit access to the Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

9.2 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9.3 **Remedies.** Recipient acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

**Section 10.0 Miscellaneous**

10.1 **Authority.** Customer represents and warrants that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Customer, enforceable against it in accordance with its terms.

10.2 **Acceptance of Privacy Policy.** All data and information provided by Customer through its use of the Service is subject to Provider’s privacy policy, as amended from time-to-time, which can be viewed by clicking the “Privacy” hypertext link located within the Service. By using the Service, Customer accepts and agrees to be bound and abide by such privacy policy.
10.3 Governing Law. This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by and construed under the laws of the State of Missouri, without regard to the principles of conflict of laws.

10.4 Relationship of the Parties. Provider is performing pursuant to this Agreement only as an independent contractor. Provider has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Provider and Customer. Provider shall not act or attempt to act or represent itself, directly or by implication, as an agent of Customer or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Customer or its affiliates.

10.5 Waiver. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

10.6 Assignment. Neither party shall have the right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void, except that Provider shall have the full ability to transfer or assign this Agreement to the surviving entity in a merger or consolidation or to a purchaser of all or substantially all of its assets without the written consent of the Customer.

10.7 Force Majeure. Subject to the limitations set forth below and except with respect to any payment obligations of Customer, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a “Force Majeure Event”). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

10.8 Notices. Except as otherwise specified in Section 7.3 of this Agreement, all notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); or (b) via electronic mail to the respective e-mail addresses included in this paragraph. All notices to Provider shall be addressed to notice@dudesolutions.com. All notices to Customer shall be addressed as to the e-mail address maintained on the Customer’s Account.

10.9 Interpretation of Agreement. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

10.10 Third Party Beneficiaries. Customer acknowledges and agrees that DSI is third-party beneficiary to this Agreement and this Agreement shall not be amended in any manner that affects DSI’s rights hereunder without DSI’s prior written consent. Except as expressly provided in the foregoing sentence, no person or entity not a party to this Agreement will be deemed to be a third-party beneficiary of this Agreement or any provision hereof.
10.11 **Severability.** The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

10.12 **Entire Agreement.** This Agreement is the entire agreement between Customer and Provider regarding Customer’s use of the Service and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in any purchase order or in any other order documentation is void.

10.13 **Modifications.** Any modification to this Agreement shall be agreed to in writing by both parties before becoming effective and binding.

[Remainder of page intentionally left blank; signature page to follow]
IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date last written below.

St Charles County, Missouri

Dude Solutions, Inc.

Signature

Signature

Print Name

Print Name

Title

Title

Date Signed

Date Signed