CLOUD-BASED APPLICATION AGREEMENT

1. <u>Background</u>. Issuetrak, Inc. ("**Issuetrak**") provides a cloud-based service identified in the Quote that allows the entity identified in the Quote (hereinafter "**you**" and "**your**") to report on and monitor the resolution of issues related to your business (the "**Service**"). This Cloud-Based Application Agreement (the "**Agreement**") governs your access to and use of the Service.

2. <u>Quote</u>. The terms of the quote you accepted for the Service (the "**Quote**") are incorporated into this Agreement by this reference.

3. <u>Definitions</u>. Capitalized terms used in this Agreement have the meanings indicated in this Agreement or in the attachments, schedules or exhibits to this Agreement.

4. <u>Rights Granted</u>. Subject to and conditioned upon your payment of the Fees and compliance with all terms of this Agreement, Issuetrak grants to you a non-exclusive, non-assignable and terminable (a) right for you and your employees, consultants, contractors, agents and customers who are authorized by you to access and use the Service (each, a "**User**") in accordance with the terms and conditions herein, and (b) license to use Issuetrak's user manuals, handbooks, and guides relating to the Service, whether in electronic or in hard copy form (the "**Documentation**") during the Term solely for your internal business purposes in connection with your use of the Service.

5. <u>Rights Not Granted</u>. Issuetrak retains all rights not expressly granted to you in this Agreement. Except as expressly set forth in this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to you or any third party any intellectual property rights or other right, title or interest in or to the Service, Documentation, or intellectual property provided to you or any User in connection with the foregoing (collectively, "**Issuetrak IP**").

6. <u>Use Restrictions</u>. You shall not (and shall not authorize or permit others) to: (a) use the Service to send any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or other form of duplicative messages, whether commercial or otherwise; (b) use the Service to transmit unlawful, harassing, libelous, abusive, threatening, vulgar, or otherwise legally objectionable material; (c) copy, modify, or create derivative works of the Service or Documentation, in whole or in part; (d) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation; (e) reverse engineer, disassemble, decompile, decode, adapt, other otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (f) remove any proprietary notices from the Service or Documentation; (g) use the Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any contract, proprietary rights, intellectual property or other rights of any person, or that violates applicable law; or (h) interfere with another's authorized use of the Service.

7. <u>Your Representations and Obligations</u>.

   a. <u>System Requirements</u>. Issuetrak's website (<u>www.issuetrak.com/system-requirements/</u>) describes the minimum system requirements for accessing and using the Service. You are responsible for obtaining and maintaining the internet connection and computer hardware and software you need to access and use the Service.

   b. <u>Point of Contact</u>. You must designate to Issuetrak and retain (or replace) a point of contact who has the authority to make decisions related to the access and use of the Service on your behalf.

   c. <u>Your Responsibility for Your Users, Agents, Point of Contact, and Customers</u>. You are solely responsible and liable for access to and uses of the Service and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the foregoing, you are responsible and liable for all acts and omissions of Users, Agents, consultants, and customers. A breach of this Agreement by anyone of those individuals will be a breach by you of this Agreement. You also are responsible and liable for any unauthorized party who accesses and uses the Service or Documentation using credentials, usernames, or passwords provided by you. For purposes of this Agreement, an "**Agent**" is a User of the Service that holds advanced permissions (i.e., the User may assign an issue, be assigned an issue, submit an issue on behalf of other Users, access and/or maintain administration functions, assign next actions, be assigned next actions, and/or be designated as a system administrator within the Service). A fee is charged for each Agent.

   d. <u>Collection of Usage Data</u>. You consent to Issuetrak monitoring your use of the Service and collecting and compiling data and information relating to your use of the Service, including but not limited to User types,

number and types of issues submitted, and number and size of attachments (collectively, the "**Usage Data**"). Usage Data will belong to Issuetrak and is Issuetrak's Confidential Information. Issuetrak has the right to use such Usage Data for the statistical and analytical purposes, for use to improve the Service, for such other purposes as Issuetrak determines.

e. Compliance with Laws. You are solely responsible and liable for access to and use of the Service in compliance with all applicable local, state, national and foreign laws and regulations. You will not use the Service to create, receive, maintain, or transmit any "Protected Health Information," and you agree that Issuetrak will not act as a "Business Associate," as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("**HIPAA**"), unless and until you have given prior written notice to Issuetrak of your desire to use the Service to create, receive, maintain, or transmit Protected Health Information and the parties have separately entered into an appropriate Business Associate Agreement that complies with the applicable requirements of HIPAA.

8. Issuetrak Representations and Obligations.

   a. Availability. Subject to the terms and conditions of this Agreement, Issuetrak will use commercially reasonable efforts to make the Service available as described in Attachment A.

   b. Your Data. Issuetrak may access and use any information, data and other content, in any form or medium, that is submitted, posted or otherwise transmitted by you or on your behalf through the Service ("**Your Data**"), to the extent necessary to provide the Service, including, without limitation, in response to your service and support requests. To the extent Your Data includes any Personal Data, Issuetrak will Process such Personal Data in accordance with the Data Processing Addendum set forth at https://helpcenter.issuetrak.com/home/2364-data-processing-addendum ("**DPA**"). As used in this section, the terms "Personal Data" and "Process" have the meanings set forth in the DPA.

   c. Security. Issuetrak's website (www.issuetrak.com/security/) describes the security Issuetrak provides for the Service and Your Data. ISSUETRAK IS NOT RESPONSIBLE FOR THE SECURITY OF FACILITIES, EQUIPMENT, DATA, OR SOFTWARE NOT UNDER ITS DIRECT CONTROL.

   d. Data Storage Allocation Limits. The Service includes an allocation of up to 20 gigabytes (20 GB) of data storage. If you exceed this level of data storage, Issuetrak reserves the right to charge an additional fee to you.

9. Fees.

   a. Fees. You shall pay Issuetrak the fees as set forth in the Quote and in each invoice (collectively, the "**Fees**") without offset or deduction. All Fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. You are solely responsible for all sales, use and excise taxes, and other similar taxes, duties and charges of any kind imposed by any federal, state, local, or foreign government or regulatory authority on any amounts payable hereunder, other than taxes imposed on Issuetrak's income.

   b. Payment. You shall make all payments hereunder in U.S. dollars on or before the date due to Issuetrak as set forth in the Quote, at 200 Golden Oak Ct, Suite 270 Virginia Beach, VA, 23452 or at such other address as Issuetrak may designate in writing. All Fees and other amounts will be due by the date(s) specified on the relevant invoice(s). Without limiting our other rights or remedies, you shall pay to Issuetrak a late-payment charge at a rate of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law, whichever is less, for any amounts not paid when due. Your failure to make a payment when due is a material breach of this Agreement. In addition to any other remedies it may have, Issuetrak may suspend or terminate your access to and use of the Service until such amounts are paid in full.

   c. Price Increases. Issuetrak reserves the right to increase any Fee on the annual anniversary of the Effective Date. Issuetrak will give you not less than thirty (30) days' prior written notice of a Fee increase. In addition, if you increase the number of authorized Agents, Issuetrak will invoice you for, and you shall pay, the increase in Fees associated with that change.

10. Title; Confidentiality

    a. Title. Issuetrak retains all right, title, interest, including all intellectual property rights, in and to the Issuetrak IP,

all applications thereof, and all documentation.

b. Confidentiality. From time to time during the term of the Agreement, Issuetrak and you may each disclose or make available to the other information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Notwithstanding the foregoing, for purposes of Issuetrak, Confidential Information also includes the Issuetrak IP. Confidential Information does not include information that: (i) is presently in or becomes part of the public domain other than by the receiving party's noncompliance with this Agreement; (ii) known to the receiving party at the time of disclosure; (iii) is rightfully obtained by the receiving party on a non-confidential basis from a third party; or (iv) is independently developed by the receiving party without reference to or use of the disclosing party's Confidential Information. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees, agents or consultants who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations under this Agreement. The receiving party shall hold the disclosing party's Confidential Information in confidence, using at least the same degree of care it uses to protect the confidentiality of its own Confidential Information. Notwithstanding the foregoing, each party may disclose the Confidential Information of the other party to the limited extent required (1) in order to comply with the order of a court of other governmental body, or as otherwise necessary to comply with applicable law, provided that the receiving party making the disclosure pursuant thereto shall first have given written notice to the disclosing party and made a reasonable a reasonable effort to obtain a protective order; or (2) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of this Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed.

c. Equitable Relief. Each party acknowledges and agrees that any use or disclosure of the other's Confidential Information, other than as contemplated under this Agreement, may result in irreparable injury and damage to the other party. Accordingly, each party agrees that, in the event it uses or discloses the other's Confidential Information other than as permitted by this Agreement, the other party, in addition to other remedies it may have, will be entitled to seek equitable relief, without any obligation to post bond or security.

d. Duration of Confidentiality Obligation. The confidentiality obligations of each party set forth in this Section 10 will survive expiration or termination of this Agreement.

11. Service Operation.

a. Backup. Issuetrak's website (www.issuetrak.com/security/) describes the backup Issuetrak provides for the Service.

b. Restoration. Database backups are available for thirty (30) days after creation. In the event of a hardware failure of the server on which the Service is hosted, Issuetrak will restore the most recent available backup of the Service and customer data to a comparable server in a comparable facility at no additional charge to you.

c. Test Site. You may request Issuetrak to create one (1) test site in the form of a clean installation or as a copy of your existing production site. This allows you to test alternative or new configurations without impacting your production site. Issuetrak may provide a test site with certain features disabled by default. Although you may have the ability to enable them, certain features will not work, and you should not use them, in the test site. Those features include, but are not limited to, Outgoing Email, Incoming Email, Escalation Rules, SLAs, Recurring Issues, and Scheduled Reports. Certain other features, including but not limited to, Issue Attachments and KB Attachments, will not be accessible from the test site. Copied sites will have all audit history truncated unless directly requested for explicit testing. Issuetrak may remove the test site if it is not used for a period of greater than one (1) year. You should not use the test site as an active site and you should not rely on the test site as a backup. Test sites are provided "AS IS" and do not have SLA's or warranties.

d. Audit History and Log Retention. Issuetrak may review excess usage patterns and, at Issuetrak's sole discretion, truncate, archive or delete asset audit history, or other excessive logging that exceeds one (1) year. You may

request an exception for compliance reporting requirements.

    e.   <u>Hosted Incoming Email Mailbox</u>. Issuetrak will provide, upon request, a hosted mailbox(es) with its strategic mail partner(s) to provide incoming email processing within Issuetrak for an additional fee. Hosted mailboxes provided by Issuetrak are made available to you subject to this Agreement.

        i.   <u>Filtering</u>. Issuetrak's strategic mail partner provides certain services designed to filter unwanted incoming email, such as spam, phishing scams, and email infected with viruses. You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email, and the failure to capture some unwanted or malicious email. The filtering service is provided "AS IS" with no warranties. You release Issuetrak and its employees, agents, suppliers, and affiliates from any liability or damages arising from the failure of filtering services to capture unwanted email or from the capture of legitimate mail, or any data loss thereof.

        ii.   <u>Retention</u>. You must configure your hosted mailboxes with "Delete Messages After Processing" enabled. In addition, hosted mailboxes provided by Issuetrak will be configured to automatically delete any messages older than thirty (30) days. Issuetrak will not recover deleted email or provide any recovery services. Mailboxes will only maintain mail in between processing intervals.

        iii.   <u>Mail Processing</u>. Issuetrak will provide automatic incoming email processing with ten (10) minute intervals.

        iv.   <u>Security</u>. Issuetrak will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of mail data, including, but not limited to, encryption of data in transmission (TLS). The Service will support the following mail protocols POP3, POP3 (SSL), IMAP and IMAP (SSL).

12.   <u>Term and Termination</u>.

    a.   <u>Your Early Termination Rights</u>. If you are not satisfied with the Service, you may, within fifteen (15) days after the Effective Date, notify Issuetrak in writing of your dissatisfaction and your election to terminate the Agreement pursuant to this Section 12(a). Upon issuance of such notice to Issuetrak, you will immediately cease all access to and use of the Service and Documentation and comply with the provisions of Section 10 with respect to the return of Confidential Information. Issuetrak will terminate your access and use of the Service upon receipt of your notice. Issuetrak will then return to you license and module fees paid by you for the Service, except any professional and/or data services charges, within a reasonable time after termination.

    b.   <u>Term</u>. The term of this Agreement (the "**Term**") begins on the date you accept your Quote (the "**Effective Date**") and continues for the initial term set forth in your Quote, or until terminated as provided in this Agreement. Unless either party delivers written notice to the other party at least thirty (30) days prior to the expiration of the then-current Term, this Agreement will automatically renew at the end of such Term for additional one (1) year periods. Notwithstanding the foregoing, if you are paying monthly and this Agreement is not terminated by either party as set forth above, this Agreement will be automatically renewed on a month-to-month basis with a thirty (30)-day termination notice required.

    c.   <u>Termination by Issuetrak</u>. Issuetrak may terminate this Agreement, effective upon written notice to you, if you (i) fail to pay any amount when due hereunder and such failure continues for a period of fifteen (15) days after written notice thereof; or (ii) breaches any of its obligations under Section 6 or Section 10(b).

    d.   <u>Termination by Either Party</u>. Either party may terminate this Agreement,(A) effective upon written notice to the other party, if the other party materially breaches this Agreement and fails to cure the breach to the non-breaching party's reasonable satisfaction within fifteen (15) days after the breaching party receives written notice describing the breach; or (B) immediately, (i) if the other party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (ii) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by the other party or if such a petition is filed by any third party; or (iii) if an application for a receiver is made by anyone and such petition or application is not resolved within ninety (90) days.

    e.   <u>Effect of Expiration or Termination</u>. Upon expiration or termination of this Agreement, you shall immediately discontinue use of the Issuetrak IP, including, but not limited to the Service, and without limiting your obligations

under Section 10, you shall delete, destroy, or return all copies of the Issuetrak IP and certify in writing to Issuetrak that the Issuetrak IP has been deleted or destroyed. No expiration or termination of this Agreement will affect your obligation to pay all Fees and other amounts that may have become due before such expiration or termination, or entitle you to any refund.

 f. <u>Return of Customer Data</u>. Issuetrak will maintain Your Data in its archive for a period of no more than ninety (90) days after expiration or termination of this Agreement. Within this retention time period, and upon receipt of a written request, Issuetrak will return to you, at no charge and in a format to be mutually agreed upon, all of Your Data contained within the Service.

13. <u>Limited Warranty; Disclaimer; Indemnification; Limitation of Liability</u>.

 a. <u>Limited Warranty</u>. Issuetrak warrants that the Service will conform in all material respects to the service levels set forth on <u>Attachment A</u> when accessed and used in accordance with the Documentation. Issuetrak does not make any representations or guarantees regarding uptime or availability of the Service unless specifically identified in <u>Attachment A</u>. The remedies set forth in <u>Attachment A</u> are your sole remedies and Issuetrak's sole liability under the limited warranty set forth in this Section 13(a).

 b. <u>Disclaimer</u>. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 13(a) ABOVE, THE SERVICES ARE PROVIDED "AS IS" AND ISSUETRAK DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANT SET FORTH IN SECTION 13(a) ABOVE, ISSUETRAK MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR REQUIREMENTS, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. FURTHER, ISSUETRAK MAKES NO WARRANTY THAT THE SERVICE, OR YOUR USE THEREOF, WILL ENSURE THAT YOU ARE OR WILL BE IN COMPLIANCE WITH ANY APPLICABLE LAW OR REGULATION.

 c. <u>Indemnification by Issuetrak</u>. Subject to the limitations of liability in Section 13(f), below, Issuetrak will indemnify and hold you harmless from and against losses, damages, liabilities and costs (including reasonable attorney's fees) ("**Losses**") that you incur resulting from any third-party suit or proceeding ("**Third Party Claims**") that allege that your use of the Service in accordance with this Agreement, infringes a third party's U.S. intellectual property right. Issuetrak's obligations under this Section 13(c) are conditioned upon you providing Issuetrak with (i) prompt written notice of the infringement claim, (ii) your full cooperation in the defense of the claim, and (iii) sole authority to control the defense and settlement of the claim. If such a claim is made or appears possible, you agree to permit Issuetrak, at Issuetrak's sole discretion, to (A) modify or replace the Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for you to continue to use the Service, or component or part thereof. If Issuetrak reasonably determines that neither alternative (A) nor (B) is reasonably available, Issuetrak may terminate this Agreement, in its entirety or with respect the affected feature or function of the Service, effective immediately on written notice to you. This Section 13(c) will not apply to the extent any alleged infringement arises from (1) use of the Service in combination with data, software, hardware, equipment or technology not provided by Issuetrak: (2) modifications to the Service not made by Issuetrak; or (3) Your Data.

 d. <u>Indemnification by You</u>. You will indemnify, hold harmless, and at Issuetrak's option, defend Issuetrak from and against any Losses resulting from any Third Party Claims that (a) allege that any use of Your Data or information in connection with this Agreement, infringes or misappropriates such third party's U.S. intellectual property right or (b) are based on your or any User's (i) negligence or willful misconduct; (ii) use of the Service in a manner not authorized by this Agreement; or (iii) modifications to the Service not made by Issuetrak, provided that you may not settle any Third Party Claim against Issuetrak unless Issuetrak consents to such settlement, and further provided that Issuetrak will have the right, at its option, to defend itself against such Third Party Claim or to participate in the defense thereof by counsel of its own choice.

 e. <u>Sole Remedy</u>. SECTIONS 13(c) AND 13(d) SET FORTH YOUR SOLE REMEDIES AND ISSUETRAK'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY

INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

f. <u>Limitations of Liability</u>. EXCEPT FOR CLAIMS UNDER SECTION 10 AND A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW) IN NO EVENT WILL ISSUETRAK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE AMOUNT OF FEES PAID BY YOU TO ISSUETRAK DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR THE PURPOSES OF THIS AGREEMENT, "**EXCLUDED CLAIMS**" MEANS: (1) CLAIMS UNDER SECTION 10 AND ISSUETRAK'S INDEMNIFICATION OBLIGATIONS HEREUNDER; (2) CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ISSUETRAK; AND (3) CLAIMS ARISING THE FROM THE VIOLATION OF ANY LAW, RULE OR REGULATION BY ISSUETRAK.

14. <u>General Provisions</u>.

a. <u>Governing Law; Venue</u>. This Agreement is governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles. You agree that any action to interpret or enforce this Agreement shall be instituted and maintained in a court having appropriate jurisdiction and located in Virginia Beach, Virginia.

b. <u>Entire Agreement; Headings</u>. The term "Agreement" includes this Cloud Based Application Agreement, the Quote, any and all applicable Attachments, schedules and exhibits. This Agreement sets forth the parties' entire agreement and understanding related to the subject matter hereof and merges all prior discussions between them. This Agreement's captions and headings are intended solely for convenience and are not intended to explain, modify or restrict any of the terms or provisions of this Agreement.

c. <u>Modifications to Agreement</u>. This Agreement may be amended solely by written agreement of both parties.

d. <u>Notice</u>. Notices must be in writing and shall be deemed effective (i) upon delivery if given in person or by electronic mail or facsimile transmission, or (ii) the next business day after being sent if sent by internationally recognized overnight courier, in any case addressed to Issuetrak, as indicated on its website, and to you, as indicated on your invoice, unless you give Issuetrak notice of a different address.

e. <u>Force Majeure</u>. The non-performance of either party (except payment of Fees and another other amounts due hereunder) will be excused to the extent performance is rendered impossible by terrorism, war, strike, fire, flood, governmental acts or orders or restrictions, epidemic, pandemic, failure of suppliers, denial of service attacks, or any other reason where failure to perform is beyond the control and not caused by the negligence or willful misconduct of the non-performing party.

f. <u>Binding Effect; Assignment; Non-Agency; No Third-Party Beneficiaries</u>. This Agreement is binding upon the parties hereto, their successors, assigns, heirs and personal representatives. You may not assign your rights or duties under this Agreement to any other person(s) or entity(ies) without Issuetrak's prior written consent, except in the context of reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of your business. Nothing in this Agreement will be construed to make the parties partners, joint venturers, representatives or agents of one another, nor will either party so represent to any third person or entity. Nothing in this Agreement is intended to, or will, create any third-party beneficiaries, whether intended or incidental and neither party will make any representations to the contrary.

g. Partial Invalidity; Waiver. If any provision of this Agreement is held to be invalid by an arbitrator or a court of competent jurisdiction, then the remaining provisions will remain in full force and effect, unless the Agreement would thereby fail of its essential purpose. A party's failure in a given instance to enforce any of its rights or any of the other party's obligations hereunder will not be construed or act as a waiver of enforcement of such right or obligation in any other instance.

h. Legal Expenses. The substantially prevailing party in any arbitration or legal action brought by one party against the other under this Agreement will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its reasonable costs and expenses, including court costs and reasonable fees and expenses of attorneys and other professionals.

i. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which together will constitute but one (1) instrument. A facsimile or digital signature will have the same legal effect as an original signature. A digital or PDF copy of this Agreement will have the same effect as an original.

j. Attachments. This Agreement is supplemented by and subject to the terms and conditions of Attachment A: Service Level Terms and Conditions, which will govern in case of any conflict with the rest of the Agreement.

k. Survival. Rights and obligations created by this Agreement which are continuing in nature, including without limitation those rights and obligations described in Sections 6, 7(c), 7(d), 7(e), 9, 10(a)-(d), 12(e), 12(f), 13, and 14 of the Agreement, will survive termination of this Agreement and remain in full force and effect.

1. <u>Service Availability</u>.

    a. <u>Standard Hours for Service Availability</u>. Subject to the terms and conditions of the Agreement, Issuetrak will use commercially reasonable efforts to make the Service available at least 99.0% of the time as measured over the course of each calendar month, excluding unavailability as a result of any of the exceptions set forth below (the "**Availability Requirement**"). For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Service will be considered unavailable nor any service level failure will be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of you or any User to access or use the Service that is due, in whole or in part, to any: (i) act or omission by you or any User, or access to or use of the Service by you or any User, or using you or any User's access credentials, that does not strictly comply with this Agreement; (ii) your or a User's Internet connectivity; (iii) force majeure event; (iv) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Issuetrak pursuant to this Agreement; (v) Scheduled Downtime; (vi) Planned Service Outage; or (vii) disabling, suspension, or termination of the Service pursuant to the terms of the Agreement.

    b. <u>Scheduled Downtime</u>. Issuetrak may use the time periods commencing at 10:00 p.m. Eastern Time on Tuesday, Friday and Saturday and ending at 6:00 a.m. Eastern Time on the following day for hardware maintenance, repair, or replacement or maintenance, updates, upgrades, implementation of patches or fixes, or installation of new releases of the Service ("**Scheduled Downtime**").

    c. <u>Planned Service Outages</u>. In the event that a major renovation or upgrade is required, a period of additional scheduled downtime ("**Planned Service Outage**") may be scheduled outside of Scheduled Downtime hours. Issuetrak will use commercially reasonable efforts to give you at least forty-eight (48) hours' notice of any Planned Service Outage.

    d. <u>Rights of Issuetrak</u>. Issuetrak may temporarily suspend access to and use of the Service: (i) during Scheduled Downtime and Planned Service Outages; (ii) during any unavailability caused by circumstances beyond Issuetrak's reasonable control, including a force majeure event; or (iii) if Issuetrak suspects or detects any malicious data or misuse of the Service by you or your Users. Issuetrak will use good faith efforts to provide you with notice of any such temporary suspension and when access and use of the Service is anticipated to be resumed.

2. <u>Releases</u>. Issuetrak may apply new releases to the Service. The three levels of releases, Major, Minor, and Patch Releases are identified by a release version number consisting of a sequence of three numbers separated by a dot ("."). The first number in the sequence identifies a Major Release where dramatic or substantial changes to the product are included. The second number identifies a Minor Release when a few new features are included but are not substantial enough to be considered a Major Release. The third number in the sequence is a Patch Release which includes fixes to issues, but no new features.

3. <u>Service Level Fee Adjustments</u>. In the event of a material failure of the Service to meet the Availability Requirement ("**Service Level Failure**") for a specific month, Issuetrak will issue you a credit in the form of a discount to the applicable monthly fee for the Service ("**Service Credit**"); provided that (a) Issuetrak has no obligation to issue a Service Credit unless (i) you report the Service Level Failure to Issuetrak promptly on becoming aware of it, and (ii) you request the Service Credit in writing within thirty (30) days of the Service Level Failure. You acknowledge and agree that this Service Credit will be your only remedy, and Issuetrak's sole obligation and liability, for a Service Level Failure. (This remedy, however, shall not serve to limit your remedies with respect to other breaches of this Agreement. Service Credits shall be calculated pursuant to the table below:

Service Availability	Discount to Applicable Monthly Fee
Equal to or greater than 98.0% but less than 99.0%	5%
Equal to or greater than 96.0% but less than 98.0%	10%
Equal to or greater than 94.0% but less than 96.0%	15%
Equal to or greater than 92.0% but less than 94.0%	20%
Less than 94.0%	30%

4. <u>Support Requests</u>. During the Term, Issuetrak will accept support requests related to the Service by telephone, electronic mail, or the Issuetrak Support site twenty-four (24) hours per day, seven (7) days a week. However, subject to the provisions set forth below, Issuetrak will provide technical support staff only during the hours of 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday, excluding U.S. Federal and/or company holidays. Issuetrak may employ a third-party answering service, as needed, when technical support staff is not available. Outside normal business hours, during the Term, Issuetrak will use reasonable efforts to provide technical support for any problem related to the Service that renders unusable the Service by you (an "**Emergency**"). Issuetrak will provide such after-hours Emergency support only by telephone and only to the extent that Issuetrak has technicians available. Issuetrak support staff will determine the severity of the Emergency in conjunction with you. Under Emergency conditions, Issuetrak may opt to follow the quickest path to resolution to restore Service as quickly as reasonably possible, including, but not limited to, rolling back executed changes that inflicted the Emergency. Issuetrak may monitor and track all support-related requests and monitor and record all support-related telephone calls and electronic mail to, among other things, ensure accurate issue logs and to facilitate the creation of a "lessons-learned" database.