



TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS are hereby incorporated into and made part of the Agreement between Sickle Brook Services, Inc. and (the Customer). Capitalized terms shall have the meanings set forth in Section 1 or elsewhere in this Agreement.

1) DEFINITIONS

"Sickle Brook" shall refer to Sickle Brook Services, Inc., a Massachusetts Corporation.

"Confidential Information" of a party means any confidential or proprietary knowledge, information, materials, or trade secrets in which such party has rights, disclosed to the other party, and which either party would reasonably expect or consider to be confidential or proprietary information, including but not limited to, information regarding business methods, products, services, finances, customers and potential customers, suppliers, pricing and rates, costs, expenses, marketing, technologies, properties, specifications, personnel, or organization, in various media, including but not limited to, oral, written, and electronic data form.

"Effective Date" means the date identified in the Service Level Agreement and the date the Terms and Conditions of this Agreement go into effect.

"SLA" means Service Level Agreement as outlined on page 1.

2) LIMITATIONS/EXCLUSIONS

(a) Except as otherwise specified in this agreement, Sickle Brook grants to the Customer no right, title, interest, or license in any Sickle Brook company trademark, trade name, service mark, or any other proprietary right.

(b) Except as otherwise specified in this Agreement, the Customer grants to Sickle Brook no right, title, interest, or license in the Customer's data stored in or accessed through the services except as expressly granted herein.

(c) *General Exclusions:* CD key numbers; support intervention using the member's real-time(live) date (use only data that has been backed up or copied); programming (macros, Visual Basic or formulas); registration information; actions that are a risk or violation of copyright laws; pre-release or beta versions of software; development or network setup or deployment; BIOS flash; support requiring ISP intervention; creating, editing or deleting macros. Additional general exclusions may be applicable as determined by Sickle Brook Services, Inc from time to time.

(d) *Product Exclusions:* Hardware-building systems, networking hubs and routers, digital cameras; Operating System-registry issues, drive compression/decompression, deleting PWL files, providing passwords to members, BIOS flashes, Windows NT Server, Windows 2000 Server; Word Processing-managing HTML documents and publishing to a web page, creating databases; Spreadsheet Software-if-then statements, complex formulas; Presentation Software-publishing to a web page; Relational Database Software-create sub-forms, build relational database; Internet Browsers-support requiring network administration intervention (proxy settings); Contact Management Software-multi-user setup; Email Software-manage email over network, address book setup; Desktop Publishing Software-Publishing to web pages; pcAnywhere-protocol intervention. Additional specific product exclusions may be applicable as determined by Sickle Brook Services from time to time.

3) FEES; TERMS OF PAYMENT

(a) All fees, including the Service Fees, payable under this Agreement shall be non-refundable and non-creditable. The Effective Date and Termination Date will be agreed to and defined in the SLA. Payment annual service agreements will be made in

advance of delivery of the service. Any invoices in addition will be due and payable 30 days after receipt of the invoice.

4) TERM AND TERMINATION

(a) Upon expiration or termination of this agreement, all licenses granted by Sickle Brook, and the Customer's access to the Service as defined in the SLA, shall immediately terminate.

5) REPRESENTATION AND WARRANTY

(a) Sickle Brook will make commercially reasonable efforts to provision, maintain and operate the services to minimize downtime.

(b) The service level specifications set forth in this Section 5 shall only apply to the SLA provided by Sickle Brook and do not apply to (i) any professional services other than those specifically included as part of the SLA (ii) any additional services, or (iii) any service(s) that expressly exclude these service level specifications.

(c) Each party represents and warrants that: (i) it has the full right, power, and authority to enter into this Agreement and perform the acts required of it hereunder; (ii) when executed and delivered by such party, this Agreement will constitute a legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

(d) The Customer represents and warrants that its uses of the services defined in the SLA do not and will not violate the personal or privacy rights of any third party.

(e) SICKLE BROOK (AND ITS LICENSORS) PROVIDE THE SERVICE "AS IS." EXCEPT AS OTHERWISE SPECIFIED IN THIS SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SICKLE BROOK (AND ITS LICENSORS) EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE SERVICE AS DEFINED IN THE SLA. SICKLE BROOK EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY CUSTOMER INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE SERVICE.

6) INDEMNIFICATION; LIMITATION OF LIABILITY

(a) The Customer shall indemnify, hold harmless, and defend Sickle Brook and Sickle Brook's directors, officers, employees, representatives, and customers, to the fullest extent lawful, from and against any liability, loss, damage, suit, demand, claim, cost, judgment, award, assessment, interest, penalty, or expense (including, without limitation, reasonable attorneys' fees), arising out of or in connection with third party claim (i) that the Customers use of the Service as defined in the SLA and any website product integrated with the Service infringe or violate any copyright, patent, trademark, trade secrets or the personal privacy rights of any third party; (ii) arising out of any results obtained by or for the Customer using the Service; (iii) of breach of this Agreement by the Customer, including breach of the Customer's representation, warranty, or covenant (iv) that where applicable, any Customer Provided Materials furnished to Sickle Brook: infringe on the copyrights, trademarks, service marks, trade secrets or trade names of any third party arising or enforceable under the laws of the United States, knowingly infringe on any existing patents of any third party arising or enforceable under the laws of the United States, or contain confidential or proprietary material

misappropriated from any third party.; provided, however, that Sickle Brook: (1) provides the Customer with reasonable notice of any such claims; (2) provides the Customer with the information and assistance necessary for such defense and settlement of the claims; and (3) does not enter into any settlement with respect to such claims without the express consent of the Customer, which consent shall not be unreasonably withheld.

(b) In the event of any third-party claim (i) that alleges that any Service, any portion of the Service, or any software, hardware or device, component or technology used by Sickle Brook to provide the Service infringes, misappropriates or violates any proprietary rights, or (ii) that otherwise seeks to limit Sickle Brook's ability to provide the Service, Sickle Brook may, at its option: (1) replace the Service without additional charge, with a compatible, functionally equivalent and non-infringing product or service; (2) modify the Service to avoid the infringement and provide substantially equivalent functionality; (3) obtain a license for the Customer to continue use of the Service for the term of this Agreement and pay for any additional fee required for such license; or, (4) if none of the foregoing alternatives are, in Sickle Brook's reasonable opinion commercially practicable, Sickle Brook may terminate this Agreement and return all Fee(s) to the Customer paid by Customer to Sickle Brook during the last month immediately preceding such termination.

(c) IN NO EVENT SHALL SICKLE BROOK BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT AND WHERE APPLICABLE ANY WORK ORDER, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IN THE EVENT THAT SICKLE BROOK HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES OR SALES, LOST BUSINESS OPPORTUNITY, LOST OR CORRUPTION OF DATA, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR INTERRUPTION OF USE OR SERVICES. IN NO EVENT SHALL SICKLE BROOK'S LIABILITY UNDER THIS AGREEMENT OR WHERE APPLICABLE ANY WORK ORDER EXCEED THE FEES ACTUALLY PAID TO SICKLE BROOK BY THE CUSTOMER UNDER THIS AGREEMENT.

(d) NO LIABILITY FOR VIRUSES OR WORMS: The Company makes no representation or warranty that any software or content downloaded or installed on Customer's computer(s) does not contain a virus or other harmful feature and it is Customer's sole responsibility to take appropriate precautions to protect any computer or other hardware of Customer from damage to its software, files or data as a result of any such virus or other harmful feature. NEITHER THE COMPANY NOR ITS AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

7) CONFIDENTIAL INFORMATION

(a) During the Term of this Agreement and for two (2) years thereafter, each party (the "Receiving Party"): (i) shall treat as strictly confidential all Confidential Information disclosed by the other party (the "Disclosing Party"); (ii) shall not disclose, disseminate, distribute, or transfer such Confidential Information to any third party without the express written consent of Disclosing Party; (iii) shall not use such Confidential Information except solely for the purpose of its performance under this Agreement; and (iv) shall protect the Confidential Information by using at least the same degree of care as the Receiving Party uses to protect its own confidential information of like nature to prevent any unauthorized access, use, dissemination, or publication of such Confidential Information, but in no event less than reasonable care. The Receiving Party further agrees to disclose Disclosing Party's Confidential Information only to its employees and consultants with a need to know such Confidential Information to perform their work responsibilities and agrees to require such employees and consultants to execute nondisclosure agreements containing protections substantially similar to the restrictions herein. The Receiving Party shall promptly notify the Disclosing

Party in writing of any unauthorized access, use, dissemination, or publication of such Confidential Information.

(b) Upon prior written notice to the Disclosing Party, the Receiving Party may disclose Disclosing Party's Confidential Information as: (i) is required by law or regulation to be disclosed, but only to the extent and solely for the purpose of such required disclosure; or (ii) is required by order of a court or other governmental body, but only to the extent and solely for the purpose of such required disclosure. The Receiving Party agrees to assist the Disclosing Party (at the Disclosing Party's expense) in all proper ways to limit or prevent the disclosure of such Confidential Information.

(c) The Receiving Party will return or destroy (at the Disclosing Party's election) all Confidential Information (including all copies) received from the Disclosing Party within its possession, custody, or control promptly upon termination or expiration of this Agreement or upon the earlier written request of the Disclosing Party. At the request of the Disclosing Party, after such return or destruction, the Receiving Party shall certify in writing that such return or destruction has been accomplished.

(d) Confidential Information does not include information which as evidenced in writing by the Receiving Party: (i) is known to the Receiving Party, without any confidentiality restriction, at the time of disclosure by the Disclosing Party; (ii) is publicly known or becomes publicly known and made generally available through no wrongful act of the Receiving Party or any third party; (iii) has been rightfully received by the Receiving Party, without any confidentiality restriction, from a third party who is authorized to make such disclosure and not otherwise in violation of this Agreement; (iv) is disclosed generally to third parties by the Disclosing Party without any confidentiality restriction; or (v) was independently developed by the Receiving Party without any use of the Confidential Information.

(e) Each party has the right to disclose the existence of this Agreement, but agrees that the material terms and conditions of this Agreement shall be deemed Sickle Brook's Confidential Information.

8) CONDUCT

Both parties agree not to: (a) upload, transmit, post, email or otherwise make available to each other, each parties information systems or web sites any content or other material in any format that: (x) is false, inaccurate, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, invasive of another's privacy, libelous and/or otherwise objectionable; (y) infringes any third party's intellectual property; or (z) contains viruses, worms, Trojan horses, corrupted files, or any other similar software or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (b) alter, remove, or falsify any attributions or other proprietary designations of origin or source of any other content appearing on the Site, contained in a file that is uploaded to the Site or the materials; (c) impersonate any person or entity, including, but not limited to, an Sickle Brook Services, Inc. official or falsely state or otherwise misrepresent Your affiliation with a person or entity; or (d) attempt, through any means, to gain unauthorized access to the Services. The use of any device, software or routine that interferes or attempts to interfere with the proper working of Services, including the Site is expressly prohibited.

9) MISCELLANEOUS

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts without regard to its choice of law rules. The parties expressly agree and consent to the exclusive and sole jurisdiction and venue of the state and federal courts located in Massachusetts as the forum for any dispute or controversy regarding this Agreement. If any action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief.

(b) This Agreement, including the SLA and any Exhibits attached hereto and incorporated herein, represents the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings or representations, whether written or oral, between the parties with respect to such subject matter. This Agreement may be amended only by a writing executed by both parties. A term or provision of this Agreement may be waived only with the written consent of the parties, and the waiver of any particular breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.

(c) Both the Customer and Sickle Brook may not assign any of its rights or obligations under this Agreement, except with the prior written consent of the other party, which consent shall not unreasonably be withheld or delayed. Any assignment in breach of this paragraph shall be null and void. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns. Notwithstanding the above, each party hereto may assign its rights and obligations under this Agreement to a successor in interest in the event of a merger, acquisition or a sale of substantially all of its assets to a third party entity without the prior written consent of the non-assigning party provided that the assigning party delivers notification within thirty (30) days to the non-assigning party following such merger, acquisition or sale. Sickle Brook shall reserve the right to terminate this Agreement after receipt of such notice of assignment upon sixty (60) days written notice to the Customer consistent with the terms set forth in Section 6(b) contained herein if such assignment is unacceptable.

(d) If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (i) such provision shall be excluded from this Agreement; (ii) the remainder of the Agreement shall be interpreted as if such provision were so excluded; and (iii) the remainder of the Agreement shall be enforceable in accordance with its terms.

(e) Notwithstanding anything to the contrary, in no event shall either party be liable to the other for any delay or failure to perform hereunder, which delay or failure to perform is due to causes beyond the control of the non-performing party including, but not limited to, government restrictions, exchange or market rulings, labor strike, war, act of civil or military authority, sabotage, epidemic, flood, earthquake, fire, other natural disaster, or any other event, condition or occurrence beyond the reasonable control of such non-performing party (each, a "Force Majeure"). The non-performing party shall promptly notify the other party of the nature and anticipated length of continuance of the Force Majeure, and if such condition persists for a period greater than thirty (30) days the other party may, at its option, terminate this Agreement without penalty.

(f) Any notice required or permitted by this Agreement shall be: (i) in writing; (ii) delivered by messenger, courier service, nationally or internationally recognized overnight delivery service, U.S. certified or registered mail, or confirmed facsimile; and (iii) effective upon receipt. Oral, electronic mail, or voice-mail notice shall not be effective notice. A copy of any such notice shall be sent to the recipient party's general counsel. Notice shall be addressed to the party to be notified at such party's address or facsimile number as set forth in this Agreement, or as subsequently modified by written notice pursuant to this subsection.

(g) This Agreement may be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. For purposes hereof, a facsimile copy of the Agreement, including the signature pages hereto, shall be deemed to be an original. Notwithstanding the foregoing, the parties shall deliver original execution copies of the Agreement to one another as soon as practicable following execution thereof.

(h) The headings of the sections of this Agreement are intended for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.