CIRCUITREE SUBSCRIPTION AGREEMENT
Innovation Package

THIS SUBSCRIPTION AGREEMENT (the "Agreement") is entered into as of October 1, 2021 ("Effective Date") by and between CircuiTree, LLC, a Delaware limited liability company ("Company"), and Texas A&M University System, an agency of the State of Texas ("Client").

1   SUBSCRIPTION

1.1   **Grant.** Company grants to Client an Internet-based subscription to use and access via the Internet, in accordance with this Agreement, Company's CircuiTree™ software (the "Software") and any related documentation that Company may provide to Client from time to time (the "Documentation"). Company reserves the right to modify the Software from time to time, in accordance with this Agreement. Any such modifications to the Software will continue to comply with and be governed by the terms and conditions in this Agreement.

1.2   **Scope.** Company will host the Software at its own site for Client's use, which shall include providing access, without an additional charge, to Client's affiliates, as approved by Company, on a concurrent user license basis. See Schedule B for the listing of approved affiliates as of the date of this Agreement. See Schedule E for a listing of the number of concurrent user licenses approved for Client and Client's affiliates' use. For purposes of this Agreement, the term Client shall be deemed to include all approved affiliates on Schedule B.

1.3   **Copies.** The Software permits Client to export Client's data, reports and summaries of Client's data. Except for Client's internal use, Client will not make copies of any screens displaying the Software, and Client will not copy data that is created or stored by the Software that is not supplied by Client or calculated using Client supplied data without written permission of Company.

1.4   **Term.** The term of this Agreement is one (1) years ("Term") and begins on the date first written above. After conclusion of the Term, this Agreement may be renewed only by written agreement executed by both parties, unless a party terminates this Agreement in accordance with Section 8 below. The terms in Section 8 shall apply in the case of any such termination.

1.5   **Web Content Hosting.** Company will, in connection with providing Client access to the Software, provide hosting services to Client for certain Client content subject to the terms and conditions set forth in the Web Content Hosting Services Agreement on Schedule D as such terms may be modified by the Quote for Software Services on Schedule E or by an amendment to Schedule D executed by each party.

1.6   **Quote for Software Services.**   A quotation of the Software Services that Company makes available to Client is included on Schedule E. The quotation is good for thirty (30) days from date of the quote and is subject to the terms of this Agreement. A Quote for Software Services shall not be binding until it has been executed by both parties.

2 SYSTEM REQUIREMENTS

Systems Requirements. Client shall be responsible, at its expense, for procuring and maintaining at Client's sites and locations the computer hardware, systems software and other items necessary to securely access and use the Software (the "Client Systems"). The minimum Client Systems requirements as of the date of this Agreement for such hardware, systems software and other items for access to and use of the Software are provided on Schedule A. Company reserves the right to modify these requirements from time to time.

3 PAYMENTS

3.1   **Terms.** All fees for the Software are set forth in Schedule E, and are payable monthly as described below.

3.1.1   **Optional Services.** Client shall pay Company for all optional services provided, as listed on Schedule E, whether selected prior to implementation or added during.

3.1.2   **One-Time Implementation Fee.** Upon execution of the Agreement, Client shall pay Company in advance a one-time implementation fee as set forth in the Quote for Software Services on Schedule E.

3.1.3   **Intentionally Blank**

3.1.4   **Registration-Based Fees.** The "Named Registrations", "Unnamed Registrations", "Staff Fee", and "Annual Donor Fee" for the Software Services are as set forth on Schedule E, and will be invoiced by Company to Client at the end of each calendar month based on (i) the number of registrations in such month and (ii) the price for each type of registration as set forth in Schedule E. If there are no registrations in a month, no registration-based fee will be due. This monthly invoiced amount shall be known as the "Registration-Based Monthly Fee."

3.1.5   **Concurrent User, Workstation and WebStore Licenses.** Following implementation (as described in Section 3.1.9), the amounts listed in Schedule E for concurrent user, workstation and web store license fees (i.e. Concurrent User License, SalesLink Workstation License, and WebStore License) are divided by twelve (12) and billed at the end of each calendar month.

3.1.6   **Other Transaction Fees.** Other transaction fees, if any, not addressed above and identified in Schedule E are as set forth on Schedule E, and will be invoiced by Company to Client at the end of each calendar month based on (i) the number of transactions in such month and (ii) the price for each type of transaction set forth in Schedule E.

3.1.7   **Implementation.** An implementation period (the "Implementation Period") starts once Company receives a signed copy of this Agreement and payment of the one-time implementation fee as set forth in Sections 3.1.1 and 3.1.2 and as listed in Schedule E. The Implementation Period will conclude at the end of eight (8) weeks provided that if Client is not able to access or use the Software at the end of such 8-week period, then

the Implementation Period will conclude at such time as Client has such access and use of the Software. However, upon written agreement by both Company and Client, the Implementation Period can be shortened or lengthened. Equal cooperation and reasonable efforts are required by both Company and Client to complete an implementation. The following steps will be completed prior to the end of the Implementation Period: (i) import of Client Data to Company, (ii) configuring of Software Service options with Client's business requirements, (iii) Client access to the production version of the Software Services, and (iv) Client's attendees can successfully secure online registrations through Company's Software Services. It is normal for auxiliary features such as WebStore and SalesLink to be brought online after the Implementation Period.

3.1.8 **Fee Adjustment.** Beginning twelve (12) months after the initial contract date written above, the base fees for the Registration-Based Monthly Fee described in Section 3.1.4 will increase 1.5% annually by giving Customer at least thirty (30) days' written notice in advance of the increase

3.1.9 **Intentionally Blank.**

3.2 **Taxes.** The prices in <u>Schedule E</u> and other amounts payable by Client to Company under this Agreement do not include any taxes of any jurisdiction that may be assessed or imposed upon Client's use of the Software, the Documentation delivered to Client, or the services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including any sales, use, excise, value added, personal property, export, import and withholding taxes. Company will be responsible for taxes based upon Company's net income. If applicable, Client shall directly pay any such taxes assessed against it by law, and Client shall promptly reimburse Company for any such taxes paid by Company on behalf of Client, upon receipt of an invoice for such taxes paid by Company on behalf of Client and written evidence that Company paid such taxes to the applicable taxing authority. If Client claims tax-exempt status, it shall provide all necessary documentation to support that status to Company. If Client is required to withhold any taxes under applicable law, then Client shall withhold such amounts as required by law and as requested by Company, Client will provide Company with information regarding such withholding and the payment of such withheld taxes by Client to the applicable taxing authority.

4 LICENSE TO COMPANY

Subject to the terms of this Agreement, Client hereby grants to Company a limited, royalty-free, nonexclusive, non-transferable license for the Term of the Agreement, under Client's intellectual property (i.e., copyright, data rights, trademark, and trade secret rights) in or associated with the material, data and information that Client's customers or Client transmits or provides to Company in connection with Client's and Client's customer's use of the Software (collectively, "Client Data"), for the purpose of processing and storing such Client Data for the benefit of Client (and not for the benefit of Company or any third party). Any such Client Data material may be processed, stored and used by Company solely in connection with Company performance

of Company's obligations under this Agreement for the benefit of Client, including, but not limited to, reproduction for storage purposes, disclosure to Client, transmission to Client, and posting for viewing by Client. Client agrees and acknowledges that Client is responsible for all Client Data and other information sent to Company. Other than the license set forth in this Section, this Agreement does not grant Company any right, title, or interest in or to Client's intellectual property or any Client Data. As between Client and Company, Client is and will continue to be the owner of all right, title, or interest in or to the Client Data and all intellectual property rights in the Client Data.

5   FORCE MAJEURE; LIMITATION OF WARRANTIES AND LIABILITIES; INDEMNITY

5.1   **Force Majeure.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, Internet unavailability for any reason, outage of power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by Company with reasonable care.

5.2   **WARRANTIES; DISCLAIMER AND EXCLUSIONS**. ATTACHED HERETO AS SCHEDULE C IS A COPY OF THE COMPANY'S SERVICE LEVEL AGREEMENT SCHEDULE PERTAINING TO CERTAIN STANDARDS WITH RESPECT TO THE SOFTWARE AND RELATED SERVICES (E.G., ACCESS TO THE SOFTWARE) PROVIDED HEREUNDER. EXCEPT AS SET FORTH ON SUCH SCHEDULE C, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND DISCLAIMS ANY AND ALL, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SOFTWARE OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT.

5.3   **LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, IN NO EVENT WILL THE TOTAL LIABILITY OF COMPANY OR CLIENT ARISING OUT OF THIS AGREEMENT WITH RESPECT TO THE SOFTWARE, THE USE OR PERFORMANCE OF SUCH SOFTWARE OR OTHERWISE UNDER THIS AGREEMENT EXCEED THE SUM OF THE FEES ACTUALLY PAID BY CLIENT HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRIOR TO ACCRUAL OF SUCH CAUSE OF ACTION FOR THE SERVICE THAT FORMS THE BASIS FOR SUCH CAUSE OF ACTION. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, IN NO EVENT SHALL COMPANY OR CLIENT HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT, PRODUCTS

LIABILITY, STRICT LIABILITY AND NEGLIGENCE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES AGREE THAT THIS SECTION 5.3 REPRESENTS A REASONABLE ALLOCATION OF RISK.

5.4   INDEMNITY BY COMPANY.

5.4.1   INFRINGEMENT INDEMNITY. Subject to Section 5.3, Company agrees to indemnify, defend and hold the Client, its parent, its affiliated companies, and each of their respective employees, officers, directors, and agents harmless from and against any and all claims, actions, suits, demands or proceedings, by any third party ("Claims") and all costs in connection with defense thereof (including but not limited to attorneys' fees), judgments, and settlements resulting from alleged trade secret, patent, trademark or copyright infringement or misappropriation by the Client's access to or use of the Software in accordance with this Agreement. Client will promptly notify Company in writing of any Claim or allegation of infringement. Subject to authorization from the Attorney General of the State of Texas, Company shall have sole control of defense of any such Claim(s) and all negotiations for its settlement or compromise. Company may not settle any Claim without the prior written consent of Client if such settlement would present an undue burden to the Client. Client's consent shall not to be unreasonably withheld.

**5.4.2   **To the extent permitted by the Constitution and laws of the State of Texas, Company shall have no obligation to Client to defend or satisfy any claims made against Client that arise from the use, sale, licensing, or other disposition of the Software by Client other than as permitted by this Agreement or from the Client's use of the Software in a manner that is not in accordance with the Documentation or intended use of the Software. To the extent permitted by the Constitution and laws of the State of Texas, Company shall have no obligation to Client to defend or satisfy any claims made against Client that arise from Client's violation of Section 7.5.

5.5   INDEMNITY BY CLIENT. To the extent permitted by the Constitution and laws of the State of Texas, Client agrees to indemnify, defend and hold the Company, its parent, its affiliated companies, and each of their respective employees, officers, directors, and agents harmless from and against any and all claims, actions, suits, demands or proceedings, by any third party ("Claims") and all costs in connection with defense thereof (including, but not limited to, reasonable attorney's fees) judgment, and settlements threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to: (a) Client's negligent use or intentional misuse of the Software, or (b) any breach of any representation, warranty or covenant of Client contained in this Agreement, (c) any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party, or (d) any acts or omissions of Client. Company will promptly notify Client in writing of any Claim or written allegation of infringement received by Company. Client shall have sole control of defense of any such

Claim(s) and all negotiations for its settlement or compromise. Client may not settle any Claim without the prior written consent of Company if such settlement would present an undue burden to the Company. Company's consent shall not to be unreasonably withheld.

5.6   The terms of Section 5.4 and Section 5.5 shall survive any termination of this Agreement.

6 SERVICE AND SUPPORT

6.1   **Set-up.** Company will provide Client with login information for accessing the Software. Client understands that if Client does not meet or exceed the minimum required system configuration specified in Schedule A, then Client's use of such login information and the Software may be adversely impacted. Company will charge on a time and materials basis for work requested by Client that is outside the scope of the one-time implementation fee as defined on Schedule E. Client may request additional set-up services. These services will be billed at the Company's then current fee schedule as set forth in the Quote for Software Services on Schedule E.

6.2   **Services.** Company will provide support and user assistance, periodic upgrades to the Software, off-site backup to the Software database, and correction of Software bugs and errors, which substantially impair the use of the Software. For the purposes of this Agreement, "substantially impair" means the effect of the software bug or error prevents the Client utilization of a feature that is central to the Software's main purpose or function.

6.3   **Negotiated Custom Development Project.** At no additional cost to Client, Company will build and maintain a custom "Compliance Registration Module" to, at minimum, fulfill the requirements of the "CPM Application" process currently performed by the utilities accessed at https://stuactonline.tamu.edu/app/form_camps/index/login. Usage fees for this module will apply as outlined in section 3.1.4 and Schedule E.

7 CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANTS

7.1   **Confidential Information.** All business information disclosed by one party (the "disclosing party") to the other party (the "receiving party") in connection with this Agreement, including the fees paid by Client (which shall be the confidential information of both parties), shall be treated as confidential information unless such information is or later becomes publicly available through no fault of the receiving party or it was or later is rightfully obtained by the receiving party from independent sources free from any duty of confidentiality or it was independently developed by or for the receiving without use of the confidential information of the disclosing party. Each party's confidential information shall be held in strict confidence by the receiving party and shall not be used or disclosed by the receiving party for any purpose except as necessary to implement or perform this Agreement, or except as required by law provided that the disclosing party is given a reasonable opportunity to obtain a protective order.

7.1.1 **Public Information.** Company acknowledges that Client is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Client's written request, Company will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, *Texas Government Code*, to Client in a non-proprietary format acceptable to Client. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Client has a right of access. Company acknowledges that Client may be required to post a copy of this fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

7.2 **Client Data.** Without limiting the generality of the foregoing, such Client confidential information shall include the Client Data. Company agrees to limit access to the Client's Data only to such employees and representatives of Company with a need to know and as necessary for such employees and representatives to perform their duties to accomplish the terms and conditions of this Agreement. Company may not disclose or make available any Client Data to any third party (other than such employees with the need to know) for any purpose (except to a governmental authority as required by law and then subject to the terms in Section 7.1). Company will not sell, license, assign or otherwise disclose (other than such disclosure to Client) Client Data. Client will retain all ownership rights in and to the Client Data that Client or its customers may input or use in connection with the Software and Client grants no ownership rights to Company in and to such Client Data. Company will implement the data protection and security measure described in Schedule C to protect the Client Data.

Company will implement reasonable data protection and security measures to protect against unauthorized access to or disclosure of the Client Data, including such access or disclosure by Company's other clients. Company shall comply with all laws regarding the protection, use and disclosure of personally identifiable information included without limitation the Client Data. In the event of any unauthorized disclosure of or access to any Client Data or it was reasonably likely that there was unauthorized disclosure of or access to any Client Data stored by Company, Company will be responsible for taking those actions required under applicable law.

In the event of a breach of security or other unauthorized access to any Client Data stored by Company or where it is reasonably likely that there was unauthorized access to any Client Data stored by Company, Company will promptly (i) seek to rectify or stop the breach or unauthorized access and (ii) notify Client in writing and such notice will include reasonable detail regarding the nature of the security breach or access.

Additionally, Client may utilize the data export and reporting functions within the Software to extract any desired Client Data at any time.

7.2.1   **Vendor Access.** Company hereby acknowledges responsibility to comply with all applicable Client policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by Client.

For purposes of this section 7.2.1, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in Section 51.914 of the *Texas Education Code*); Information or agrees to provide adequate certification that the and medical records. Mission Critical Information is information that is defined by Client to be essential to the continued performance of the mission of Client, the unavailability of which would result in consequences to Client.

In the event Company should obtain or be granted access to Confidential and/or Mission Critical Information of Client ("Client Information"), Company will keep and protect Client Information confidential to no less than the same degree of care as required by Client policies, rules and procedures. At the expiration or early termination of this Agreement, Company agrees to return all ClientClient Information has been destroyed. Company, its employees, agents, contractors, and subcontractors shall use the Client Information solely in connection with performance by Company   of the services provided to Client pursuant to this Agreement, and for no other purpose. Should Company, its employees, agents, contractors, or subcontractors acquire other Client Information during the course of this Agreement, it shall not be used for Company's own purposes or divulged to third parties. Company shall comply with all terms and conditions of any Client non-disclosure agreement applicable to this Agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this Agreement and the eligibility for Company to receive any Client Information from Client for a period of not less than five (5) years.

Both parties shall each provide contact information for specific individuals. The designated contact for Client shall be Henry Judah,System Risk Management, 301 Tarrow Rm 505A, College Station, Texas 77840, Telephone: (979) 458-6234, Email: HJudah@tamus.edu. The designated contact for Company shall be Chad Quiring, Chief Information Officer, CircuiTree, LLC, 1353 Lake Shore Drive, Branson, Missouri 65616, Telephone: (877) 800-3390, Email: chad@circuitree.com. Should the designated contact for either party need to be changed, the new contact information shall be updated and provided to the respective parties within 24 hours of any staff changes. Should Company have a need to access Client Information, that request shall be directed to Client's designated contact. Further, Company is responsible for reporting all security

breaches directly to Client. Client's designated contact for breaches shall be System Office IT help Desk (SO-HelpMe@tamus.edu). Security breach investigation reports shall be provided to the designated contact for Client and Client's Chief Information Security Officer (To Be Determined)."

7.2.2 **Payment Card Industry Compliance.** Company acknowledges responsibility for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of Client, or to the extent that Company could impact the security of the cardholder data environment. Company attests that, as of the Effective Date of this Agreement, it has complied with all applicable requirements to be considered PCI DSS compliant, has performed the necessary steps to validate its compliance with the PCI DSS, and will maintain such compliance for the Term of this Agreement. For purposes of this Agreement, "PCI DSS" means the most current version of the Payment Card Industry Data Security Standard administered by the Payment Card Industry Security Standards Council. Company agrees to supply evidence of its most recent validation of compliance upon execution of this Agreement and annually for the length of the Agreement. Company will immediately notify Client if it learns it is no longer PCI DSS compliant and will immediately remediate the non-compliance status. In no event shall Company's notification to Client be later than thirty (30) calendar days after Company learns it is no longer PCI DSS compliant. Company acknowledges that unauthorized access to the cardholder data environment ("a cardholder data breach") resulting from a lapse in Company's security obligations is grounds for early termination of this Agreement without penalty, at Client's discretion. Company agrees to comply with all applicable laws requiring notification of individuals in the event of a cardholder data breach. In the event of a cardholder data breach resulting from a lapse in Company's security obligations, Company agrees to assume responsibility for informing all such individuals in accordance with applicable law. Company further agrees to indemnify, hold harmless, and defend Client and its agents and employees from and against any claims, damages, or other harm related to a cardholder data breach. This provision survives termination of this Agreement.

7.3 **Company's Proprietary Items.** Client acknowledges that (a) the Software and Documentation, the object code and the source code for the Software, and (b) to the extent protected by intellectual property laws (i) the visual expressions, screen formats, report formats and other design features of the Software, all ideas, (ii) methods, algorithms, formulae and concepts used in developing or incorporated into the Software or Documentation, (iii) all future modifications, revisions, updates, releases, refinements, improvements and enhancements of the Software or Documentation, all derivative works based upon any of the foregoing, and (iv) all copies of the foregoing ((a) and (b) referred to, collectively, as "Proprietary Items") are trade secrets and proprietary property of Company, having great commercial value to Company. Furthermore, Client acknowledges that the existence and the terms of this Agreement also constitute Proprietary Items of Company for purposes of this Agreement. Client acknowledges that the restrictions in this Agreement are reasonable and necessary to protect Company's

legitimate business interests.

7.4   **Ownership Rights.** All Proprietary Items provided to Client under this Agreement are being provided on a strictly confidential and limited use basis. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights shall remain exclusively with Company, even with respect to such items that were created by Company specifically for or on behalf of Client. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to Client by virtue of this Agreement. All copies of Proprietary Items in Client's possession shall remain the exclusive property of Company and shall be deemed to be on loan to Client during the Term of this Agreement.

7.5   **Disclosure Restrictions.** All Proprietary Items in Client's possession, whether or not authorized, shall be held in strict confidence by Client, and Client shall take all steps reasonably necessary to preserve the confidentiality thereof. Client shall not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any person, or permit any person to have access to or possession of any Proprietary Item. Client shall limit its use of and access to Proprietary Items to only those of its employees or agents whose responsibilities (consistent with this Agreement) require such use or access. Client shall advise all such employees and agents, before they receive access to or possession of any Proprietary Items, of the confidential nature of the Proprietary Items and require them to abide by the terms of this Agreement. To the extent permitted by the Constitution and laws of the State of Texas, Client shall be liable for any breach of this Agreement by any of its employees, agents or any other person who obtains access to or possession of any Proprietary Item from or through Client.

7.6   **Use Restrictions.** Client shall not do, nor shall it permit any other person to do, any of the following:

    7.6.1   Use the Software for any purpose, at any location or in any manner not specifically authorized by this Agreement;

    7.6.2   Use the Software for any purpose other than management of Client's camps in the normal course of Client's business;

    7.6.3   Add data or files that are not directly related to the Client's use of the Software;

    7.6.4   Permit use of the Software by anyone other than Client's affiliates, employees, agents or brokers, including without limitation Client's accountants and attorneys;

    7.6.5   Create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile, copy or disassemble the Software;

    7.6.6   Modify, adapt, translate or create derivative works based upon the Software, or combine or merge any part of the Software with or into any other software or Documentation;

    7.6.7   Refer to or otherwise use Software as part of any effort to develop a

program having any functional attributes, visual expressions or other features similar to those of any Proprietary Item to compete with Company;

7.6.8 Remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Item made by Client;

7.6.9 Sell, market, license, sublicense, distribute or otherwise grant to any person, including any outsourcer, vendor, consultant or partner, any right to use the Software, whether on Client's behalf or otherwise; or

7.6.10 Use the Software to conduct any type of service bureau or time-sharing operation for the benefit of a third party (other than Client's affiliates) or to provide remote processing, network processing, network telecommunications or similar services to any person (other than Client's affiliates), whether on a fee basis or otherwise.

8 TERMINATION

8.1 Termination by Client.

8.1.1 Client may terminate this Agreement by giving written notice of termination to Company (in accordance with Section 10.1), no later than sixty (60 days) prior to the end of the Term or any one-year renewal term.

8.1.2 Client may terminate this Agreement upon a material breach by Company in connection with any of Company's obligations under this Agreement if Company does not cure the breach within thirty (30) days after Client gives written notice to Company describing the breach in reasonable detail.

8.1.3 In addition to these termination rights, Client may terminate this Agreement at any time during the Term or any one-year renewal term upon written notice to Company.

8.2 Termination by Company.

8.2.1 Company may terminate this Agreement by giving written notice of termination to Client (in accordance with Section 10.1), no later than sixty (60 days) prior to the end of the Term or any one-year renewal term.

8.2.2 Company may terminate this Agreement upon a material breach by Client in connection with any of Client's obligations under this Agreement if Client does not cure the breach within thirty (30) days after Company gives written notice to Client describing the breach in reasonable detail. In the event of any other breach of this Agreement,

Company shall, subject to the terms in this Agreement and to the extent permitted by the Constitution and laws of the State of Texas, be entitled to recover damages at law or seek equitable relief.

    8.2.3   Company may terminate this Agreement if Client dissolves or liquidates or otherwise discontinues all or a significant part of its business operations.

8.3   **Effect of Termination.** Upon a termination of this Agreement, including without limitation under Sections 8.1 or 8.2, Company shall terminate Client's access to the Software, and Client shall discontinue all use of the Software and any Documentation. Upon a termination of this Agreement, Client shall promptly return to Company all copies of the Documentation and any other Proprietary Items then in Client's possession, and Client shall give written notice to Company certifying that it has retained no Proprietary Items. Upon a termination of this Agreement, Company shall promptly return to Client all copies of the Client confidential information and shall destroy all Client Data in Company's possession or under Company's control, and Company shall give written notice to Client certifying that Company has retained no Client Data.

8.4   **Termination Services.** In the event of termination or expiration of the Agreement while Company is providing the Hosting Services, Client may request in writing, Company to download all materials maintained on any website, IP address or IP number on behalf of Client to a medium of Client's choosing and deliver such materials to Client within fifteen (15) business days of receipt of the written request. The fee for this service is billed at $100 per hour plus any material costs. In addition, upon Client's written request, Company shall keep any website, IP addresses and IP numbers publicly accessible for a period of thirty (30) days following the date of termination or expiration of the Agreement for a fee of $500.

9   REMEDIES

9.1   In the event of improper disclosure of confidential information or Proprietary Items Company shall be entitled, in addition to all other remedies available to it at law or equity, to the following:

        9.1.1   Equitable relief, including specific performance and injunctive relief to enforce any provision hereof and to restrain Client from using or disclosing, in whole or in part, directly or indirectly, any confidential information or Proprietary Items, without the necessity of proof of actually injury, loss, or damage; and

        9.1.2   The recovery for damages, losses, and expenses of any nature (including, but not limited to, attorneys' fees) arising out of, resulting from, or otherwise relating to such breach or threatened breach, subject to the terms and conditions in this Agreement.

9.2   To the extent permitted by the Constitution and laws of the State of Texas, Client agrees to cooperate to the full extent required, including being joined as a party in a civil action or bringing a civil action, to enforce this Agreement or similar obligations against current and former employees and agents.

10 OTHER PROVISIONS

10.1 **Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified air mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile or email, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Notices should be addressed as follows:

Client:	Texas A&M University System
	System Risk Management
	Environment, Safety & Security
	Moore/Connally Building (Mail Stop 1262)
	301 Tarrow St., 5th Floor
	College Station, TX 77840
	Attn: Henry Judah
	Telephone: (979) 458-6234
	Email: HJudah@tamus.edu
With copy to:	Texas A&M University System
	HUB & Procurement Programs
	301 Tarrow St., Second Floor
	College Station, TX 77840
	Attn: Director
	Telephone: (979) 458-6410
	Email: jzimmermann@tamus.edu
Company:	CircuiTree, LLC
	1353 Lake Shore Drive
	Branson, Missouri 65616
	Attn: Chad Quiring, Chief Information Officer
	Telephone: (877) 800-3390
	Email: chad@circuitree.com

10.2 **Parties in Interest.** This Agreement shall bind, benefit and be enforceable by and against Company and Client (including Client's affiliates) and, to the extent permitted hereby, their respective successors and assigns. Client shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without Company's prior written consent. Company's consent shall not be unreasonably withheld in the case of an assignment to a purchaser of or successor to substantially all of Client's business, or to an affiliate of Client, provided that the scope of the license granted hereunder does not change and Client guarantees the obligations of the assignee. Any change in control of Client, and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Client for purposes of this Section

10.3 **Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not employees, partners, joint ventures or agents and neither party has the right to enter into any agreement or contract on behalf of the other party or to otherwise bind the other party.

10.4 **Non-Solicitation.** During the Term of this Agreement and for one year after the termination or expiration of this Agreement, neither party shall, on behalf of itself, an affiliate or through any third party, actively solicit any employee of the other party who has performed any material work for the hiring party under this Agreement, and with whom the hiring party has had direct contact under this Agreement, without the other party's written consent.

10.5 **Publicity.** Client acknowledges that Company may list Client's name on Company's website, press releases, advertising materials, and lists of clients / customers. Company may use screen prints of Client's website homepage and any other web pages utilizing Company's Services for the exclusive purpose of promoting Company's Services.

10.6 **Entire Understanding.** This Agreement and any Schedule(s) hereto states the entire understanding and agreement between the parties with respect to their subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Any written, printed or other materials which Company provides to Client that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to Client.

10.7 **Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

10.8 **Severability.** Should one or more of the provisions contained in this Agreement be deemed unenforceable, or unenforceable to its full extent, in a determination by a body with proper jurisdiction, the parties agree (without waiving rights of appeal) that the

unenforceable provision(s) shall be: (i) reconstituted to approximate as closely as lawfully possible the fullest extent permitted by law; or (ii) if option (i), above, cannot be implemented, the unenforceable provision(s) shall be excised from the Agreement and the parties shall negotiate in good faith with respect to modification of the Agreement. If the parties cannot agree to a modification, the Agreement shall be enforced without the unenforceable provision in a fair manner and without undue prejudice to either party.

10.9 **Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

10.10 **Governing Law; Exclusive Jurisdiction and Venue.** This Agreement and all matters arising from or related to its terms or subject matters shall be governed by, construed in accordance with, and remedied in accordance with the laws of the State of Texas (without regard to that State's conflicts of laws rules), irrespective of the fact that one party now is or may become the a resident of a different state. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Client shall be in Brazos County, Texas.

10.11 **State Contracting.**

> 10.11.1 **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

> 10.11.2 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Company agrees that any payments owing to Company under this Agreement may be applied directly toward certain debts or delinquencies that Company owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

> 10.11.3 **Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and Company to attempt to resolve any claim for breach of contract made by Company that cannot be resolved in the ordinary course of business. Company shall submit written notice of a claim of

breach of contract under this Chapter to the University Contracts Officer of Client, who shall examine Company's claim and any counterclaim and negotiate with Company in an effort to resolve the claim.

10.11.4 **Conflict of Interest.** By executing and/or accepting this Agreement, Company and each person signing on behalf of Company certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Client or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

10.11.5 **Access by Individuals with Disabilities**. Company represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Client under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent Company becomes aware that the EIRs, or any portion thereof, do not comply then Company represents and warrants that it will, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

10.11.6 **Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, Company certifies Company (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.11.7 **Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Company certifies Company is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Company acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

10.11.8 **Franchise Tax Certification.** If Company is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Company certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Company is exempt from the

payment of franchise (margin) taxes.

10.11.9 **Loss of Funding.** Performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, Client will issue written notice to Company and Client may terminate this Agreement without further duty or obligation hereunder. Company acknowledges that appropriation of funds is beyond the control of Client.
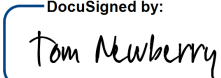
10.11.10 **State Auditor's Office.** Company understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Company agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Company will include this provision in all contracts with permitted subcontractors.

10.11.11 **Non-Waiver.** Company expressly acknowledges that Client is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Client of its right to claim such exemptions, privileges, and immunities as may be provided by law.

This Agreement is executed as of the date first above written.

CircuiTree, LLC   Texas A&M University System

DocuSigned by:

By: Tom Newberry   By: Jeff Zimmermann
    4079FF8037A2462...   E2BE2924E69547F...

Name: Tom Newberry   Name: Jeff Zimmermann

Title: President   Title: Director, Procurement & Business Services

10/27/2021 | 06:36:27 PDT   10/27/2021 | 08:29:11 CDT

SCHEDULE A

**CIRCUITREE MINIMUM SYSTEM
REQUIREMENTS**
Revised October 6, 2014

Company reserves the right to modify these requirements from time to time. The then-current version of this minimum system requirements document is available upon request. The following are the current system requirements:

1. INITIAL DATA LOAD REQUIREMENTS:

    1.1   **Data Format.** Any data to be imported must be given to CircuiTree personnel in one of the following formats: Comma separated file, Excel spreadsheet, Access data file, Microsoft SQL backup file, or other formats to be approved by Company on a case-by-case basis.

    1.2   **Data Arrangement.** The data stored in any of the above formats must be arranged in the following manner (or such other manner as mutually agreed by the parties):

- Each line, row, or record must represent a single individual or piece of data that will be imported into the CircuiTree Software (aka the Software) as a single data record.
- Each line, row, or record must contain individual fields for each piece of data related to that record. i.e. separate fields for first name, last name, gender, etc.
- Create a separate file for each group of data. For example, parent, camper, and staff information should each be submitted in three separate files.
- Provide a separate schematic document for each file submitted that describes each field in the file, following the same order that the fields are saved in the file.
- Sample data templates available upon request.

2. SOFTWARE/HARDWARE CONFIGURATION

    2.1   **Minimum Requirements for Client Workstation**
- Desktop or mobile device capable of running the latest Citrix Receiver, client plug-in, or legacy client software.
- Latest Citrix client software can be found on Citrix's website or at the following web address: http://www.citrix.com/lang/English/lp/lp_2309126.asp.
- Printer compatible with the selected platform and Citrix client software.
- Access to the Internet utilizing a connection that will provide a reliable, sustained connection speed of 19.2kbps or higher per concurrent user.
- Unrestricted access to CircuiTree Solutions' access gateway at the following web address: https://client.mycircuitree.com. This website address must be added to the Client's web browser's "Trusted sites."
- Disable all popup blockers when accessing https://client.mycircuitree.com, or add this address to the popup blocker's exemption list.

- Sufficient user permissions to install the ActiveX or Java applet automatically downloaded when connecting to CircuiTree Solutions' access gateway.

2.2   Point of Sales Software

- Computer workstation running one of the following platforms: Windows 7, Windows Vista, or Windows XP.
- Computer hardware that meets the greater of the following requirements:
- Minimum requirements established by Microsoft for the platform selected by the Client.
- 1GB of free RAM after OS boot-up
- 2GBs of free disk space for software install
- Computer workstation with enough USB and serial ports to support optional accessories.
- Optional accessories:
- Barcode reader: 100% compatible with selected platform; specific model to be pre- approved by Company.
- Receipt printer: DYMO, Model LabelWriter 400 Turbo; other models to be pre- approved by Company.
- Signature pad: Topaz Systems, Model T-L462-HSB; other models to be pre- approved by Company.
- Cash drawer: 100% compatible with selected platform; specific model to be pre- approved by Company.
- Card swipe device: 100% compatible with selected platform; specific model to be pre-approved by Company.
- Access to the Internet utilizing a connection that will provide a reliable, sustained connection speed of 128 kbps or higher for the "synchronization" process. Internet access is not required during all other operations, including all sales except those paid with credit card.
- Installation of CircuiTree Solutions' "SalesLink" software application on the Client's local computer workstation.
- Unrestricted access to CircuiTree Solutions' access gateway for the "synchronization" process at an Internet address to be provided by Company during the setup phase.

SCHEDULE B

CIRCUITREE APPROVED AFFILIATES

Affiliate Name:

Affiliate Mailing Address:

Affiliate Relationship to Client (subsidiary, brother/sister, etc):

Affiliate Federal ID#: _____

Affiliate Name:

Affiliate Mailing Address:

Affiliate Relationship to Client (subsidiary, brother/sister, etc):

Affiliate Federal ID#: _____

Affiliate Name:

Affiliate Mailing Address:

Affiliate Relationship to Client (subsidiary, brother/sister, etc):

Affiliate Federal ID#: _____

Affiliate Name:

Affiliate Mailing Address:

Affiliate Relationship to Client (subsidiary, brother/sister, etc):

Affiliate Federal ID#: _____

SCHEDULE C

**CIRCUITREE SERVICE LEVEL
AGREEMENT**
Innovation Package

1. OVERVIEW

    1.1   This Service Level Agreement applies to the Software and Company's application and data hosting services, including accessibility to and availability of the Software, the Client Data, other data and software services provided by Company via the internet (collectively referred to as the "Services") only. The Service Level Agreement does not apply to Client's internet connection(s) or other services independently contracted for by Client with Company or any third party provider. Company will provide the Services in a manner consistent with the terms in this Schedule C.

    1.2   Company's network incorporates components from manufacturers such as Cisco Systems, EMC, Dell, Microsoft and Citrix. Company's Services will run over the networks of multiple vendors who implement SONET redundant, diverse rings for customer traffic, where available, to limit the impact of adverse weather conditions, natural disasters, Acts of God, or other developments that may compromise the Services. Additionally, Company's network will incorporate a multi-tiered model for multiple redundancies and safe-guards from single points of failure. Company's network and data will be monitored by Company 24 hours per day, 7 days a week, 365 days per year and will employ various technologies to protect Company's systems from threats such as denial of service attacks, SQL injection attacks, unauthorized access, ping sweeps, e-mail relays, virus outbreaks, worms, hackers, etc.

    1.3   To ensure the highest level of Service availability, Company has implemented and will continue to implement and deploy dual network operation centers (hereinafter "NOC" or "NOCs") located in two different physical locations. The primary NOC is and will continue to be located in an underground bunker or similar such facility that provides multiple layers of security and redundancy including monitoring 24 hours per day, 7 days a week, 365 days per year, redundant power paths, redundant data paths, redundant power generators and uninterruptible power supplies, redundant A/C units, fast-acting fire extinguishing systems and much more. The secondary NOC is located at a separate physical location from the primary NOC. The Secondary NOC offers uninterruptible power supplies, redundant A/C units, enhanced physical security, and monitoring 24 hours per day, 7 days a week, 365 days per year. The secondary NOC has an exact copy of all software and data at all times.

2. TROUBLE REPORT AND RESPONSE TIME

    2.1   In the event that Client reports to Company a problem or error that impacts the Services, Company technicians will work on the problem in accordance with the

following schedule. Company shall provide to Client current support contact information (email address and phone numbers) for those Company technical support personnel tasked with receiving notices of problems and communicating with Client regarding the resolution of problems. Company will promptly notify Client of any contact updates should it change.

Severity 1 (High)

Definition: System crash or catastrophic problem that prevents Client or its customers from making an effective use of the Software; Software is unavailable or materially impaired; Problem that causes a loss or corruption of Client Data. Severity 1 problems include, without limitation, the inability to register campers, the inability to save camper registrations, and the inability to charge campers and/or receive payment from campers.

Response Time: Company will make an initial response within 1 hour of receiving Client's trouble report. Company will handle Severity 1 problems 24 hours per day, 7 days a week, 365 days per year. Company will make reasonable efforts to provide a fix or work around for Severity 1 problems within 4 hours of receiving Client's trouble report.

Severity 2 (Medium)

Definition: Client and its customers can make an effective use of the Software, but a problem exists that impairs some of the functionality or operations of the Software; no loss or corruption of Client Data

Response Time: Provided that Client's trouble report is received between 8:00 am and 5:00 pm Central Time, Monday to Friday, excluding major holidays ("Company's Business Hours"), Company will make an initial response within 24 hours of receiving Client's trouble report. Company will make reasonable efforts to provide a fix or work around for Severity 2 problems within 3 business days of receiving Client's trouble report.

Severity 3 (Low)

Definition: General usage question or recommendation for a future enhancement or modification of the Software; issue that has no impact on the quality, performance or functionality of the Software

Response Time: Company will make an initial response within 5 business days of receiving Client's trouble report. Severity 3 issues will be dealt with on a case-by-case basis.

2.2   If the problem that generated the Client's trouble report is the result of some failure of the Services attributable to a third party carrier or service provider, Company will assist in the reporting and transmission of technical data and information to such third

party carrier or service provider and will use reasonable efforts to escalate issues with the third party carrier or service provider to have the issue resolved as soon as possible.

2.3   If the problem that generated the Client's trouble report is isolated to Company's Services, Company will resolve the Services issue and restore the Services without any charge to the Client.

2.4   If the problem that generated the Client's trouble report is caused by the Client's internet connection or other on-site equipment, Company will provide any technical data or information about Company's Services to help facilitate resolution of the problem. However, Client agrees and acknowledges that it is Client's responsibility to work with the appropriate vendor(s) to resolve the problem. Furthermore, any costs associated with resolving a problem that is caused by Client's internet connection or other on-site equipment will be Client's responsibility. If Client elects to contract Company to help resolve such problems, Client will be billed on a time and materials basis at the Company's then hourly rate.

3.   MAINTENANCE

3.1   **Scheduled Maintenance.** Company's Services are designed and intended to be available 24 hours per day, 7 days a week, 365 days per year, subject to pre-scheduled and/or routine maintenance windows and emergency maintenance requirements. Company reserves the right to perform "Low-Impact Service Maintenance" as defined in Section 3.3 below between   8:00 pm and 6:00 am Central Time each day. Company will also reserve the right to perform "High-Impact Service Maintenance" as defined in Section 3.4 that may result in an intentional Service interruption on Mondays between 5:00 am to 5:30 am Central Time. If   High-Impact Maintenance needs to occur outside of that window, the Company will contact the Client at least forty-eight (48) hours in advance of any scheduled maintenance window.

3.2   **Emergency Maintenance.** Company will provide Client with as much notice as possible in the case of emergency maintenance.

3.3   **Low-Impact Service Maintenance.** A "Low-Impact Service Maintenance" (hereinafter "LISM") event is defined as (i) an update to any part of Company Software or Services; or (ii) an update to any software, hardware, services, or other pieces or parts that support Company Software or Services, provided such event (a) does not create a Severity 1 (High) issue as defined in section 2.1.1.1; and (b) does not create a disruption that lasts longer than 60 minutes.

3.4   **High-Impact Service Maintenance.** A "High-Impact Service Maintenance" (hereinafter "HISM") is defined as (i) an update to any part of Company Software or Services; or (ii) an update to any software, hardware, services, or other pieces or parts that support Company Software or Services. The resulting maintenance may result in intentional Service interruptions that will not last longer than 30 minutes.

4. DEFINITIONS

    4.1   **Affected Service Module. "**Affected Service Module" is a specific Service Module that experiences a degradation of service as defined in the "Service Interruptions and Credit Policy" section below.

    4.2   **Internet Connection Rate.** The "Internet Connection Rate" (hereinafter "ICR") is defined as the ability of an external computer connected to the internet to ping Company's NOC.   This connection rate is not dependent upon the availability of Company Services or specific applications or data. The ICR is also not dependent upon the reliability of Client's connection to the internet.

    4.3   **Service Availability Rate.** The "Service Availability Rate" (hereinafter "SAR") is defined as the ability of an external computer connected to the internet to access and receive Services, applications and/or Client Data. This is often referred to as "availability" of a solution or system. Company's solution and system will be considered "available" and not impact the SAR as long as there are no Severity 1 problems impacting the Software or Services 99% of the time and Services, applications and Client Data are useable by Client and accessible to an external computer via the internet. Additionally, the SAR is not dependent upon the reliability of Client's computer or other onsite equipment or their ability to connect to Company's Services.

    4.4   **Monthly Fee.** The "Monthly Fee" shall mean either (i) the Sales-Based Monthly Fee, as defined in Section 3.1.3 of the Agreement, where the Client has selected the Sales-Based Pricing structure or (ii) the Registration-Based Monthly Fee, as defined in Section 3.1.4 of the Agreement, where the Client has selected the Registration-Based Pricing structure.

5. SERVICE INTERRUPTIONS AND CREDIT POLICY

    5.1   **Service Level Commitment.** Company Services will have an average monthly Internet Connection Rate (ICR) of 99%, excluding scheduled maintenance. Company utilizes a third- party vendor to determine the ICR. Company Services will have an average monthly Service Availability Rate of 99%.

    5.2   **ICR Failure and Impact on SAR.** In the event of an ICR performance failure, all other performance guarantees, such as the SAR, will be suspended. Any outage or inaccessibility time during the ICR performance failure will not count towards the SAR or any other guarantee until any failure related to the ICR has been restored.

    5.3   Internet Connection Rate (ICR) Credit Policy.

        5.3.1   The ICR guarantee supersedes all other guarantees.

5.3.2   Credit for performance failure in a given month may not exceed 100% of the applicable Monthly Fee for the affected Service.

5.3.3   In the event of a failure to meet monthly Internet Connection Rate levels, Client shall be entitled to the following credits:

A. 95.00% to 98.99% ICR results in a 5% credit of the applicable Monthly Fee for the Affected Service Module for the month in which the target ICR was missed.

B. 90.00% to 94.99% ICR results in a 15% credit of the applicable Monthly Fee for the Affected Service Module for the month in which the target ICR was missed.

C. 89.99% and less ICR results in a 25% credit of the Monthly Fee for the Affected Service Module for the month in which the target ICR was missed.

5.4   Service Availability Rate (SAR) Credit Policy

5.4.1   Credit for performance failure in a given month may not exceed 100% of the applicable Monthly Fee for the Affected Service Module.

5.4.2   In the event of a failure to meet monthly Service Availability Rate levels, Client shall be entitled to the following credits:

A. 95.00% to 98.99% SAR results in a 5% credit of the applicable Monthly Fee for the Affected Service Module for the month in which the target SAR was missed.

B. 90.00% to 94.99% SAR results in a 15% credit of the applicable Monthly Fee for the Affected Service Module for the month in which the target SAR was missed.

C. 89.99% and less SAR results in a 25% credit of the applicable Monthly Fee for the Affected Service Module for the month in which the target SAR was missed.

5.5   Credit allowance for a failure of the ICR or SAR performance levels (hereinafter "performance failure") commences upon the earlier of (i) Company's receipt of notice from the Client of the performance failure or (ii) Company's actual knowledge of the performance failure between the hours 6:00AM to 10:00PM Central Time. Credit allowance ceases accruing when the Service has been restored. Credits for a performance failure shall be given only when the Client notifies Company that such

credit is due. Client waives any right to credits not claimed within sixty (60) days of the applicable performance failure.

5.6 **Extended Service Interruption.** In the event of a Severity 1 problem or complete Service interruption, defined as total inability to access Company's web portal for the purpose of accessing Services (hereinafter "Service Interruption") of at least forty-eight (48) continuous hours ("Extended Service Interruption"), Client may terminate this Agreement without penalty or liability following the 48th hour by (i) giving Company written notice of the termination within thirty (30) days after the end of the Extended Service Interruption and (ii) by making payment for any undisputed outstanding balance due for Services rendered by Company through the date of termination. Such termination will be effective on the date specified by Client in such written notice to Company.

5.7 For purposes of this Service Level Agreement, a Service Interruption or performance failure will be deemed to have occurred only if the Services (including without limitation the Software) become unusable or unavailable to the Client as a result of a failure of Company's Software, Services, facilities, equipment or personnel, and only where the Service Interruption or performance failure is not the result of: (i) the fault or negligence of or attributable to the Client; (ii) any planned, routine, or emergency maintenance as described above; or (iii) other circumstances beyond the reasonable control of Company, provided that Company has complied with the terms of this Agreement regarding Force Majeure Events and switching from one NOC to the other NOC.

6. DATA INTEGRITY

6.1 Company has implemented and will continue to implement various technologies, equipment, and techniques to provide the best data protection possible. This includes, but is not limited to, protections against equipment failure, data corruption, viruses, worms, and malicious attacks. Company implements a redundant network system architecture to ensure Zero Data Loss (hereinafter "ZDL") to our Clients.

6.2 For the purposes of this Service Level Agreement, data loss is defined as a data record that once existed in the database, but has subsequently been corrupted or completely deleted or removed from the database due to equipment failure, power-loss, virus, worm, malicious attack, other catastrophic failure to the NOC or any other reason or event. Data loss due to Client user error is not covered by the ZDL guarantee.

6.3 For purposes of this Service Level Agreement, data loss will be deemed to have occurred only if the loss of Client data is a result of a failure of Company's facilities, equipment or personnel, or due to virus, worm or other malicious attack, and only where the data loss is not the result of: (i) the fault or negligence of or attributable to the Client or (ii) planned or intentional deletion of data in each case at Client's request.

6.4 Client must report any known actual or suspected data loss to Company within seven (7) days of the actual data loss event to qualify for the ZDL guarantee. A data loss can be recovered up to fourteen (14) days after the data loss event.

6.5 Due to feasibility and technological challenges, data must be stored on Company's Services for a minimum of twenty-four (24) hours before the ZDL guarantee can apply. Data created or stored on Company Services for less that twenty-four (24) hours that are subsequently lost or deleted will have to be manually recreated using resources outside of Company Services or Software.

7. GENERAL LIMITATION OF LIABILITY

7.1 Company will use all reasonable efforts to promptly remedy any issues, problems, delays, interruptions, omissions, mistakes, accidents, corruptions, data loss or errors in the Services (hereinafter "Defect" or "Defects").

7.2 Company represents and warrants to Client that the Services will be performed in a professional and workmanlike manner and in a manner consistent with industry standards applicable to similar services.

7.3 The warranties and remedies set forth in this SLA are exclusive and in lieu of all other warranties or remedies, whether express, implied or statutory, including without limitation implied warranties or merchantability and fitness for a particular purpose.

SCHEDULE D

CIRCUITREE WEB CONTENT HOSTING SERVICES AGREEMENT

1   OVERVIEW

1.1   This Hosting Agreement sets forth the terms and conditions of Company's provision of hosting services for certain Client's content appearing on Client's website(the "Hosting Services").

1.2   The terms and conditions set forth in the CircuiTree Subscription Agreement are hereby incorporated by reference.

2   CLIENT'S RESPONSIBILITIES

2.1   Client agrees to reasonably cooperate with Company in connection with Company's performance of the Hosting Services, including providing the Client content to Company for hosting by Company.

2.2   Client assumes full responsibility for providing end users with any legally required disclosure or explanation of the various features of the Client's website and any goods or Hosting Services described therein, as well as any rules, terms or conditions of use.

2.3   Because the Hosting Services permit Client to electronically transmit or upload content directly to the Client's website, Client shall be fully responsible for uploading all content to the Client's website and supplementing, modifying and updating the Client's website.

2.4   Client is responsible for complying with the requirements of the Digital Millennium Copyright Act (the "DMCA") and acknowledges that Company is a "service provider" under the DMCA and is therefore immune from liability under the DMCA. Consistent with the DMCA, Company may accommodate standard technical measures used to identify and protect copyrighted works.

3   WEBSITE CONTENT

3.1   All Hosting Services provided by Company may only be used by Client for lawful purposes. Transmission, storage, or presentation of any information, data or material in violation of any United States Federal, State or City law, or in violation of the laws of any country, is prohibited. Client is responsible for determining what laws or regulations are applicable to its use of the Hosting Services.

3.2   Prohibited information, data and material which Client may not provide to Company for hosting includes, but is not limited to: third party copyrighted material, third party trademarks and intellectual property, material Company judges to be threatening or obscene, material that advocates or calls for the commission of crimes or civil harms to any person, group of people, corporation, country, or any entity, or material protected by trade secret and other statute without proper authorization. Company will notify Client if

any Client content is deemed to be prohibited.

3.3 Client agrees not to transmit or provide to Company for hosting any content that Client knows or has reason to believe may be damaging to Company servers or any other server on the internet. Links to such materials are also prohibited. Client agrees to use its best efforts to ensure that the Client's content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.

4   LICENSE TO COMPANY

Subject to the terms of this Agreement, Client hereby grants to Company, during the Term of the Subscription Agreement, a, royalty-free, non-exclusive license to Client's intellectual property rights (i.e. copyright, trademark, trade secret) associated with material that Client transmits or provides to Company to enable the Company to provide the Hosting Services. Any such material may be used by Company only for purposes of performing the Hosting Services, specifically, reproduction and posting on Client's website. Client agrees and acknowledges that Client is responsible for all information sent to Company.

5   BANDWIDTH; STORAGE; CPU USAGE

Client agrees that bandwidth and disk usage shall not exceed the contracted for parameters set forth in the Quote for Software Services attached hereto as Schedule E. If Schedule E does not lay out these parameters, the following will be used: (i) total file storage on website is limited to a maximum of 2GB, (ii) all streaming media including but not limited to video and audio must be hosted on a third-party service, and (iii) maximum sustained CPU usage is limited to 10%. Any violation of these policies may result in corrective action by Company, including, but not limited to the assessment of additional charges.

6   INTERNET PROTOCOL (IP) ADDRESS OWNERSHIP

If Company assigns Client an Internet Protocol ("IP") address for Client's use in connection with the Hosting Services provided by Company for Client content, the right to use that IP address shall belong only to Company, and Client shall have no right to use that IP address except as permitted by Company in its sole and absolute discretion in connection with the Hosting Services, during the term of this Hosting Agreement. Company shall maintain and control ownership of all IP numbers and addresses that may be assigned to Client by Company, and Company reserves the right to change or remove any and all such IP numbers and addresses, in its sole and absolute discretion.

7   LIMITED WARRANTY

7.1 Company represents and warrants to Client that the Hosting Services will be performed in a manner consistent with industry standards reasonably applicable to the performance thereof.

7.2 The foregoing warranty shall not apply to performance issues or defects in the Hosting Services (a) caused by factors outside of Company reasonable control; (b) that resulted from any actions or inactions of Client or any third parties; or (c) that resulted from Client's equipment or any third-party equipment not within the sole control of Company.