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## Software as a Service Agreement

- 1) This Software as a Service Agreement is made on \_\_\_\_\_ (the "Effective Date") between MJTrax, a Hawaii Corporation, whose principal place of residence is at 16-566 Keaau-Pahoa Rd, Keaau, HI 96749 (the "Host") and \_\_\_\_\_, a \_\_\_\_\_ Corporation whose principal place of business is at \_\_\_\_\_ (the "Subscriber").
- 2) **Grant of License to Access and Use Service.** Host hereby grants to Subscriber, including to all Subscriber's Authorized Users, a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the MJ Trax.com website (the "Service") solely for Subscriber's business operations according to Host's terms and policies listed at [SamyuTech.com/mjtraxterms.aspx](http://SamyuTech.com/mjtraxterms.aspx).
- 3) **Fees.** Subscriber shall pay Host a monthly subscription fee of \$399 (the "Basic Subscription Fee") for hosting of and access to the cloud-based suite of business intelligence services provided under this agreement.
- 4) **Payment.** Subscriber shall pay
  - a) the Basic Subscription Fee to Host
    - i) due on or before 5<sup>th</sup> day of each current month,
    - ii) in immediately available funds, and
    - iii) to the account Host lists immediately below:
      - (1) Account Number:
      - (2) Routing Number:
- 5) **Taxes.** Payment amounts under this agreement do not include Taxes, and Subscriber shall pay all Taxes applicable to payments between the parties under this agreement.
- 6) **Interest on Late Payments.** Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month (12.68% annually) or the maximum allowed by Law, whichever is less.
- 7) **Support Services**
  - a) **Initial Support.** For the 12 month period beginning on the Effective Date, and at Host's own expense, Host shall provide Subscriber with
    - i) telephone or electronic support during Host's normal business hours in order to help Subscriber locate and correct problems with the Service and any related software, and
    - ii) internet-based support system generally available seven days a week, twenty-four hours a day.
  - b) **Renewed Support.** After the initial 12 month support period, Subscriber may elect to renew Host's support services under this paragraph for additional 12 month periods, at Host's then-current service rates.
- 8) **Service Levels**
  - a) **Applicable Levels.** Host shall provide the Service to Subscriber with a System Availability of at least 99.5% during each calendar month.

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- 9) **System Maintenance.** Host may
- a) take the Service offline for scheduled maintenances that it provides Subscriber the schedule for in writing (this scheduled maintenance time will not count as System Availability), and
  - b) change its schedule of maintenances on [one] month written notice to Subscriber.
- 10) **System Availability Definition**
- a) **Percentage of Minutes per Month.** "System Availability" means the percentage of minutes in a month that the key components of the Service are operational.
- 11) **Not Included in "System Availability."**
- "System Availability" will not include any minutes of downtime resulting from
- a) scheduled maintenance,
  - b) events of force majeure,
  - c) malicious attacks on the system,
  - d) issues associated with Subscriber's computing devices, local area networks or internet service provider connections, or
  - e) Host's inability to deliver services because of Subscriber's acts or omissions.
- 12) **Data Protection.** Subscriber shall implement reasonable safeguards to prevent unauthorized access to, use of, or disclosure of the disclosing party's Data.
- a) **Data Privacy.** Host may collect, use and process Subscriber data only according to Host's Privacy Policy, available at [SamyuTech.com/Privacy.aspx](http://SamyuTech.com/Privacy.aspx)
  - b) **Back-Up Data.** On Subscriber's request and payment of \$150 per copy, Host shall deliver to Subscriber a full back-up of Subscriber's Data, in a format the parties agree on in writing.
- 13) **Statistical Information.** Host may anonymously compile statistical information related to the performance of the Service for purposes of improving the Service, but only if such information does not identify the data as Subscriber's or otherwise include Subscriber's name.
- 14) **Publicity**
- a) **Consent.** Neither party will use the other party's name, logo, or trademarks, or issue any press release or public announcement regarding this agreement, without the other party's written consent, unless specifically permitted under this agreement or required by Law.
  - b) **Cooperation.** The parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this agreement and the relationship between the parties.
  - c) **No Unreasonable Delay.** The parties will not unreasonably withhold or delay their consent to press releases or public announcements.
- 15) **User Obligations**
- a) **Hardware Obligations.** Subscriber shall be responsible for
    - i) obtaining and maintaining all computer hardware, software, and communications equipment needed to internally access the Service, and

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ii) paying all third party access charges incurred while using the Service.

## 16) **Subscriber's Use of Services.** Subscriber shall

- a) abide by all local and international Laws and regulations applicable to its use of the Service,
- b) use the Service only for legal purposes, and
- c) comply with all regulations, policies and procedures of networks connected to the SaaS.

## 17) **Restricted Uses.** Subscriber will not

- a) upload or distribute of any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Service,
- b) modify, disassemble, decompile or reverse engineer the Service,
- c) probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the Service,
- d) take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the Service,
- e) copy or reproduce the Service,
- f) access or use any other clients' or their users' data through the Service,
- g) maliciously reduce or impair the accessibility of the Service,
- h) use the service to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or
- i) transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

## 18) **Export Compliance**

### a) **No Representation by Host.**

- i) Host makes no representation that the Service is appropriate or available for use outside of the United States.

### b) **Subscriber Status.**

Subscriber represents that it is not located in, under the control of, or a national or resident of any country to which the United States has embargoed the import or export of goods, on the United States Treasury Department's List of Specially Designated Nationals or United States Commerce Department's Table of Deny Orders.

## 19) **Term.** This agreement begins on the Effective Date and will continue until terminated

## 20) **Representations**

### a) **Mutual Representations**

- i) **Existence.** The parties are corporations incorporated and existing under the laws of the jurisdictions of their respective incorporation.

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- ii) **Authority and Capacity.** The parties have the authority and capacity to enter into this agreement.
  - iii) **Execution and Delivery.** The parties have duly executed and delivered this agreement.
  - iv) **Enforceability.** This agreement constitutes a legal, valid, and binding obligation, enforceable against the parties according to its terms.
- 21) **No Conflicts.** Neither party is under any restriction or obligation that the party could reasonably expect might affect the party's performance of its obligations under this agreement.
- 22) **No Breach.** Neither party's execution, delivery, or performance of its obligations under this agreement will breach or result in a default under
- a) its articles, bylaws, or any unanimous shareholders agreement,
  - b) any Law to which it is subject,
  - c) any judgment, Order, or decree of any Governmental Authority to which it is subject, or
  - d) any agreement to which it is a party or by which it is bound.
- 23) **Permits, Consents, and Other Authorizations.** Each party holds all Permits and other authorizations necessary to
- a) own, lease, and operate its properties, and
  - b) conduct its business as it is now carried on.
- 24) **No Disputes or Proceedings.** [Except as disclosed in the parties respective Disclosure Schedules] There are no Legal Proceedings pending, threatened, or foreseeable against either party, which would affect that party's ability to complete its obligations under this agreement.
- 25) **No Bankruptcy.** Neither party has taken or authorized any proceedings related to that party's bankruptcy, insolvency, liquidation, dissolution, or winding up.
- 26) **Host's Representations**
- a) **Ownership.** Host is the exclusive legal owner of the Service, including all Intellectual Property included in the Service.
  - b) **Status of Licensed Intellectual Property.** Host has properly registered and maintained all Intellectual Property included in the Service and paid all applicable maintenance and renewal fees.
  - c) **No Conflicting Grant.** Host has not granted and is not obligated to grant any license to a third party that would conflict with the Service.
  - d) **No Infringement.** The Service does not infringe the Intellectual Property rights or other proprietary rights of any third party.
  - e) **No Third Party infringement.** To Host's Knowledge, no third party is infringing the Service.
- 27) **Limited Warranty**
- a) **Service Warranty.** The Company will provide the Service in a professional manner consistent with general industry standards.

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- b) **Performance Warranty.** The Company warrants that the Service will perform substantially in accordance with the Documentation.
- c) **Warranty Disclaimer.** The Company does not guarantee that the Service will be error-free, virus-free, or uninterrupted. The Company will not be liable for any unauthorized alteration, theft, or destruction of any of the Customer's data.

28) **Ownership of Intellectual Property.** Host will retain all interest in and to the Services, including all documentation, modifications, improvements, upgrades, derivative works, and all other Intellectual Property rights in connection with the Service, including Host's name, logos, and trademarks reproduced through the Service.

## 29) Termination

- a) **Termination on Notice.** Either party may terminate this agreement for any reason on 60 business days' notice to the other party.
- b) **Termination for Material Breach.** Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if
  - i) the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and
  - ii) the failure, inaccuracy, or breach continues for a period of 15 Business Days after the injured party delivers notice to the breaching party reasonably detailing the breach.
- c) **Termination for Failure to Pay.** Host may terminate this agreement with immediate effect by delivering notice of the termination to Subscriber if Subscriber fails to pay the monthly Subscription Fee on time 3 times over any 12 month period.

## 30) Effect of Termination

- a) **Refund Amounts.** Host shall immediately refund to Subscriber any prepaid Subscription Fees covering the remainder of the term of all subscriptions after the effective date of termination.
- b) **Pay Outstanding Amounts.** Subscriber shall immediately pay to Host all amounts outstanding as of the date of, and any amounts outstanding as a result of, termination.
- c) **Discontinuance of Use.** Subscriber shall cease all use of the Service upon the effective date of the termination.
- d) **Recovery of Data.** Subscriber will have 30 days from the date of termination to retrieve any of data that Subscriber wishes to keep.

## 31) Limitation on Liability

- a) **Mutual Limit on Liability.** Neither party will be liable for breach-of-contract damages suffered by the other party that are remote or speculative, or that could not have reasonably been foreseen on entry into this agreement.
- b) **Maximum Liability.** Host's liability under this agreement will not exceed the fees paid by Subscriber under this agreement during the 12 months preceding the date upon which the related claim arose.

## 32) Notices

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- a) **Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax][ or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.
- b) **Receipt of Notice.** A notice given under this agreement will be effective on
  - i) the other party's receipt of it, or
  - ii) if mailed, on the earlier of the other party's receipt of it and the 5th business day after mailing it.

## 33) Response and Resolution Goals

- a) **2.1 Severity 1:** The Production system / application is down, seriously impacted and there is no reasonable workaround currently.
  - i) Upon confirmation of receipt, the Company will begin continuous work on the issue, and a customer resource must be available at any time to assist with problem determination.
  - ii) Once the issue is reproducible or once we have identified the Software defect, the Company support will provide reasonable effort for workaround or solution within 24 hours.
- b) **2.2 Severity 2:** The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.
  - i) The Company will work during normal business hours to provide reasonable effort for workaround or solution within 7 business days, once the issue is reproducible.
- c) **2.3 Severity 3:** The system or application is moderately affected. The issue is not critical and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.
  - i) The Company will work during normal business hours to provide reasonable effort for workaround or solution within 10 business days, once the issue is reproducible.
- d) **2.4 Severity 4:** Non-critical issues.
- e) The Company will seek during normal business hours to provide a solution in future releases of the Service.

## 34) General Provisions

- a) **Entire Agreement.** The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,
  - i) represent the final expression of the parties' intent and agreement between the parties relating to the subject matter of this agreement,
  - ii) contain all the terms the parties agreed to relating to the subject matter, and
  - iii) replace all the parties' previous discussions, understandings, and agreements relating to the subject matter.

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- b) **Amendment.** Host may amend the terms and conditions of this agreement at any time by reasonable notice, including without limitation by posting revised terms on its website at the URL [URL].
  - c) **Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.
- 35) **Governing Law.** This agreement shall be governed, construed, and enforced in accordance with the laws of the State of Hawaii, without regard to its conflict of laws rules.
- 36) **Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- 37) **Waiver**
- a) **Affirmative Waivers.** Neither party's failure or neglect to enforce any of rights under this agreement will be deemed to be a waiver of that party's rights.
  - b) **Written Waivers.** A waiver or extension is only effective if it is in writing and signed by the party granting it.
  - c) **No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.
- 38) **No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.
- 39) **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 40) **No Partnership**
- a) **No Relationship.** Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties.
  - b) **No Authority.** Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.
- 41) **Definitions**
- a) "Authorized Users" means the list of Persons authorized to use the Services under this agreement.
  - b) "Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in New York, New York are not open for business.
  - c) "Confidential Information" has the same meaning in this agreement as the term has under the Non-Disclosure Agreement between the parties, dated [DATE], referenced in section [CONFIDENTIALITY OBLIGATIONS] and attached to this agreement.
  - d) "Data" means all of the data Subscriber creates with or uses with the Service, or otherwise related to Subscriber's use of the Services.
  - e) "Disclosure Schedule" means the schedules delivered, before the execution of this agreement, by each party to the other party which list, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this agreement or as an exception to one or more of

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the representations or warranties made by the party, or to one or more of the covenants of the party.

- f) "Effective Date" is defined in the introduction to this agreement.
- g) "Governmental Authority" means
  - i) any federal, state, local, or foreign government, and any political subdivision of any of them,
  - ii) any agency or instrumentality of any such government or political subdivision,
  - iii) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
  - iv) any arbitrator, court or tribunal of competent jurisdiction.
- h) "Intellectual Property" means any and all of the following in any jurisdiction throughout the world
  - i) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
  - ii) copyrights, including all applications and registrations related to the foregoing,
  - iii) trade secrets and confidential know-how,
  - iv) patents and patent applications,
  - v) websites and internet domain name registrations, and
  - vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).
- i) "Law" means
  - i) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
  - ii) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.
- j) "Legal Proceeding" means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).
- k) "Order" means any decision, order, judgment, award, or similar order of any court of competent jurisdiction, arbitration panel, or Governmental Authority with jurisdiction over the subject matter, whether preliminary or final.
- l) "Permits" means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the party's business.
- m) "Person" includes



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- i) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- ii) any individual.
- n) "Taxes" includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

## 42) This agreement has been executed by the parties.

- a) MJTrax LLC
  - i) By:
  - ii) Name:
  - iii) Title:
- b) \_\_\_\_\_
  - i) By:
  - ii) Name:
  - iii) Title:

## SCHEDULE A

### 43) Software Service and Pricing

- a) This Software Service and Pricing Schedule is effective upon the Software as a Service Agreement Effective Date, documents the Service (defined below) being purchased by \_\_\_\_\_ ("Customer") under the terms and conditions of the Software as a Service Agreement.
  - i) **Services**
  - ii) **Term**
- b) The term begins upon the Schedule Effective Date and ends ONE year thereafter ("Subscription Term").
- c) **Subscription Fee**
  - i) The total value of this Schedule is \$ \$9588.00. Upon execution of this Schedule, the Company shall issue an invoice in accordance with the Software as a Service Agreement.
- d) **Customer Billing Information**

### 44) Billing Department Name:

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45) Billing Department Address:

46) Contact Name:

47) Contact Phone number:

48) Contact email: