

OPEN ACCOUNT AGREEMENT FOR TENNESSEE STATE AND LOCAL GOVERNMENT CUSTOMERS

This Open Account Agreement (this “**Agreement**”) is made by and between Internetwork Services Incorporated d/b/a Internetwork Engineering (“**IE**”) and customer set forth on the signature page to this Agreement (“**Buyer**”).

Buyer desires to purchase Goods and Services (as those terms are defined below) from IE from time to time on an open account basis and agrees, in consideration of the creation of the open account, to be bound by this Agreement. Neither IE nor Buyer shall have any obligation to sell or purchase Goods and Services pursuant to this Agreement. In general, the sale of any Goods shall be made pursuant to a purchase order (“**PO**”) and the sale of any services shall be made pursuant to a statement of work (“**SOW**”). Any goods sold pursuant to a PO are referred to as “**Goods**” and any services sold pursuant to a SOW are referred to as “**Services**.” Any Goods or Services pursuant to a PO or SOW shall be covered by this Agreement; and IE does not accept any other terms and conditions of sale, *except* where Buyer and IE have executed a contract which specifically supersedes and replaces some or all of terms and conditions herein (e.g., a Master Services Agreement or an OnDemand Agreement). This Agreement, which shall be referenced on all invoices, contains the terms and conditions upon which IE makes all sales of its Goods and Services.

Acceptance by IE of all Buyer’s PO is expressly made conditional upon Buyer’s agreement, expressed or implied, with the terms and conditions set forth herein without modification or addition except to the extent that such terms are mutually agreed upon in either an applicable SOW or other executed document between the parties. No Buyer terms or conditions shall apply to the Goods or Services, including any terms Buyer affixes to any sales quote or sales confirmation issued by Buyer, and all such other terms (any and all such other supplemental terms proposed by Buyer) are deemed rejected by IE unless explicitly accepted by IE in writing with an acknowledgment that such other terms modify or supersede this Agreement.

- A. **ACCEPTANCE** - Buyer's acceptance of these terms and conditions shall be indicated by its written signature below.
- B. **FEES AND EXPENSES** - A PO or SOW will specify whether payment is based on time and materials or a fixed fee (as applicable, “**Fees**”). If Fees are based on time and materials, Buyer shall pay IE for the amount of time actually worked at the rates set forth in the PO or SOW. If Fees are based on a fixed fee, Buyer shall pay IE the fixed fee specified in the PO or SOW, which shall be billed against a PO or SOW. Professional services will be performed during normal business hours unless otherwise authorized by Buyer. If after-hours work is required, Buyer will be charged at 1.5 times the normal hourly rate of IE’s personnel that is specified in a PO or SOW. Normal business hours are defined as 8:00 AM through 6:00 PM, Monday through Friday, holidays excluded. The hourly rate for IE’s personnel applies to travel time. In addition to IE’s Fee(s), Buyer shall reimburse IE for all audit-worthy reimbursable expenses. Reimbursable expenses for work performed outside of the area/facilities designated in the PO or SOW will require Buyer’s advance approval and shall include: (i) actual and reasonable mileage reimbursed at fifty cents (\$.50) per mile; (ii) actual and reasonable costs of lodging, up to one hundred and fifty dollars U.S. (\$150.00) per day; (iii) actual and reasonable cost of meals up to fifty dollars U.S. (\$50) per day for overnight travel; and (iv) actual and reasonable costs of airfare for locations greater than 200 miles outside of IE’s designated local office.
- C. **PURCHASE PRICE FOR GOODS** - The purchase price for all Goods shall be as set forth in the applicable PO.
- D. **TERMS OF PAYMENT** - Unless otherwise specified, payment terms for all purchases of Goods and all Fees are NET 30 days. If applicable, Buyer shall bear all applicable federal, state, municipal and other government taxes (such as sales, use and similar taxes), however designated or levied on the sale of Services or Goods (or the delivery thereof) or measured by the purchase price paid for the Goods. All amounts payable to IE under the Agreement or any associated PO or SOW shall be paid by Buyer to IE in full without any setoff, deduction, or withholding for any reason. Buyer’s failure to make timely payment may result in such action as commencement of proceedings for collection, revocation of credit, stoppage of shipment, delay or cessation of future deliveries and any services, repossession of unpaid delivered Goods and/or termination of any one of more sales agreements. Notwithstanding any net payment provisions specified on the invoice, IE shall have no continuing obligation to deliver Goods or Services on credit, and any credit approval may be withdrawn by IE at any time and without prior notice.

- E. **DELIVERY OF GOODS** - Unless otherwise agreed in writing, delivery of Goods shall be made to the address specified by Client on the applicable purchase order in accordance with the standard shipping policy of the original equipment manufacturer or authorized designated channel representative. Unless otherwise stated on the front of PO or invoice for Goods, title to and all risk of loss or damage with respect to the Goods shall pass to Buyer upon delivery by IE to Buyer at the delivery location specified in the PO. Buyer shall promptly notify IE, but in no event later than five (5) business days after delivery, of any claimed shortages or rejection as to any delivery. Such notice shall be in writing and shall be reasonably detailed, stating the grounds for any such rejection. Failure to give any such notice within such time shall be deemed an acceptance in full of any such delivery. IE shall not be liable for any shipment delays beyond the reasonable control of IE which affect IE or any of IE's suppliers, including, but not limited to, delays caused by unavailability or a shortage of Goods from IE's suppliers, natural disasters, acts of war, acts of terrorism; acts or omissions of Buyer, fire, strike, governmental interference, unavailability or shortage of materials, labor, fuel or power through normal commercial channels at customary and reasonable rates, failure or destruction of plant or equipment arising from any cause whatsoever, or transport failures or delays.
- F. **RETURN OF GOODS** - Return of Goods purchased hereunder shall be governed by the OEM's product return policy for such authorized goods in effect on the date of the invoice, or as otherwise provided by IE to Buyer in advance in writing. IE will honor and pass through to Buyer all rights and warranty entitlements provided by the original equipment manufacturer of the Goods ("**OEM**"). In most cases, unopened Goods may be returned within 30 days, contingent on the OEM's approval. Opened Goods returns may be allowed on a case-by-case basis contingent on the OEM (or the OEM's distributor) approval and may incur a restocking fee. The right to return defective Goods, as previously described, shall constitute IE's sole liability and Buyer's exclusive remedy in connection with any claim of any kind relating to the quality, condition of performance of any Goods, whether such claim is based upon principles of contract, warranty, gross negligence, breach of any statutory duty, principles of indemnity or contribution, the failure of any limited or exclusive remedy to achieve its essential purpose, or otherwise. In the event IE issues a return authorization to Buyer allowing Buyer to return Goods to IE, Buyer will deliver the Goods to IE's address in Charlotte, NC, if so required by IE, and Buyer shall bear all applicable federal, state, municipal and other government taxes (such as sales, use and similar taxes), however designated or levied, on any replacement Goods to be shipped by IE to Buyer.
- G. **WARRANTIES**
1. Warranties for Goods. IE warrants that all Goods will be new and will conform in all material respects with the descriptions and specifications set forth on the applicable PO. ALTHOUGH IE'S POLICIES MAY PERMIT BUYER TO RETURN GOODS CLAIMED TO BE DEFECTIVE UNDER CERTAIN CIRCUMSTANCES, IE MAKES NO REPRESENTATIONS OF WARRANTIES OF ANY KIND WITH RESPECT TO THE GOODS AND THE ONLY WARRANTIES OFFERED WITH RESPECT TO THE GOODS ARE THOSE WARRANTIES PROVIDED BY THE OEM, IF ANY. To the maximum extent it is permitted to do so, IE shall pass through to Buyer, and provide Buyer with the benefit of, the OEM's warranties (if any) for the Goods.
 2. Warranties for Services. With respect to all Services, IE warrants that IE: (i) has the right, power and authority to provide the Services, (ii) Services will conform and operate in all material respects with the descriptions and specification set forth in the applicable SOW, and (iii) will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet IE's obligations under the applicable SOW.
 3. Disclaimer of All Other Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, ALL GOODS AND SERVICES ARE PROVIDED "AS IS" AND IE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- H. **LIMITATION OF LIABILITY** - NEITHER PARTY SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL,

CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA OR FOR ANY DAMAGES OR SUMS PAID TO THIRD PARTIES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE.

- I. **CONFIDENTIALITY** - The term “Confidential Information” means any information owned or disclosed by or on behalf of IE that (i) constitutes a trade secret under Tenn. Code § 47-25-1701, et. seq., or (ii) is exempt from the Public Records Act pursuant to TN. Code §4-3-70. IE shall mark all appropriate portions of any written or electronic materials containing Confidential Information as “confidential,” “proprietary,” or with a similar legend, in all cases, consistent with applicable Tennessee law. Buyer and all Buyer’s employees, affiliates, agents or subcontractors (“Representatives”) agree: (i) not to disclose or use Confidential Information in violation of Tennessee law; (ii) to use at least commercially reasonable efforts to protect Confidential Information from disclosure to others; and (iii) to notify IE in writing upon discovery of any loss or unauthorized disclosure of the Confidential Information by Buyer, or if Buyer becomes aware of any demand, action, or threatened action to compel the disclosure of IE’s Confidential Information.
- J. **EQUAL OPPORTUNITY EMPLOYER** - IE shall comply with all applicable federal and Tennessee laws and regulations relating to equal opportunity employment and does not and shall not discriminate in its employment practices on the basis of race, color, religion, sex, national origin, physical disability, or any other classification protected under applicable federal or Tennessee law.
- K. **ASSIGNMENT** - Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, except that upon thirty (30) days’ notice, IE may assign this Agreement, in whole or in part, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.
- L. **TERMINATION** - Either party may terminate this Agreement on thirty (30) days prior written notice to the other party. Buyer shall remain liable to IE for all Goods and Services provided by IE through the date of termination.
- M. **NO THIRD-PARTY BENEFICIARY; SEVERABILITY** - The provisions of this Agreement are intended for the sole benefit of Buyer and IE, and there are no third party beneficiaries other than assignees identified in this Agreement. If any provision of this Agreement or the application of this Agreement to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected, and every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by law.
- N. **NON-SOLICITATION** - IE and Buyer agree that during the term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement for any reason, neither will, directly or indirectly, solicit for employment an employee or independent contractor of the other party with whom the soliciting party came in contact as a result of this Agreement during the term of this Agreement. Each party understands and agrees that in the event of such solicitation, the other party may seek all legal remedies available. Notwithstanding the foregoing, general advertisements for employment shall not be deemed to violate this section.
- O. **NOTICES** - Any notices including invoices to be given by either party to the other party hereunder shall be in writing and given either by personal delivery, or by registered or certified mail, postage prepaid, return receipt requested, facsimile or express mail. Three (3) days after the date of mailing of such notice shall be deemed to be the effective date of such notice. Notices shall be transmitted to each party at the address designated by such party. Until either party shall designate a different address in writing, notices shall be transmitted to the parties at the addresses designated in the signature page to this Agreement.
- P. **SIGNATURE AUTHORITY** - The person signing this Agreement hereby warrants that he/she has the legal authority



to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity of both parties. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

Q. **GENERAL** - Any failure at any time of either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of such party to enforce such provision at any subsequent time. This Agreement shall constitute the final, complete and exclusive agreement of the parties with respect to all sales by IE to Buyer and shall supersede all prior and contemporaneous offers, negotiations, understandings and agreements. Unless Buyer and IE have executed a contract which specifically supersedes and replaces some or all of terms and conditions herein (e.g., a Master Services Agreement or an OnDemand Agreement), it is expressly agreed that no prior, contemporaneous or subsequent agreement of understanding, whether written or oral, shall contradict, modify, supplement or explain the terms and conditions contained herein. No additional or different terms or conditions, whether material or immaterial, shall become a part of any sales agreement unless expressly accepted in writing by an authorized officer of IE in the United States. Any provision of these terms and conditions that is prohibited or unenforceable under the laws of the State of Tennessee shall be ineffective to the extent of such prohibition or unenforceability, without impairing or invalidating the remaining provisions of these terms and conditions. All sales agreements shall be deemed to be made in, and shall be governed by, the laws of the State of Tennessee. The sole and exclusive venue for any disputes arising out of any sales agreement shall be, Davidson County, TN, and the parties hereby irrevocably consent to such sole and exclusive venue and jurisdiction.

The undersigned parties, by their duly authorized representatives, have executed this Agreement as of the last date appearing under their signature.

Company Name of Buyer

By: _____

Name: _____

Title: _____

Date: _____

**INTERNETWORK SERVICES INCORPORATED
D/B/A INTERNETWORK ENGINEERING**

By: _____

Name: **Chris Applegate**

Title: **EVP of Business and Legal Affairs**

Date: _____