

**THE STATE OF TEXAS  
UPSHUR COUNTY**

This agreement is made and entered into on this the 29 day of August 2014 by and between NET Data, with its principal place of business in Sulphur Springs, Texas and Upshur County (hereinafter referred to as "CLIENT"), with its principal place of business in Gilmer, Texas.

This agreement will supersede all previous written and oral agreements between NET Data and CLIENT.

**DEFINITIONS:**

"Cloud Computing" is the delivery of computing as a service rather than a product, whereby shared resources, software and information are provided to computers and other devices over a network.

The term "Services" in this Agreement shall mean the NET Data Cloud System Service and any related licensed materials such as, but not limited to, manuals, system documentation and written or verbal instructions provided for use in connection ("Documentation") with the Service.

**RECITALS**

Licensor has developed certain computer programs and operating manuals, known collectively as

*County Clerk Case Management*  
*District Clerk Case Management*  
*District Attorney Case Management*  
*Constable*  
*Justice of the Peace*  
*Law Enforcement*  
*Hot Check*  
*RVI w/OCR Software*  
*Justice of the Peace IRA*  
*County Clerk IRA*  
*District Clerk IRA*

**1. TERM**

This Agreement is effective from ~~October 1<sup>st</sup>, 2014~~ and shall remain in effect for a period of ~~Sixty (60)~~ months from the Effective Date.

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**2. TERMINATION OF SERVICE**

Should either party wish to terminate for a material breach of contract, that party agrees to notify in writing and offer a reasonable opportunity to cure prior to such termination.

Upon termination, NET Data may immediately discontinue the Service and all Documentation provided CLIENT shall be returned to NET Data. CLIENT HEREBY WAIVES CLAIMS FOR DAMAGE ARISING FROM ANY SUCH RIGHTFUL TERMINATION BY NET Data UNDER THIS PROVISION.

### **3. WARRANTY**

NET Data warrants that it has the right to market, distribute, support and maintain Services and that Services are warranted to conform to the operating specifications as outlined in the Documentation. CLIENT agrees that its SOLE AND EXCLUSIVE REMEDY for a breach of this Warranty is for NET Data to correct any error, malfunction or defect if the Services warranted hereunder fails to conform to the applicable operating specifications and CLIENT advises NET Data of such failure in writing. If after reasonable attempts, NET Data is unable to correct the error, malfunction, or defect, CLIENT shall be entitled to terminate this Agreement. (For the purpose of this Agreement, the term "error, malfunction or defect" shall mean only significant material deviations from the operating specifications for the Services as set forth in the applicable software documentation issued by NET Data.)

EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT HEREBY DISCLAIMS ANY RELIANCE ON ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

### **4. LIMITATION OF LIABILITY**

NEITHER PARTY WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUE OR BUSINESS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANY TERM OF THIS AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) FOR DAMAGES OR LOSS HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S ACTIONS WILL NOT BE GREATER THAN THE AMOUNT PAID TO NET DATA BY CLIENT. IN NO EVENT WILL NET DATA BE LIABLE FOR ANY DAMAGES CAUSE BY THE CLIENT'S FAILURE TO PERFORM THE CLIENT'S RESPONSIBILITIES.

### **5. SUPPORT**

NET Data will provide 541 Hours of on-site application training. NET Data will provide complete Services support as outlined in the attached CLOUD SERVICES SUPPORT ADDENDUM TERMS AND CONDITIONS, incorporated herein by reference.

### **6. DATA CONVERSION**

NET Data will provide the necessary data conversion services.

### **7. USER SOFTWARE**

Licensee may not modify software. Licensor agrees to modify software as required to:

- a) Correct any errors found in System.
- b) Bring the System into compliance with new legislation.
- c) Provide Licensee with enhancements to System.

### **8. CLIENT DATA**

CLIENT will have full access to their data via the NET Data application software. CLIENT shall not attempt to reverse assemble, reverse compile or reverse engineer the Services or any part thereof, or otherwise attempt to discover any Services source code or underlying proprietary information. The CLIENT shall not attempt to access other areas outside their NET Data application on NET Data's server.

NET Data retains all rights to customizations developed by NET Data to the Service.

CLIENT shall retain ownership in and all rights to CLIENTS data stored in the Services provided by NET Data. Upon request by CLIENT made within 60 days of the effective date of termination of this Agreement, NET Data shall take commercially reasonable steps to make available to CLIENT a copy of all Client Data, in electronic format, with all work hereunder to be invoiced to CLIENT at the standard hourly billing rate. After 60 days, NET Data will have no obligation to maintain or provide any Client Data and shall remove all Client Data in NET Data's possession or control.

### **9. CONFIDENTIALITY & PROPRIETARY INFORMATION**

Each party acknowledges that it and its employees may acquire information that is proprietary or confidential to the other party. Each party agrees that it shall hold such information in strict confidence and shall not disclose any such information to any third party. "Confidential Information" means all technical and non-technical information including but not limited to: CLIENT Data, Services, Documentation, financial and marketing information, other proprietary information, and information disclosed that should have reasonably been regarded as confidential, regardless of whether such information would be protected under the common law.

CLIENT specifically acknowledges NET Data's statement that the Services and related software are the exclusive property of NET Data, constitutes trade secrets of NET Data, and agrees to protect the Services or any part thereof from unauthorized use or disclosure by its agents, consultants, contracted personnel, employees, CLIENT, or successors. CLIENT agrees to reproduce and include NET Data's proprietary, copyright, and trade secret notice on any copies, in whole or in part, in any form, including partial copies and modifications of Services and Documentation. In the event the License granted hereunder is terminated, the above obligations of CLIENT with respect to protection and security shall not terminate but shall continue for a period of five (5) years following such termination of License.

NET Data and CLIENT further agree that, except as expressly authorized in writing in advance by the other party, neither of them will copy or disclose Confidential Information to any third party.

### **10. ACCESS TO SERVICES**

CLIENT agrees that access to services is intended for Client's employees only and that access by any third party is strictly prohibited without the prior written consent of NET Data.

### **11. GENERAL**

Licensee acknowledges that System, and all portions or aspects thereof, expressly including all ideas and expression of System are confidential and proprietary information. Licensee agrees that it will not provide or make available to third parties the System or any part thereof, including use of System, any physical embodiment of System or any materials supplied by Licensor in connection with System. As hereinafter provided, Licensee shall take all steps necessary to protect the confidentiality of System and the proprietary rights of Licensor.

Neither CLIENT nor NET Data is responsible for failure to fulfill their respective obligations under this Agreement due to causes beyond their control. This Agreement shall be governed by the laws of the State of Texas both as to interpretation and performance. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

**12. CONSIDERATION**

The price of NET Data's CLOUD SYSTEM SERVICE shall be a an annual charge of \$148,518 for 5 years.

**13. VENUE.**

Licensee expressly acknowledges that in the event any legal action is brought involving any circumstances arising out of the contractual relationship created by this agreement, such litigation must be brought in Hopkins County.

NET Data

CLIENT

By: 

By: 

Tory Humphries  
President - NET Data

Upshur County

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**NET Data**  
**HOSTING SERVICE LEVEL AGREEMENT TERMS AND CONDITIONS**

The purpose of this Service Level Agreement ("SLA") is to define service levels and operational specifications that NET Data will provide to Client. "Critical Hours" means 8:00 a.m. to 5:00 p.m. CST five days per week.

**SERVICE LEVELS**

**1. Hosting Obligations.**

NET Data shall provide the following:

- Operate the Services on a server owned or leased and maintained by or on behalf of NET Data;
- Allow access to the Services over a secured connection and provide secure and confidential storage of all information transmitted to and from the Services;
- Maintain a back-up server, at a geographically different site from where the server is located, for data recovery in the event of disaster;
- Review security notifications and alerts relevant to the hosting platform, and apply as appropriate to maintain the highest level of defense customary in the industry for company's dealing with like data; and
- NET Data shall provide adequate firewall protection as is customary in the industry for company's dealing with like data in order to secure Client Data and other Confidential Information of CLIENT and users of the Services from unauthorized access by third parties.

**2. System Availability.**

NET Data shall use reasonable best efforts to maintain the following system availability:

- For any consecutive thirty (30) day period, the system within scope will be fully operational, available, and capable of supporting CLIENT's workload at a 99.5% availability level except for Scheduled Service Outages as specified.
- "Scheduled Service Outages" shall be performed during the hours of 5:00 p.m. to 8:00 a.m. Central as necessary for upgrades, maintenance, or for any other agreed upon purpose.
- System is "available" when the servers are operational and capable of serving Users, independent of any CLIENT's network links outside our control.

**3. Exclusions**

NET Data is not to be held responsible for any Service or system failures during any period of time in which any of the following "Exclusions" exist:

- CLIENT Resource Problems – there are problems resulting from CLIENT resources not under NET Data management.
- Failure of any hardware not under NET Data's management (customer PC's, portage boxes, etc.)
- Scheduled Maintenance – Scheduled maintenance windows and other agreed upon periods of time that are necessary for repairs or maintenance.
- Network Changes – Changes made by CLIENT to the networking environment that were not communicated to or approved by NET Data.
- Force Majeure – Problems resulting from a Force Majeure Event.
- Agreed Temporary Exclusions – Any temporary exclusions requested by NET Data and approved by CLIENT to implement changes in applications, environments, conversions or system software.
- CLIENT Actions – Problems resulting from actions or inactions of CLIENT contrary to the NET Data's reasonable recommendations.
- CLIENT Responsibilities – Problems resulting from any failure by CLIENT to fulfill its responsibilities or obligations.
- Internet Connectivity Loss – Loss of Internet connectivity to CLIENT site for any reason.
- Third-Party Software – Any loss of Service or system availability due to malfunctions or errors related to any third-party software in use by the CLIENT.