

COMDOC PREMIER SOLUTIONS AGREEMENT

THIS COMDOC PREMIER AGREEMENT (this "Agreement") is made effective as of 02/09/2018 (the "Effective Date"), by and between ComDoc, Inc. with its principal place of business at 3458 Massillon Rd., Uniontown, OH 44685 ("Provider") and City of Lakewood (Client Name) with its principal place of business at 12650 Detroit Rd ("Client"). Provider and Client are sometimes referred to individually as a "Party" and collectively as the "Parties".

BILLING INFORMATION		
LEGAL NAME: <u>City of Lakewood</u>		
ADDRESS: <u>12650 Detroit Rd</u>		
CITY: <u>Lakewood</u>	STATE: <u>OH</u>	ZIP: <u>44107</u>
BILLING CONTACT NAME: <u>Jean Yousefi</u>		
CONTACT PHONE: <u>216-529-6613</u>	CONTACT EMAIL: <u>jean.yousefi@lakewoodoh.net</u>	

WHEREAS, Provider is in the business of delivering professional services, including, but not limited to, programming services and software installation; and WHEREAS, Client wishes to obtain certain professional services from Provider from time to time on the terms set forth herein;

NOW, THEREFORE, intending to be legally bound hereby, and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound agree as follows:

1. Hardware and Software purchases:

HARDWARE AND SOFTWARE PURCHASES			
QTY	Description	Price	Extension
1			
2			
3			
4			
Total (plus tax)			
<input checked="" type="checkbox"/> N/A		See SOW for billing, project completion and sign-off.	

2. Cloud Based Software purchases:

CLOUD AND TERM BASED SOFTWARE SOLUTIONS		
Description	Term in Months	Price/month (plus Tax)
<u>Docuware Cloud Base</u>	<u>60</u>	<u>\$369.00</u>
<u>Details: All functional modules, 4 user log ins, 20 GB cloud storage</u>		
<input checked="" type="checkbox"/> N/A		See SOW for billing, project completion and sign-off.

3. Professional Services:

PROFESSIONAL SERVICES AND IMPLEMENTATION	
Description	Price
<u>Docuware Cloud System Implementation</u>	<u>\$4000.00</u>
See SOW for billing, project completion and sign-off.	
If Professional Services are not included, Client agrees to be billed separately for implementation of items in Sections 1 and 2.	

4. Premier Maintenance:

PREMIER MAINTENANCE AND SUPPORT		
Description	Term in Months	<input checked="" type="checkbox"/> Billed Monthly <input type="checkbox"/> Billed Annually
<input checked="" type="checkbox"/> N/A		See SOW for billing, project completion and sign-off.
If Premier Maintenance and Support is not included, Client agrees to be billed on a per call basis for all break/fix assistance and upgrades		

5. **Software Finance Agreement:** If any combination of software purchases (Section 1) and/or Professional Services (Section 3) are financed on Provider's Software Finance Agreement, complete the Software Finance Agreement and attached it the Agreement along with the fully completed and executed Statement of Work.
6. **Hardware and Software Purchases:**
- a) **Acceptance and Non-Cancellation:** Purchases under this Agreement shall become binding upon the client's execution of this Agreement and may not be cancelled or altered thereafter without the Provider's written consent.
 - b) **Delivery and Installation:** Unless specified otherwise, the Provider shall deliver and install the goods and services at the location specified on page 1 unless: (1) Client has not made available at that address a suitable place of installation as specified by the Provider; (2) Client is responsible for their network environment and server requirements; (3) the Goods are to be delivered to a location outside of the Provider's service area. All risk of loss will transfer to the Client upon delivery.
7. **Premier Maintenance and Support Includes the following:**
- a) **Software Support:** shall consist of Services applied to support, reconfigure, upgrade or troubleshoot Client's software. Software Support may be delivered either via on-site or remotely, at Provider's discretion.
 - i) Payment of support agreements with software manufacturers or publishers for the Items listed in Sections 1 and 2 on page 1 are included with Premier Solutions, however Client agrees that said agreements are provided by and pursuant to the terms of the manufacturer or publisher of the software.
 - ii) Client agrees that Client will maintain separate support agreements with software manufacturers or publishers for any items not listed in Sections 1 and 2 on page 1.
 - iii) Client acknowledges that if Client alters or performs any Software Support or allows anyone other than Provider to alter or perform any Software Support on any machines or systems that are hosting or being used with software, Provider is not responsible for the consequences of such actions, and Client may be charged at the Provider's standard Professional Services hourly rate for all labor related to the consequences of such actions.
 - b) **Help Desk:** shall consist of Provider making available to Client the capacity to enter Software Support requests via telephone or email.
 - c) **Software Updates:** shall consist of applying all appropriate patches and updates to software in a reasonable amount of time. Provider shall determine when Software Updates are appropriate and what constitutes a reasonable amount of time.
 - i) Client acknowledges that if Client requests Software Updates that Provider considers inappropriate, or wishes to have Software Updates applied before Provider deems them safe, Provider is not responsible for the consequences of such actions, and Client may be charged at the Provider's standard Professional Services hourly rate for all labor related to the consequences of such actions.
 - ii) Furthermore, if Client alters or performs Software Support, or allows anyone other than Provider to alter or perform any Software Support on any machines or systems that are hosting or being used with software, Provider is not responsible for the consequences of such actions, and Client may be charged at the Provider's standard Professional Services hourly rate for all labor related to the consequences of such actions.
 - d) **Secure Remote Administration:** shall consist of Provider utilizing remote technologies to securely administer and troubleshoot Client software issues.
8. **Nature of Premier Maintenance and Support:** Premier Maintenance and Support is intended to cover the maintenance for software only. It is not intended to cover any hardware replacements (such as purchasing servers, laptops, etc.) or repairs, materials, equipment, consumables, or any labor related to projects other than the proper maintenance of the Software listed in Section 1. Provider offers other Services, including additional hardware, software and related labor; however, any other Services or merchandise provided outside of the scope of Premier Services and Support will be at the normal rates
9. **Professional Services:**
- a) **Services:** Provider will provide professional services (the "Services") set forth in one or more Statements of Work (each, an "SOW"). The initial SOW is attached as Schedule A hereto, and made a part of this Agreement. Each subsequent SOW must be executed by both parties to be effective. Each such executed SOW shall then be attached to and made a part of this Agreement. In the event of any conflict between a SOW and this Agreement, this Agreement shall prevail, unless the SOW expressly states that the parties intend to override any such conflicting term in this Agreement.
 - b) **Project Services:** Provider will provide all labor related to software implementation, software migration, software configurations, software deployments, or other projects that Provider and Client agree are to be completed in Client's environment. Project Services may be delivered via on-site or remote work, at Provider's discretion.
 - c) **Manner of Performance:** Provider will retain the sole and exclusive right to control or direct the manner or means by which the Services are performed. Provider may subcontract any or all of its obligations and rights under this Agreement.
 - d) **Commencement:** The initial Services will commence as soon as reasonably practical following Provider's receipt and acceptance of a signed copy of this Agreement. Any future Services will commence as soon as reasonably practical after the parties have executed a SOW for such Services.
 - e) **Ownership:** Client agrees that all inventions, improvements, discoveries, or developments, including but not limited to all deliverables, specifications, designs, documentation, and other materials developed or authored by Provider, that Provider may make or conceive, either solely or jointly with others, whether arising from Provider's own efforts or suggestions received from any other source, and arising out of the Services provided under this Agreement, are the sole property of Provider. To the extent that Client would have a claim to any such rights, Client hereby irrevocably grants, conveys, and assigns to Provider all such rights therein, including but not limited to all patents, copyrights, trade secrets, and all other proprietary rights.

f) **Right to Develop Independently:** Client understands and acknowledges that Provider is in the business of developing products and providing consulting services similar to those provided for Client for other parties generally based upon the same computer software, tools and knowledge base. Client agrees that nothing in this Agreement will impair Provider's right to provide the same services or develop for itself or others deliverables substantially similar to, or performing the same or similar functions as, the Services under this Agreement.

g) **CLIENT RESPONSIBILITIES**

- i. **Cooperation:** Client shall cooperate with and assist Provider by providing to Provider such information and such access to Client's personnel, facilities, equipment, databases, software, and other resources as Provider may reasonably request, including those tasks and responsibilities communicated in writing outside of this Agreement.
- ii. **Availability:** Client shall ensure the availability of its broadcasting signal (analog and/or digital), and internal computing networks and environments as necessary to support the Services set forth in this Agreement, if and to the extent required in connection with the particular Services provided pursuant to this Agreement.
- iii. **Point of Contact:** Client agrees to appoint a staff member to be their Point of Contact (the "POC"). The POC will be the primary point of contact for all issues relating to the Client's software implementation. At a minimum, the POC should be PC literate, proficient in Windows, knowledgeable in basic network administration, familiar with Client's network and network based applications, familiar with Client's data communications and equipment, and have access to or be able to facilitate access to Client's server(s). The POC should have the ability to schedule resources and sign off on SOWs.
- iv. **Backup:** It is extremely important to backup your data. It is Client's responsibility to verify that a valid backup has been completed each day. It is also Client's responsibility to verify that the data has been backed up to the appropriate location or media. Failure to generate a valid and complete backup may result in a loss of data due to an unexpected system malfunction.

10. **Confidential Information:**

- a) **Definition:** The parties acknowledge that by reason of their relationship with each other under this Agreement each will have access to certain information and materials concerning the other's business, plans, customers, technology and/or products that is confidential and of substantial value to that party, which value would be impaired if such information were disclosed to third parties ("Confidential Information").
- b) **Obligation:** Each party agrees that it will not use in any way for its own account, or for the account of third parties, nor disclose to any third party, any Confidential Information revealed to it by the other party. Each party will protect the Confidential Information by using the same degree of care it uses for its own confidential information, but in no event less than reasonable care. Upon request by the receiving party, the disclosing party will advise whether or not it considers any particular information to be Confidential Information.

11. **Terms and Conditions:**

- a) **Taxes:** Client shall pay all federal, state, and local sales, use, property, excise, or other taxes imposed on or with respect to the purchase price of the Goods.
- b) **Force Majeure:** The Provider shall not be determined to be in default of any provision herein or be liable for any delay, failure in performance or interruption of services resulting from acts of God, civil or military catastrophe, strikes, embargoes, transportation delays, inability to obtain materials from suppliers, product deficiencies, or any other situation beyond the reasonable control of the Provider.
- c) **Default:** Provider will be in default of this Agreement if Provider does not receive payment within 10 days after the date payment is due or Client breaches any other obligation under this Agreement. Client will pay all reasonable costs, including attorneys' fees, incurred by the Provider to enforce this Agreement and/or any disputes arising with regard to the Goods. In addition to any remedies under the law, if Client breaches this Agreement and fails to cure said breach within 20 days after receipt of notice from the Provider, the Provider may terminate this Agreement.
- d) **Term and Termination:**
 - i) This Agreement will take effect on the Effective Date and will remain in effect for the term identified in Section 4 on page 1. This Agreement will automatically renew for succeeding one-year periods. This Agreement is subject to annual increases. This Agreement will continue beyond its termination until the date of completion of the Services (as defined in the applicable SOW) under all outstanding SOWs.
 - ii) This Agreement may be terminated: (a) by either party if the other commits a material breach of this Agreement, which breach is not cured within thirty (30) days of a written notice of such breach by the non-breaching party; or (b) by ComDoc if Client (i) terminates or suspends its business activities, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.
 - iii) Termination of this Agreement will not affect the provisions relating to the payment of amounts due, or the provisions of the following Sections: 10, 11(f), 11(g), 11(i) and 11(p) all of which will survive termination of this Agreement, regardless of the reason for termination.
- e) **Indemnification:** (a) Client is responsible for any losses, damages, penalties, claims, suits, and actions (collectively "Claims") whether based on a theory of contract, tort, strict liability, or otherwise caused by or related to or in any manner arising out of the use, ownership, possession, or funding or financing, of the Goods (including but not limited to the negligence of Client, Client's employees or agents, or any third party), and (b) Client is responsible for any and all costs and attorneys' fees incurred by the Provider relating to any such claim. Client will reimburse and, if requested, defend the Provider at Client's own cost and expense, against any Claims. Client's obligations under this Section 10 shall survive termination of this Agreement. JKS
- f) **WARRANTIES AND LIMITATION OF LIABILITY ON WORK PERFORMED. THERE ARE NO WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, ON ANY GOODS PROVIDED BY PROVIDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF**

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OBLIGATION OR LIABILITY SHALL GROW OUT OF THE PROVIDER RENDERING TECHNICAL OR OTHER ADVICE IN CONJUNCTION WITH GOODS PROVIDED UNDER THIS AGREEMENT.

- g) **Limitation of Liability:** The Provider's total liability to Client for any claim, whether based in contract, tort, common law, or statute, arising out of, connected with, or resulting from the furnishing or failure to furnish any Goods under this Agreement (and the associated delivery and installation of said goods) shall not exceed the cost paid by the Client for the Goods which give rise to the claim. In no event shall the Provider be liable for any incidental, consequential, or special damages incurred by Client or any third party, including without limitation any loss of use, loss of anticipated profits, costs or downtime, or for substitute equipment, and any claims of Client's clientele for service interruptions or failure to supply.
- h) **Limited License to Use Software:** The Provider grants Client a non-exclusive, non-transferable license to use in the U.S.: (a) software and accompanying documentation provided with the Equipment ("Base Software") with which it was delivered; and (b) software and accompanying documentation identified on the Cover Page as "Application Software" only on any single unit of Equipment for as long as Client is current in the payment, including any applicable software license fees (if any). Third Party Software may also be obtained under this Agreement and may be subject to a separate End User License Agreement. "Base Software," "Application Software," and "Third Party Software" are referred to collectively as "Software". Client has no other rights and may not (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Software; (2) activate Software delivered with the Equipment in an inactivated state; or (3) allow others to engage in same. Title to, and all intellectual property rights in, Software will reside solely with Provider and/or its licensors (who will be considered third-party beneficiaries of this subsection). The Base Software license will terminate: (i) if Client no longer uses or possesses the Equipment; (ii) Client is a lessor of the Equipment and its first lessee no longer uses or possesses it; or (iii) upon the expiration of any installment payments under which Client has rented or leased the Equipment (unless Client has exercised an option to purchase the Equipment). Neither Provider nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted.
- i) **Governing Law:** This Agreement shall be governed by the laws of the state of Ohio without regard to the conflict of laws or principles of such states.
- j) **Errors:** The Provider reserves the right at its sole discretion to correct clerical and typographical errors in this Agreement.
- k) **Severability:** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.
- l) **Modifications:** No modification, amendment, or other change shall be binding on the parties unless agreed to in writing by each party's authorized representative.
- m) **Waiver:** The waiver of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach. The failure of either party to exercise any right arising from any default of the other party hereunder shall not be deemed to be a waiver of such right.
- n) **Relationship:** The relationship of the parties established under this Agreement is that of independent contractor and neither party is a partner, employee, agent or joint venturer of or with the other.
- o) **Assignment:** Any assignment of this Agreement by Client without the prior written consent of the Provider shall be void and unenforceable.
- p) **Non-solicitation:** Client acknowledges and agrees that the employees and consultants of ComDoc who perform the Services are a valuable asset to ComDoc and are difficult to replace. Accordingly, Client agrees that for a period of one (1) year after the completion of the Services (as defined in Part 3 if the applicable SOW), it will not offer employment as an employee, independent contractor, or consultant to any ComDoc employee or consultant who performs any of the Services. If Client hires in violation of this Section 3(c), Client will pay to ComDoc damages equal to fifty percent (50%) of that individual's annual salary. For purposes of this Agreement, an individual's annual salary will mean that individual's annual salary with either ComDoc or with Client as of the date of breach, whichever is greater.
- q) **Payment Terms:** Upon receipt
- r) **End User License Agreement:** Software purchased in Sections 1 and 2 on page 1 may require the end user to execute an end user license agreement with the software manufacturer. If an end user license agreement is necessary, the Client agrees to comply with such requirements.
- s) **Complete Agreement:** This Agreement is the complete and exclusive statement of the agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior proposals and agreements, oral or written, between the Parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the Parties hereto.
- t) **Notices:** All notices, demands, or consents required or permitted under this Agreement will be in writing. Notice will be sent by certified or registered mail, return receipt requested, or by commercial express courier, to the parties at the addresses set forth on the first page of this Agreement, or at such other postal or e-mail address or fax number as may be given by either party to the other in writing. Notice by fax or e-mail must be accompanied by a confirmation copy sent by mail or courier.
- u) **Counterparts:** This Agreement may be executed in two or more counterparts, each of which will be considered an original and may be transmitted by facsimile or e-mail, and all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto, each acting with proper authority, have executed this Agreement as of the Effective Date.

ComDoc, Inc

By: Michael P. SummersName: MICHAEL P. SUMMERSTitle: MAYORClient: CITY OF LAKEWOODBy: Michael P. SummersName: Michael P. SummersTitle: MAYOR**Approved As To Legal Form:**Jennifer N. Scellaro**Director of Law, City of Lakewood**

Will Frank
Regional President