



## SoftVu LLC Master Agreement

**YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT AND ANY STATEMENTS OF WORK THAT REFERENCE THIS AGREEMENT, ALL OF WHICH ARE INCORPORATED INTO AND FORM PART OF THIS AGREEMENT. YOU ALSO REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU WILL NOT HAVE ANY RIGHT TO RECEIVE AND USE THE SOFTVU SERVICES OR ANY OTHER SERVICES PROVIDED BY SOFTVU. SOFTVU'S ACCEPTANCE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS; IF THESE TERMS ARE CONSIDERED AN OFFER BY SOFTVU, ACCEPTANCE IS LIMITED TO THESE TERMS. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.**

**WHEREAS**, SoftVu has created the SoftVu Platform (defined below) that automates direct-to-consumer marketing communications using SoftVu Services (defined below); and

**WHEREAS**, the parties desire to enter into this Agreement for purpose of establishing the terms and conditions that will govern Client's use of SoftVu Services and SoftVu's provision of related Professional Services (defined below) to Client.

**NOW, THEREFORE**, in consideration of the foregoing, and in reliance on the mutual agreements contained herein, SoftVu LLC ("**SoftVu**"), a Kansas limited liability company, located at 2029 Wyandotte St., Suite 100, Kansas City, MO 64108, and the client identified in client's registration on the SoftVu Site ("**Client**"), agree to the following as of the date Client clicks "I Accept" or "I Agree" ("**Effective Date**"):

### 1. DEFINITIONS

- 1.1 "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify a User's identity and authorization to access and use the SoftVu Services.
- 1.2 "**Affiliate**" means with respect to a party, an entity which controls, is controlled by, or is under common control with such party. For purposes of this definition, the term "control" means: (a) beneficial ownership of at least 50% of the voting securities of a corporation or other business organization with voting securities (or such lesser percentage which is the maximum allowance by a foreign corporation in a particular jurisdiction); (b) a 50% or greater interest in the net assets or profits of a partnership or other business organization without voting securities; or (c) the ability to direct the affairs of any such entity.
- 1.3 "**Client Account**" is defined in Section 2.2 below.
- 1.4 "**Client Content**" means Content supplied or created by Client.
- 1.5 "**Content**" means information, web pages, graphic files, audio or video files, text files, scripts, software, code and other components used to create a finished output supplied by or to Client; or information, graphic files, audio or video files, or text files within finished output.
- 1.6 "**Intellectual Property Rights**" means all or any of the following: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, domain names and social media names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.
- 1.7 "**Professional Services**" means the professional services to be provided by SoftVu for Client in connection with the SoftVu Services as set forth in a written Statement of Work executed by the parties.
- 1.8 "**SoftVu Platform**" means SoftVu's proprietary technology platform that powers the SoftVu Services.
- 1.9 "**SoftVu Services**" means a collection of tools, applications and resources, that are accessible through the SoftVu Platform, which automate marketing communications to a company's sales pipeline and existing Client base, including but not limited to, the functionality, text, data, information, content, materials, software, and graphics contained or provided or made available in any form or media, as well as all updates, enhancements and modifications thereto.
- 1.10 "**SoftVu Site**" means the website located at the URL: [www.softvu.com](http://www.softvu.com) and related SoftVu websites and pages.

- 1.11 **“Statement of Work”** or **“SOW”** means one or more statements of work, schedules or similar documents executed by the parties for the purchase of the SoftVu Services, Professional Services, and the other services generally available from SoftVu in connection with the SoftVu Services, and that reference this Agreement. Upon mutual execution of Statement of Work, such Statement of Work is incorporated into this Agreement by reference. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Statement of Work, the terms and conditions of this Agreement will govern and control.
- 1.12 **“Subscription Term”** means the period of time specified in the applicable Statement of Work during which the SoftVu Services will be provided to Client.
- 1.13 **“Third Party Content”** means any Content owned or developed by third parties, which are utilized or incorporated into Content, campaigns or programs produced or managed by SoftVu or Client under a Statement of Work or otherwise under this Agreement.
- 1.14 **“Third Party Software”** means any application program, database, operating system, or other like product, which is not developed or owned by SoftVu, but which is necessary to operate the SoftVu Services or the Content, and which have been supplied by SoftVu to Client under a Statement of Work or otherwise under this Agreement.
- 1.15 **“User”** means a specific individual authorized by Client to access and use the SoftVu Services through the Client Account under this Agreement, and to whom Client has issued Access Credentials. Client will identify certain Users that will have administrative, security and supervisory capacities with respect to the SoftVu Services (**“Administrative Users”**).

## 2. **PROVISION OF SOFTVU SERVICES**

2.1 **SoftVu Services.** Subject to the terms and conditions of this Agreement, SoftVu will make the SoftVu Services available to Client only (a) during the applicable Subscription Term specified in a Statement of Work, (b) for use by Users, (c) for Client's business purposes, (d) for the fees set forth in the applicable Statement of Work, and (e) in accordance with any additional SoftVu Services rights and limitations set forth on the applicable Statement of Work, and all in accordance with SoftVu's documentation and stated policies made available to Client on the SoftVu Platform or otherwise by SoftVu. The SoftVu Services are provided to Client on a non-exclusive basis. The rights of Client to access and use the SoftVu Services are limited to those expressly granted in this Section 2 and will terminate automatically upon the termination of this Agreement or the applicable Statement of Work for such SoftVu Services for any reason. There are no implied rights or licenses. SoftVu hereby reserves all rights not expressly granted to Client under this Agreement.

### 2.2 **Client Account, User Names and Access Credentials.**

- (a) SoftVu will create and assign a login ID for Client (**“Client Account”**) and Client will be responsible for issuing Access Credentials to its Administrative Users and Users to the SoftVu Services. Access Credentials provided to a User who is a specific individual may only be utilized by that individual and may not be temporarily shared or used by or transferred or assigned to any other person. Client may permanently (i.e., not for a predefined temporary period of time) replace one individual User with another individual if the original individual User no longer has access to the SoftVu Services. Client acknowledges that SoftVu utilizes certain protocols to ensure proper use of Access Credentials and that SoftVu may require password changes in its sole discretion and communicate with Users via email from time to time to verify identity, use, and continued status as a valid User. Client will cooperate with SoftVu, and will render reasonable assistance requested by SoftVu, to assist SoftVu in identifying and preventing any use of or access to the SoftVu Services in violation of this Agreement. Client will (i) be responsible for Client's and its Users' compliance with the terms and conditions of this Agreement; (ii) be responsible for the confidentiality and security of (and for all activities and uses that occur under, with or without Client's knowledge or consent) the Client Account, (including but not limited to passwords); and (iii) prevent unauthorized access to or use of the SoftVu Services, and notify SoftVu promptly of any such unauthorized access or use of which Client is aware. Client acknowledges that only certain Internet browsers and browser versions are capable of accessing the SoftVu Services. Client may obtain the then-current list of such browsers and browser versions from SoftVu upon request.
- (b) SoftVu will work to support Client in its efforts to establish new Users and to ensure new Users are adequately trained by Client or by SoftVu per the end user training provisions of this Agreement, if approved by the Client Account Manager (defined below). Client is responsible for communication to SoftVu of any additional Users and of any deletion of Users from the SoftVu Services on a timely basis.
- 2.3 **Affiliates.** Client may allow its Affiliates to use the SoftVu Services made available to Client hereunder for the benefit of Client and its Affiliates provided that Client will be responsible for the acts and omissions of its Affiliates as if such acts and omissions were those of Client. Client Affiliates may also order SoftVu Services, Professional Services, other services under this Agreement by either of the following methods: (a) pursuant to a Statement of Work executed by Client and SoftVu, in which case Client will be responsible for such Affiliate's compliance with the terms and conditions of this Agreement, including payment obligations; or (b) pursuant to a Statement of Work executed by such Affiliate and SoftVu under which such Affiliate agrees to the terms and conditions of this Agreement and will be “Client” for all purposes under this Agreement with respect to such Statement of Work only. With respect to any such Statement of Work signed by an Affiliate, the relevant Affiliate will be solely liable for its own compliance with the terms and conditions of this Agreement, including payment obligations.

- 2.4 **Restrictions.** This is an Agreement for services, and except for any express license and/or ownership rights granted to Client herein, Client is not granted a license or ownership rights to any software, technology or Intellectual Property Rights by this Agreement. Client will not, directly or indirectly: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of or included in the SoftVu Services or any software, documentation or data related to the SoftVu Services; (b) modify, translate or create derivative works based on the SoftVu Services; (c) copy, distribute, pledge, assign or otherwise transfer or encumber rights to the SoftVu Services; or (d) use the SoftVu Services for timesharing or service bureau purposes.
- 2.5 **Feedback.** SoftVu will have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or any other party relating to SoftVu Services.
- 2.6 **SoftVu Privacy Policy.** The right to privacy and data security are primary concerns at SoftVu. The most current version of SoftVu's Privacy Policy Statement is available at the SoftVu website, <http://www.softvu.com/privacy-policy/>. SoftVu reserves the right to amend and update the Software Privacy Policy. All amendments and updates to the SoftVu Privacy Policy are posted to the Privacy Policy Statement at least ten business days before implementation.
- 2.7 **Security Measures.** SoftVu and Client represent and warrant that each has in place, and will continue to implement, support and maintain, commercially reasonable security measures and techniques to eliminate to the extent practical unauthorized access or damage to the SoftVu Services, SoftVu Platform and Client data including the diligent use of commercially available third-party software to safeguard against computer viruses (collectively "**Security Measures**"). Client is responsible for ensuring that all of Client's Users have adequate Security Measures in place at all times when accessing the SoftVu Services.
- 2.8 **Aggregate Data.** Client acknowledges that SoftVu may collect, use and analyze general information and data from its clients (including Client) for purposes of improving and enhancing the quality and nature of its services, or to market or publish general information and statistics, provided that SoftVu does not specifically identify Client or disclose any personally identifiable information in the course of collecting, using, analyzing, marketing or publishing that information or data.
- 2.9 **Contacts.** Client will establish a single point of contact ("**Client Account Manager**") as the primary contact for SoftVu. SoftVu will in turn establish a single point of contact for Client ("**SoftVu Client Manager**").

### 3. **SUPPORT AND MAINTENANCE SERVICES**

- 3.1 **Support and Maintenance Services.** At no additional charge, SoftVu will provide standard support and maintenance services ("**Support Services**") to Client with respect to the SoftVu Services and Client's use of the SoftVu Services in accordance with SoftVu's then-current Support Services policy (a current copy is set forth in the attached Exhibit D). SoftVu may update its Support Services policy from time to time and will make such updated Support Services policy available to Client.
- 3.2 **Training Services.** Client may obtain, at its expense, the mutually agreed training from SoftVu, if any, specified in the applicable Statement of Work.

### 4. **CLIENT RESPONSIBILITIES**

- 4.1 **Network access.** Client's modifying or deleting company or personal files and Users' account settings, releases SoftVu from any liability or responsibility to repair or reconfigure Client files or account settings and Client will pay for any work authorized by Client and performed by SoftVu to replace or repair deleted files, or to reconfigure Client accounts, in accordance with SoftVu's standard rates and policies. Client will only allow its Users to have access to the SoftVu Services and/or make decisions or requests with respect to the SoftVu Services.
- 4.2 **SoftVu Email Server.** The SoftVu Services serve as an external email server for the Client. Client will establish SoftVu's email domain as a "White Listed" mail service domain within Client's email environment with privileges consistent with Client's internal email systems. Client will cooperate with SoftVu to successfully resolve any internal issues associated with establishing the SoftVu Services email server.
- 4.3 **Back Up.** Client may upload and store files on the SoftVu Services. SoftVu recommends that Client retain an original Client file for any Client originated files uploaded and stored on the SoftVu Services. SoftVu will back up all Client created files as a normal part of its backup process, however, SoftVu accepts no responsibility for a loss associated with a file uploaded or stored on the SoftVu Services, including files and content created using the SoftVu Services.
- 4.4 **Compliance with Law.** Client will use the SoftVu Services only as permitted by applicable local, state, national and international laws and regulations, including export control laws and regulations, and will not interfere with the use and privileges by other clients or users of the SoftVu Services. Client will be solely responsible for the contents of Client's private and public communications, whether uploaded, posted, emailed or otherwise transmitted through the SoftVu Services. Without limiting the foregoing, Client will: (a) not use the SoftVu Services for illegal purposes (and will comply with CAN SPAM laws); (b) not interfere with or disrupt the SoftVu Services or servers or networks connected to the SoftVu Services; (c) comply with all requirements, procedures, policies and regulations of networks connected to the SoftVu Services; (d) not use the SoftVu Services to scan, discover, probe, harass, deny service to or gain unauthorized access to the SoftVu Platform or the SoftVu Services.

- 4.5 **Compliance with Commercial Email Laws.** Client acknowledges that by using the SoftVu Services its Users agree to comply with SoftVu's Permission Email Policy described in the attached Exhibit A. Further, Client acknowledges and agrees that compliance with the CAN-SPAM Act of 2003 ("Act") and any other laws regulating commercial email messaging is Client's responsibility solely. Client will not rely upon SoftVu for compliance (other than as outlined in attached Exhibit B) or for advice in complying with the Act. SoftVu disclaims all responsibility for any non-compliance by Client with regard to the Act and any other laws regulating commercial email messaging.
- 4.6 **Client Marketing Campaign.** Client will establish a marketing campaign plan including a plan for creative services to help project in advance Client's expected creative services needs. This plan will be reviewed as part of the periodic account review meetings.
- 4.7 **Suspension of Services.** SoftVu may suspend provision of the SoftVu Services and Professional Services without terminating a Statement of Work or this Agreement if it determines that Client is in material violation of its obligations set forth under this Section 4 or the other provisions of this Agreement even if Client attempts to use SoftVu Services through another person or under a different name, provided that (a) SoftVu has first given Client at least ten days prior written notice of its intent to suspend such services, stating in detail the nature of the alleged violation, and (b) Client has neither cured such violation nor given a reasonable refutation thereof within such period. While such services are suspended, Client will continue to pay SoftVu for such services.
5. **PROFESSIONAL SERVICES AND CONTENT AGREEMENT.** If Client desires to purchase from SoftVu certain advisory, marketing, advertising, consulting, content creation, and/or technology services which may include, without limitation: general consulting; design, development and implementation; training; applications development; campaign development; sales and marketing consulting; and/or call center services, then such services will be set forth in a Statement of Work. In connection with any mutually agreed Statement of Work, SoftVu and Client, hereby agree as follows:
- 5.1 **Statements of Work.** In consideration for the applicable fees, SoftVu will provide the Professional Services identified in certain Statements of Work according to the terms and conditions as set out in this Agreement and in each such Statement of Work.
- 5.2 **Additional Work.** Any additional work up to \$1000.00 may be approved by email agreement by both parties. For additional work estimated above \$1000.00, SoftVu will supply a new Statement of Work (or change order) and require written agreement by both parties before initiating work.
- 5.3 **Project Extension Fees.** If a Professional Services project exceeds the estimated date of completion by 30 days as a result of delays directly resulting from Client's failure to perform its obligations under a Statement of Work or this Agreement, Client will pay a recurring monthly project management fee equal to 15% of the total project cost specific to the unfinished work until the project is completed and accepted and approved by Client.
- 5.4 **Client Covenants.** Client covenants that:
- (a) Client has title to or license or other rights required and necessary to use or modify any Client contributed Client Content, software, materials or products which it has requested SoftVu to include or modify as part of the Professional Services and SoftVu Services under this Agreement;
  - (b) Client will provide SoftVu reasonable access to Client's designated personnel, appropriate documentation and records and facilities in order for SoftVu to perform the Professional Services and other services for Client under this Agreement; and
  - (c) It, its Affiliates and its and their officers, directors, employees and agents will: (i) comply with all applicable laws, regulations, rules and ordinances in performance of its obligations and exercise of its rights under this Agreement, and (ii) perform all obligations under this Agreement and conduct business in a manner that reflects favorably on the goodwill and reputation of SoftVu.
6. **PROPRIETARY RIGHTS**
- 6.1 **SoftVu Services Ownership.** SoftVu and its licensors presently own and will continue to own all right, title, and interest in and to the SoftVu Services and all Intellectual Property Rights therein and thereto.
- 6.2 **Copyrighted Materials.**
- (a) **Copyrights and Other Rights.** Except to the extent of Content provided by SoftVu, Client retains all responsibility for securing all necessary rights, including copyrights and right of publicity for any Content or other works Client uploads to, stores on, distributes from, or otherwise controls on the SoftVu Services in connection with this Agreement. SoftVu assumes no liability for copyrighted or copyrightable images, videos, sound recording, or any other copyrighted or copyrightable Content provided and controlled by Client.
  - (b) **SoftVu Copyrights.** SoftVu's finished Content is the copyrighted property of SoftVu and its licensors and are licensed only for use as a complete work presented in an online environment. Online environments include hyperlinks to Content from the SoftVu Services to the Client's viewers through the internet or through the Client's website. Decompiling, copying, reuse of any finished Content elements, or distribution by any means other than as expressly permitted herein is strictly prohibited

and constitutes an unlicensed use of materials copyrighted by SoftVu and others. Any Client Content that comprise the finished Content provided by SoftVu as part of the SoftVu Services hereunder by SoftVu or by the Client, will remain the sole property of Client.

### 6.3. **Third Party Software/Content and Creative Content.**

- (a) **Third Party Software and Creative Content and Restrictions on Use.** Content created by SoftVu for Client under or in connection with this Agreement and as specified in a Statement of Work ("**Creative Content**") may contain Third Party Software or Third Party Content that may be licensed under a restricted agreement granting limited rights for the use of the Third Party Software or Third Party Content. The specific restrictions on use of Third Party Software or Third Party Content, if any, will be limited to the extent required by the third party owning or otherwise holding the Intellectual Property Rights in the Third Party Software or Third Party Content. Any restrictions on the use of Third Party Software or Third Party Content, if any, will be set forth in the applicable Statement of Work. By way of example, such restrictions on use of Third Party Content may include, without limitation: (i) use of the Third Party Content only in an online or e-mail environment; (ii) no decompiling or use of individual components of Third Party Content incorporated into a work product; and/or (iii) no use of Third Party Content incorporated into a broadcast distribution market, such as television or radio.
- (b) **Pre-Existing SoftVu Content.** All pre-existing components of Content created and provided by SoftVu, will remain the sole property of SoftVu, which include, without limitation, Content templates, e-cards, stock videos, photos, and audio clients.
- (c) **Third Party Software/Content.** Client acknowledges that the Third Party Software and Third Party Content is and will remain the property of such third parties. SoftVu will be responsible for securing any licenses or other rights necessary for the utilization by Client of the Third Party Software and Third Party Content.
- (d) **Content Supplied by Client.** SoftVu acknowledges that the Client Content provided by or on behalf of Client to SoftVu under or in connection with this Agreement is and will remain the property of Client or the third party that has granted use rights to Client. Client retains all responsibility for securing all Intellectual Property Rights for the use of any such Client Content. SoftVu assumes no liability for the use of any such Client Content (unless and only to the extent SoftVu modifies such Client Content).
- (e) **Produced by SoftVu.** All Creative Content produced for Client by SoftVu, and defined in the applicable Statement of Work, will be jointly owned by both parties, with the exception of: (i) Third Party Software and Third Party Content; (ii) pre-existing and/or separately developed SoftVu Content; (iii) Client Content; and (iv) all video Creative Content, which will be the exclusive property of Client, subject to the restrictions in the following sentence. All video Creative Content produced by SoftVu for Client, and defined in the applicable Statement of Work, (1) may only be re-used by Client for the purpose for which it was intended as set forth in the applicable SOW, (2) Client may not make any derivative works of such video Creative Content, (3) such Client use must comply with restrictions of use with respect to Third Party Software and Third Party Content, and (4) any SoftVu Content included in such video Creative Content may not be separated, or separately used, from the finished video Creative Content.

7. **ORDERING.** From time to time during the term of this Agreement, the parties will execute one or more Statements of Work for the purchase of SoftVu Services and Professional Services, if applicable. Client may purchase additional SoftVu Services, Professional Services and other services, or renew an existing Statement of Work. Each such Statement of Work must reference this Agreement, must be in the form mutually agreed to by the parties, and must be signed by both parties. No Statement of Work will be deemed accepted by either party unless and until such party has executed such Statement of Work in writing. Any pre-printed terms and conditions of any orders (except for the Statement of Work) or acknowledgements will not apply; SoftVu's failure to object to provisions contained in any communication from Client will not constitute acceptance of those provisions.

### 8. **FEES AND PAYMENT TERMS; TAXES**

- 8.1 **ACH Payments and Payment Terms.** The fees for the SoftVu Services are set forth in the applicable Statement of Work for such SoftVu Services, and are due and payable in advance. SoftVu will invoice Client for the SoftVu Services on an annual basis or will provide means for Client to pay quarterly if the payments are set up as an ongoing ACH transaction, or as otherwise specified in the applicable Statement of Work. In any event, payment is due and payable from Client by the first day of the billing period for use of the SoftVu Services. The attached Exhibit D - Automated Clearing House Agreement details the specific terms and conditions for the ACH transaction process between the parties and can be executed separately from this Agreement.
- 8.2 **Professional Services.** The fees for any Professional Services or other services are set forth in the applicable Statement of Work, and are due and payable in advance, except as set forth in the applicable Statement of Work. All payments will be made as an ACH transaction unless otherwise specified in the applicable Statement of Work.
- 8.3 **Travel and Incidental Expenses.** Client will reimburse SoftVu for any reasonable out-of-pocket expenses incurred by SoftVu, and pre-approved by Client, in connection with performing any services at Client's site.
- 8.4 **Past Due Invoices.** If any payment is not made when due, interest will begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or 1.5% per month, accrued from the date due until paid in full. In the event Client in good faith disputes the amount charged, services completed, or whether such invoice is properly payable, only the disputed

amount will not be due and payable until the parties resolve the dispute.

8.5 **Nonrefundable.** Except as provided otherwise in the applicable Statement of Work, or in the case of termination by Client for cause under Section 13.3 below, (a) all payments are nonrefundable, and (b) Client must in any event pay all amounts due under all Statements of Work for the full term that is set forth in such Statements of Work.

8.6 **Taxes.** Client will be responsible for and pay any and all applicable sales, use, and excise taxes (excluding income taxes), and like charges imposed by any federal, state, or local governmental entity for products or services provided under this Agreement.

## 9. WARRANTIES AND DISCLAIMER

9.1 **General Warranty.** Each party hereby represents and warrants to the other that (a) it has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (b) the making of this Agreement does not violate any agreement existing between it and any third party.

9.2 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, ALL EXPRESS, IMPLIED AND/OR STATUTORY CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION SATISFACTORY QUALITY, ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT, THE SOFTVU SERVICES, PROFESSIONAL SERVICES AND OTHER SERVICES, THE RESULTS DERIVED FROM THE USE OF SOFTVU SERVICES, PROFESSIONAL SERVICES AND OTHER SERVICES, ARE HEREBY EXCLUDED AND DISCLAIMED BY SOFTVU TO THE EXTENT ALLOWED BY APPLICABLE LAW. THIS WARRANTY GIVES CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION. SoftVu does not warrant that the SoftVu Services will be uninterrupted or error-free. In addition, due to the continual development of new techniques for intruding or attacking networks, SoftVu does not warrant that the SoftVu Services or any equipment, system or network on which the SoftVu Services are provided will be free of vulnerability to intrusion, attack or computer virus infection. No employee, agent, representative or Affiliate of SoftVu has authority to bind SoftVu to any oral representations or warranties concerning the SoftVu Services. Any written representation or warranty not expressly contained in this Agreement is unenforceable.

## 10. INDEMNITIES

10.1 **By SoftVu.** SoftVu will defend, indemnify and hold harmless Client, its officers, directors, employees and agents from and against any claims, actions, demands, liabilities, losses, expenses or damages, including reasonable attorneys' fees (collectively, "**Damages**"), awarded against Client or agreed upon by SoftVu in settlement:

- (a) arising out of or resulting from a third party claim that the SoftVu Services, the SoftVu Content or any Third Party Software or Third Party Content provided by SoftVu under this Agreement infringes a U.S. patent, copyright or trademark, or misappropriates a trade secret, of a third party; and/or
- (b) arising from injury to or death of any person and/or damage or destruction of real or tangible personal property arising out of or resulting from the willful misconduct or negligent acts or omissions of SoftVu or its agents, except to the extent such Damages result from or are caused by the willful misconduct or negligence of Client or its agents.

10.2 In the event of a copyright infringement by SoftVu as described under Section 10.1 above, SoftVu will use commercially reasonable efforts to secure copyright or other rights of use for Client or at SoftVu's discretion, provide Client a reasonable substitute to or partial refund for the item at issue.

10.3 **By Client.** Client will defend, indemnify and hold harmless SoftVu, its officers, directors, employees and agents from and against any Damages awarded against SoftVu or agreed upon by Client in settlement:

- (a) arising out of or resulting from the improper use by Client or the modification by Client of any SoftVu Services, the SoftVu Content or any Third Party Software or Third Party Content provided by SoftVu;
- (b) arising out of or resulting from a third party claim that any Client Content, any Third Party Software or Third Party Content provided by Client, or other materials or content that is input or used by Client in relation to its use of the SoftVu Services, or SoftVu's use of any such item as authorized herein (unless SoftVu modifies such item in a manner other than as authorized by Client), infringes a U.S. patent, copyright or trademark, or misappropriates a trade secret, of a third party;
- (c) arising out of or resulting from or in connection with Client's breach of the Act and any other laws regulating commercial email messaging, and/or
- (d) arising from injury to or death of any person and/or damage or destruction of real or tangible personal property arising out of or resulting from the willful misconduct or negligent acts or omissions of Client or its agents, except to the extent such Damages result from or are caused by the willful misconduct or negligence of SoftVu or its agents.

10.4 **Indemnity Process.** The party seeking to be indemnified will give prompt written notice to the other party of the claim against which it seeks to be indemnified and will provide the indemnifying party, at the indemnifying party's expense, with the assistance

reasonably necessary for the defense and settlement of the claim. The failure by the indemnified party to timely furnish to the indemnifying party any notice required to be furnished under this Section 10 will not relieve the indemnifying party of its obligations under this Section 10, except to the extent such failure materially and adversely prejudices the ability of the indemnifying party to defend such matter. The indemnifying party will have sole control of the defense and settlement of any such claim. The indemnifying party will not be liable for any settlement of an action effected without its written consent (which consent will not be unreasonably withheld or delayed), nor will the indemnified party settle any such action without the written consent of the indemnifying party (which consent will not be unreasonably withheld or delayed). The indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim, or settlement thereof, without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. The indemnified party may engage counsel of its choice at its own expense.

## 11. LIMITATION OF LIABILITY

11.1 EXCLUSIVE OF CLAIMS MADE UNDER SECTION 10 (INDEMNITIES), SECTION 12 (CONFIDENTIALITY), SECTION 2.4 (RESTRICTIONS), CLIENT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, AND/OR AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT TO SOFTVU FOR SERVICES UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

11.2 EXCLUSIVE OF LIABILITY UNDER SECTION 10 (INDEMNITIES), SECTION 12 (CONFIDENTIALITY), SECTION 2.4 (RESTRICTIONS) AND/OR AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, TO THE EXTENT ALLOWABLE BY LAW, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING FOR LOSS OF DATA OR ITS USE OR LOST PROFITS OR OTHER ECONOMIC DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT, INCLUDING NEGLIGENCE.

## 12. CONFIDENTIALITY

12.1 **Confidential Information.** Each party acknowledges that it and its employees or agents may, in the course of performing its obligations under this Agreement, be exposed to or acquire information verbally or in written or electronic form, which is proprietary or confidential to the other party. "**Confidential Information**" includes, without limitation: (a) technical information, design, process, procedure, formula, improvement, logins, access codes, passwords, and other data relating to the development or production of any Content done for the Client and any other information designated "confidential" or "proprietary"; (b) business plans, product plans and strategies, marketing plans and objectives, pricing information, business processes, competitive advantages and disadvantages and financial information; and (c) other information which the disclosing party considers to be the confidential information of disclosing party or its third party contractors or suppliers. Confidential Information will be either (i) written information received from the disclosing party which is marked or identified as confidential; (ii) oral or visual (or other non-tangible format) information identified as confidential at the time of disclosure which is summarized in writing to the receiving party promptly after such disclosure; or (iii) information which a reasonable person under the circumstances would know the disclosing party intended to be treated as Confidential Information. Software source code and any documentation, release notes, collateral materials, operating instructions and information related to the SoftVu Services system performance provided by SoftVu will be considered SoftVu Confidential Information, regardless of whether it has been designated as such.

12.2 **Exclusions.** Confidential Information does not include information that is: (a) already known by or available to the receiving party without obligation of confidentiality before disclosure under this Agreement; (b) or becomes publicly known without breach of this Agreement by the receiving party; (c) rightfully received by the receiving party from a third party without a duty of confidentiality; (d) independently developed or learned by the receiving party without use of or reference to the disclosing party's Confidential Information as proven by its records; or (e) disclosed by the receiving party with the disclosing party's prior written approval.

12.3 **Use of Confidential Information.** The receiving party will for a period of three years from the last transfer of Confidential Information under this Agreement: (a) keep the disclosing party's Confidential Information in its strictest confidence and take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the receiving party employs with respect to its confidential materials); (b) not make any use of the disclosing party's Confidential Information except to carry out its rights and obligations under this Agreement; (c) not divulge the disclosing party's Confidential Information or any information derived therefrom to any third party except to receiving party's Affiliates and its and their employees, directors, officers, agents, consultants and contractors ("**Representatives**") as is reasonably required in connection with the exercise of receiving party's rights and obligations under this Agreement and, in the case of Client, to bank regulatory authorities; and (d) not copy (except as necessary to carry out its rights and obligations under this Agreement) the disclosing party's Confidential Information. Any Representatives given access to the disclosing party's Confidential Information must have a legitimate "need to know" and must have agreed, either as a condition of employment, representation or in a written agreement in order to obtain the Confidential Information, to be bound by terms and conditions no less protective of the disclosing party than this Section 12. The receiving party will be liable for any of its Representatives' failure to comply with such obligation.

12.4 **Authorized Disclosures.** The receiving party may disclose the disclosing party's Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; to the extent not prohibited by law, the receiving

party must give reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement or seek confidentiality treatment. Each party may disclose terms and conditions of this Agreement: (a) in connection with any financing transaction or due diligence inquiry; and/or (b) pursuant to a registration statement, annual, quarterly or current report, proxy statement, or other filing with, and any exhibits thereto, filed with the Securities and Exchange Commission, securities exchange or quotation service, or any state securities commission, or any other associated documents or materials so filed or furnished.

12.5 **GLB Act.** Each party acknowledges that the Gramm-Leach Bliley Act of 1999 (as amended, the “**GLB Act**”) and the regulations promulgated thereunder impose certain obligations on financial institutions with respect to the confidentiality of Client data. Regardless of whether Receiving party is subject to the GLB Act, if the GLB Act, related regulations or other applicable law, at any time, impose a higher standard of confidentiality with respect to any Client data contained in the Confidential Information, such standard will prevail over and be in addition to the provisions of this Agreement, and such obligations will survive indefinitely. In accordance with data privacy laws and regulations applicable to this Agreement, which may include but not be limited to the GLB Act, SoftVu will not disclose or permit access to or use of the non-public personal information of Client or its customers made available by Client to SoftVu. SoftVu will not sell the information regarding Client’s customers for any reason. In connection with providing services to Client, SoftVu will take all commercially reasonable steps to ensure the privacy and security of Client’s customers’ information and protect against anticipated threats and hazards to the security of such information. SoftVu will take commercially reasonable steps to prevent unauthorized access to or use of such information that could result in substantial harm to Client or its customers. SoftVu represents and warrants that it has implemented policies and procedures to ensure the proper disposal of consumer information in accordance with applicable Federal and State requirements. SoftVu has separately published its data privacy and security compliance commitment to its clients, which corresponds at a minimum to the provisions of this section as of the Effective Date of this Agreement. To the extent that additional commitments by SoftVu are reflected in future published versions of this policy, these additional commitments will be incorporated as part of this Agreement without further actions by the parties. In no event will a future published data privacy and security compliance statement issued by SoftVu lessen or eliminate any of the commitments by SoftVu stated in this paragraph. If a breach of security results in an unauthorized intrusion into SoftVu’s systems, the SoftVu Platform or the SoftVu Services which directly and materially affects Client or its customers, SoftVu will take appropriate measures to stop the intrusion; report on the intrusion to Client within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by SoftVu in response to the intrusion; and provide reasonable assistance to Client to support any mandatory disclosures about the intrusion by Client to its customers required by law. If SoftVu has notified law enforcement agencies about the intrusion, SoftVu may delay its notification of the intrusion to Client until authorized to do so by the law enforcement agencies.

12.6 Each party further acknowledges that it is aware that the United States securities laws prohibit any person who has received material, non-public information concerning the matters which may be the subject of this Agreement from purchasing or selling any securities of either party to this Agreement, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

12.7 **Remedies.** Each party acknowledges that monetary remedies may be inadequate for any breach of this Section 12 and, without prejudice to any rights or remedies at law or in equity otherwise available to the disclosing party, the disclosing party will be entitled to seek injunctive relief, specific performance or other appropriate equitable remedies to protect its interest therein, without the posting of bond or proof of actual damages.

### 13. **TERM AND TERMINATION**

13.1 **Term of Agreement.** This Agreement will begin on the Effective Date and will remain in force until there are no Statements of Work in effect for a period of 12 consecutive months, unless terminated earlier in accordance with the terms of this Agreement.

13.2 **Subscription Term.** Each Subscription Term specified in a Statement of Work will begin upon the date the applicable Statement of Work is executed, unless a different start date is expressly stated in such Statement of Work, and will remain in force until the end of such Subscription Term, unless terminated earlier in accordance with the terms of this Agreement. Each Subscription Term will automatically expire at the end of its term, unless the parties execute a Statement of Work to extend or renew the Subscription Term or unless the applicable Statement of Work includes an express clause for the automatic renewal of such Statement of Work. Upon execution of a Statement of Work to extend or renew a Subscription Term, or upon automatic renewal of a Statement of Work, the pricing terms, charges, rates and prices stated in the Statement of Work will be reviewed and revised as mutually agreed to by Client and SoftVu.

13.3 **Termination by Client for Cause.** Except as otherwise provided elsewhere in this Agreement, in the event of a material breach of this Agreement by SoftVu, Client may terminate this Agreement for cause upon giving SoftVu 30 days’ prior written notice of the breach; provided, however, if SoftVu cures such breach within such notice period, this Agreement will not terminate.

13.4 **Suspension or Termination by SoftVu for Cause.**

(a) In the event that Client breaches this Agreement (including any Statement of Work), the Permission Email Policy (Exhibit A), or any other agreement subject to this Agreement, or if Client has not paid any undisputed (in good faith) invoice, or the undisputed portion thereof, within ten days after written notice, SoftVu may immediately suspend any and all Client access to the SoftVu Services and performance of any Professional Services or other services, and Client will be considered in breach of this Agreement.



- (b) In addition, in the event that Client has not paid such undisputed (in good faith) invoice, or the undisputed portion thereof, when due, or Client has otherwise committed a breach as described in Section 13.4(a) above, SoftVu may terminate this Agreement and all Statements of Work 30 days after such written notice; provided, however, if Client cures such breach within such notice period, this Agreement and its Statements of Work will not terminate.
- (c) In the event of any termination of this Agreement by SoftVu for cause under this Section 13.4, all Statements of Work will automatically terminate and Client will promptly pay to SoftVu all amounts due under all existing Statements of Work then in effect for the full Subscription Term or other period of time that is set forth in such Statements of Work.
- 13.5 **No Termination Without Cause.** Neither party may terminate a Statement of Work (or its Subscription Term) before the end of such term without cause.
- 13.6 **Bankruptcy.** Either party may terminate this Agreement immediately upon delivery of written notice if: (a) the other party makes an assignment for the benefit of creditors; (b) the other party ceases to carry on business as a going concern; (c) the other party becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; or (d) commits, or is under investigation for, a violation of the Act or any other law, regulation, rule or ordinance.
- 13.7 **Effect of Termination.** Upon termination of this Agreement or any Statement of Work: (a) SoftVu will terminate Client's access to the SoftVu Services, Professional Services and other services covered by such Statement of Work; (b) unless required for another Statement of Work that is still in effect between the parties, each party will promptly (within 15 days after termination) return to the other party or, at the other party's request, destroy, such other party's Confidential Information in its possession or control and all copies and portions thereof, in all forms and types of media, and provide such other party with an officer's written certification, certifying to its compliance with the foregoing; and (c) all amounts due for SoftVu Services, Professional Services and other services performed until the effective date of termination, and any other amounts due and owing under this Agreement, may be invoiced by SoftVu and will be paid by Client within 30 days of the date of such invoice.
- 13.8 **Non-exclusive Remedy.** Except as otherwise set forth in this Agreement, termination of this Agreement or any Statement of Work by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Termination of this Agreement or Statement of Work will not relieve Client of its obligation to pay all fees and expenses that accrued before such termination.
- 13.9 **Survival.** The rights and obligations of the parties contained in Sections 1, 2.4, 2.5, 2.8, 5.5(a), 6, 8, 9.4, 10, 11, 12, 13.4(c), 13.7, 13.8, 13.9 and 14 of this Agreement, and any other provisions herein which by their nature or implication survive, will survive the termination of this Agreement or of any individual Statement of Work.
14. **MISCELLANEOUS**
- 14.1 **Insurance.** SoftVu and Client will maintain their respective standard insurance coverage throughout the term of this Agreement.
- 14.2 **Compliance with Laws.** Each party will comply with all applicable laws, rules, and regulations in the operation of its business, and the performance of its obligations hereunder.
- 14.3 **Status.** For all purposes of this Agreement, each party will be and act as an independent contractor and not as partner, joint venturer, or agent of the other and will not bind nor attempt to bind the other to any contract.
- 14.4 **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Merger or change in control of a party will not be deemed to be an assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 14.5 **Notices.** All notices, demands or consents required or permitted under this Agreement will be in writing and will be deemed effective upon delivery to the party to whom addressed. All notices to SoftVu will be sent to the address specified on the face page of this Agreement or to such other address SoftVu may designate in writing pursuant to this section. Copies of all notices sent to SoftVu will also be sent to SoftVu LLC, Attention: General Counsel, 2029 Wyandotte St., Suite 100, Kansas City, MO 64108. Copies of all notices, required to be sent to Client, will be sent to the address currently on record with SoftVu noted on the most recent executed Statement of Work or to such other address Client may designate in writing pursuant to this section. All notices sent pursuant to this section will be sent via certified mail return receipt requested, express commercial courier, or in such other way that sender obtains a written receipt.
- 14.6 **Dispute Resolution.** Except in disputes relating to confidentiality, SoftVu's intellectual property, or instances where either party seeks injunctive relief, in the event of any dispute between the parties regarding this Agreement, and before the commencement of any formal proceedings, the parties will attempt in good faith to reach a negotiated resolution by bringing the disputed matter to the attention of the other party in writing and designating a representative of appropriate authority to resolve the dispute. Except in disputes relating to confidentiality, SoftVu's intellectual property, or instances where either party seeks injunctive relief, neither party will bring an action until 30 days after notice of the dispute; provided, however, that the foregoing will not prohibit either party from exercising its rights under Section 13.3 or 13.4 (Termination) above in accordance with the provisions of such section.

- 14.7 **Governing Law; Jurisdiction.** This Agreement will be governed by and interpreted under the laws of the State of Kansas without regard to rules governing conflicts of law and the parties hereby submit to exclusive jurisdiction and venue in the United States Federal District Courts or any of the state courts located in Johnson County, Kansas. Each party hereby agrees and consents to the personal and exclusive jurisdiction of said courts over it as to all such actions and further waives any claim that such action is brought in an improper or inconvenient forum. **EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY, FROM WHATEVER SOURCE ARISING, IN CONNECTION WITH ANY LITIGATION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**
- 14.8 **Attorneys' Fees.** In any suit or proceeding between the parties relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and will survive and not be merged into any such judgment and such amounts will be excluded from the limitation of liability set forth in Section 11 above.
- 14.9 **Amendment.** This Agreement may be modified or amended only by consent in writing and signed by the authorized representatives of both parties.
- 14.10 **Entire Agreement.** This Agreement, the Exhibits, and any executed Statements of Work set forth the entire understanding of the parties with respect to the subject matter hereof and is binding upon both parties in accordance with its terms. There are no understandings, representations or agreements other than those set forth herein.
- 14.11 **Force Majeure.** Neither party will be liable to the other for any failures or delays in the performance of any obligations hereunder to the other party arising out of conditions beyond its reasonable control, including, without limitation, fire, flood, earthquake or act of God, act of government, war, riot, civil disorder, act of terrorism or revolution, strikes, lock-outs or labor disputes, or other cause similar to the above beyond its reasonable control.
- 14.12 **Waiver.** Any waiver of any right or default will be effective only in the instance given and will not operate as or imply a waiver of a similar right or default on any other occasion. No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom it is sought to be enforced. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder will constitute a waiver of any other right or remedy, or future exercise thereof.
- 14.13 **Severability.** In the event that any provision of this Agreement will be determined to be invalid or unenforceable by a body of competent jurisdiction, that provision will be limited or severed only as necessary to eliminate such invalidity or unenforceability. The parties will in good faith negotiate a valid, enforceable substitute provision that most nearly effects their original intent in entering into this Agreement including, without limitation, the economic intent. The other provisions of this Agreement will remain in full force and effect.
- 14.14 **No Solicitation.** During the term of this Agreement and for a period of 12 months thereafter, neither party will actively solicit any of the other party's employees with whom it has had contact in the course of the offering and delivery of any SoftVu Services, Professional Services or other services under this Agreement. For purposes of this Agreement, "actively solicit" will be defined as contacting directly for purposes of employment or consulting with prior knowledge that the individual being contacted is an employee of the other party. For purposes of this Agreement, "actively solicit" will not include placing an advertisement for a job in newspapers or professional journals or web sites, or contacting an individual who has placed a resume on a web site or with a recruiting firm/recruiter, participating in job fairs, or similar activities that result in a party's receipt of a resume from the other party's employee and responding to such resume.
- 14.15 **Construction.** Headings herein are for convenience of reference only and will in no way affect interpretation of the Agreement. No provision of this Agreement will inure to the benefit of any third parties so as to constitute any such person a third-party beneficiary of this Agreement. This Agreement will be construed without regard to any presumption or rule requiring construction against the drafting party.
- 14.16 **Execution.** The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement. This Agreement may be executed in counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. Signatures executing this Agreement may be delivered by facsimile transmission or in an emailed PDF file or by other reliable means.

END

## **Exhibit A – SoftVu Permission Email Policy**

A User will not distribute any content, email or web publishing with or through the SoftVu Services that violates the SoftVu Permission Email Policy described below.

1. **Permission-based email.** SoftVu allows Client and its Users of the SoftVu Services to distribute only permission-based emails in connection with the use of the SoftVu Services. SoftVu defines permission-based emails as those emails sent to addresses that have been “opted-in” to mailing lists, email addresses that are used in legitimate 1-to-1 business communications, or email addresses that have otherwise been willingly submitted by its owner to the sender for contact purposes.
2. **Unsolicited Commercial Email is Prohibited.** Distribution of unsolicited commercial email with the SoftVu Services is strictly prohibited. If Client or any of its Users violates this policy, or anyone else uses the Client Account (with or without Client’s knowledge or consent) to violate this policy, SoftVu may immediately suspend Client’s access to the SoftVu Services and Client will be considered in breach of the Agreement. Any cure by Client must include, without limitation, Client’s implementation of SoftVu’s Email Best Practices Guidelines within a 30-day period from the infraction date. SoftVu will not be liable for any damage or provide refunds from such suspension(s) or any subsequent termination.
3. **Unlawful Usage.** Client will not knowingly distribute any correspondence or otherwise utilize the Software in violation of any United States law, including, without limitation, laws regulating the distribution of commercial email such as the CAN-SPAM Act of 2003. Further, without derogation of the foregoing sentence, Client and its Users will not use the SoftVu Services to create or distribute obscene or scandalous works, as defined by federal, state or local laws.

**Exhibit B – CAN SPAM COMPLIANCE (within SoftVu’s Platform)**

This Exhibit defines the Opt-out/Opt-in functionalities within the SoftVu Services as it relates to the integration capabilities for any client & CRM environment. There are standard integration points provided by SoftVu and non-standard integration points as referenced by the dashed line elements within **Figure 1: Opt-Out Workflow Process** below.

**SoftVu Services Standard Process Steps:**

1. New leads will be inserted into the CRM, at which time, rules will be evaluated and if TRUE, a Marketing Campaign will be triggered to the SoftVu Services.
2. If the opt-out flag has been set in SoftVu Services, then the email campaign will not be sent as the SoftVu Services will not distribute a campaign if the email address has previously been opted-out within the SoftVu Services.
3. If no opt-out flag was set, the SoftVu Services will distribute a marketing campaign.
4. If the recipient of the email invokes the opt-out link within the marketing campaign, SoftVu will promptly opt-out the email address of the recipient and no additional campaigns will be distributed to the recipient.

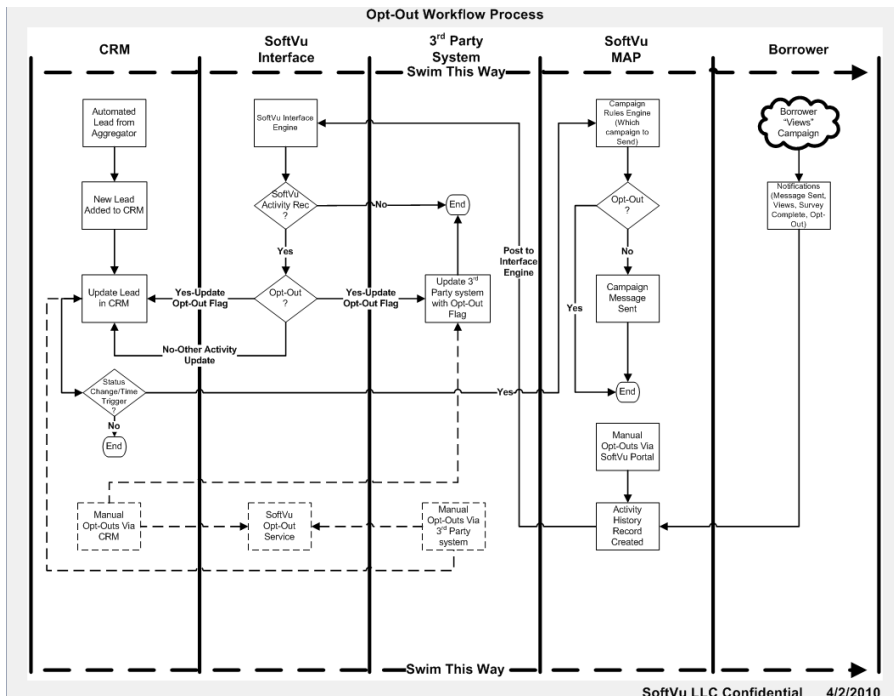
In addition, if the recipient contacts SoftVu Support directly and asks to be opted-out, SoftVu’s support representative will immediately opt-out the recipient’s email address and no additional campaigns will be distributed to the recipient.

- a. The SoftVu Services will automatically post an opt-out activity record to SoftVu’s Interface Engine. If Client wishes that transaction to be posted to a 3<sup>rd</sup> party system, the Interface Engine will post a standard, XML-based transaction to the 3<sup>rd</sup> party system.
  - b. The 3<sup>rd</sup> party system will be responsible for updating its database with the opt-out information.
5. If the recipient contacts Client directly and asks to be opted-out, Client will immediately opt-out the recipient’s email address so that no additional campaigns will be distributed to the recipient. Further, Client will use best efforts to only provide and upload into the SoftVu Platform only pre-scrubbed opt-in, non-duplicative emails, free of any spam traps. Before any campaign or batch send, SoftVu may send a portion of the Client-provided email addresses through a third party verification tool. SoftVu will pay for the sample cost for 1,000 email entries. If the third party hygiene report returns a list of unverified and malicious email addresses (e.g. emails that may include spam traps, etc.) of 5% or higher, the remaining email entries will be processed through the hygiene process at a per email fee specified in the SOW above the 5% which will be paid by Client. If Client is manually executing a batch send, then Client must inform SoftVu before importing its email list in to the SoftVu Platform.

**3<sup>rd</sup> Party Manual Process Steps:**

1. If manual opt-outs are executed within a 3<sup>rd</sup> party system, SoftVu provides a standard opt-out service that the 3<sup>rd</sup> party system may invoke. Manual processes are indicated in **Figure 1: Opt-Out Workflow Process** below.
  - a. SoftVu will process valid requests for opt-out and update the opt-out information within the SoftVu Services.
  - b. SoftVu will add an opt-out entry in the SoftVu Services if no previous record exists.
  - c. Any 3<sup>rd</sup> party system is responsible for notifying any other 3<sup>rd</sup> party system regarding opt-outs.

**Figure 1: Opt-Out Workflow Process**



**Summary:**

In summary, the SoftVu Services provide the capability for its clients to aggregate all opt-out entries within the SoftVu Services environment. SoftVu also has the capability to update 3<sup>rd</sup> party systems provided the 3<sup>rd</sup> party system can accept and process a standard XML-based transaction. SoftVu also provides Professional Services to assist clients with opt-out integration with 3<sup>rd</sup> party systems. SoftVu's opt-out service also supports a list of email addresses in the event clients wish to pre-populate opt-out information in the SoftVu Services environment thus providing a centralized, synchronized opt-out solution.

**Exhibit C – Automated Clearing House Agreement**

This Automated Clearing House Agreement is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, and the year of 2016 by and between SoftVu LLC (SoftVu) and \_\_\_\_\_ (Client).

1. **Nature of Agreement** – The parties desire to set forth the terms and conditions by which Client will authorize SoftVu to initiate credit entries (Credit Entry) to Client's account in payment of obligations owed by Client to SoftVu. It is the intention of the parties to assure that this Agreement complies with the Automated Clearing House rules applicable to Corporate Trade Payment Entries.
2. **Authorization** – Subject to the terms of this Agreement, Client authorizes SoftVu to initiate Credit Entries to the account specified hereinafter to pay obligations owing from time to time by Client to SoftVu for products and services purchased by Client. All such credit Entries will be initiated in accordance with Automated Clearing House Rules related to Corporate Trade Payment Entries (Rules). Client agrees to execute such further and additional documents as may be necessary from time to time to facilitate the transfers hereunder. Client agrees to execute any documentation reasonably requested by the financial institution at which the Account is located (Bank), as well as any documentation necessary to assure the parties' compliance with the Rules. The account to which this authorization applies (Account) is as follows:

<u>Owner of Account</u>	<u>Financial/Banking Institution</u>	<u>Account No.</u>	<u>Routing No.</u>
-------------------------	--------------------------------------	--------------------	--------------------

\_\_\_\_\_

**Bank Address:** \_\_\_\_\_ **Phone:** (\_\_\_\_) \_\_\_\_\_

3. **Authorization Limitations and Procedures** – No Credit Entry to the Account may be initiated under the terms of this Agreement except in accordance with the provisions set forth herein. Whenever SoftVu intends to initiate a Credit Entry to the Account to satisfy the obligations of Client to SoftVu, SoftVu will give written notices of the same to the Client not less than three (3) business days before the day in which the Credit Entry will be initiated with respect to the Account. Such notice may be delivered only by telefax or e-mail at the telefax or e-mail address provided hereinafter unless the parties have agreed on a different form of notice.

Client may direct SoftVu not to initiate a Credit Entry to the Account during either of the three (3) business days from the day Client receives written notice of the intention of SoftVu to initiate the Credit Entry to the Account. If such notice is given by the Client, then SoftVu will not initiate such Credit Entry to the Account. In such event, SoftVu and Client will agree to promptly meet and discuss the Credit Entry in question and work to resolve the issue in a timely manner.

If Client does not object to the initiation of the Credit Entry to the Account and does not otherwise direct SoftVu not to initiate such Credit Entry to the Account then SoftVu will be free to initiate the Credit Entry to the Account in satisfaction of the obligation.

4. **Nature and Content of Credit Entry Notices** – All notices required of SoftVu to initiate a Credit Entry to the Account will specify (i) the nature of the obligation to be paid at a line item level as normally documented in an Invoice (ii) the amount of the Credit Entry and (iii) the Invoice number and PO number (if applicable) for tracking purposes.
5. **Acceptance and Return of Entries** – Nothing contained herein will be deemed to require Client or the Bank to accept any Credit Entry initiated under this Agreement and any such entry may be returned in accordance with the Rules. Client may provide written notice to SoftVu of a discrepancy at any time within ninety (90) days after receipt by Client of the Credit Entry by the Bank. In such event, the Credit Entry will be reversed unless the parties have agreed otherwise.
6. **Adherence to Security Procedures** – Both parties hereto agree to adhere to any security procedures imposed by Federal Law. To the extent such compliance requires a modification of the terms of this Agreement, the parties agree to amend this Agreement.
7. **Erroneous Entry** – If SoftVu makes an erroneous Credit Entry at any time to the Account, SoftVu will be obligated to immediately notify Client and to then immediately correct such error.
8. **Liabilities of Parties; Compliance with the Law** – Neither SoftVu nor Client will be liable for any act or omission of the Bank in connection with the transactions described herein. Further, the parties agree that they will jointly take all steps necessary to assure that all transactions completed under this Agreement comply with all United States Laws including all sanctions enforced by the Office of Foreign Assets Control.
9. **Notices** – All notices permitted or required hereunder will be sent in the manner set forth above and addressed as follows:

SoftVu Fax: (913) 696-9701 E-Mail Address: billing@softvu.com

Client Fax: (\_\_\_\_) \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

10. **Term of Agreement** – This agreement will commence on the date set forth above (Effective Date) and will continue until the Master Agreement is terminated or by giving a ten (10) day written notice by either party.
11. **Governing State Law** – This agreement will be governed by and interpreted in accordance with the laws of the state of Kansas.
12. **Complete Agreement** – This Agreement sets forth the complete understanding of the parties hereto with respect to the matters set forth herein, and any modifications of the terms must be in a writing signed by both parties hereto.
13. **Restrictions on Assignment** – Neither party hereto may assign any of its rights nor delegate any of its duties hereunder to any third party without the prior written consent of the other party. Subject to such limitation on assignment, the terms hereof will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

<b>SoftVu LLC:</b>		_____:	
_____ <b>Signature</b>	_____ <b>Date</b>	_____ <b>Signature</b>	_____ <b>Date</b>
_____ <b>Printed Name</b>	_____ <b>Title</b>	_____ <b>Printed Name</b>	_____ <b>Title</b>

**EXHIBIT D – SoftVu Standard Support Services; Service Level Agreement**

1. **General.** SoftVu Support Services is provided by the SoftVu Client Management Team (CMT). Support Services encompass technical troubleshooting, functional expertise and instruction on the configuration and use of the SoftVu Services, and general client services.

Level 1 help desk support for User problems are required to go through a Client Level 1 help desk before being submitted to SoftVu for level 2 help desk support.

2. **Technical Support Contact Information and Hours.** SoftVu will provide technical support by telephone and email for the SoftVu Services from 8 a.m. to 5 p.m. (Central Time), Monday-Friday, except for SoftVu holidays. Support Services documentation is also available within SoftVu’s online client portal. 24x7 support may be made available to Client for a fee.

- SoftVu Phone Support: (877) 611-0104, ext. 1
- SoftVu Email Support: support@softvu.com

3. **Technical Support.** SoftVu will provide Client with the Support Services described below:

(a) **SoftVu Obligations.** SoftVu will provide technical support to Client for the incidents reported by Client, in order of preference, via telephone or email. Response time for initial SoftVu return contact and target resolution will be as set forth below. All assistance will be given in English only to 2 named employees of Client. Each named employee will have sufficient knowledge of the SoftVu Services. Named employees may be changed by written notice to SoftVu. Each employee will have appropriate knowledge and training.

(b) **Client Obligations.** In order to properly identify and resolve errors, Client will provide SoftVu with the following information:

- Incident severity as determined by Client using definitions included below
- Contact name and preferred contact information
- Operating platform, and other environment specifications including third-party products involved
- Sample data, log files and sample code, if applicable
- Test case or step-by-step instructions to reproduce problem

4. **Escalation Procedures.** SoftVu will acknowledge and respond to all inbound requests for Support Services as specified in the Priority Support Table below. Resolution times will vary depending on the complexity of the reported problem and/or the nature of the required solution. In some cases, resolution may take longer if:

- A significant product change is required
- A third party network (e.g. Facebook) is responsible for the underlying problem.

SoftVu’s standard framework for problem resolution is to categorize and prioritize problem reports in a typical manner, such as “Priority 1”, “Priority 2”, and “Priority 3”. Any production system outage is automatically treated as a high/critical “Priority 1” and triggers a 24x7 development and support commitment until resolved. Lower priority issues are ranked based on impact to the client and issue complexity.

<b>Priority 1 Support Issue</b>	
Priority Definition	Widespread production system outage. System is unusable.
Initial Response	Within 180 Minutes Maximum
SoftVu Action	All resources applied 24x7 until resolved
Work-Around Target	1 Day (assumes all 3rd party platforms operating within SLA)
Resolution Target	2 Days (assumes all 3rd party platforms operating within SLA)
<b>Priority 2 Support Issue</b>	
Priority Definition	Major impact to production workflow. No clear work-around.
Initial Response	Within 240 Minutes Maximum

SoftVu Action	All resources applied within business hours until resolved.
Work-Around Target	2 Days (assumes all 3rd party platforms operating within SLA)
Resolution Target	3 Days (assumes all 3rd party platforms operating within SLA)
<b>Priority 3 Support Issue</b>	
Priority Definition	Minor impact to production workflow.
Initial Response	4-8 Business Hours Maximum.
SoftVu Action	Review and respond within stated time frame
Work-Around Target	3-5 Business Days
Resolution Target	Varies
<b>Priority 4 Support Issue</b>	
Priority Definition	Questions on product use, feedback, suggestions, other
Initial Response	Next Business Day
SoftVu Action	Review and respond within stated time frame
Work-Around Target	Suggest where appropriate
Resolution Target	Varies
<b>Security Breach and Incident Management</b>	
Priority Definition	Any credible indication that security has been breached will be immediately treated as a " <b>Priority 1 Support Issue</b> " as defined above. All service level commitments will apply.

5. **Maintenance and Update Notification.** Client will be notified via email or by screen notifications within the SoftVu Services at least 2 business days before planned maintenance, testing, or downtime that will take more than two hours and materially impact the availability and/or performance of the SoftVu Services. Client will be notified of planned maintenance downtime of less than 2 hours at least 12 hours in advance of the planned downtime. In addition to the foregoing planned maintenance downtime, from time to time SoftVu will take down the system for a minimum amount of time at low usage times to implement SoftVu Services updates, although taking down the system for such updates is typically not necessary. No advance notice is provided to Client with respect to such update downtime, provided, however, that in the event that this standard update window may be longer than reasonable, SoftVu will notify Client as soon as possible before the planned update. While all attempts will be made to notify in advance and minimize interruptions to the SoftVu Services, it may be necessary to respond quickly and update without advanced notification. SoftVu makes every effort to avoid such scenarios.
6. **Disaster Recovery.** During the term of the Agreement, SoftVu will have a disaster recovery plan in place for the SoftVu Services. If SoftVu's disaster recovery plan is invoked, SoftVu will (a) execute such plan and restore SoftVu Services to the Service Availability service level described below in accordance with the requirements of such plan, but no less than 4 days after invoking such plan subject to hardware availability, and (b) Client will be treated with at least equal priority as any other SoftVu client of the SoftVu Services.
7. **Business Continuity.** During the term of the Agreement, SoftVu will have an annually tested business continuity plan in place to assist SoftVu in reacting to a disaster in a planned and tested manner.
8. **Service Level Commitment (SLA).** SoftVu will use commercially reasonable efforts to make the SoftVu Services Available with a "**Minimum Uptime Percentage**" of at least 99.1% on a monthly basis. In the event SoftVu does not meet the Minimum Uptime Percentage during any calendar month, Customer will be eligible to receive one or more Service Credits



as described below. SoftVu has a series of monitoring metrics that are available from within the production environment that assess performance and outages. The architecture is designed to be fault tolerant, and if a virtual server were to fail, SoftVu operations staff is notified and the issue will be resolved, but should not impact the overall availability of the SoftVu Services service. However, at this time SoftVu does not publish internal issues that do not affect the overall availability of the SoftVu service. If SoftVu fails to meet Minimum Uptime Percentage at any time, it will promptly, at no additional charge, use all reasonable efforts to minimize the impact of and correct the problem, and begin meeting the Minimum Uptime Percentage as soon as practicable.

8.1 **Definitions.**

“**Available**” means the number of minutes per calendar month when all or the material majority of the SoftVu Services are operational and available within reasonable response times as measured by SoftVu’s external monitoring system through API access and HTTP screen loads. The SoftVu Services are unavailable if they are unable to load outside of Scheduled Maintenance and Other Exclusions.

“**Scheduled Maintenance**” means a period in which Client is notified in advance, during which SoftVu may suspend availability of all or part of the SoftVu Services in order to carry out maintenance activities. If an issue exists which merits immediate attention in the interests of several SoftVu clients, SoftVu may elect to perform Scheduled Maintenance with limited, if any, advance notice.

“**Uptime Percentage**” means the proportion of scheduled Availability time (that is, any time on a 24 hour per day, 7 days per week basis, excluding Scheduled Maintenance and Other Exclusions (as defined below) during any one calendar month when the SoftVu Services are Available. For this purpose, calendar months are deemed to begin at 12:00 a.m. U.S. Central Time on the first day of the calendar month and end at 11:59 p.m. U.S. Central Time on the last day of the calendar month.

8.2 **Remedies.** If the availability for a given calendar month is less than the Minimum Uptime Percentage, Client will be entitled to receive one or more Service Credits (as defined below) against future SoftVu Services fees, as set forth in the below table:

<b>Minimum Uptime Percentage</b>	<b>Service Credit</b>
If the Availability for a given calendar month is less than the Minimum Uptime Percentage.	1 Service Credit
For each 100-minute increment during the same calendar month that the 1 <sup>st</sup> Service Credit is provided, the Availability is less than the Minimum Uptime Percentage.	1 additional Service Credit per 100-minute increment

A “**Service Credit**” means an amount equal to 1/30th of the SoftVu Services monthly fee. The total Service Credits for a given month will, in no event, exceed an amount equal to 100% of the then-current SoftVu Services monthly fee for the SoftVu Services. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All Service Credits will be calculated on a calendar month basis.

If Client receives a Service Credit under this Section, then Client may not also receive any other credit from SoftVu with respect to the same period of time under any contract or applicable policy that may be in effect from time to time, if any.

To receive a Service Credit, Client must submit a claim by emailing their SoftVu Account Manager within 30 days after the end of the calendar month in which the Minimum Uptime Percentage was not met, and the Service Credit request must include:

- The words “SLA Service Credit Request” in the subject line;
- The dates and times of each unavailability incident that Client is claiming; and
- Logs and other material that document the errors and corroborate Client’s claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks). SoftVu reserves the right to withhold any Service Credit if SoftVu cannot verify the downtime or Client cannot show that Client was adversely affected in any way as a result of the downtime.

If the Uptime Percentage of such request is confirmed by SoftVu and is less than the Minimum Uptime Percentage, then SoftVu will issue the applicable Service Credit to Client’s account. Client’s failure to provide the requested and other information as required above will disqualify Client from receiving any Service Credit.

Client’s right to receive Service Credits will be Client’s exclusive remedy for SoftVu’s failure to meet the Minimum Uptime Percentage, provided, however that if SoftVu fails to meet the Minimum Uptime Percentage more than 7 days in any calendar month Client will have the right as its exclusive remedy to terminate this Agreement without penalty. With respect to such right to terminate, (a) SoftVu must receive written notice from Client within 30 days after the end of such calendar month of Client’s intent to terminate and the effective date of such termination, and (b) the effective date of such termination must be no later than 60 days after the end of such calendar month.

9. **Other Exclusions.** The Minimum Uptime Percentage does not apply to any unavailability, suspension or termination of SoftVu Services performance issues (“**Other Exclusions**”): (a) caused by factors outside of SoftVu’s reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the SoftVu Site, (b) that result from any actions or inactions of Client or any third party, (c) that result from Client’s software or other technology and/or third party equipment, software, applications or other technology (other than third party equipment within SoftVu’s direct control); or (d) arising from SoftVu’s suspension and termination of Client’s right to use the SoftVu Services in accordance with the Agreement. If Availability is impacted by factors other than those used in SoftVu’s Uptime Percentage calculation, then SoftVu may issue a Service Credit considering such factors at SoftVu’s sole discretion.