



ProTracker Cloud™ Usage Contract

Please read this Usage Contract carefully, and then sign and return the last two pages before placing your order.

Introduction

USAGE CONTRACT

The Usage Contract for ProTracker Cloud comprises six sections: the License Agreement, the Service Agreement, the Non-Disclosure Agreement, the Fee Agreement, the IVDesk Credit Card Authorization, and the ProTracker Cloud Usage Contract Signatures (collectively, the “Usage Contract”).

MONTHLY SUBSCRIPTION SERVICE

ProTracker Cloud is a monthly subscription service. The terms and conditions are set forth in this Usage Contract. If at any time you no longer agree to be bound by these terms and conditions, you must promptly notify ProTracker Software, Inc., by the 10th of the month. Telephone Number: 603-926-8085. Upon notification, your credit card will no longer be charged the monthly subscription fee. Initial setup fees and monthly subscription fees for current and prior months are not refundable.

BINDING CONTRACT

This ProTracker Cloud Usage Contract is a binding legal contract between three legal entities:

- you (either an individual or a legal entity, referred to here as the “Licensee,” or the “Customer,” or “you”);
- ProTracker Software, Inc. (“ProTracker Software” or “ProTracker”), developer of ProTracker Advantage®, located in Hampton, New Hampshire; and
- Focused Solutions Consulting, Inc., doing business as “IVDesk,” a host solution provider located in Minneapolis, Minnesota (“IVDesk”). IVDesk provides the hosted service for ProTracker Software through a SunGard Availability Solutions world-class (SAS 70, Type II) data center in Minneapolis, with additional SunGard backup data centers in St. Paul, MN, Woodside Park, IL, and other cities. The SunGard data centers have redundant power supplies, automatic redundant backup power generation, redundant Internet connections and significant access security.

Section 1

License Agreement

Except for the limited license granted in this License Agreement, ProTracker Software and its licensors retain all right, title and interest in ProTracker Cloud™ and ProTracker Advantage®, and all proprietary rights associated therewith, including copyrights, patents, trademarks and trade secret rights. The Services provided as part of this License Agreement are also licensed, but not sold.

1. DEFINITIONS.

For the purposes of this Usage Contract, the following words, terms and phrases, where written with an initial capital letter, shall have the meanings assigned to them in these definitions unless the context otherwise dictates.

- 1.1. “Affiliates” means, with respect to any party, any person or entity Controlling, Controlled by or under common Control with that party.
- 1.2. “Provider” means Focused Solutions Consulting, Inc., doing business as “IVDesk.”
- 1.3. “Application Software” (or “Applications”) means the software listed on the ProTracker Cloud Quote Sheet, and any updates, improvements or other modifications thereto. This includes ProTracker Advantage, IVDesk-Supplied Application Software and Customer-Supplied Application Software.
- 1.4. “Control,” “Controlling” and “Controlled” means possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity or other person, whether through ownership of voting securities, by contract or otherwise.
- 1.5. “Customer Data” means the content, records and data uploaded to the Customer’s workspace on ProTracker Cloud using the Application Software or Services.
- 1.6. “Customer-Supplied Application Software” is software that the Customer licenses directly from a software vendor. These software applications are often existing applications in use by the Customer at the time of ProTracker Cloud setup. They frequently include portfolio management software, accounting software, document management software, and similar core business applications.
- 1.7. “Effective Date” is the date of execution of the ProTracker Cloud Usage Agreement Signatures Page by the Customer.
- 1.8. “IVDesk” means Focused Solutions Consulting, Inc., a Minnesota corporation.
- 1.9. “IVDesk-Supplied Application Software” means the Application Software to be provided by IVDesk as set forth on the ProTracker Cloud Quote Sheet. At a minimum, IVDesk provides Microsoft Word, Excel, PowerPoint, Access, Outlook, Internet Explorer, Windows Explorer and server software.

- 1.10. "Logon Identity" is a series of letters and/or numbers that are assigned to the individuals who operate Customer's workstations.
- 1.11. "Services" means the hosting of the Application Software and storage of Customer data on a computer server and making the Application Software available to the Customer through a Web site on the Internet, and all related services and tasks.
- 1.12. "Two-Factor Authentication" means the use of a physical security key or token in addition to the customer username (Logon Identity) and password logon credentials. Two-factor authentication significantly increases Website access security.
- 1.13. "URL" means Uniform Resource Locator that provides a unique Internet protocol address for accessing an Internet page.
- 1.14. "Web" means the World Wide Web, which is part of the Internet.
- 1.15. "Website" means a location on the Internet on IVDesk's server that provides an online workspace for the Customer to interact with the Application Software on the Web. The Website is owned and operated by IVDesk and hosted by an IVDesk-designated Internet service provider (ISP).
- 1.16. "Workstation" means a single Customer computer terminal capable of accessing the Application Software and Services.

2. GRANT OF LICENSE.

- 2.1. ProTracker License. During the term of this License Agreement, ProTracker Software grants Customer a revocable, nontransferable (except as provided below), nonexclusive license to use the object code version of ProTracker Advantage for the purpose of hosted operation (i.e., installation and use in a hosted workspace) for your use only. In connection with your licensing of the Service, you will be required to identify the name of the individual or entity who will be the designated Licensee for the Service. Except as otherwise provided in this License Agreement, only the designated Licensee may use the Service.
- 2.2. IVDesk License. During the term of this License Agreement, IVDesk grants Customer a non-exclusive, non-transferable, non-assignable license to use the IVDesk-Supplied Application Software in accordance with the terms and conditions of this Agreement and the terms and conditions of the Application Software's licenses, all for Customer's business purposes.
- 2.3. Remote Hosted Service. During the term of this License Agreement, ProTracker Software and IV Desk provide the Customer with access to remote computing services and total disk space equal to 10 Gigabytes times the number of user licenses. Additional storage space may be leased, as listed on the ProTracker Cloud Quote. ProTracker Software provides access to ProTracker Advantage[®] (hereafter called "Advantage"). IVDesk provides Microsoft Office (including Word, Excel, PowerPoint, Access and Outlook) as

part of the ProTracker Cloud workspace. IVDesk performs daily backups of Licensee data.

- 2.4. **Security Keys.** Access to a ProTracker Cloud workspace requires the use of a physical security key. At the beginning of the term of this License Agreement, IVDesk will send you a security key for each user of a Cloud workspace. The Cloud workspace will not be accessible without the use of the security key. You may not share a security key with another user.
- 2.5. **Transfer of License.** You may transfer the license to another entity, provided that notice of such transfer together with the written agreement of the transferee to comply with the terms and conditions of this License Agreement is given to ProTracker Software at the time of such transfer. The new licensee must execute a new copy of this Usage Contract. There may be fees required to replace security keys.

3. LIMITATIONS ON LICENSE.

- 3.1. **Limitations on Copying and Distribution.** You may not copy or distribute Applications provided through ProTracker Cloud.
- 3.2. **Limitations on the Number of Licenses.** The number of licenses for which you have paid a license fee determines the number of users who can use the individual software applications concurrently.
- 3.3. **Limitations on Reverse Engineering and Modification.** You may not reverse engineer, decompile, disassemble, modify or create works derivative of the Applications. You may not alter or modify any disabling mechanism that may be resident in the Applications.
- 3.4. **Sublicense, Rental and Other Entity Use.** You may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Applications, or directly or indirectly permit any other firm to use or copy the Applications. You will keep any passwords associated with the use of the Service in strict confidence, and will not share such passwords with any other entity. You will be solely responsible for all use of the Service made with your passwords.
- 3.5. **Virtual Assistants.** If you desire to have a third-party outsource vendor or virtual assistant use the Service on your behalf, you must obtain an additional license and a security key for each virtual assistant.
- 3.6. **Use in Accordance with Documentation.** All use of the Applications and Services shall be in accordance with its then current documentation.
- 3.7. **Compliance with Applicable Law.** You shall be solely responsible for ensuring that your use of the Applications and Services is in compliance with all applicable foreign, federal, state and local laws, rules and regulations, including but not limited to the Investment Advisers Act of 1940, and the rules and regulations of any self-regulatory organization of which you are a member and you shall make no representations regarding the compliance of the Applications with any of the foregoing.

- 3.8. Confidentiality. You shall use the Services in strict confidence and shall not make them available to any unauthorized third parties.

4. DISABLING MECHANISM.

- 4.1. You acknowledge and agree that the Services have mechanisms whereby IVDesk and ProTracker Software can disable the Services. You agree that IVDesk and ProTracker Software may use any such mechanisms in the event of cancellation of this License Agreement or your breach of this License Agreement.

5. TERMINATION.

- 5.1. Breach of License Agreement. Without prejudice to any other rights, ProTracker Software may immediately and without notice terminate this License Agreement and all rights granted hereunder if you fail to comply with any of the terms and conditions of this License Agreement.
- 5.2. Infringement Claims. In the event of a claim of intellectual property infringement by any third party relating to the Application or Service ("Infringement Claims"), ProTracker Software reserves the right to immediately terminate this License Agreement and the rights granted hereunder.
- 5.3. Termination for Convenience. You may terminate this License Agreement at any time by discontinuing use of the Services, and complying with your termination obligations set forth in Section 2, Service Agreement.

6. MAINTENANCE OF BOOKS AND RECORDS.

- 6.1. ProTracker Software and IVDesk expressly disclaim, and you acknowledge and agree, that ProTracker Software and IVDesk (including its directors, officers, employees, agents and affiliates) shall not have any responsibility for maintenance of the books and records, in whole or in part, of you or your affiliates, as may be required under federal, state, local and foreign laws and regulations, including but not limited to the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Securities Exchange Act of 1934, all as amended.

7. GOVERNING LAW.

- 7.1. The ProTracker Advantage license is governed by and construed in accordance with the laws of the State of New Hampshire, as applied to agreements entered into and wholly performed within New Hampshire between New Hampshire residents.
- 7.2. The ProTracker Advantage license shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. Any action or proceeding brought by either party hereto shall be brought only in a state or federal court of competent jurisdiction located in Concord, New Hampshire,

and the parties submit to the in personam jurisdiction of such courts for purposes of any action or proceeding.

7.3. Licenses provided by IVDesk shall be governed by the State of Minnesota.

8. PROTRACKER SOFTWARE WEBSITE.

8.1. Your access and use of any ProTracker Software website, including www.protracker.com, shall be subject to the terms and conditions of use posted on the website. Any software, documentation, and other information downloaded from the website shall be subject to the licenses provided with such material or, if no license is provided, the materials shall be treated as an Application under this License Agreement and subject to all limitations and restrictions provided herein.

9. GENERAL.

9.1. This License Agreement constitutes the entire understanding and agreement between ProTracker Software, IVDesk and you with respect to the transactions contemplated in this License Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this License Agreement, all of which are merged in this License Agreement. In particular, if you are a current licensee of the Application or Service, this License Agreement shall supersede your existing license agreement and that agreement shall be of no further force or effect.

9.2. This License Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of all parties. In the event that any provision of this License Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this License Agreement shall remain valid and enforceable according to its terms.

9.3. Any failure by ProTracker Software or IVDesk to strictly enforce any provision of this License Agreement will not operate as a waiver of that provision or any subsequent breach of that provision.

9.4. ProTracker Software and IVDesk may assign any of their rights or obligations hereunder as it deems necessary. It is expressly understood and agreed that in the event any remedy hereunder is determined to have failed its essential purpose, all limitations of liability and exclusions of damages set forth herein shall remain in effect.

Section 2

Service Agreement

The following provisions of this Section shall constitute the Service Agreement (or "Agreement") that is hereby entered into between the Customer, ProTracker Software, Inc., and IVDesk.

1. INITIAL SYSTEM SETUP.

- 1.1. Application Software. IVDesk shall make the Service and Application Software available to the Customer on the Effective Date. Customer is responsible for furnishing IVDesk with the machine-readable media in a format specified by IVDesk for the Customer-Supplied Software. In no event shall IVDesk be obligated to make the Customer-Supplied Software available as part of the Service less than thirty (30) days following IVDesk's receipt of the necessary media and confirmation from the Customer of the existence of licenses to the Customer-Supplied Software. Any liability ever identified associated with licensing and Customer-Supplied Applications is the sole responsibility of the Customer.
- 1.2. Customer's Responsibilities for Setup. Customer must provide Internet connectivity to the Website with sufficient bandwidth to meet Customer's utilization demands. Customer must connect with either the latest Microsoft RDP (Remote Desktop Protocol), current or previous version of Microsoft Internet Explorer or other compatible browser configuration agreed upon by the parties. Customer must provide Internet connectivity with no more than 70 milliseconds of latency from the Customer desktop to IVDesk's server.
- 1.3. Customer Passwords. For the number of Customer workstations specified on the ProTracker Cloud Quote Sheet, IVDesk will furnish Customer with a matching number of Logon Identities and an initial password for each Logon Identity. Both a Logon Identity and a password are necessary to access the Services through the Website. Each user having access to Customer's Workstations must have his or her own Logon Identity; provided, however, that if Customer determines that an individual assigned a Logon Identity no longer requires access to the Services, such Logon Identity may be transferred to a new individual without additional cost or expense to Customer. The password provides vital security in preventing unauthorized access to Customer's Data and Confidential Information. Each party agrees to keep and maintain the confidentiality of the passwords that are assigned to Customer. IVDesk shall have no responsibility for unauthorized access to Customer's Data or Confidential Information that results from Customer's failure to keep secure the assigned passwords. IVDesk reserves the right to change passwords and Logon Identities whenever it deems it necessary, in its sole discretion, to protect the Setup, Services or Website.

- 1.4. Two-Factor Authentication. IVDesk shall institute and maintain Two-Factor Authentication security for all of Customer's users in addition to the customary Logon Identity and password.
- 1.5. IVDesk's Obligations. Beginning with the Effective Date and continuing during the Term of this Agreement, IVDesk shall provide and maintain (a) the Website; (b) all servers, hardware and other equipment necessary to provide the Services; and (c) all other material necessary to provide the Services.

2. SCOPE OF PERMITTED USE.

- 2.1. Customer agrees to use the Application Software only for the lawful purposes described above. Customer shall not:
 - 2.1.1. post or transmit on or through the Website(s) any libelous, obscene or otherwise unlawful information of any kind;
 - 2.1.2. interfere with, disable, modify, decompile, or reverse engineer the Application Software in any way;
 - 2.1.3. engage in any conduct involving the Website or the Application Software that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation; or
 - 2.1.4. upload, post, reproduce or distribute to or through the Application Software any material protected by copyright, privacy or other proprietary right without first obtaining a written license from the owner thereof.

3. SERVICE ACCESS LEVEL.

- 3.1. IVDesk is not responsible for loss of access to the Service or Application Software for reasons that are beyond IVDesk's reasonable control.
- 3.2. With the exception for loss of access that is beyond IVDesk's reasonable control, IVDesk shall maintain a level of access to the services and application software (excluding periods of scheduled maintenance and scheduled application software upgrades as set forth in Service Agreement, Sections 10 and 11) of 99% Access Availability during the first three months following implementation, and 99.5% Access Availability thereafter during the term of this Contract.
- 3.3. Service Access Level is defined as:
$$\frac{1 - (\text{Total Access Outage minutes per calendar month})}{(24 \text{ hours} \times 60 \text{ minutes} \times 30 \text{ days per month})}$$
- 3.4. An Access Outage is defined as the unscheduled inability of Licensee subscribed to the Service to access their entire Service.
- 3.5. Access Outage Duration is defined as the period of time beginning when the Customer reports an Access Outage to the IVDesk help desk (Trouble Ticket initiation) and ending when the IVDesk help desk closes the Trouble Ticket with the Customer's agreement that the issue has been resolved.

- 3.6. A Trouble Ticket is defined as the official method used by the Customer to advise IVDesk of a perceived Access Outage. If the Customer does not initiate a Trouble Ticket with IVDesk or release the Service for IVDesk testing, IVDesk will not be obligated to issue credits for the Access Outage.

4. FUNCTIONAL AVAILABILITY LEVEL.

- 4.1. IVDesk is not responsible for loss of functionality of Application Software for reasons that are beyond IVDesk's reasonable control. With the exception for loss of functionality that is beyond the IVDesk's reasonable control caused by Customer, Customer-Provided Applications, or Customer-Provided Access Vendors (e.g., telephone service), IVDesk shall maintain a level of functionality of the Application Software (excluding periods of scheduled maintenance and scheduled Application Software upgrades as set forth in Service Agreement, Sections 10 and 11) of 99.5% Functional Availability.
- 4.2. Functional Availability Level is defined as:
$$\frac{1 - (\text{Total Access Outage minutes per calendar month})}{(24 \text{ hours} \times 60 \text{ minutes} \times 30 \text{ days per month})}$$
- 4.3. A Functional Outage is defined as the unscheduled inability of all Customers subscribed to a given Application Software to access and use all functions of the Application Software.
- 4.4. For purposes of Functional Availability calculation, Functional Outages will be calculated after an Application has been in service for 60 days.
- 4.5. Functional Outage Duration is defined as the period of time beginning when the Customer reports a Functional Outage to the IVDesk help desk (Trouble Ticket initiation) and ending when the IVDesk help desk, closes the Trouble Ticket with the Customer's agreement that the issue has been resolved.
- 4.6. A Trouble Ticket is defined as the official method used by the Customer to advise IVDesk of a perceived Functional Outage. If the Customer does not initiate a Trouble Ticket with IVDesk or release the Service for IVDesk testing, IVDesk will not be obligated to issue credits for the Functional Outage.

5. REMEDIES FOR FAILURE TO MEET SERVICE ACCESS LEVEL PERCENTAGES.

- 5.1. Should the level of Access Availability fall below the 99.5% requirement as set forth in Service Agreement, Section 3.3, for any given calendar month for which Customer has paid the Service and License Fees, Customer may request a pro-rata credit on charges for the month's Services and Licenses Fees in proportion to the amount the level of access was below 99.5% for the month. For each day which the Customer experiences an Access Outage or Outages, the Customer shall be eligible to receive a credit of 1/30 of the monthly Service bill.

- 5.2. Customer shall have the right to terminate this Agreement without penalty, if
 - 1) the level of Access falls below 99.5% for any two consecutive months; or
 - 2) three months out of any six-month period.

6. REMEDIES FOR FAILURE TO MEET FUNCTIONAL AVAILABILITY LEVEL PERCENTAGES.

- 6.1. Should the Functional Availability Level fall short for any given month, Customer shall be entitled to credit under one of the applicable remedies set forth below.
 - 6.1.1. Should the Functional Availability Level for any given Application Software fall below 99.5% for the month, Customer shall be eligible to receive a credit of 1/30 of the monthly Service bill for the Logon Identities subscribed to the Application Software for each day that the Application Software had an Application Outage of 60 minutes or greater duration.
 - 6.1.2. Should the Functional Availability Level for Logon Identities subscribed to the Application Software fall below 98% in five consecutive months, Customer shall have the right to terminate this agreement without penalty.

7. LIMITS TO REMEDIES FOR FAILURE TO MEET SERVICE ACCESS AND FUNCTIONAL AVAILABILITY GOALS.

- 7.1. Claims for any and all Service credits must be submitted by Customer to IVDesk in writing within thirty (30) days of the last day of the month for which credit is claimed. In the event a Customer has coincident rights to a credit based on Access Availability and/or Functional Availability, only one credit shall apply.
- 7.2. Total credits a customer can receive in a month under Service Agreement, Sections 5 and/or 6, shall not exceed the amount paid by Customer in such month. In each case, where the Customer attains the right to terminate for failure to meet Service Access Availability or Functional Availability levels, Customer must exercise the right within 60 days of attaining the right, or Customer loses right to terminate associated with each case.
- 7.3. Customer's credit and/or right of termination shall be Customer's sole remedies for IVDesk's breach of Service Agreement, Sections 3 and 4, regarding level of Access Availability and Functional Availability levels.

8. SOFTWARE MONITORING

- 8.1. IVDesk will monitor its Services to detect Service-impacting incidents. IVDesk will use its best efforts to immediately remedy incidents that are detected by IVDesk and within the Services to be provided hereunder. Detected incidents outside of the Services to be provided hereunder will be referred back to the Customer.
- 8.2. IVDesk will use best efforts to attempt to correct “major errors” within 24 hours after the discovery of the incident and to attempt to correct “minor bugs” within three business days after the incident. A “major error” means that the service is not operational or a critical transaction aborts with an error message. All errors other than “major errors” are classified as “minor bugs.”

9. SUPPORT OF PROTRACKER-SUPPLIED APPLICATION SOFTWARE.

- 9.1. ProTracker will provide direct Customer support to Customers relative to the purpose and usage of ProTracker Advantage during the regular business hours of 9:00 a.m. to 5:00 p.m. Eastern Time, excluding ProTracker Software’s regularly scheduled holidays.
- 9.2. IVDesk will provide best effort ProTracker support to Customers outside of regular business hours, primarily through the use of the ProTracker Advantage built-in help system and the ProTracker Knowledge Base.

10. MAINTENANCE.

- 10.1. When it is necessary for IVDesk to undertake maintenance of the system and upgrades to the Application Software, IVDesk will use best efforts to conduct these activities on a reasonable, scheduled basis as set forth in this Section of the Agreement.
- 10.2. Emergency unscheduled maintenance may be necessary from time to time. These periods of loss or diminished access are not included in calculating IVDesk’s overall Service Availability as set forth in Service Agreement, Sections 3 and 4.
- 10.3. Scheduled maintenance will occur at commercially reasonable times as may be agreed upon by IVDesk. Access to the Service and Application Software may be unavailable or diminished for all or a portion of the scheduled maintenance period. If the scheduled maintenance does not cause the Website to be totally unavailable to Customers during the maintenance period, IVDesk will post on the Website information concerning the probable length of the maintenance period and Services and Application Software affected by the maintenance.
- 10.4. Emergency maintenance may be required at times other than scheduled maintenance periods. IVDesk will use best efforts to promptly notify Customers of any emergency maintenance and to complete such maintenance as quickly as possible.

11. SOFTWARE UPGRADES.

- 11.1. Enhancements. ProTracker Software reserves the right to upgrade, enhance, change or modify ProTracker Advantage (collectively, "Enhance" or "Enhancements") at any time at its sole discretion. Any Enhancements made available to you by ProTracker Software will be subject to the terms of this License Agreement, except to the extent that conflicting or more restrictive provisions are agreed upon in future agreements relating to such Enhancements. Enhancements will be installed by IVDesk at no cost to the Customer on a not-to-interfere basis outside of regular business hours.
- 11.2. During the term for which you pay Subscription Fees, ProTracker Software will provide you with any Enhancements that ProTracker Software distributes to its other customers without additional charge. If ProTracker Software distributes any Enhancement as an option or new product for which it charges an additional fee, it will make such option or new product available to you on the same terms as it offers to other similarly-situated customers.
- 11.3. When software upgrades, corrections, bug-fixes or any other corrections, modifications or improvements to the Application Software (collectively, "Upgrades") are made available to IVDesk (either directly from ProTracker Software, a third-party software vendor, from a Customer or any other source) IVDesk and Customer shall discuss in good faith the impact on the Services the Application Software. With Customer's prior approval, IVDesk shall implement the Upgrade(s) for use by Customer.
- 11.4. Whenever practicable, IVDesk will seek to conduct software Upgrades during the scheduled maintenance periods. If software Upgrades cannot be reasonably conducted during the regular scheduled maintenance periods, IVDesk may schedule a software Upgrade period. IVDesk will give Customer reasonable advance notice of the software Upgrades scheduled outside the scheduled maintenance periods by posting the notice on the Website and by email notice to Customer's designated technical contact.

12. BACKUPS.

- 12.1. IVDesk will perform an incremental system backup every Monday through Saturday and a full backup on Sundays. All Application Software and Customer Data will be backed up on this schedule. IVDesk will maintain in a safe and secure location, a copy of at least one full backup until after the next full backup is performed.
- 12.2. Backups will be maintained on a rolling basis and IVDesk will not be responsible for archiving more than the most recent full day's backup. IVDesk will use best efforts to maintain data integrity in any backup, but IVDesk is not responsible for loss of data or data integrity so long as IVDesk has used such efforts.

- 12.3. IVDesk will provide a permanent full backup to Customer upon Customer requests in a format agreed upon by IVDesk and the Customer for the same fee as the Termination Fee listed on the ProTracker Cloud Quote Sheet.

13. PROPRIETARY RIGHTS.

- 13.1. Confidentiality and Responsibility for Customer Data. All right, title and interest in the Customer Data shall be owned by Customer. IVDesk agrees to treat the Customer Data uploaded to the Application Software as Customer's proprietary material and Confidential Information. With the exception of the commitments set forth in Service Agreement, Section 12, IVDesk makes no representations whatsoever regarding the accuracy, reliability or timeliness of the Customer Data and as between Customer and IVDesk, the sole responsibility and liability for the Customer Data lies with Customer and Customer shall indemnify and hold harmless IVDesk and ProTracker Software from any third-party claims, causes of action or liability howsoever arising out of IVDesk's hosting of the performance of the Application Software or Service with respect to the Customer Data if, and to the extent such disclosure is required.
- 13.2. Notwithstanding the above, IVDesk has the right to intercept and disclose any Customer Data to the extent reasonably necessary to protect the rights of IVDesk, for mechanical or service quality control as permitted by law, or to comply with any law, regulation or governmental request.
- 13.3. IVDesk will not intentionally intercept, monitor or disclose any information contained in the Application Software unless required by law or expressly permitted to do so, and IVDesk shall be under no obligation to monitor, review, screen, edit or otherwise control the Customer Data.
- 13.4. In the event that either party elects not to renew this Agreement for an additional term, IVDesk agrees to export the Customer Data in a format agreed upon by IVDesk and the Customer for the fee listed on the ProTracker Cloud Quote Sheet.

14. LIMITED WARRANTY AND DISCLAIMER.

- 14.1. IVDesk warrants that, for a period of ninety (90) days following the Effective Date, the IVDesk-Supplied Software Applications and Services will substantially conform to the descriptions contained in IVDesk's published Customer documentation. IVDesk will correct any material failure of the IVDesk-Supplied Applications Software or Services to so conform; provided that: a) Customer gives IVDesk reasonable written notice of any claimed failure to so conform; and b) such failure to so conform is not a result of:
 - 14.1.1. any telecommunications failure;
 - 14.1.2. failure to operate the Applications Software from within an adequate hardware and software environment;
 - 14.1.3. improper use of the Applications Software by Customer;

- 14.1.4. failure to comply with any of IVDesk's recommendations or requirements.
- 14.2. IVDesk warrants that Independent Software Applications and Customer-Supplied Software Applications have been installed on the IVDesk's servers in accordance with manufacturers written specifications. Except for this warranty of installation, IVDesk makes no other warranty for the other Application Software.
- 14.3. Professional Work. IVDesk represents, warrants and agrees that all Services to be provided under this Agreement shall be performed in a professional, competent, and timely manner by appropriately qualified personnel in accordance with the requirements of this Agreement.
- 14.4. No Withholding of Services. Provided Customer continues to make all undisputed support payments in a timely manner, except for amounts withheld under Section 4, Fee Agreement, Paragraph 3.10, IVDesk represents, warrants and agrees that during the Term of this Agreement it will not withhold Services provided hereunder, for any reason, including but not limited to a dispute between the parties arising under, or unrelated to, this Agreement, except as may be specifically authorized herein.
- 14.5. ProTracker Software warrants ProTracker Advantage and the associated documentation to be free of defects in materials and workmanship under normal circumstances. If ProTracker Software receives notification of defects in materials or workmanship, and such notification is determined by ProTracker Software to be correct, ProTracker Software will update ProTracker Advantage or the documentation as your sole and exclusive remedy. ProTracker Software shall not be liable for failures caused by third-party hardware and software (including your own systems), misuse of the Applications or the Services, or your negligence or willful misconduct.
- 14.6. Disclaimer. Except as expressly provided in this agreement, all products and services furnished by IVDesk under this agreement are furnished by IVDesk and accepted by Customer "as is," without any warranty whatsoever. All other warranties, express or implied, including any warranties of merchantability or fitness for any particular purpose, are specifically excluded and disclaimed. IVDesk does not warrant that the Application Software or any products or services furnished by IVDesk hereunder will meet Customer's requirements, that the operation of the Application Software will be uninterrupted or error free, or that all failures of the Application Software to conform to its manufacturer's published customer documentation will be corrected.
- 14.7. Actions of Third Party. Without limiting the foregoing disclaimer, Customer specifically acknowledges that, beyond IVDesk's servers, all Services are provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which connections to telecommunication networks (or portions thereof) or the Service or Software Applications may be impaired or disrupted. Although IVDesk will use

commercially reasonable efforts to take any actions it deems appropriate to remedy and avoid such events, IVDesk cannot guarantee that they will not occur. IVDesk is not responsible for denial of service, computer viruses, or other actions of third parties that may disrupt the availability of the Service or Software Applications. Accordingly, so long as IVDesk acts in a commercially-reasonable manner as described above, IVDesk will have no liability whatsoever resulting from or related to such events.

14.8. Limitation of Liability.

14.8.1. Except for liabilities arising under Service Agreement, Section 16 (Indemnification), Customer agrees that in no event shall IVDesk or its agents, employees, directors or suppliers be liable to Customer, or anyone claiming through Customer, for (1) incidental, indirect, special or consequential damages, or (2) any claims resulting from or caused by Customer's failure to comply with its obligations set forth in this agreement; or (3) any damages whatsoever resulting from loss of use, data or profits, arising out of or in connection with Customer's use of the service, the performance or non-performance of the services or the content accessible through the service, even if the possibility of such damages was foreseeable.

14.8.2. Customer agrees that the liability of IVDesk and its agents, employees, directors and suppliers hereunder is limited solely to customer's direct damages and in no event shall it exceed the amount of license fees actually collected from customer during the thirty (30) days immediately preceding the date of termination, or \$500.00, whichever is greater.

14.9. Notice of Claims. Customer must notify IVDesk in writing of any claim Customer has against IVDesk within ninety (90) days of Customer's knowledge of the claim except for other claim notices herein or the claim shall be barred and Customer shall be deemed to have waived any right to proceed against IVDesk on the claim.

14.10. Basis of the Bargain; Failure of Essential Purpose. Customer acknowledges that IVDesk and ProTracker Software have set their prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and limitations on damages set forth in this Agreement, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

14.11. Except as provided in Service Agreement, Section 14 (Limited Warranty and Disclaimer), the application and maintenance services are provided on an "as available" and "as is" basis. ProTracker Software does not warrant that the Applications or Services on ProTracker Cloud will meet your requirements, or that the operation of the Applications or Services will be uninterrupted or error-free, or that defects in the Applications will be

corrected. No oral or written information or advice given by ProTracker Software shall create any additional ProTracker Software warranties or in any way increase the scope of ProTracker Software's obligations hereunder.

- 14.12. The Service is used to access and transfer information over the Internet. You acknowledge and agree that IV Desk and ProTracker Software do not operate or control the Internet and that viruses, worms, Trojan horses, malware, or other software or unauthorized users (e.g., hackers) may attempt to obtain access to and damage your data, websites, computers, or networks. IVDesk and ProTracker Software shall not be responsible for such activities. You are solely responsible for the security of your user names, passwords and security keys.
- 14.13. To the maximum extent permitted by law, in no event shall ProTracker Software or IVDesk, or their suppliers and licensors, be liable to you or any third party for any special, incidental, consequential, punitive, or indirect damages, which shall include, without limitation, damages for personal injury, lost profits, lost data and business interruption, arising out of the use or inability to use the Service, even if ProTracker Software or IVDesk has been advised of the possibility of such damages. You agree that you will have sole and complete responsibility for any decisions made or actions taken by you in reliance upon the Applications or Services. You agree and acknowledge that the Applications are not intended to supply tax, investment, financial planning, or legal advice.
- 14.14. Some states do not allow the exclusion of incidental or consequential damages, or the limitation on how long an implied warranty lasts, so some of the above may not apply to you.

15. CUSTOMER'S WARRANTIES.

- 15.1. Customer-Supplied Software Applications. Customer represents and warrants that it owns, has a valid license, or has the legal right and authority, and will continue to own, license or maintain the legal right and authority during the term of this Agreement, to place and use the Customer-Supplied Software as contemplated by this Agreement.
- 15.2. Customer's Business. Customer represents and warrants that Customer's services, products, materials, data, information and Customer-Supplied Software Applications used by Customer in connection with this Agreement will not during the term of this Agreement, operate in any manner that would violate any applicable law or regulation.
- 15.3. Customer's Authority. Customer represents and warrants that it has the right, power and authority to enter into this Agreement.

16. INDEMNIFICATION.

- 16.1. IVDesk's Indemnification of Customer. IVDesk will defend, indemnify Customer, and any Affiliates, and its and their officers, directors, employees, representatives and successors-in-interest (each a Customer-Indemnified Party and collectively the "Customer-Indemnified Parties") and hold any Customer-Indemnified Parties harmless against costs, expenses and liability related to any claim by any third party that the IVDesk-Supplied Software or Services infringe or violate any U.S. patent, copyright, trademark, or trade secret, or other proprietary right of any third party, provided that:
 - 16.1.1. Customer notifies IVDesk promptly in writing of any notice of such claim;
 - 16.1.2. Customer cooperates with IVDesk in all reasonable respects in connection with the investigation and defense of any such claim;
 - 16.1.3. IVDesk shall have sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise; and
 - 16.1.4. should the IVDesk-Supplied Software or Services become, or in IVDesk's opinion be likely to become, the subject of a claim referred to above Customer shall permit IVDesk, at IVDesk's option and expense, either to:
 - 16.1.4.1. procure for Customer the right to continue using and receiving the IVDesk-Supplied Software or Services; or
 - 16.1.4.2. replace or modify the same so that it becomes non-infringing.
- 16.2. Notwithstanding anything herein to the contrary, however, IVDesk shall have no obligation or liability to Customer hereunder to the extent any such claim is based upon use of the IVDesk-Supplied Software in a manner that exceeds the scope of use permitted under this Agreement or upon any IVDesk-Supplied Software which has been modified by Customer in such a way as to cause it to become infringing. This indemnification does not apply to Independent Software Applications or Customer-Supplied Software Applications.
- 16.3. Customer's Indemnification of IVDesk. Customer will indemnify, defend and hold IVDesk, its officers, directors, employees, affiliates, representatives and customers harmless from and against any and all losses suffered by (including settlement costs, costs of litigation, and legal fees), or resulting from or arising out of any action brought by or against, IVDesk, its officers, directors, employees, affiliates, representatives or customers alleging:
 - 16.3.1. with respect to the Customer's Business: (A) infringement or misappropriation of any intellectual property rights; (B) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (C) spamming, or any other offensive, harassing or illegal conduct;

- 16.3.2. any other damage arising from the Customer-Supplied Software Applications or Customer's Business;
- 16.3.3. any violation of law or regulation by Customer or its representatives;
or
- 16.3.4. any violation of this Agreement or breach of Customer's warranties by Customer or its representatives.
- 16.4. You agree to indemnify, defend and hold harmless ProTracker Software and IVDesk, including their officers, directors, shareholders, host services providers, agents, affiliates, and licensors, from and against any and all third-party claims of any kind (along with attorney's fees and litigation costs) arising out of, resulting from, or in connection with your breach of this Usage Contract or your use or misuse of the Applications or Services.
- 16.5. Customer's Insurance. Customer agrees that it will not pursue any claims against IVDesk or ProTracker Software for any liability IVDesk may have under or relating to this Agreement until Customer first makes claims against Customer's insurance provider(s) and such insurance provider(s) finally resolve(s) such claims. Customer waives its right of recovery against IVDesk (and waives the subrogation right of its insurance providers) to the extent such claims are covered by Customer's insurance.

17. TERMINATION OF SERVICE.

- 17.1. Term. The term of this Service Agreement is indefinite and the license granted to you is one (1) month from the first day of the month in which the Service is delivered to you. This License Agreement and the Service Agreement to use the Service may be extended by your payment of a monthly subscription fee that will be charged to your credit card on or about the 15th of the month for Service to be rendered during the following month (payment in advance). Without the payment of the subscription fee, the Service will automatically cease to function at the end of the month and the license granted will expire.
- 17.2. Customer's Termination Obligations. Customer shall notify ProTracker Software by the 10th of the month for the termination to be effective for the following month.
- 17.3. Termination for Cause. In addition to any other provision in this Agreement allowing a party to terminate, in whole or in part, and without limiting any other remedies available at law, in equity, or under this Agreement, if either party materially or repeatedly defaults in the performance of any of its duties or obligations under this Agreement, and within thirty (30) days after written notice is given to the defaulting party specifying the default, it is not cured to the reasonable satisfaction of the party giving the notice of default, then the party not in default may terminate this Agreement by giving written notice of termination to the defaulting party.

- 17.3.1. In the case of IVDesk's termination of this Agreement as set forth above, such termination shall be effective no sooner than forty-five (45) days following IVDesk's written notice of termination.
- 17.3.2. In the case of Customer's termination of this Agreement as set forth above, such termination shall be effective no sooner than forty-five (45) days following Customer's written notice of termination. If the default is incapable of being cured, then the cure periods above shall not apply, and notice of termination may be given directly by the party not in default.
- 17.4. Effect of Termination/Survival. Upon the effective date of any termination of this Agreement, IVDesk shall disable all Customer's passwords and/or access codes provided pursuant to this Agreement and shall be entitled to remove all Customer's Application Software and Customer Data from IVDesk's servers. In the event that this Agreement is terminated, IVDesk will return Customer's Application Software and Customer's Data in a form acceptable to Customer as set forth in Service Agreement, Section 12 (Backups).
- 17.5. Termination of Customer. When a Customer terminates, IVDesk agrees to maintain backup copies of Customer's data for at least thirty (30) days. IVDesk agrees to move all Customer data to portable media and ship the portable media to the Customer via overnight shipping methods for a fee stipulated on the ProTracker Cloud Quote Sheet.

18. RELATIONSHIP.

- 18.1. Independent Contractors. The relationship of the parties under this Agreement is and at all times shall, remain that of independent contractors. Nothing in this Agreement will be construed to create a joint venture, partnership, franchise, employment or agency relationship between IVDesk or ProTracker Software and the Customer.
- 18.2. Intellectual Property Rights. Customer hereby acknowledges that all right, title and interest in all intellectual property rights, including patent, copyright, trademark, and trade secret rights in IVDesk's Software Applications and the Services, including any modifications, enhancements, versions, releases, or correction levels thereto, program concepts including literal or non-literal structure, sequence and organization, training materials, literature, and other IVDesk related materials shall remain exclusively with IVDesk. Customer agrees not to copy, distribute, prepare derivative works on, decompile, disassemble or reverse engineer any part of the Software Applications, nor to permit or acquiesce to other parties to committing any such acts. All rights not expressly granted herein are reserved by IVDesk.

19. GENERAL PROVISIONS.

- 19.1. **Governing Law and Dispute Resolution.** This Service Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and the State of Minnesota, without regard to that State's conflict of laws provisions. Any action between IVDesk and Customer howsoever arising out of or relating to this Agreement or the rights or obligations of the parties hereunder will be submitted to binding arbitration in the State of Minnesota under the then-current rules of the American Arbitration Association. IVDesk and Customer shall mutually agree upon an arbitrator for such a dispute and, unless waived by the parties, that arbitrator shall have expertise in intellectual property law and contracts for provision of application software.
- 19.2. **Entire Agreement.** This Service Agreement, including the ProTracker Cloud Quote Sheet, and together with such end-user license agreement terms in written, shrink-wrap, click-wrap or Web-wrap form that may appear in connection with the end-user's logon or use of the Application Software, sets forth the entire agreement and understanding among the parties regarding the subject matter hereof and supersedes any prior understanding or agreements, whether written or oral, regarding the same subject matter. This Service Agreement may not be modified or amended except by a writing signed or electronic acknowledgement by the party against whom the same is sought to be enforced.
- 19.3. The parties to this Service Agreement signify their consent to be bound by its terms by the signatures on the ProTracker Cloud Usage Contract Signature Page.

Section 3

Non-Disclosure Agreement

This Non-Disclosure Agreement will provide the necessary protection for Customers who need to provide Personal Information and Confidential Information (defined hereafter) to ProTracker Software, Inc., and IVDesk for general business purposes.

The following terms shall apply when one of us ("Discloser") discloses Personal Information or Confidential Information to the other ("Recipient") under this Non-Disclosure Agreement.

1. WRITTEN INFORMATION SECURITY PROGRAMS.

- 1.1. IVDesk and ProTracker Software maintain written Information Security Programs that conform to Commonwealth of Massachusetts 201 CMR 17.00, so that Customer data containing Personal Information and Confidential Information is protected.
- 1.2. IVDesk and ProTracker Software shall make every attempt to conform to all state laws with respect to information security as laws and regulations are enacted.
- 1.3. Transfers of Personal Information and Confidential Information shall be accomplished through ProTracker Software's encrypted file transfer facility.

2. DEFINITIONS.

- 2.1. "Personal Information" shall mean Personally Identifiable Information, which includes but is not necessarily limited to a person's first name and last name, or first initial and last name, in combination with any one or more of the following data elements:
 - 2.1.1. Social Security number;
 - 2.1.2. driver's license number or state-issued identification card number;
 - 2.1.3. credit or debit card number, with or without any required security code, access code, personal identification number or password; or
 - 2.1.4. financial account number, which would permit access to a financial account.

- 2.2. Additionally, "Confidential Information" shall include the following: business vision, business objectives, business strategy, business tactics, business challenges, business requirements, marketing, sales, forecasts, finances, price quotes, price lists, marketing proposals, branding strategies, services, suppliers, clients, client lists, markets, creative designs and concepts, technical data, screen layouts, report layouts, web designs, trade secrets and know-how, research, product plans, products, technical requirements, ideas, preliminary concepts, functional specifications, training materials, software, programming techniques, algorithms, developments, inventions, processes, technology, designs, drawings, techniques, hardware configuration information, or other business information disclosed by either of the parties.

3. DISCLOSURE.

- 3.1. Personal Information and Confidential Information (collectively, "Confidential Information") may be disclosed:
 - 3.1.1. in writing;
 - 3.1.2. by delivery of items;
 - 3.1.3. by authorized access to Confidential Information, such as may be contained in a database; or
 - 3.1.4. by oral and/or visual presentation.
- 3.2. All materials containing Confidential Information must have a restrictive marking of the Discloser at the time of Disclosure, or if disclosed orally, identified as confidential at the time of disclosure.
- 3.3. Notwithstanding the foregoing, all information disclosed by authorized access to a database, internal website, server or computer network is Confidential Information. Confidential Information shall not include information the Recipient can establish:
 - 3.3.1. has entered the public domain without Recipient's breach of any obligation owed to Discloser;
 - 3.3.2. already lawfully known to the Recipient;
 - 3.3.3. is rightfully received by Recipient from a third party without confidentiality restrictions;
 - 3.3.4. is known to Recipient without any restriction as to use or disclosure prior to first receipt by Recipient from Discloser;
 - 3.3.5. is authorized for disclosure by Discloser; or
 - 3.3.6. is independently developed by Recipient.

- 3.4. All disclosures of information other than those made pursuant to this Agreement shall be deemed to be non-confidential. The Discloser shall not disclose any Confidential Information that Discloser does not have the right to disclose to the Recipient.

4. PROTECTION.

- 4.1. This Agreement shall apply to all Confidential Information disclosed beginning on the earliest date that one of the Parties signs the ProTracker Cloud Usage Contract Signature Page.
- 4.2. The Recipient will:
 - 4.2.1. use the same care and discretion to avoid disclosure of the Discloser's Confidential Information as the Recipient uses with its own similar information that it does not wish to disclose (which shall be no less than the care a reasonable person would use under similar circumstances);
 - 4.2.2. not disclose any Confidential Information to third parties; and
 - 4.2.3. use the Confidential Information only for related business purposes.
- 4.3. Confidential Information shall remain confidential indefinitely. If, however, the Recipient totally destroys the Confidential Information by legally acceptable means (for example, physical shredding of paper-based information, or electronic shredding of digitally-based information), then the Recipient will be relieved of further responsibility for the Confidential Information received.

5. EXCEPTIONS.

- 5.1. The Recipient may disclose Confidential Information to:
 - 5.1.1. its employees and independent contractors who have a need to know; and
 - 5.1.2. any other party with the Discloser's prior written consent.
- 5.2. Before disclosure to any of the above parties, the Recipient must have an appropriate written or oral agreement with such party sufficient to require that the party treat such Confidential Information in accordance with this Agreement.
- 5.3. The Recipient may disclose Confidential Information to the extent required by law, but the Recipient must give the Discloser advance notice to allow the Discloser a reasonable opportunity to obtain a protective order.

6. GENERAL.

- 6.1. This Agreement does not require either party to disclose or to receive Personal Information or Confidential Information.
- 6.2. All Personal Information and Confidential Information is provided "as is." Discloser makes no warranties, expressed, implied or otherwise, regarding its information.
- 6.3. Neither this Agreement, nor any disclosure of Confidential Information hereunder grants the Recipient any right or license under any trademark, copyrights or patent now or hereafter owned by or controlled by the Discloser.
- 6.4. Neither party shall be deemed to make any representation, warranty, assurance, guarantee or inducement with respect to any Confidential Information disclosed hereunder, including without limitation any representation concerning non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property rights or other rights.
- 6.5. Neither party may assign or otherwise transfer our rights or delegate our duties or obligations under this Agreement without the prior written consent of the other. Said written consent will not be unreasonably withheld.
- 6.6. Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information of the other party, and that in the event of a breach or threatened breach of this Agreement, the other party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- 6.7. If either party should undertake legal action to enforce any of the terms of this Agreement, the prevailing party therein shall be entitled to reasonable attorney fees and costs of suit incurred in connection therewith. These fees will be in addition to any other relief awarded.
- 6.8. Only a written agreement signed by both of us can modify this Agreement.
- 6.9. The failure of either party, in any one or more instances, to insist on performance of any of the provisions of this Agreement, or to exercise any right to terminate this Agreement or any other right under this Agreement, shall not be a waiver and shall not prevent such party from enforcing such provision or any other provision of this Agreement in the future.
- 6.10. If a court of competent jurisdiction determines that any provision of this Agreement or any part of that provision is illegal or unenforceable, the remainder of that provision and this Agreement shall remain in full force and effect.
- 6.11. Either party may terminate this Agreement by providing thirty (30) days advance written notice to the other. Any provisions of this Agreement, which

by their nature extend beyond its termination, remain in effect until fulfilled and apply to our respective successors and authorized assignees.

- 6.12. The laws of the State of New Hampshire, excluding its conflict of laws rules, govern this Agreement. This Agreement is the complete and exclusive agreement regarding our disclosures of Confidential Information.

7. TECHNICAL SUPPORT.

- 7.1. Error logs are generated by ProTracker Advantage to facilitate troubleshooting should you have a problem. The error logs tell ProTracker Software what screen you were on in Advantage when the situation or question arose. ProTracker Software requests that error logs be sent to ProTracker for analysis when a question arises, which is done by clicking on Help > Contact Customer Support. The error logging function is turned on by default under Tools > Options > System > Logging at initial installation. No confidential data is recorded in the error logs.
- 7.2. ProTracker Software uses remote access software to help answer your questions. You must authorize ProTracker Software personnel to see your screen. Data that is observed on your screen falls under this Non-Disclosure Agreement and will be treated as confidential data. No data is retained by the remote access software used during technical support sessions.
- 7.3. IVDesk uses remote access software to help answer your questions or troubleshoot your situation. You must authorize IVDesk personnel to see your screen. Data that is observed on your screen falls under this Non-Disclosure Agreement and will be treated as confidential data. No data is retained by the remote access software used during technical support sessions.

Section 4

Fee Agreement

1. PROTRACKER CLOUD QUOTE SHEET.

- 1.1. The Customer was provided a ProTracker Cloud Quote Sheet (the "Quote") prior to entering into this Usage Contract that disclosed the various components comprising this Contract. The Quote was developed based on information known at the time of preparation, including the contemplated software applications that would be hosted as part of ProTracker Cloud.
- 1.2. ProTracker and IVDesk are in the customer service business, with complete intentions of providing concierge-level service to the Customer. The Customer may request hosting for fewer or greater numbers of software applications, now or in the future, and IVDesk will make every effort to accommodate the Customer's request. Accordingly, the exact monthly fee will depend on the current number of applications being hosted. The Quote provides a fee schedule for adding or eliminating software applications on ProTracker Cloud, and is firm for at least one year.

2. SETUP FEES.

- 2.1. By signing Section 5, IVDesk Credit Card Authorization, you authorize IVDesk to charge your credit card for the required setup fees for each of the services to which you are subscribing. The debit will appear as "Focused Solutions Consulting, Inc."
- 2.2. The one-time setup fees are as quoted on the ProTracker Cloud Quote Sheet provided at time of purchase.

3. MONTHLY SUBSCRIPTION FEES.

- 3.1. Customer will receive a monthly invoice as set forth on the ProTracker Cloud Quote Sheet that will apply to the next month of services. The Customer may add or delete software hosting services, such that, after the first month, the subsequent monthly invoices may vary from the initial Quote Sheet.
- 3.2. The customer has a ten-day period from the 1st of the current month to the 10th of the current month to dispute the monthly invoice charges.
- 3.3. By signing Section 5, IVDesk Credit Card Authorization, you authorize IVDesk to charge your credit card around the 15th of each month at the current invoice rate for each of the Service(s) to which you subscribe. The charges to your account are for Services to be rendered during the following month (payment is in advance).
- 3.4. The monthly subscription fees are as quoted on the ProTracker Cloud Quote provided at time of purchase.

- 3.5. If the credit card on file is denied (card expired, lost/stolen, or over limit), IVDesk will immediately notify the Customer of the denial by email within one business day if the credit card on file is expired or denied. A second email notification will be sent to the Customer by IVDesk on or about ten days following the expiration or denial if the Customer has not rectified the credit card deficiency.
- 3.6. IVDesk will terminate service to the Customer if the Customer fails to rectify the credit card deficiency by noon (Customer local time) on the first business day of the following month in which the credit card deficiency occurred.
- 3.7. IVDesk is authorized to charge Customer an account reinstatement fee
- 3.8. Each party will pay all taxes, assessments, duties, tariffs, imposts, permits and fees however designated, which are levied upon it and related to its performance of its obligations or exercise of its rights under this Agreement. In no event will one party be responsible for any taxes levied against the other party's net income.
- 3.9. In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event IVDesk is in default of its duties or obligations under this Agreement and it fails to cure the default within fifteen (15) days after receipt of written notice of default from the Customer, the Customer, without waiving any other rights under this Agreement, elect to withhold from the payments due to IVDesk under this Agreement during the period beginning with the sixteenth (16th) day after IVDesk's receipt of notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the Customer. Upon curing of the default by IVDesk, Customer will cause the withheld payments to be paid to IVDesk, without interest.
- 3.10. In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event Customer is in default of payment of invoice thirty (30) days after receipt of written default notice from IVDesk of said default, IVDesk may, without waiving any other rights under this Agreement, elect to withhold services due to Customer under this Agreement during the period beginning with the thirty-first (31st) day after Customer's receipt of notice of default, and ending on the date that the default of payment has been cured inclusive of interest and other fees associated with stopping and starting of service as determined in IVDesk's reasonable discretion.

4. DATA CONVERSION.

- 4.1. ProTracker Software is solely responsible for the accurate conversion of its Customer's data from prior software applications to ProTracker Advantage if the Customer purchased such data conversion services.
- 4.2. ProTracker Software is responsible for negotiating the conversion parameters, the conversion fee, performing the conversion, directly billing the Customer for the data conversion, and collecting the conversion fee.
- 4.3. ProTracker Software is responsible for uploading Customer's converted data to IVDesk's platform.
- 4.4. IVDesk is not responsible for the accuracy of the data conversion.

5. SUBSCRIPTION CANCELLATION.

- 5.1. To cancel the subscription, the Customer shall notify ProTracker Software by the 10th of the month for services to be provided the following month. No subscription refunds are provided for the unused portion of the current month.

6. DATA TRANSFER FEES AT TERMINATION.

- 6.1. By signing Section 5, IVDesk Credit Card Authorization, you authorize IVDesk to charge your credit card for any data transfer services that you require upon termination.
- 6.2. The data transfer fee is as stated on the ProTracker Cloud Quote Sheet. All of your company data will be shipped to you on an encrypted portable hard drive by overnight courier. You will be provided the appropriate security keys to decrypt your data.

7. FEE CHANGES.

- 7.1. ProTracker Software and IVDesk may not modify the quoted fee schedule for one year after this Usage Contract is signed.
- 7.2. Thereafter, ProTracker Software or IVDesk may adjust fees to reflect current business conditions.

8. TERM OF USAGE CONTRACT.

- 8.1. This Usage Contract shall become effective on the date inscribed on the ProTracker Cloud Usage Contract Signature Page.
- 8.2. This Usage Contract shall remain in effect indefinitely as long as the Customer continues to pay its monthly invoice, or until a party terminates the Usage Contract as provided herein.

Section 5

IVDesk Credit Card Authorization



Please read and sign this Credit Card Authorization prior to purchasing ProTracker Cloud. By signing below, you indicate that you have the authority to place charges on the credit card listed below. If you have any questions concerning this Credit Card Authorization Agreement, please contact ProTracker Software at 603-926-8085.

Company Name: _____

CREDIT CARD INFORMATION

Credit Card Type: VISA ___ MASTERCARD ___ AMEX ___ DISCOVER ___

Account Type: Personal ___ Business ___

Account #: _____ Expiration _____ Sec. Code _____

Name on Card _____

Billing Address _____

City _____ State _____ Zip Code _____

Telephone: _____ Fax _____

AUTHORIZED USER OF CREDIT CARD INFORMATION

Identification of User of Card _____

Telephone: _____

Email: _____

Relationship to Owner(s) of the Firm _____

Initial Setup Fee amount authorized _____ Date of initial charge _____

AUTHORIZATION FOR CARD USE

I certify that I am the authorized holder and signer of the credit card referenced above.
I certify that all information above is complete and accurate.

I hereby authorize the charges for the initial ProTracker Cloud setup fee as indicated above. Charges for Initial Setup may not exceed the amount listed without further authorization.

After the ProTracker Cloud service is in effect, this credit card authorization will also serve to authorize the ProTracker Cloud monthly subscription fees.

Signature _____ Date _____

Please sign this IVDesk Credit Card Authorization and the Usage Contract Signatures Page. Fax both pages to ProTracker Software at **603-929-9927**.



Section 6

ProTracker Cloud™ Usage Contract Signatures Page

By signing this Usage Contract, you indicate that you have the authority to bind yourself and your organization to the terms of this Usage Contract. If you have any questions concerning this Usage Contract, please contact ProTracker Software at 603-926-8085.

The Licensee:

- Has read and agrees to the terms and conditions of this Usage Contract, which comprises the License Agreement, the Service Agreement, the Non-Disclosure Agreement; the Fee Agreement, and the IVDesk Credit Card Authorization;
- Agrees not to share security keys provided by ProTracker Software;
- Understands that ProTracker Software and IVDesk have access to the hosted data, including the ProTracker Advantage client database and any other files stored on the ProTracker Cloud remote host;
- Authorizes IVDesk to charge a credit card or debit a bank account monthly for the current subscription fee for each of the services to which the Licensee subscribes around the 15th of the month for the following month (payment in advance) per the previously-accepted ProTracker Cloud Quote;
- Must contact ProTracker Software by the 10th of the month to terminate the monthly subscription for the following month;
- Understands that data transfer fees will apply upon termination of this Usage Contract.

ProTracker Software, Inc. and IVDesk:

- Agree to provide a hosted solution including:
 - Server hardware; Microsoft Internet Explorer; Microsoft Windows Explorer;
 - ProTracker Advantage®, SQL Version;
 - Microsoft Office (Word, Excel, PowerPoint, Access and Outlook);
 - Company-wide (shared) disk space (10GB/user);
 - Automatic nightly backup of your database and files.
- Agree to keep customer data confidential per the Non-Disclosure Agreement; and
- Provide 24x7 technical support.
- Install software updates as available.

Company Name: _____

Customer Signature

ProTracker Software, Inc./IVDesk

Date

Date

Please sign this Usage Contract Signatures Page and the IVDesk Credit Card Authorization. Fax both pages to ProTracker Software at **603-929-9927**.