

THIS IS AN AGREEMENT BETWEEN YOU AND CITYFILE, LLC. ("CityFile") FOR USE OF CityFile SERVICES AS DISCUSSED BELOW. BY ACCEPTING THIS AGREEMENT YOU, OR THE ENTITY ON BEHALF OF WHICH YOU ARE REPRESENTING, ACCEPTS THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A BUSINESS OR OTHER ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY BY YOUR ACCEPTANCE TO BIND SUCH BUSINESS OR OTHER ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. ALL REFERENCES TO "YOU" OR "YOURSELF" IN THIS AGREEMENT MEANS THE PERSON OR ENTITY WHICH REGISTERS FOR OR USES THE SERVICES.

**1. TERMS OF SERVICE FOR CityFile APPLICATIONS** CityFile provides its Services to you subject to the following Terms of Service ("TOS") and CityFile [Privacy Policy](#) for its Services. In addition, when using specific CityFile Services, you and CityFile will be subject to any guidelines or rules applicable to these Services, which CityFile may communicate to you or post from time to time. These guidelines or rules and CityFile Privacy Policy shall be deemed part of the TOS.

**2. DESCRIPTION OF THE SERVICES**

CityFile currently provides users with online business applications designated under the name and mark **CityFile** (the "Services"). Unless explicitly stated otherwise, any new features which augment or enhance the current Services, including any new Services, will be subject to the TOS.

**3. YOUR REGISTRATION INFORMATION MUST BE ACCURATE, CURRENT AND COMPLETE**

In consideration of your use of the Services you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the registration form of the Services (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or CityFile has reasonable grounds to believe that such information is untrue, inaccurate, not current or incomplete, CityFile has the right to suspend or terminate your account and to refuse any and all current or future use of the Services (or any portion thereof).

**4. YOUR OBLIGATION TO PAY FEES**

You agree to pay all subscription, service and use fees, if any, CityFile charges you for the Services. You agree to pay all costs (including attorney's fees), if any, incurred by CityFile in collecting overdue fees from you. CityFile reserves the right to discontinue service when non payment occurs. You also agree to pay all foreign, federal, state and local taxes applicable to your access to or use or receipt of the Services.

**5. ACCESS, PASSWORDS AND SECURITY**

You may designate up to the number of users under your account which corresponds to the level of Services you are receiving from CityFile, and you may provide and assign access and passwords to such users. You will be responsible for the confidentiality and use of your access number(s), password(s), and account number(s). You will be responsible for all electronic communications, including account registration and other account holder information, e-mail and financial and other data ("Electronic Communications") entered through or under your access number(s), password(s) or account number(s). CityFile will act as though any Electronic Communications it receives under your access number(s), password(s) or account number(s) will have been sent by you. You agree immediately to notify CityFile if you become aware of any loss or theft or unauthorized use of any of your access number(s), password(s) and/or account number(s) so we can act appropriately.

**6. ELECTRONIC COMMUNICATION BETWEEN YOU AND CITYFILE**

The Services allow you to send Electronic Communications directly to CityFile and interact within applicable areas of the CityFile Services. You acknowledge and agree to the following with respect to use of Electronic Communications through the Services:

CityFile shall be entitled, but is not obligated, to review or retain your Electronic Communications for your compliance with the TOS and the security of the Services. CityFile may also review or retain Electronic Communications (other than Data) for other reasons that CityFile believes in good faith will improve the quality of the Services.

CityFile may disclose Electronic Communications if required to by law or in the good-faith belief that such disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any Electronic Communications violate the rights of third parties; or (iv) protect the rights, property, or personal safety of CityFile, its users or others. You will not use any Electronic Communication for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening. Neither you, nor someone on your behalf, will use the Services to solicit CityFile customers or others for any purpose. You will not upload, post, reproduce or distribute any information, software or other

material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights.

You will not in any way express or imply that CityFile endorses any opinions contained in your Electronic Communications. You agree to provide CityFile with your e-mail address, promptly provide CityFile with any changes to your e-mail address and accept Electronic Communications from CityFile at the e-mail address you specify. You agree that CityFile may provide notices, statements and other communications to you solely through e-mail, posting on the Services or other electronic transmission; and You understand that the technical processing and transmission of the Services, including your Electronic Communications, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

#### **7. SECURITY OF DATA TRANSMISSION**

You agree to use software produced by third parties, including, but not limited to, "browser" software which supports a data security protocol compatible with the protocol used by CityFile. Until notified otherwise by CityFile, you agree to use software which supports the Secure Socket Layer (SSL) protocol or other protocols accepted by CityFile and to follow logon procedures for Services which support such protocols. You acknowledge that CityFile is not responsible for notifying you of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. You acknowledge that it is possible that Electronic Communications may be accessed by unauthorized third parties when communicated between you and CityFile using the Internet, other network communications facilities, telephone or any other electronic means.

#### **8. GENERAL PRACTICES REGARDING USE OF THE SERVICES**

You acknowledge that CityFile may establish general practices and limits concerning use of the Services. You acknowledge that information entered into and stored on CityFile by You is solely your responsibility to ensure accuracy and compliance. You acknowledge that CityFile reserves the right to disable accounts which are inactive for an extended period of time. You further acknowledge that CityFile reserves the right to change these general practices and limits at any time, upon notice as provided in Section 17 below.

#### **9. SECURITY AND STORAGE OF DATA**

The security of your Data may be maintained through the use of data encryption, data security protocols, passwords and other methods which CityFile may employ, or which CityFile may suggest or require that you employ. You agree that CityFile has no responsibility or liability either for the deletion or failure to store any Data transmitted by you or anyone else to the Services or the operation, or failure, or weakness, of any data encryption, data security protocols, passwords or other security methods employed by CityFile.

#### **10. CityFile PROPRIETARY RIGHTS**

You acknowledge and agree that the Services and any necessary software used in connection with the Services ("Software") contain proprietary and confidential information which is protected by applicable intellectual property and other laws. You further acknowledge and agree that content contained in sponsor advertisements or information presented to you through the Services or by advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Services or the Software, in whole or in part. You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services.

#### **11. LICENSE FOR SOFTWARE**

CityFile grants you a non-transferable, non-exclusive, *non sub-licensable* and terminable right and license to use the object code of its Software; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Software or any part thereof or otherwise attempt to discover any source code, or sell, assign, sublicense, grant a security interest in or otherwise transfer any right in or to the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Services. You agree not to access the Services by any means other than through the interfaces that are provided or recommended by CityFile for use in accessing the Services.

#### **12. TRADEMARK INFORMATION**

The CityFile and CityFile service marks, logos and product and service names are marks of CityFile Corporation (the "CityFile Marks"). You agree not to display or use either CityFile or CityFile Marks in any manner without the express prior written permission of CityFile.

**13. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CityFile, LLC EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CityFile MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CityFile SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS. NO FINANCIAL, LEGAL OR TAX ADVICE OR COUNSEL IS GIVEN, OR SHALL BE DEEMED TO HAVE BEEN GIVEN, BY THE SERVICES. THE SECURITY MECHANISM INCORPORATED IN THE SOFTWARE HAS INHERENT LIMITATIONS AND YOU MUST DETERMINE THAT THE SOFTWARE ADEQUATELY MEETS ITS REQUIREMENTS.

**14. LIMITATION OF LIABILITY**

CityFile shall not be liable for any loss resulting from a cause over which CityFile does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines; telephone or other interconnect problems; bugs, errors, configuration problems or incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to your computer; problems with intermediate computer or communications networks or facilities; problems with data transmission facilities or your telephone or telephone service; or unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes. CityFile is not responsible for any damage to your computer, software, modem, telephone or other property resulting from your use of the Services.

CityFile AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES OR LEGAL THEORIES WHATSOEVER, FOR ANY LOSS OF BUSINESS, PROFITS OR GOODWILL, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, EVEN IF *CityFile* IS AWARE OF THE RISK OF SUCH DAMAGES, *WHICH* RESULT IN ANY WAY FROM THE USE OR INABILITY TO USE THE SERVICES OR THE SOFTWARE, OR *WHICH* RESULT FROM ERRORS, DEFECTS, OMISSIONS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY OTHER FAILURE OF PERFORMANCE OF THE SERVICES OR THE SOFTWARE. CityFile' LIABILITY TO YOU SHALL NOT, FOR ANY REASON, EXCEED THE AGGREGATE PAYMENTS ACTUALLY MADE BY YOU TO CityFile *DURING THE TIME THE AGREEMENT HAS BEEN IN EFFECT*. CityFile SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE UNDER THESE TOS RESULTING DIRECTLY OR INDIRECTLY FROM FORCE MAJOR EVENTS, *INCLUDING BUT NOT LIMITED TO CIVIL DISORDER, WAR, LABOR DISPUTES, OR ACTIONS BY GOVERNMENT AGENCIES*.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages; accordingly, some of the above limitations may not apply to you.

**15. INDEMNITY**

You agree to defend, indemnify and hold CityFile harmless from and against any and all claims, losses, liability, costs and expenses (including but not limited to attorneys' fees) arising from your violation of the TOS, state or federal laws or regulations, or any third party's rights, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights. This obligation will survive the termination of the Services *and this Agreement*.

**16. NON ASSIGN ABILITY OF AGREEMENT**

You may not assign or otherwise transfer your rights or obligations under this Agreement without the express prior written consent of CityFile, and any attempt to do so without such express written consent shall be null and void.

**17. MODIFICATIONS TO OR DISCONTINUATION OF THE SERVICES.**

CityFile reserves the right at any time and from time to time to modify, temporarily or permanently, the Services (or any part thereof) upon notice to you. If CityFile sends you notice *by electronic* mail, posting on the Services or otherwise of *such a* modification, you confirm your acceptance of the modification by not closing and/or by continuing to use the Services. CityFile also reserves the right at any time to discontinue, temporarily or permanently, the Services (or any part thereof) to any accounts not in good standing upon notice to you. You agree that CityFile shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

**18. TERMINATION OF THE SERVICES.**

You agree that CityFile, in its sole discretion, may terminate your password, account (or any part thereof) or use of the Services and remove and discard any Electronic Communications within the Services if CityFile `believes that you have

violated or acted inconsistently with the letter or spirit of these TOS. CityFile may also in its sole discretion and at any time discontinue providing the Services, or any part thereof. You agree that any termination of your access to the Services under any provision of these TOS may be effected upon notice to you, and acknowledge and agree that thereafter CityFile may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files, or the Services; however, in the event that your Services with CityFile terminates, CityFile will use commercially reasonable efforts to return your Data to you electronically, in an appropriate format selected by CityFile, as promptly as is reasonably possible after such termination, provided you have complied with the TOS and have paid in full all amounts owed to CityFile. Further, you agree that CityFile shall not be liable to you or any third party for any termination of your access to the Services, provided, however, that if the termination is unrelated to your acts or omissions CityFile will refund the pro rata portion of any fee that may have been paid by you for the portion of the Services not furnished to you as of the date of such termination.

**19. LINKS**

The Services CityFile may provide, or third parties may provide, links to other World Wide Web sites or resources. Because CityFile has no control over such sites and resources, you acknowledge and agree that CityFile is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that CityFile shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

**20. NOTICES**

Notices to you from CityFile may be made by either e-mail or regular mail. CityFile may provide notices of changes to the TOS, modification or termination of the Services and/ or other matters by e-mail to you or by displaying notices or links to notices to you on the Services. *You may give notice to CityFile, which shall be deemed given when received by CityFile, by any of the following: electronic mail to support@CityFile.net; letter delivered by nationally established overnight delivery service or registered first class mail, postage prepaid, to the mailing address of 6 Maiden Lane, Suite, Suite 7, New York, NY 10038. Notice shall be deemed given (i) twenty-four (24) hours after each respective e-mail or facsimile transmittal is sent, or earlier if actually received earlier by the recipient, unless the transmitting party is notified that the e-mail address is invalid or the transmission was not successful; (ii) three (3) days after deposit in the United States mail; or (iii) one (1) day after deposit with the overnight delivery service.*

**21. GENERAL PROVISIONS**

*This Agreement and the TOS therein constitute the entire agreement between you and CityFile and govern your use of the Services, superseding any prior agreements between you and CityFile with respect to the subject matter contained in the TOS. The TOS may only be modified or amended as set forth above in Section 17 or otherwise in writing signed by CityFile and you. The TOS and the relationship between you and CityFile shall be governed by the laws of the State of California without regard to its conflicts of laws provisions. You and CityFile agree to submit to the personal and exclusive jurisdiction of the courts located within the County of New York, NY. The failure of CityFile to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred. The Section titles in the TOS are for convenience only and have no legal or contractual effect. CityFile reserves the right the change the Terms of Service without prior notification.*