



CATSWeb® Software License Agreement

This Software License Agreement (this "Agreement") is entered into as of January 14, 2016 (the "Effective Date") by and between AssurX, Inc., a California corporation ("AssurX"), and the City of Columbia, Missouri, a Missouri municipal corporation ("Licensee").

1. **Grant of License** - AssurX's software product CATSWeb, together with any upgrades to the CATSWeb software, (the "Licensed Software") is licensed, not sold. In consideration of the payment by Licensee of the license fees specified in Section 9 of the Statement of Work ("SOW") attached as Attachment B to that certain Support and Consulting Services Agreement (the "SCSA") by and between the parties hereto dated as of even date herewith ("License Fees"), AssurX hereby grants Licensee a nonexclusive, nontransferable (except as set forth herein) right and license to use the Licensed Software, including all user manuals and similar reference materials, whether in printed or machine-readable form, generally furnished by AssurX with the Licensed Software (the "Documentation"), in accordance with the terms, conditions and restrictions set forth herein. Unless otherwise indicated, the term "Licensed Software" will include Documentation.
 - a. Unless otherwise agreed by the parties in writing, Licensee may use a total of five (5) copies (unless rights for additional copies are purchased by Licensee) of the Licensed Software, each of which may be installed on a single server (a "Licensed Server"). Licensee may choose to deploy one (1) or more Licensed Servers in a single Production Environment. Licensee is permitted to implement one Production Environment only, unless Licensee purchases the right from AssurX to deploy its Licensed Servers in additional Production Environments. For the purposes of this Agreement, a "Production Environment" means one or more Licensed Servers that utilize the same single CATSWeb database, and that employ the functionality of the Licensed Software in the management or furtherance of Licensee's business. Licensee will also have the right to configure an additional environment as needed for disaster recovery, development, training, validation and testing purposes, each of which utilizes a single CATSWeb database, and each is referred to herein as a "Non-Production Environment." Licensee may choose to allocate its remaining Licensed Servers among its single Production Environment and such Non-Production Environments as Licensee desires.
 - b. Licensee may install and use additional copies of the Licensed Software only if Licensee purchases an additional server license from AssurX for each additional copy of the Licensed Software.
 - c. Licensee may make a reasonable number of archival backup copies of the CATSWeb database and the Licensed Software only for data retention, system maintenance, and repair.
 - d. The Licensed Software is licensed as a "Concurrent User" license.
 - e. Licensee may allow users from anywhere in the world, including third parties, to access, including remote access, and use the Licensed Software for the benefit of Licensee and its subsidiaries, joint ventures, and affiliates, provided that the Licensed Software remains in Licensee's sole possession and control.
2. **Restrictions** - Licensee may not rent, lease, or sublicense the Licensed Software. Licensee may not reverse engineer, decompile, or disassemble the Licensed Software for any purpose whatsoever. All rights not expressly granted in this Agreement are expressly prohibited.
3. **Transfer and Assignment** - Licensee may assign its rights to use the Licensed Software and this Agreement to another party, provided that (i) AssurX is notified in writing in advance of the proposed transfer, (ii) the transferee is not a then current or prospective competitor of AssurX, (iii) the transferee agrees in writing to the terms and conditions hereof, (iv) the transferee pays to AssurX a license transfer fee of \$5,000, and (v) Licensee retains no copies of the Licensed Software. "Competitor" means an entity that provides a quality management or compliance software product or system. AssurX may assign or transfer this Agreement to any affiliate or to any third party that purchases all or substantially all of the equity of AssurX or assets of AssurX relating to the subject matter of this Agreement by merger or otherwise, upon written notice to Licensee. Any purported assignment, sale, transfer, delegation or other disposition by a party, except as permitted herein, will be void.
4. **Fees, Term and Termination** - Payments for License Fees are due in U.S. currency thirty (30) days after the date of the invoice. The term of this Agreement will begin on the Effective Date and will continue unless terminated as provided herein. AssurX may terminate this Agreement upon thirty (30) days' prior written notice to Licensee if Licensee is in material breach hereof and fails to cure that material breach within thirty (30) days following notice thereof. Upon any termination hereof, Licensee will promptly cease using and destroy all copies of the Licensed Software. The provisions of Sections 2 through 15 hereof will survive termination of this Agreement indefinitely. Notwithstanding anything herein to the contrary, after delivery and installation of the Licensed Software, Licensee will have certain rights to return the Licensed Software to AssurX, and terminate this Agreement along with the SCSA. In particular, within thirty (30) days following the Effective Date, AssurX



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will deliver and install the Licensed Software as described in the SOW. Upon completion of installation, AssurX will invoice Licensee for fifty percent (50%) of the License Fees due hereunder. Licensee will have thirty (30) days following completion of such installation to reject the Licensed Software by means of written notice to AssurX ("Rejection"). Failure to so reject the Licensed Software within such period will be deemed to be Licensee's acceptance thereof ("Acceptance"). Upon Acceptance AssurX will invoice Licensee for the remaining fifty percent (50%) of the License Fees. Upon Rejection, this Agreement will be deemed terminated, Licensee will promptly return to AssurX all copies of the Licensed Software and the Documentation in Licensee's possession, and AssurX will promptly refund to Licensee all amounts paid by Licensee for License Fees hereunder.

5. Confidential Information

- a. Nondisclosure and Nonuse. The parties to this Agreement acknowledge that they will have access to Confidential Information concerning the other party's business, customers, plans, products, technology and other information held in confidence. As used in this Agreement, "Confidential Information" means (i) the Licensed Software and the terms and conditions of this Agreement (which will be the exclusive Confidential Information of AssurX), (ii) all information, data and materials that either party (the "Receiving Party") obtains from the other (the "Disclosing Party") under this Agreement, or that the Receiving Party may have access to in connection with this Agreement, that (A) is marked as confidential, or (B) the Receiving Party should reasonably know, by its nature or the manner of its disclosure, to be confidential. The Receiving Party acknowledges and agrees that but for this Agreement, the Receiving Party would have no rights to use or access the Confidential Information. The Receiving Party agrees that it will not use the Confidential Information of the Disclosing Party for any purpose except in performance of its obligations hereunder or to exercise the rights granted to it hereunder. The Receiving Party agrees to maintain all Confidential Information in strict confidence. The Receiving Party will not, without the prior written consent of the Disclosing Party, disclose, in any manner or via any media whatsoever, any of the Disclosing Party's Confidential Information, other than to the Receiving Party's employees, manufacturing agents, resellers, consultants and contractors ("Representatives") (x) who have a specific need to know such Confidential Information in order to exercise the Receiving Party's rights hereunder, (y) who are informed of the confidential nature of the Confidential Information, and (z) who agree in writing to act in accordance with and be bound by terms and conditions at least as restrictive as the terms and conditions herein regarding the safeguarding, disclosure and restrictions on use of Confidential Information. Notwithstanding the foregoing, if a Receiving Party is required by operation of law or mandated by applicable rule or regulation, or by an order of a court or governmental or law enforcement agency or other authority, each of competent jurisdiction, to disclose Confidential Information, it is agreed that the Receiving Party will give prompt notice to the Disclosing Party. The Disclosing Party may challenge such disclosure or, failing in such challenge, attempt to secure a protective order or other appropriate confidential treatment of the Confidential Information so disclosed. Any such required disclosure will not alter the nature of the information so disclosed as Confidential Information for purposes of this Agreement.
- b. Exceptions. Confidential Information does not or will not include any information that is already known to Receiving Party at the time that it is disclosed to the Receiving Party, or that: (i) becomes publicly known through no wrongful act of the Receiving Party; (ii) is rightfully received from a third party without restriction on disclosure and without breach of this Agreement; (iii) is independently developed by the Receiving Party without the use of or reference to any Confidential Information of the Disclosing Party; or (iv) is approved for release by written authorization of the Disclosing Party. Only the specific information that meets such exclusions will be excluded, and not any other information that happens to appear in proximity to such excluded portions (for example, a portion of a document may be excluded without affecting the confidential nature of those portions that do not themselves qualify for exclusion).
- c. Breach. The Receiving Party will be responsible for any breach of this Section 5 by any of its Representatives. The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized disclosure or use (inadvertent or otherwise) and will, within thirty (30) days of such notice (i) use its best efforts to cure such unauthorized disclosure or use of Confidential Information, (ii) take all reasonable precautions to prevent any such unauthorized disclosure or use in the future, and (iii) cooperate in good faith with the Disclosing Party to assist the Disclosing Party to regain possession of its Confidential Information and/or to prevent further unauthorized use or disclosure.
- d. Remedy. In the event of a breach of Section 5, the parties agree that the non-breaching party will suffer irreparable harm and injury for which money damages will be an inadequate remedy. Therefore, upon a breach of this Section 5, the non-breaching party will be entitled to obtain, in addition to other available remedies at law or equity, immediate injunctive relief, without the necessity of proving monetary damages or posting bond or other security.

6. **Limited Warranty; Sole Remedy** - AssurX represents and warrants that (a) for a period of sixty (60) days following Acceptance, the Licensed Software will perform substantially in accordance with the accompanying Documentation, (b) as of the Effective Date, it has the right and authority to enter into and to grant the rights set forth in this Agreement, (c) AssurX will comply with all applicable local, state, federal and foreign rules and



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regulations in providing the Licensed Software to the extent it is bound by such laws, rules, and regulations, and (d) the Licensed Software will be free, at the time of installation, of any detectable computer virus, and does not contain any constraints that would restrict the use of, or access to, the Licensed Software as permitted, and for the purposes and by the users specified, under this Agreement. A "computer virus" means any harmful data, design, or routine incorporated into the Licensed Software with malicious or mischievous intent that disrupts the proper operation of a computer system, specifically excluding: (i) anything designed to prevent or inhibit unauthorized use of any software, and (ii) the use of date-limited Licensed Software, as used by AssurX in the ordinary course of its business. If a claim is made by Licensee in connection with the warranty stated above, AssurX's entire liability will be, at AssurX's option, either to (a) refund all of the License Fees paid by Licensee for the Licensed Software (excluding any fees paid for support, consulting, training or other items, if any), or (b) repair or replace the Licensed Software. The foregoing limited warranty is void if failure of the Licensed Software has resulted from accident, abuse or misapplication.

7. **Warranty Disclaimer** - THE WARRANTY SET FORTH IN SECTION 6 ABOVE IS THE SOLE AND EXCLUSIVE WARRANTY MADE BY ASSURX WITH RESPECT TO THE LICENSED SOFTWARE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 6 ABOVE, THE LICENSED SOFTWARE IS OTHERWISE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, AND LICENSEE'S USE OF THE LICENSED SOFTWARE IS MADE STRICTLY AT LICENSEE'S OWN RISK. ASSURX HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.
8. **No Assurance of Regulatory or Standards Compliance** - The Licensed Software provides regulations and standards (ISO, AS, QS, 21 CFR Part 11, NERC, SEC, FRB, etc.) compliance utilities. Use of such utilities does not, however, imply or guarantee that Licensee will achieve successful compliance with any regulations or standards. Licensee acknowledges and understands that compliance is subject to external factors (e.g. usage, documentation, validation, etc.), which are beyond the scope of the Licensed Software. Further, regulations and standards are subject to change at any time, and there can be no assurance that the Licensed Software used by Licensee or provided by AssurX will reflect the most current regulations or standards. The Licensee, and not AssurX, is responsible for ensuring and validating Licensee's compliance with current regulations and standards.
9. **Limitation of Liability** – Except for gross and willful misconduct or amounts payable to third party plaintiffs pursuant to AssurX's obligations under Section 13 below, in no event will AssurX or its suppliers be liable for any special, incidental, or consequential damages whatsoever (including, without limitation, loss of business profits, business interruption, or loss of business information) arising out of this Agreement or the use of or inability to use the Licensed Software, even if AssurX has been advised of the possibility of such damages. AssurX's total liability under this Agreement, for all claims in the aggregate, will not exceed the License Fees paid by Licensee hereunder. Licensee and AssurX agree and acknowledge that the License Fees paid by Licensee to AssurX are based in part on the limited warranty and limitations of liability and remedies set forth herein.
10. **Governing Law** - This Agreement will in all respects be interpreted, construed in accordance with, and governed by the internal laws of the State of Missouri, without regard to the rules on conflict of laws. The parties exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods if otherwise applicable. The place of making and the place of performance for all purposes will be Columbia, Missouri regardless of the actual place of execution or performance. In the event of any litigation between the parties, the parties stipulate that the sole and exclusive jurisdiction for such action will be in the State Courts for the County of Boone, Missouri or the United States District Court for the Western District of Missouri. Both parties agree that the above referenced courts will have personal and exclusive jurisdiction over the parties for any dispute arising out of this Agreement.
11. **NOT USED**
12. **NOT USED**.
13. **Indemnity** - AssurX will, at its own expense, defend, indemnify and hold Licensee harmless from all losses, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or in connection with any action brought by a third party against Licensee based on a claim that the use of the Licensed Software, or any part thereof, as provided to Licensee hereunder infringes any patent, trademark, or copyright, or misappropriates the trade secrets of a third party, provided that Licensee, at Licensee's expense: (a) notifies AssurX promptly in writing of any such claim; (b) supplies AssurX with all available information, assistance and authority that AssurX requires to defend or settle the claim; (c) that Licensee permits AssurX to control the defense, compromise or settlement of the claim; and (d) Licensee does not incur any cost or expense subject to this indemnity without the prior written consent of AssurX, such consent not to be unreasonably withheld.



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If AssurX determines that the Licensed Software does or is likely to infringe any patent, trademark or copyright or misappropriate the trade secret of a third party, AssurX may at its option: (i) procure at no cost to Licensee the right to continue to use the Licensed Software in accordance with this Agreement; (ii) replace or modify the Licensed Software so that it no longer infringes or misappropriates, and thereafter substantially conforms, to the applicable specifications and Documentation for such Licensed Software; or (iii) terminate this Agreement and refund the License Fees paid by Licensee for the use of the Licensed Software on a prorated basis, based on a useful life of thirty-six (36) months. This Section 13 states AssurX's entire liability to Licensee for any infringement of any third party rights.

14. **General Provisions**

- a. **Severability.** If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
 - b. **Effect of Waiver.** The failure or decision not to exercise any right or remedy accruing to either party upon any breach or default of any provision or condition hereof will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.
 - c. **Force Majeure.** Neither party is responsible for delays or failure to perform any of its obligations hereunder due to causes beyond its reasonable control.
 - d. **Export Laws.** Licensee is responsible for compliance with all applicable export or re-export control laws and regulations if it exports the Software.
 - e. **Headings.** The headings of the several Sections of this Agreement are inserted for reference only and not intended to affect the meaning or interpretation of this Agreement.
 - f. **Attorney's Fees.** In any action to enforce this Agreement, the prevailing party will be entitled to its attorneys' fees in addition to any other recovery awarded.
15. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreements, oral or written, between the parties with respect to such subject matter, and any warranty, representation, promise or condition not incorporated herein will not be binding upon either party. No modifications, renewal, extension, or waiver of this Agreement or any of its provisions will be binding unless in writing and signed by both parties. The parties acknowledge that should Licensee use its standard form purchase order or any other ordering document in any way in connection with this Agreement, or should AssurX use any form of invoice, any terms of such purchase order or other ordering document or invoice that differ from the terms of this Agreement will be deemed rejected, ineffective, and will not modify or supplement this Agreement in any way.
16. **Notices - All** notices to be given by either party to the other will be in writing and must be delivered or mailed either (i) through the U.S. Postal Service by registered mail, return receipt requested, or (ii) sent by a nationally recognized courier or overnight mail service which renders a receipt upon delivery, via overnight delivery, addressed as set forth below or such other addresses as either party may hereinafter designate by a Notice to the other. Notices are deemed delivered or given and become effective five (5) days after mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

To AssurX

AssurX, Inc. - Attn: Sal Lucido
18525 Sutter Boulevard, Suite 150
Morgan Hill, California 95037
(408) 778-1376 Tel
(408) 776-1267 Fax

To Licensee

City of Columbia, Missouri, Dir. of Water & Light
701 E. Broadway
Columbia, Missouri 65205
Tel
Fax

17. **Execution in Counterpart** - This Agreement may be executed in counterpart by the parties, either through original copies or by facsimile or electronic copies. An executed copy of this Agreement delivered by facsimile or electronically will constitute valid execution and delivery of this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

AssurX, Inc.

ADDFFBCD66C649C
John Moroney
DocuSigned By: John Moroney

By: _____

Printed Name: John Moroney

Printed Title: VP Sales

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor