



ONLINE SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made and entered into by and between **sCube, Inc.**, with offices at 1462 Erie Boulevard, Suite C101, Schenectady NY 12305-1026 (“Contractor”) and the reviewing party (“Client”), collectively “Party” or the “Parties”. This Agreement shall be effective on the date of acknowledgement by the Client.

IN CONSIDERATION OF the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PROFESSIONAL SERVICES

- 1.1 **Scope of Services.** Subject to the terms and conditions of this Agreement, Contractor is hereby retained by Client to provide the professional services specified in a “Statement of Work” attached hereto in subsequent Attachments and incorporated herein by reference, which services are referred to herein as the “Services”. Client may, but is not obliged to, engage Contractor to perform Services upon mutually agreed terms and conditions and by means of a written Statement of Work Attachment of this Agreement.
- 1.2 **Performance Standard and Warranty.** Contractor will cooperate with Client and Client’s staff in the performance of the Services. Contractor warrants and represents that the Services will be performed in a professional and timely manner and the Contractor does not have any actual or potential interests adverse to Client with reference to the subject of this Agreement. Unless otherwise specified in the Acceptance Terms in the Statement of Work Client must report any deficiencies in the Services to Contractor in writing within 30 days after such Services are performed in order to receive the warranty remedy. Client’s sole and exclusive remedy and Contractor’s entire liability for breach of this warranty will be re-performance of the deficient Services. If, for any reason, Contractor is unable or fails to correct such deficiencies, Client may terminate this Agreement as provided in Section 3.2. Contractor will bear no liability or otherwise be responsible for delays in the provision of Services, or any portions thereof, occasioned by Client’s failure to timely complete a task or adhere to its own schedule.
- 1.3 **Nature of Services.** All reports, documents, files, media, or other written material (“Written Work”) created, developed, or produced by Contractor in connection with the Services shall be and remain the property of Client. Contractor retains the right to use any such Written Work as templates for Services performed for other Clients. Client does not under this Agreement acquire any ownership rights in or to any software, documentation, tools, techniques, methodologies, or other material which has not been created as part of the Services and which is proprietary to Contractor.
- 1.4 **Independent Contractor.** Contractor will determine the method, details, and means of performing the Services. At its own expense and discretion Contractor may use Employees or Subcontractors to perform the Services under this Agreement. Contractor and Client understand and intend that Contractor shall perform the Services as an independent contractor and not as an employee of Client. Nothing in this Agreement will be deemed to create an agency, partnership, or joint venture between the Parties.

2. COMPENSATION AND PAYMENT



- 2.1. **Fees and Expenses.** For the Services provided by Contractor pursuant to this Agreement, Contractor shall be compensated in accordance with the “Payment Terms” in the Statement of Work in the Attachment and incorporated herein by reference. Statements of Work will not be amended without explicit approval by both parties in writing. Compensation will include reimbursement for all reasonable and necessary travel, living, and out-of-pocket expenses incurred by Contractor in providing the Services, when travel is required in order to provide the Services. Contractor will obtain Client’s approval in writing for billable travel prior to incurring any expense for such travel.
- 2.2. **Payment.** Contractor will invoice Client on a monthly basis. Client’s payment terms will be in U.S. dollars and paid in full within thirty (30) days after the invoiced date.
- 2.3. **Overdue Invoices.** In addition to any other remedy available to Contractor for late payments, Client will be obligated to pay Contractor interest for fees and charges not paid within thirty (30) days after the invoice date at the compounded rate of 2% per month or the maximum allowed by law, whichever is less, calculated from the date such payment was due until the date paid. If Client elects to discontinue the Services and does not pay the outstanding fees and charges in full within thirty (30) days of such election, Client will continue to be charged interest until the balance is paid in full. Client will be responsible for any costs, including attorney’s fees, incurred by Contractor in collecting any past due amounts under this Agreement.
- 2.4. **Disputed Charges.** Client will notify Contractor in writing of any charges that Client believes are improper or incorrect, within fifteen (15) days after the invoice date. If Client disputes any charge on a given invoice, Client will pay all non-disputed charges and document the disputed charges in writing to Contractor. Client will notify Contractor in writing, no later than fifteen (15) days after the invoice date, of any questions or issues relating to items billed on an invoice or all fees and charges will stand.
- 2.5. **Taxes.** Client agrees to be responsible for paying all direct or indirect federal, state, municipal or other governmental excise, sales, or similar taxes, that now or in the future may be imposed on Client, together with any penalties, interest or any additions thereto associated with the Services hereunder or arising as a result of or in connection with transactions under this Agreement, other than taxes related to Contractor’s net income or property. Client shall not be responsible for paying any taxes that are not imposed on them.

3. TERM AND TERMINATION

- 3.1. **Term.** The term of this Agreement will begin on the Effective Date and will remain in full force and effect for a period of five (5) years, or until the expiration of the term of all Services, whichever comes later, unless earlier terminated as provided in this Agreement.
- 3.2. **Termination.** Either Party may terminate this Agreement, with or without cause, following thirty (30) days written notice to the other party. Client’s termination of this Agreement will not relieve Client of its obligation to pay for any Service performed.

4. CONFIDENTIALITY AND NON-SOLICIT

- 4.1. **Confidential Information.** Under this Agreement, “Confidential Information” refers to any and all information of a Party (“Disclosing Party”) that has been disclosed to the other Party (“Receiving Party”), which is designated in writing as confidential, proprietary, or secret or under the context of its disclosure ought to be reasonably considered as confidential. Confidential



Information includes, but is not limited to, all information concerning a Party's Customer Personally Identifiable Information, financial, existing business, business systems, business plans, and information systems, trade secrets, compensation, prices, and pricing information.

- 4.2. **Use of Confidential Information.** Each Party will comply with all laws and regulations that apply to use, transmission, storage, disclosure, or destruction of Confidential Information. Both Parties agree to hold the other Party's Confidential Information in strict confidence. Client agrees not to use Contractor's Confidential Information in any way except as expressly permitted by or required to achieve the purposes of this Agreement, and Contractor agrees to use Client's confidential Information solely for the purposes of performing the Services. Both Parties agree to use all reasonable efforts to protect unauthorized use or distribution of Confidential Information and the Receiving Party agrees to use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the Disclosing Party as the Disclosing Party uses to protect its own Confidential Information, except such disclosure or access will be permitted in order to perform the Services provided under this Agreement. Each Party agrees to ensure that its employees, agents, representatives, and contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Agreement.
- 4.3. **Limitation of Use.** Confidential Information will not include information of the Disclosing Party which: (i) is publicly available as of the Effective Date or becomes publicly available thereafter through no fault of the Receiving Party; (ii) the Receiving Party rightfully possessed before it received such information from the Disclosing Party; (iii) is subsequently furnished to the Receiving Party by a third party without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the Receiving Party will promptly notify the Disclosing Party and cooperate, at the Disclosing Party's expense, to permit the Disclosing Party to seek appropriate protective orders from the issuing court of government authority limiting disclosure or use of the Confidential Information.
- 4.4. **Ownership of Confidential Information.** Except as explicitly stated in this Agreement, Receiving Party is granted no license or conveyance of Disclosing Party's Confidential Information or any intellectual property rights therein. Title to the disclosing Party's Confidential Information shall remain solely with the Disclosing Party.
- 4.5. **Non-Solicit.** Client shall not solicit to hire or engage, or hire or engage, any personnel or former personnel of Contractor, unless explicitly authorized to do so by an authorized executive of the Contractor, during the service period of an existing SOW or for a period equal of one year following the completion of the Services under any SOW between Contractor and Client.

5. LIABILITY AND DAMAGES

- 5.1. **Limitation of Liability.** Contractor agrees to take all necessary precautions to prevent injury to any persons or damage to any property during the term of this Agreement. Client agrees the liability of Contractor, if any, on any claim for damages arising out of this Agreement shall be limited to direct damages and shall not exceed the amount which has been paid to Contractor by Client for the six (6) month period preceding the date on which the claim is based.
- 5.2. **Damages Waiver.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CONTRACTOR WILL NOT BE LIABLE TO CLIENT FOR CONSEQUENTIAL DAMAGES AND CONTRACTOR WILL HAVE NO LIABILITY WHATSOEVER RESULTING FROM ANY LEGAL CLAIMS



AGAINST CLIENT. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO CLIENT OR ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT, LOST PROFITS, OR SIMILAR ECONOMIC LOSS OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR PUNATIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION INCLUDING BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND BREACH OF WARRANTY WHETHER IN CONTRACT, TORT OR OTHERWISE, IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF, OR ANY FAILURE OR DELAY IN PROVIDING THE SERVICES, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. GENERAL PROVISIONS

- 6.1. **Governing Law.** This Agreement is governed by the laws of the state of New York and shall be governed by and construed and enforced in accordance with the laws of the state of New York. The federal and state courts located in Schenectady County, NY will have jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.
- 6.2. **Force Majeure.** Neither Party is responsible for delays or failures to perform its responsibilities under this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, acts of government, floods, fires, earthquakes, tornados, civil unrest, acts of terror, labor disputes, computer, telecommunications, internet service provider or hosting facility failures, delays involving hardware, software, or power systems, malicious code, denial of service threats, or inability to obtain energy; provided however, that the Party so affected will promptly resume performance as soon as reasonably practical.
- 6.3. **Severability.** If any provision of this Agreement is declared or found to be prohibited, unenforceable or void, the Parties will negotiate in good faith to agree upon a substitute provision that is valid, binding, and enforceable and is as nearly as possible consistent with the intention underlying the original provision. If the Parties are unable to agree upon such substitute provision, the original provision will be stricken. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 6.4. **Insurance/Authorization.** Contractor shall carry adequate liability, property, workers' compensation, umbrella, and other insurance of a kind and in an amount generally carried by persons engaged in the same or a similar kind of business similarly situated, unless, in any case, other types of insurance or higher amounts are required by Client. Upon request, Contractor shall supply to Client a certificate of insurance evidencing the same. Contractor hereby represents, warrants, and covenants to Client that it has and/or will have and maintain all necessary permits, license, approvals, and other authorizations applicable to the performance of its obligations contemplated under this Agreement.
- 6.5. **Entire Agreement.** This Agreement (including any referenced Attachments, Amendments and Exhibits) constitutes the entire agreement between the Parties. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties hereto.



6.6. **Notices.** Any notice, request, approval, or consent between the Parties will be given in writing and will be directed as set forth below:

	If to Client:
Name	sCube, Inc.
Street Address	1462 Erie Boulevard, C101
City, State, Zip	Schenectady NY 12305-1026
Attention	Paul Ciullo
Email	paul.ciullo@scubeenterprise.com

6.7. **Waiver.** No delay or failure by either Party to exercise any right or power under this Agreement will constitute a waiver of that right. A waiver by any Party of any of the covenants, conditions, or agreements to be performed by the other Party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained. No change, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, as of the Effective Date.