

# **VITALITY IO, Inc.**

## **APPLICATION SERVICES AGREEMENT**

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING ANY PORTION OF THE SERVICE OR BY PAYING FOR THE SERVICE BY ANY MEANS OFFERED BY VITALITY, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY OTHER WRITTEN NEGOTIATED CONTRACT SIGNED BY YOU. THE TERMS AND CONDITIONS OF THIS AGREEMENT APPLY TO ANY AND ALL USE OF THE SERVICE BY YOU OR OTHERS IN YOUR ORGANIZATION, AND YOU AGREE TO BE BOUND BY THIS AGREEMENT REGARDLESS OF THE TYPE OF USE OF THE SERVICE BY YOU OR YOUR ORGANIZATION.

This Agreement, effective as of the effective date of the applicable Order Form and, is made and entered into by and between the signed Client (hereinafter the "CUSTOMER" or "Customer"), and VITALITY IO, INC., a Delaware company, with a registered address located at 3731 W South Jordan Pkwy #102-437 South Jordan, UT 84009 (hereinafter "VITALITY").

Whereas, VITALITY and CUSTOMER desire to enter into a relationship in which VITALITY will provide software and/or services as defined in the applicable executed Order Form, attached hereto and incorporated herein.

Now, therefore, in consideration of the premises and of the mutual promises and undertakings herein contained, the parties intending to be legally bound do hereby agree as follows:

### **1. DEFINITIONS**

1.1 **"Platform"** means VITALITY's cloud-based utility management software platform, including any updates, enhancements, or modifications thereto.

1.2 **"Services"** means the provision of access to the Platform and any associated support or professional services as described in this Agreement or applicable order forms.

1.3 **"Customer Data"** means all data, information, and materials submitted by CUSTOMER or its authorized users to the Platform.

1.4 **"License Agreement"** means the separate agreement governing CUSTOMER's use of the Platform, incorporated herein by reference.

1.5 **"Authorized Users"** means individuals who are authorized by the CUSTOMER to access and use the Platform pursuant to this Agreement.

### **2. SERVICES PROVIDED**

2.1 **Access to the Platform.** VITALITY shall provide CUSTOMER with access to the Platform for the term specified in this Agreement or applicable order forms.

2.2 **Support Services.** VITALITY shall provide support services in accordance with the Service Level Agreement ("SLA") attached as Exhibit A.

**2.3 Professional Services.** If specified in an order form, VITALITY may provide implementation, training, or other professional services.

**2.4 Subscription Suites.** VITALITY shall provide CUSTOMER with access to the specific subscription suite in accordance with the License Agreement attached as Exhibit B.

### **3. CUSTOMER RESPONSIBILITIES**

**3.1 Use of the Platform.** CUSTOMER shall use the Platform solely for its internal business purposes in compliance with the terms of the License Agreement.

**3.2 Account Security.** CUSTOMER is responsible for maintaining the confidentiality of its account credentials and ensuring that Authorized Users comply with this Agreement.

**3.3 Data Backup.** CUSTOMER acknowledges that it is solely responsible for maintaining appropriate backup copies of its CUSTOMER Data.

### **4. FEES AND PAYMENT TERMS**

**4.1 Fees.** CUSTOMER shall pay the fees specified in the applicable Order Form. All fees are non-refundable unless otherwise specified.

**4.2 Payment Terms.** Fees are due within thirty (30) days of the date of the invoice unless otherwise agreed in the Order Form.

**4.3 Taxes.** CUSTOMER is responsible for any applicable taxes, excluding taxes based on VITALITY's income.

### **5. INTELLECTUAL PROPERTY**

**5.1 Ownership.** VITALITY retains all intellectual property rights in the Platform. No ownership rights are transferred to CUSTOMER.

**5.2 License.** Subject to CUSTOMER's compliance with the License Agreement, VITALITY grants CUSTOMER a limited, non-exclusive, non-transferable license to access and use the Platform.

All data files are hosted by Amazon Web Services ("AWS") and VITALITY will protect the integrity of CUSTOMER's data, including backups, in accordance with Amazon's data integrity and backup policies.

### **6. OWNERSHIP OF PROPRIETARY ITEMS**

**6.1 VITALITY rights.** CUSTOMER acknowledges that VITALITY uses, or may develop hereunder, methods, concepts, code sequences, format, sequence structure, organization, menu command hierarchy, templates, masks, user interface, techniques, program organization, database structuring techniques, and the like (VITALITY proprietary items) that are proprietary to VITALITY. It is agreed that these VITALITY proprietary items shall remain the sole and exclusive property of VITALITY. VITALITY grants CUSTOMER a non-exclusive, paid-up license to use VITALITY proprietary items subject to the following:

- a. CUSTOMER may use VITALITY proprietary items solely in connection with the products or services purchased hereunder, for the purpose for which those products/services were originally purchased.
- b. CUSTOMER may not transfer, sell, or otherwise dispose of any VITALITY proprietary items without the prior written consent of VITALITY.

- c. This agreement grants no title or ownership rights in VITALITY proprietary items or related intellectual property to CUSTOMER.
- d. CUSTOMER grants VITALITY a perpetual non-exclusive, paid-up license to use all portions of the Deliverables first developed by VITALITY during the performance of this Agreement, not to include content or any material provided to VITALITY by CUSTOMER.
- e. VITALITY recognizes that any and all data, utility data and, if applicable, Tenant information is solely the property of CUSTOMER and VITALITY is responsible for data warehousing and analytic display only. Any release of this data must be made in writing to VITALITY from CUSTOMER. In the event that this agreement is canceled, VITALITY will continue to warehouse said data for a period no longer than 30 days unless otherwise agreed upon. After 30 days, data may be deleted at VITALITY's discretion.

## **7. DATA OWNERSHIP**

**7.1 CUSTOMER Data.** Any data gathered or input into VITALITY is considered owned and sole property of the CUSTOMER. VITALITY agrees to warehouse and store the data for the duration of this agreement and for at a minimum of twenty-four months (2 years) after termination. This data is considered confidential and will not be released by VITALITY without expressed written permission from the CUSTOMER or authorized officer. VITALITY will provide the CUSTOMER access to their corresponding data in standard formats that, at a minimum include web, .csv, .pdf, .html or any other applicable format consistent with this Application Service Agreement.

**7.2 VITALITY rights to data.** In the event the CUSTOMER does not wish to export their data after the course of twenty-four months, ownership of said data will transfer to VITALITY, at which time VITALITY reserves the right to condense, move or delete the data as necessary to continue standard business operations. VITALITY reserves the right to use the data for analytic and business purposes, in such cases, VITALITY will remove all CUSTOMER identifiers to such data.

## **8. CONFIDENTIALITY**

**8.1 Confidential Information.** Both parties agree to protect each other's confidential information with the same degree of care they use to protect their own confidential information, but in no event less than reasonable care.

**8.2 Exclusions.** Confidential Information does not include information that is publicly available, independently developed without access to confidential information, or obtained from a third party without breach of confidentiality.

## **9. WARRANTIES AND DISCLAIMERS**

**9.1 Platform Warranty.** VITALITY warrants that the Platform will perform substantially in accordance with the documentation.

**9.2 Commitment to Uptime:** VITALITY guarantees an uptime of **99.9%** during each calendar month, excluding scheduled maintenance and circumstances beyond the provider's control, as outlined below. Uptime is defined as the availability of the service, including all essential systems, infrastructure, and software required for normal operation, as measured by the ability of users to access the service.

**9.2.1 Exclusions from Uptime Calculations.** The following events are excluded from the calculation of uptime:

- Scheduled maintenance, provided the provider gives at least [insert notification period] notice.

- Emergency maintenance required to address critical issues affecting the system's stability, security, or performance.
- Downtime caused by factors beyond the provider's reasonable control, including but not limited to:
  - Force majeure events (natural disasters, acts of war, government action).
  - Internet service provider (ISP) or other third-party failures.
  - Customer-caused outages or disruptions resulting from misuse or misconfiguration of the service.

**9.3 Disclaimer.** Except as expressly stated, the Platform is provided "as is," and VITALITY disclaims all other warranties, including implied warranties of merchantability and fitness for a particular purpose. Except for the warranties stated in this Section, VITALITY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND DELIVERABLES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST NON-INFRINGEMENT. VITALITY expressly does not warrant that the operation of Deliverables which are software shall be uninterrupted or error-free; or that Deliverables will operate on any system, or with any software, other than the system with which the VITALITY tested such Deliverables. VITALITY does not warrant any third-party software development tools. VITALITY specifically does not warrant the accuracy of any technical or subject matter content of the courseware or software that is based upon information or direction provided by CUSTOMER.

## **10. LIMITATION OF LIABILITY**

**10.1 Exclusion of Damages.** Neither party shall be liable for indirect, incidental, consequential, or punitive damages.

**10.2 Liability Cap.** VITALITY's total liability arising out of this Agreement shall not exceed the fees paid by CUSTOMER in the twelve (12) months preceding the claim.

**10.3 Time for Claims.** All claims against VITALITY must be brought within one (1) year after the cause of action arises and CUSTOMER waives any statute of limitations which might apply by operation of law or otherwise.

## **11. INDEMNIFICATION**

**11.1 CUSTOMER** shall defend, indemnify, and save VITALITY harmless, at CUSTOMER's own expense, against any action or suit brought for any loss, damage, expense or liability that may result by reason of an infringement of any patent, trademark, copyright, or trade secret based upon the normal and intended use of the Deliverables furnished to VITALITY hereunder. Should any of the Deliverables furnished to VITALITY hereunder become the subject of a claim of any infringement of a patent, trademark, copyright, or trade secret, CUSTOMER shall, at its option and expense, deliver non-infringing material, modify the material so that it becomes non-infringing, or procure for VITALITY the right to continue using CUSTOMER's infringing material.

CUSTOMER agrees to indemnify and hold VITALITY harmless against all claims, liabilities, demands, damages, or expenses (including attorneys' fees and expenses) arising out of or in connection with CUSTOMER's use of the Deliverables.

**11.2 VITALITY** will defend at its own expense any action brought against CUSTOMER to the extent it is based on a claim that the Licensed Programs used within the scope of the license granted hereunder infringe a United States patent, copyright or other proprietary right of a third party. VITALITY will pay any costs, damages or attorney fees finally awarded against Licensee in such action which are attributable to such claim, provided VITALITY is

promptly notified in writing of such claim, may control the defense and/or settlement of such claim, and is provided with all requested assistance, information and authority. In the event that a Licensed Program becomes, or in VITALITY's opinion is likely to become, the subject of a claim of infringement of a United States patent, copyright or trade secret, VITALITY may at its option either secure Licensee's right to continue using the Licensed Programs, replace or modify the Licensed Programs to make them not infringing, or provide Licensee with a refund of the license fee less depreciation on a 5 (five) year, straight-line basis. The foregoing states Licensee's entire liability for infringement or claims of infringement of patents, copyrights or other intellectual property right.

## **12. TERM AND TERMINATION**

**12.1 Term.** The term of the Agreement shall commence on the effective date as defined, and shall automatically renew for the term outlined in the Order Form thereafter until terminated in writing by one of the parties or as provided in Section 12 below.

**12.2 Termination.** Either party may terminate this Agreement for material breach upon thirty (30) days' written notice if the breach is not cured within that period.

**12.3 Early Termination by Customer.** CUSTOMER may terminate this Agreement at any time for convenience. In such an event, Customer shall pay VITALITY an early termination fee equal to fifty percent (50%) of the remaining contract value under the applicable order form.

**12.4 Payments.** All payments due and owing under this Agreement at the time of VITALITY's receipt of the written notice of termination for work completed and in progress shall be paid to VITALITY within 30 days of such notice.

**12.5 Reimbursements.** Reimbursements for any non-cancelable services and commitments entered into by VITALITY in connection with the Project being terminated shall be provided, provided that VITALITY submits documentation to CUSTOMER evidencing completion of work or expenses incurred.

**12.6 Remaining Obligations.** Termination of the Project shall not affect either party's obligations in connection with any other ongoing Projects and the rights and obligations of all non-terminating parties to the Agreement shall remain in full force and effect.

**12.7 Material Breach.** Failure by either party to comply in any material respect with any of its obligations in this Agreement shall entitle the other party to give notice to the party in default, requiring it to cure such default. If such default is not cured within 30 days after receipt of such notice, the notifying party shall be entitled to terminate this Agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Service Contract, as herein provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

**12.8 Effect of Termination.** Upon termination, CUSTOMER's access to the Platform shall cease, and each party shall return or destroy the other's confidential information.

## **13. CONFIDENTIALITY**

**13.1 Non-Disclosure.** VITALITY and CUSTOMER acknowledge that during the course of the subscription, information of a confidential nature may be disclosed between the parties. Such information, excluding information that a party could reasonably be expected to be provided to a third party as contemplated hereunder, shall be considered confidential information ("Confidential Information"). Neither party has the right to disclose the

Confidential Information of the other, in whole or in part, to any third party, and neither party will make use of the Confidential Information of the other for its own or a third party's benefit or in any way use such Confidential Information other than for the purposes of performance of this Agreement without the prior written consent of the disclosing party. Each party agrees to take all reasonable steps to protect the other's Confidential Information from unauthorized use and/or disclosure. The parties agree not to copy in whole or in part, any Confidential Information nor modify the same in any way without prior written consent from the other party. Neither party will be liable to the other for the disclosure of Confidential Information if, as shown by clear and convincing evidence, the Confidential Information: (a) is generally known to the public at the time of disclosure by the disclosing party; or (b) becomes generally known to the public through no fault of the receiving party; or (c) was lawfully in the possession of the receiving party prior to signing this Agreement; or (d) is subject to applicable United States laws or a valid court order requiring disclosure of such Confidential Information. In any judicial proceeding, it will be presumed that the Confidential Information in question constitutes protectable trade secrets of the disclosing party, and the receiving party shall bear the burden of proving that the Confidential Information was publicly or rightfully known or disclosed.

#### **14. PUBLICITY**

**14.1 Use of name or mark.** VITALITY may use CUSTOMER's name or mark and identify CUSTOMER as a client of VITALITY, on VITALITY's website and/or marketing materials. VITALITY may issue a press release containing CUSTOMER's name, related to any award under this Agreement. Neither party will use the other party's name or marks, refer to or identify the other party for any other reason, except as established in this section, without such other party's written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

#### **15. GENERAL PROVISIONS**

**15.1 Governing Law.** This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of laws principles.

**15.2 Notices.** Notices to be given by either party under this Agreement shall be sent by certified mail, express overnight delivery, or telecopy (fax) to the attention of the other party at the addresses of the parties as first set forth above.

**15.3 Entire Agreement.** This Agreement, together with any other materials referenced in or expressly made a part of the Agreement, constitutes the final and entire Agreement between VITALITY and CUSTOMER and supersedes all prior and contemporary agreements, oral or written.

**15.4 Severability and Assignments.** The invalidity or unenforceability, in whole or in part, of any provision in this Agreement shall not affect in any way the remainder of the provisions herein. This Agreement may not be assigned by CUSTOMER without VITALITY's consent.

**15.5 Amendments.** This Agreement may only be amended in writing and signed by both parties.

**15.6 Force Majeure.** Neither party shall be liable for failure to perform, nor be deemed to be in default, under this Agreement for any delay or failure in performance resulting from causes beyond its reasonable control, including but not limited to failure of performance by the other party, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquake, riot, insurrection, civil disturbance, sabotage, embargo, blockade, acts of war, or power failure. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

15.7 **Counterparts.** The Parties hereto agree that digital signatures shall be as effective as if originals. This Agreement may be executed by clicking the “accept” button through the VITALITY platform in any number of counterparts, all of which, taken together, shall constitute one and the same agreement.

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

**CUSTOMER:**

_____ Signature	_____ Name & Title	_____ Date
--------------------	-----------------------	---------------

**VITALITY:**

_____ Signature	_____ Name & Title	_____ Date
--------------------	-----------------------	---------------

## **EXHIBIT A**

### **SERVICE LEVEL AGREEMENT**

#### **1. TECHNICAL SUPPORT.**

VITALITY will provide CUSTOMER with telephone-based technical support services to assist CUSTOMER in utilizing the VITALITY Platform, at (801) 341-1844. Telephone-based support services will be available from 8 a.m. to 7 p.m. Mountain Time on weekdays (Monday – Friday) except holidays (“Business Hours”). CUSTOMER will also have email access to the VITALITY technical support division via support@vitality.io. VITALITY technicians will use reasonable, good-faith efforts to resolve CUSTOMER’s problems. VITALITY will respond to support telephone calls or e-mail contacts based on: (a) the order that such calls or e-mail are received; and (b) the relative importance of such calls or e-mail as reasonably determined by VITALITY.

#### **2. SUPPORT SERVICE LEVELS RESPONSE TIMES.**

<b>Severity Level</b>	<b>Definition</b>	<b>Response Time</b>
1 - Critical	VITALITY Platform is down; CUSTOMER is unable to use the VITALITY Platform for any productive purpose	Within 2 Business Hours
2 - Urgent	Severe impact: the VITALITY Platform is usable for most or all core utility billing functions, but the error or problem causes significantly decreased CUSTOMER productivity, such as periodic work stoppages or software feature crashes. No reasonable workaround is available.	Within 4 Business Hours
3 - Moderate	Lesser business impact: (1) Core platform functions are available only with a workaround that materially inconveniences CUSTOMER, or (2) less significant features are unavailable with no reasonable workaround.	Within 6 Business Hours
4 - Minor	Minor problem or concern that does not materially affect VITALITY Platform’s functioning or enhancement requests.	Within 3 business day(s)

“Response Time” means that either a support representative of VITALITY answers CUSTOMER’s initial telephone call to VITALITY’s support center or, if CUSTOMER leaves a phone message or sends an email, a support representative will contact CUSTOMER within the above specified time periods.

VITALITY agrees to use commercially reasonable efforts to provide a fix or a reasonable workaround for errors to CUSTOMER within a reasonable time, taking into account the severity of the error. VITALITY will continuously work during its Business Hours to resolve any Critical errors as soon as possible.

VITALITY is not responsible for errors and problems with the VITALITY Platform or Software that:

- Are caused by CUSTOMER’s hardware or network, third-party software, and/or CUSTOMER Data and CUSTOMER’s infrastructure;
- Are caused by a suspension or termination of CUSTOMER’s account pursuant to the terms of the Agreement;
- Are caused by a force majeure event, including internet access issues or related problems beyond the demarcation point of the VITALITY Platform; or
- Result from any actions or inactions of CUSTOMER or any third party outside of VITALITY’s control.

#### **3. UPDATES AND ENHANCEMENTS.**

VITALITY will provide periodic fixes, updates and upgrades and other Modifications to the VITALITY Platform that correct errors or add functionality, as these are generally made available by VITALITY to its customers, along with Custom Developments developed pursuant to Section 3 of the Agreement.



#### 4. DOWNTIME.

**4.1 Downtime.** VITALITY will use commercially reasonable efforts to enable CUSTOMER to access to the VITALITY Platform seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine and nine-tenths percent (99.9%) reliability for the VITALITY Platform, excluding (i) Planned Downtime, as defined in Section 6(d), (ii) downtime for to unscheduled emergency maintenance, (iii) downtime caused by misuse or faults caused by CUSTOMER or CUSTOMER's system, or (iv) downtime due to other causes outside of the reasonable control of VITALITY, including without limitation malfunction or cessation of Internet services by any third party network or ISP. Downtime will be measured from the period VITALITY becomes aware, or CUSTOMER informs VITALITY, that the VITALITY Platform is entirely unavailable (system down) or is otherwise unable to be used by CUSTOMER for productive purposes (other than due to one of the causes excluded above), through the time VITALITY resolves the issue and informs CUSTOMER that the VITALITY Platform is available. VITALITY will provide no less than five (5) business days advance written notice for scheduled maintenance. To the extent reasonably feasible, VITALITY will also provide reasonable advance notice for emergency maintenance. Such notices to users will be posted within the VITALITY Platform.

**4.2 Uptime Non-conformance.** Within thirty (30) days of the end of each calendar quarter, CUSTOMER may notify VITALITY if the uptime measurements indicate excessive downtime over the previous month. Credits shall be granted pursuant to the following credit schedule:

Uptime	Credit (% of fees for the following quarter)
99.0% - 100%	0%
97.0% - 98.99%	2%
95.0% - 96.99%	5%
Below 95.0%	10%

Such credit shall be used to offset the VITALITY Platform fee for the calendar quarter immediately following the quarter in which the breach took place.

- (a) If the VITALITY Platform has downtime of 90% or less for a calendar quarter ("Serious Downtime"), CUSTOMER may notify VITALITY that Serious Downtime issues exist. If VITALITY is not able to correct such Serious Downtime issues within thirty (30) days from the date of CUSTOMER's notification of Serious Downtime, CUSTOMER may elect to terminate this Agreement upon five (5) business days' written notice to VITALITY. The credits and termination rights specified in this subsection (c) shall be CUSTOMER's exclusive remedy for VITALITY Platform downtime.
- (b) "Planned Downtime" occurs when CUSTOMER and Users have no access to the VITALITY Platform due to previously scheduled maintenance by VITALITY. Planned Downtime is limited to 5% of total hours in a month. VITALITY will use commercially reasonable efforts to schedule Planned Downtime at a time and manner reasonably anticipated to minimize disruptions to all of its affected customers.

#### 5. EXCLUSIVE REMEDIES.

The credits and termination rights set forth in this Service Level Agreement above constitute CUSTOMER's sole remedy for any breach of VITALITY's commitments set forth in this Service Level Agreement.

## ATTACHMENT B VITALITY LICENSE AGREEMENT

### 1. LICENSE AGREEMENT

**1.1 License Grant.** VITALITY grants Customer a non-exclusive, non-transferable, revocable license to use the Platform in accordance with the terms of this Agreement.

**1.2 Restrictions.** Customer shall not:

- Copy, modify, or create derivative works of the Platform;
- Reverse engineer, decompile, or disassemble the Platform;
- Use the Platform for third-party data processing services;
- Transfer or sublicense access to the Platform to third parties.

**1.3 Ownership.** VITALITY retains all intellectual property rights in the Platform. This Agreement does not transfer ownership to Customer.

**1.4 Feedback.** Any suggestions or feedback provided by Customer regarding the Platform shall be deemed VITALITY's property, and VITALITY shall have a royalty-free, perpetual license to use such feedback.

**1.5 Termination of License.** The license shall terminate upon the termination of this Agreement. Upon termination, Customer must cease all use of the Platform and destroy any copies of documentation in its possession.

## **2. LICENSE SUBSCRIPTIONS**

**2.7 Subscription Tiers and Apps.** Information regarding subscription tiers and the apps included in each subscription can be found at [www.vitality.io/subscriptions](http://www.vitality.io/subscriptions). VITALITY reserves the right to change or modify subscription tiers and included apps at any time without notice to Customer.

## **3. PROFESSIONAL SERVICES.**

**3.1 Professional Services.** VITALITY may provide additional consulting support outside of the SLA upon Customer's request. Such services will be billed at a rate of \$185 per hour, with consulting hours purchased in blocks of four (4) hours. The terms and scope of these services shall be agreed upon in writing prior to commencement.