



CRUZCONTROL MASTER SERVICES AGREEMENT

This CruzControl Master Services Agreement ("**MSA**"), by and between MOTOR CITY WASH WORKS, INC. a Michigan corporation ("**MCWW**") and you, or the entity(ies) you represent, as set out in the Payment Authorization Form ("**Subscriber**"), is entered into as of the later of the signature dates on the Payment Authorization Form. (the "**Effective Date**"). MCWW and Subscriber are each referred to as a "**Party**" and collectively as the "**Parties**." The MSA incorporates the Cruz Control Enterprises Software Platform Software-as-a-Service Order Form and Payment Authorization ("**Order Form**") and all attached Exhibits, and together and in combination are referred to as the "**Agreement**."

WHEREAS, CruzControl is MCWW's enterprise level car wash technology solution, consisting of the following: client-side Software, Hardware, and Subscription Services; and

WHEREAS, Subscriber agrees to purchase the Hardware, license the Software, and subscribe to the Subscription Services in accordance with the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I **DEFINITIONS**

1.1. Definitions. The capitalized terms set forth below have the following meanings:

- 1.1.1. "**Access Code**" means, individually and collectively, any authorized account code, username or password provided by MCWW to an Authorized User to access the Software and Subscription Services.
- 1.1.2. "**Affiliate**" with respect to either Party means any entity controlling, controlled by, or under common control with such Party, where control means controlling 50% or more of the voting equity or otherwise having managerial or voting control.
- 1.1.3. "**Agreement**" has the meaning set forth in the preamble.
- 1.1.4. "**Applicable Component**" means, as applicable, a component of the Hardware, Software, Materials, Subscription Services.
- 1.1.5. "**Authorized User**" means an employee, agent, or contractor expressly designated by Subscriber to act on Subscriber's behalf in exercising Subscriber's rights to the Subscription Services and Software under this Agreement; all Authorized Users must be appropriately trained persons who are familiar with and understand the content of all pertinent product and equipment documentation and who have received safety training to recognize and avoid hazards involved.
- 1.1.6. "**Availability Commitment**" means an Uptime % of 99.5%.
- 1.1.7. "**Confidential Information**" means: Subject to Section 1.1.7.3, all technical or business information, including without limitation, information relating to the disclosing Party's operations, products/services pricing, organization, financial condition, marketing, sales,



customers and potential customers, assets, inventions, technologies, research and strategies.

- 1.1.7.1. Subject so Section 1.1.7.3, Subscriber Confidential Information includes, but is not limited to, Subscriber Data.
- 1.1.7.2. Subject so Section 1.1.7.3, MCWW's Confidential Information includes, but is not limited to, MCWW Data and information relating to CruzControl technology, Hardware, related software, and subscription services, and the terms of the Agreement.
- 1.1.7.3. Confidential Information does not include information which: (i) before or after it has been disclosed to the receiving Party, enters the public domain through no breach of the Agreement or other obligation of confidentiality; (ii) is approved for release by written authorization of the disclosing Party; (iii) is disclosed to the receiving Party by a Third-Party without such Third-Party breaching any obligation of confidentiality; (iv) is independently developed or learned by the receiving Party without reference to or reliance on the disclosing Party's Confidential Information; or (v) is previously known to the receiving Party without an obligation of confidence. Confidential Information shall not be deemed to be within any of exceptions (i) through (v) above because (a) a portion of such Confidential Information is embraced by more general information said to be in the public domain or previously known to or subsequently disclosed to the Subscriber, or (b) it is a combination derivable from separate sources of public information, none of which discloses the combination itself.
- 1.1.8. **"CruzControl"** means the MCWW enterprise level car wash technology solution as purchased by Subscriber, consisting of the Software, Hardware, and Subscription Services as expressly identified in the Order Form.
- 1.1.9. **"CruzControl Data Organization"** means Reports and data output features resulting from CruzControl processing and application of algorithms, including but not limited to: the selection, coordination, organization, and presentation of resultant data; templates; dashboards; scoring metrics; data fields; other tools and methodologies and technology used for the presentation of processed information to the user; and any and all reports and other output in any media reflecting and/or embodying the foregoing.
- 1.1.10. **"Documentation"** means this Agreement and instructional documentation provided to customer with delivery of CruzControl.
- 1.1.11. **"Effective Date"** has the meaning set forth in the preamble.
- 1.1.12. **"Error"** means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation.
- 1.1.13. **"End Users"** means the customers of Subscriber's car washing services powered by CruzControl.
- 1.1.14. **"Fees"** means, as further set forth in the Order Form or elsewhere in the Agreement, initial purchase fees, renewal fees, Consulting Services Fees and all fees whatsoever associated with CruzControl.



- 1.1.15. **"Force Majeure"** has the meaning set forth in Section 11.10.
- 1.1.16. **"Hardware"** means all hardware provided to Subscriber by MCWW which is required to interface with the Software.
- 1.1.17. **"Intellectual Property Rights"** means all intellectual property or proprietary rights of whatever form, now or hereafter available under any applicable laws, including, but not limited to, all patents (including any continuations, continuations-in-part, reexaminations, divisionals, and foreign counterparts thereof), patent disclosures and inventions (whether patentable or not), trade secrets, know-how, copyrights, mask works, data, source identifiers (including trademarks, service marks, trademarks, trade dress, trade names, slogan, and logos), and any applications therefor or registrations thereof.
- 1.1.18. **"Materials"** means the Subscription Services, Software, CruzControl Data Organization, and any text, data compilations, Documentation, MCWW Data, photographs, data instruction packets, graphics, illustrations, artwork, video, sound, and any other contents of the Subscription Services, Reports, other output (in whatever media), and other information that is available to Authorized Users via the Software or Subscription Services or that relate to the Services and is provided in printed or electronic form to Subscriber from MCWW.
- 1.1.19. **"MCWW"** or **"Motor City"** means Motor City Wash Works, Inc.
- 1.1.20. **"MCWW Data"** has the meaning set forth in Section 2.3.1.
- 1.1.21. **"MCWW Facility"** means 19414 Gerald Ave., Northville, MI 48167.
- 1.1.22. **"Subscriber"** has the meaning set forth in the preamble.
- 1.1.23. **"Subscriber Data"** means data and information that is (a) disclosed, transmitted, submitted and/or provided by or on behalf of Subscriber or any End User to MCWW for processing with the Software, in connection with the provision of the Services; (b) the raw data and information pulled by use of the Software from Subscriber (and/or End Users) and/or other information of Subscriber; and (c) the resultant factual content derived from processing of the data described in subsections (a) and (b) above, but excluding CruzControl Data Organization.
- 1.1.24. **"MSA"** has the meaning set forth in the preamble.
- 1.1.25. **"Order Form"** has the meaning set forth in the preamble.
- 1.1.26. **"Party"** and **"Parties"** have the meanings set forth in the preamble.
- 1.1.27. **"Personal Data"** means names, addresses, phone numbers, social security numbers, dates of birth, IP addresses, unique device identifiers, email addresses, account numbers, and other information relating to an identified individual or identifiable to an individual.



- 1.1.28. **"Purpose"** means Subscriber's internal purposes of operating CruzControl for the provision of car washing services to End Users.
- 1.1.29. **"Related Parties"** means a Party's suppliers, licensors, and its and their Affiliates.
- 1.1.30. **"Report"** means an output of analytics relative to Subscriber's specific processing activities using CruzControl.
- 1.1.31. **"Services"** means Subscription Services and/or Software Maintenance and Support Services, as further described in this Agreement and/or Consulting Services Addendum.
- 1.1.32. **"Software"** means the object code (binary, machine readable version) of the software identified in the Order Form; Updates shall be deemed Software.
- 1.1.33. **"Software Maintenance and Support"** means such maintenance and support as are described in Section 5.1.
- 1.1.34. **"Subscription Services"** means CruzControl functionality served by software-as-a-service through the CruzControl Enterprise Software Platform and defined in the Order Form.
- 1.1.35. **"Term"** the initial term and any renewal term, as described in Section 7.1.
- 1.1.36. **"Third-Party"** means individuals or entities other than Subscriber and MCWW and their Affiliates and employees.
- 1.1.37. **"Third-Party Products"** means third-party components, tools, and/or technologies that operate in connection with and as part of CruzControl through the CruzControl API or otherwise.
- 1.1.38. **"Updates"** means error corrections, enhancements, and maintenance releases of the Software.
- 1.1.39. **"Uptime %"** means (the number of minutes in the month less Downtime) ÷ the number of minutes in the month, measured on a 24-hour, 7-day per week basis, for two consecutive months in any rolling six-month period. Downtime means the period in which the Subscription Services are not accessible except for i) scheduled maintenance; (ii) impairments or outages caused by circumstances outside MCWW's network or its reasonable control; (iii) maintenance associated with item (ii); and (iv) intermittent outages of ten (10) minutes or less.
- 1.2. If a defined term appears in all upper case in a paragraph in which all words are in upper case, such term's use as a defined term shall be signified by its appearance in bold lettering.

ARTICLE II

LICENSE, OWNERSHIP, AND RESTRICTIONS

- 2.1 **Ownership of Hardware.** Subject to compliance with the terms of this Agreement, Subscriber will take title to the Hardware, exclusive of Software. Subscriber understands that the Hardware is dedicated to the Purpose and cannot be used for any other purpose.



2.2 Software

- 2.2.1 Ownership of Software.** MCWW retains full ownership rights to the Software and all related source code and Confidential Information, and all Intellectual Property Rights therein, and Subscriber acknowledges that it obtains no ownership rights to the Software and disclaims and releases any such claims. Subscriber hereby assigns any and all such present and future rights to the Software to MCWW and agrees to execute any and all documents necessary to effectuate the purposes of this Section so that all such rights vest in MCWW.
- 2.2.2 License to Use Software.** Subject to and so long as Subscriber complies with the terms of this Agreement, including but not limited to payment of all Fees, MCWW hereby grants to Subscriber a personal, non-exclusive, and non-transferable license to use the Software in accordance with the Documentation and with the following further restrictions: it shall be used only by and through Authorized Users, only on the purchased Hardware, and only for the Purpose. This license shall include Updates as such are released in the ordinary course of MCWW's business.
- 2.2.3 Reproduction and Modification of Software.** MCWW will supply Subscriber with one copy of the Software. All copies of the Software shall contain all of MCWW's copyright and any other restrictive and proprietary notices in form and content as they appear on the Software provided hereunder to Subscriber. Subscriber shall not reverse assemble or reverse compile the Software, in whole or in part, or permit or allow any other party to do so. Without limiting the generality and force of the foregoing, any such modification, adaptation, enhancement, or other derivative work shall be property of MCWW and Subscriber shall execute any and all documents necessary to assign such to MCWW. All rights not expressly granted in this Agreement are reserved.

2.3 Subscription Services

- 2.3.1 Ownership of Materials.** The Parties agree that as between MCWW and Subscriber, MCWW owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Materials and all technology, software, documents and other materials relating thereto. Subscriber hereby assigns any and all such present and future rights in and to Materials to MCWW and agrees to execute any and all documents necessary to effectuate the purposes of this Section so that all such rights vest in MCWW. Subscriber hereby grants to MCWW a perpetual, irrevocable, non-exclusive, fully paid, royalty-free, right and license to use Subscriber Data, under any and all rights Subscriber may have in and to such data, as necessary for providing Services to Subscriber and to aggregate and compile such data into CruzControl background technology so as to enhance the capacity of CruzControl to process information generally. Subscriber represents and warrants that it owns all rights necessary to make the foregoing grant. Notwithstanding the foregoing, MCWW shall own all data not constituting Subscriber Data, including but not limited to the data inputs and outputs as compiled into and as part of an aggregated deidentified data set or as part of the background technology forming a part of CruzControl ("**MCWW Data**").
- 2.3.2 License to Use Subscription Services.** Subject to Subscriber's compliance with the terms of the Agreement, MCWW hereby grants to Subscriber, during the Term, a non-exclusive, non-transferable license to access the Subscription Services to use such Services only by and through the Hardware for the Purpose, in accordance with the Documentation (and not for



purposes of acting as a data center, reseller or service bureau). Subscriber shall use such Subscription Services solely by and through Authorized Users through their Access Codes. Without limiting the generality of the foregoing, Subscriber shall use Materials solely to facilitate authorized use of the Subscription Services.

- 2.4 Prohibited Use.** Except as permitted under the Agreement, accessing, copying, storing, displaying, reproducing, distributing, selling, licensing, sublicensing, publishing, or creating derivative works of any Materials, including but not limited to Software and/or Subscription Services, is expressly prohibited without the prior written permission from MCWW and the copyright holder identified in any individual contents copyright notice. Subscriber shall not reverse engineer, reverse compile, disassemble, decompile, or retransmit Software and/or Subscription Services or any other Materials in any way through any medium or otherwise translate any of the Materials, Software or Subscription Services into any language or computer language. Subscriber shall not use Software or Subscription Services or any other Materials in violation of this Agreement or of any regulations or laws and, without limiting the generality of the foregoing, Subscriber shall not export, re-export or use Software or Subscription Services or any other Materials or any copy thereof in violation of the export control laws or other laws of the United States of America or any other applicable country. Subscriber shall not assist others to do directly or indirectly what it is prohibited from doing directly under the Agreement. Subscriber shall provide Access Codes only to Authorized Users and shall use its best efforts to ensure no Access Code is shared with anyone other than an Authorized User. All rights not expressly granted are reserved to MCWW. Subscriber shall not make any representation, promise, or warranty that offers any undertaking relative to the Services that exceeds the scope of any representation, promise or warranty in this Agreement.

SUBSCRIBER ACKNOWLEDGES THAT IT IS RESPONSIBLE FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, CONTRACTORS, AUTHORIZED USERS, AND END USERS AS IF SUCH ACTS AND OMISSIONS WERE ITS OWN, AND SUCH ACTS AND OMISSIONS OF SUCH PERSONS SHALL BE DEEMED ACTS AND OMISSIONS OF SUBSCRIBER.

ARTICLE III

FINANCIAL TERMS

- 3.1** The financial terms contained in the Order Form are hereby incorporated by reference.

ARTICLE IV

SUBSCRIBER OBLIGATIONS

- 4.1 Use and Responsibility.** Subscriber is responsible and liable for all uses of all Materials, including the Subscription Services, Software, Hardware, and Documentation, resulting from access provided to Subscriber and all such access provided by Subscriber, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Subscriber shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.
- 4.2 Authorized Access.** Subscriber agrees to take reasonable precautions to protect the Subscription Services from unauthorized access. Subscriber shall maintain the confidentiality of the Access Codes and instruct its Authorized Users to do the same. Subscriber agrees to promptly, but in any event within 24 hours or earlier as may be required by applicable law, notify MCWW of any unauthorized use of any Access Codes



or any other unauthorized access to the Subscription Services or breach of security of which Subscriber becomes aware. Subscriber shall be responsible for any damages or losses incurred by MCWW or any Third-Party resulting from breach of this Section. Subscriber will promptly (and within seven days) notify MCWW in writing regarding the termination of employment of any of its employees or contractors who had been given access to the Subscription Services. Subscriber shall be responsible for Authorized Users' unauthorized use of any Access Codes, breach of the Terms of Use, or any other breach of security by Authorized Users (who shall also remain responsible).

- 4.3 MCWW Access.** Subscriber will supply such access to Subscriber's instance of CruzControl as may be required for MCWW to fulfill its obligations or exercise such other rights to support, maintain, repair, or otherwise service the Subscription Services and Software.
- 4.4 MCWW's Rights to Prevent Access to the Services.** Subscriber agrees and understands that MCWW, in its sole discretion, may prevent access to the Subscription Services by any individual, including an Authorized User, if MCWW reasonably believes that the individual poses a security threat or otherwise is in violation of this Agreement.
- 4.5 Administrative Contact.** Subscriber authorizes the Contact listed on the first page of the Agreement to receive information relating to Subscriber's Authorized Users (or individuals purporting to be such), including Access Codes. The Contact may be changed from time to time upon written notice to MCWW which shall be in such form or contain such additional documents as MCWW may, in its sole reasonable discretion, require from time to time.

ARTICLE V

MAINTENANCE AND SUPPORT

- 5.1 Software Maintenance.** From time to time during the term, MCWW may provide Subscriber with maintenance Updates. Nothing herein shall be construed as requiring MCWW to create maintenance Updates. As a condition to receiving further maintenance and support and all other rights under the license, Subscriber shall be in compliance with the Agreement and agrees to install such Updates within fourteen (14) days of release. Updates that are provided under the maintenance program include all such enhancements and updates to the Software made by MCWW that are made generally available to its other customers without a fee. For the avoidance of doubt, and without limiting the foregoing, enhancements that have any of the following attributes will not be Updates that will be provided as part of maintenance above: (i) enhancements that provide substantially enhanced functionality, (ii) enhancements not required to cause the Software to be in compliance or otherwise meet the requirements of this Agreement, (iii) enhancements that MCWW may choose to license separately from each component of the Software, or (iv) enhancements that MCWW does not generally provide to other customers without additional charge. Subscriber agrees that Updates may automatically download and install on the Hardware from time to time. In such event, Subscriber agrees to allow such Updates to be promptly downloaded and installed as part of Subscriber's use of CruzControl.
- 5.2 Certain Obligations of Subscriber.**
- 5.2.1** Obtain and provide to MCWW sufficient information to establish entitlement, severity, and priority for identified problems;



- 5.2.2** Use reasonable commercial efforts to isolate problems and reproduce any identified Errors or malfunctions; and
- 5.2.3** Provide, upon MCWW's request, diagnostic output and such additional Subscriber Data in machine-readable or interpreted form deemed necessary or desirable by MCWW to reproduce the environment in which the errors or malfunctions occurred and to aid in understanding the errors or malfunctions.

ARTICLE VI

INTELLECTUAL PROPERTY

- 6.1** **Rights to Technology.** The Parties agree that as between MCWW and Subscriber, MCWW owns all right, title and interest, including without limitation all present and future Intellectual Property Rights, in and to CruzControl, the Materials, Hardware, Software, Subscription Services, and all technology, software, documents, and other materials relating thereto.
- 6.2** To the maximum extent authorized by law, Subscriber shall not engage in, or permit, directly or indirectly, any modification, disassembling, reverse engineering, copying, or sharing of the design of, the Hardware and/or any related Software (or any portion or component thereof), or the sale or other transfer thereof, without the prior written consent of MCWW.

ARTICLE VII

TERM AND TMINATION

- 7.1** **Term.** This Agreement shall have an initial Term of one (1) year beginning on the date identified in the Order Form (the "**Initial Term**") and shall automatically renew for successive one-month periods (each, a "**Renewal Term**"). Following the Initial Term, either Party may cancel this Agreement by providing at least ninety (90) days' prior written notice.
- 7.2** **Termination For Breach.** Subject to express exclusive remedies, either Party shall have the right, at its sole option, to terminate this Agreement with immediate effect in the event a breach of this Agreement by the other Party is not remedied within thirty (30) days) of the date of the notice issued pursuant to Section 11.3.
- 7.3** **Subscriber Insolvency.** MCWW shall have the right, at its sole option, to terminate this Agreement if any assignment is made of Subscriber's business for the benefit of creditors, or if a petition in bankruptcy is filed by or against Subscriber, or if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of its property or if Subscriber is adjudicated a bankrupt.
- 7.4** **Disabling Access.** Subscriber agrees and understands that, upon expiration or termination of the Agreement, or upon failure to renew or pay Services Fees or other charges within thirty (30) days from the date such Service Fees or other charges become due, MCWW reserves the right to disable the Services and all applicable Access Codes issued pursuant to the Agreement, disable or remove the Software from the Hardware, and Subscriber, on request, shall return to MCWW all Materials in its possession and control. CUSTOMER ACKNOWLEDGES THAT DISABLING ACCESS CODES MAY RESULT IN CUSTOMER'S INABILITY TO OPERATE ITS FACILITY. Subscriber shall have thirty (30) days after termination or expiration of this Agreement in which to access the Subscription Services exclusively for the purpose of recovering Subscriber



Data, and for no other purpose; provided however, that nothing shall prevent MCWW from storing such data for such longer period of time for purposes of improving the technology in a manner consistent with this Agreement and otherwise to exercise its rights and obligations hereunder.

- 7.5 Reinstatement of Services.** In the event Subscriber is in breach of this Agreement for failure to pay Service Fees or other charges and MCWW elects to disable the Services, Subscriber may cure such breach by paying a one-time reinstatement fee of \$1,500 along with the then-current cost of all applicable Software Services as outlined in the Order Form. Upon payment, all Services shall resume, and this Agreement shall renew for Renewal Terms as described in Section 7.1. Subscriber shall have access to all historical data collected during the subscription period, however, Subscriber shall not have access to data collected during the period of breach.

ARTICLE VII

CONFIDENTIALITY

Each Party shall use the other Party's Confidential Information only for the purposes of the Agreement and only to the extent necessary for such purposes and shall restrict disclosure of the other Party's Confidential Information to its employees and consultants with a need to know and shall not disclose the other Party's Confidential Information to any Third-Party without prior written approval of the other Party. The recipient shall protect the confidentiality of the Confidential Information using at least the same measures it takes to protect its own information of like kind but in any event not less than commercially reasonable measures (including reasonable technical, administrative, and physical safeguards and controls) given the confidential nature of the information. In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party, the Party receiving such process shall promptly notify the other Party of such receipt and cooperate reasonably with any efforts of the other Party to narrow the scope of any production through an appropriate protective order and may, thereafter, comply with such subpoena or process to the extent required by law. At the termination or expiration of the Agreement, any Confidential Information furnished by one Party to the other Party, all copies thereof and all portions of any materials prepared by or on behalf of such receiving Party analyzing, discussing or incorporating Confidential Information will, at the disclosing Party's option, but only to the extent applicable law permits, either be: (i) promptly returned to the disclosing Party, or (ii) destroyed by the receiving Party (with the receiving Party providing written certification of such destruction to the disclosing Party).

ARTICLE IX

LIMITED WARRANTIES, DISCLAIMERS, AND LIMITATIONS OF LIABILITY

- 9.1 Subscription Services Performance.** During the Term, MCWW shall use commercially reasonable efforts to cause the Subscription Services to conform to the Documentation and meet or exceed the Availability Commitment.
- 9.2 Software License.** MCWW will provide Software Support and Maintenance in accordance with this Agreement.
- 9.3 Permissions.** Subscriber warrants that it has and will obtain all consents, permissions, and rights necessary for MCWW to lawfully process Subscriber Data and End User data pursuant to the Agreement, including as may be necessary to access any files, services, documents, or websites. Subscriber represents and warrants neither it nor any End Users will cause Personal Data to be processed by MCWW or in, through or by



CruzControl.

- 9.4 Certain Disclaimers.** THE FOREGOING DOES NOT APPLY TO **THIRD-PARTY PRODUCTS**. EXCEPT FOR WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, **SUBSCRIBER** ACKNOWLEDGES AND AGREES THAT **CRUZCONTROL**, INCLUDING THE **SOFTWARE** AND **SERVICES**, ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND **MCWW** DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. **MCWW** MAKES NO WARRANTY OF ANY KIND THAT THE **SERVICES, SOFTWARE, HARDWARE, AND MATERIALS**, OR ANY PRODUCTS, **REPORTS** OR RESULTS OF THE USE THEREOF, WILL MEET **SUBSCRIBER'S** OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR OTHERWISE ERROR-FREE.

PERFORMANCE MAY BE LIMITED BY A VARIETY OF CIRCUMSTANCES UNRELATED TO FAILURES WITHIN **CRUZCONTROL** AS PROVIDED BY **MCWW**, INCLUDING BUT NOT LIMITED TO, POWER SUPPLY, INTERNET ACCESS ISSUES, ELECTRICAL ISSUES, ISSUES WITH **SUBSCRIBER'S** INTERNET SERVICE PROVIDER, QUALITY OF NETWORK PORT, NOT OPERATING UNDER NORMAL ENVIRONMENTAL CONDITIONS, ISSUES WITH ADMINISTRATIVE CREDENTIALS, BREACH OF THIS **AGREEMENT**, ABUSE, FAILURE OF **SUBSCRIBER** TO OPERATE **CRUZCONTROL** IN ACCORDANCE WITH THE **DOCUMENTATION** OR **MCWW** INSTRUCTIONS, OPERATING **CRUZCONTROL** IN A MANNER NOT AUTHORIZED BY **MCWW**, FAILURE TO IMPLEMENT ANY UPDATE OR OTHER ERROR CORRECTION, AND OTHER CIRCUMSTANCES AND CONDITIONS NOT HAVING TO DO WITH THE CONFORMANCE OF **CRUZCONTROL** TO THE **DOCUMENTATION**.

- 9.5 Third-Party Providers.** Subscriber agrees that MCWW will not have any responsibility for or obligations with respect to any hardware, software, or other items, or any services except to the extent MCWW expressly undertakes such responsibilities and/or obligations in the Order Form and Subscriber further agrees that MCWW shall not have any responsibility for or obligations with respect to any items and services provided by any persons other than MCWW or its contractors acting directly on its behalf.
- 9.6 Remanufactured Components.** Hardware furnished by MCWW hereunder may contain remanufactured subassemblies or parts which shall have been cleaned, refinished, inspected, and tested to new Hardware test standards.
- 9.7 Limitation of Liability and Damages.** IN NO EVENT SHALL THE TOTAL AGGREGATE MONETARY OR OTHER LIABILITY OR RELIEF REQUIRED OF **MCWW** AND **RELATED PARTIES** TO **SUBSCRIBER** FOR CLAIMS UNDER OR IN CONNECTION WITH THIS **AGREEMENT** OR OTHERWISE RELATING TO OR ARISING OUT OF THE USE, PURCHASE, OR LICENSING OF THE **MATERIALS**, INCLUDING (BUT NOT LIMITED TO) THE **SOFTWARE** OR **SUBSCRIPTION SERVICES**, REGARDLESS OF THE FORM OF ACTION, EXCEED IN VALUE THE **FEES** ACTUALLY PAID BY THE **SUBSCRIBER** FOR **CRUZCONTROL** OR ANY **APPLICABLE COMPONENT**, AS THE CASE MAY BE, IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THE **SUBSCRIBER** FURTHER AGREES THAT **MCWW** AND ITS **RELATED PARTIES** SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA EVEN IF **MCWW** AND SUCH **RELATED PARTIES** HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- 9.8 SUBSCRIBER** ACKNOWLEDGES THAT THE **SOFTWARE** MAY BE USED TO CONTROL PIECES OF HEAVY MACHINERY, AND THAT THE WILLFULLY IMPROPER OR NEGLIGENT USE OF THE SOFTWARE MAY RESULT



IN PERSONAL OR REAL PROPERTY DAMAGE, SERIOUS BODILY INJURY, AND/OR DEATH. IN NO EVENT SHALL **MCWW** BE LIABLE FOR DAMAGES RESULTING OUT OF **SUBSCRIBER'S** IMPROPER OR NEGLIGENT USE OF THE **SOFTWARE**.

ARTICLE X
INDEMNIFICATION

- 10.1 MCWW Indemnification.** MCWW agrees to defend, indemnify, and hold harmless Subscriber from and against any (i) claim by a Third-Party that the Software or Subscription Services, when used in accordance with the Agreement, infringes a U.S. patent, trade secret, or copyright of such Third-Party and (ii) any award of direct damages on such claim and reasonable expert and attorneys' fees and costs incurred in defending such claim. Notwithstanding anything to the contrary, MCWW's obligation to defend, indemnify, and hold harmless shall not apply where the claim arises from content, software, technology, data, or any information supplied by Subscriber or Related Parties, alteration or modification by Subscriber or Related Parties, or the Applicable Component is used other than in accordance with this Agreement.
- 10.2 Termination and Fee Adjustment.** In the event that an infringement claim is associated or asserted along with other claims, MCWW's obligation set forth in this Section shall be strictly limited and apportioned to the infringement claim. In the event of a claim, or MCWW reasonably determines that a claim is probable or that use in violation of a Third-Party's rights, MCWW may at MCWW's option and discretion: (i) procure for Subscriber the right to continue to use the affected portion of the Applicable Component, (ii) replace or modify, upon Subscriber's consent which shall not be unreasonably withheld or delayed, the affected portion to make its use non-infringing or (iii) should such options not be available, terminate this Agreement with respect to the affected portion upon thirty (30) days prior written notice to Subscriber. In such event of termination per the previous sentence, Subscriber shall be entitled to a pro-rata refund of any prepaid Fees paid to MCWW for the applicable Term, such refund to be in relation to the applicable remaining portion of the Term for which Fees had been prepaid; provided that if such refund is requested in the in the initial Term, Subscriber shall return the Hardware in accordance with instructions by MCWW.
- 10.3 Subscriber Indemnification.** Subscriber agrees to defend, indemnify, and hold harmless MCWW and its Related Parties and its and their officers, directors, managers, employees and agents, from and against (i) any claim by any Third-Party arising from Subscriber's violation of the terms of this Agreement; (ii) except for claims for intellectual property infringement of the Software or Subscription Services arising out of Subscriber's use thereof in accordance with the terms of the Agreement, any claim by any Third-Party arising from Subscriber's (including any Authorized User's) use of any Applicable Component; (iii) Subscriber's negligence or willful misconduct; (iv) modifications to CruzControl not made by MCWW; and (v) any award of monetary relief on such claim and reasonable expert and attorneys' fees and costs incurred in defending such claims; provided that Subscriber may not settle any Third-Party Claim against MCWW unless MCWW consents to such settlement, and further provided that MCWW will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice. For the avoidance of doubt, acts or omissions of Subscriber's employees, contractors, Authorized Users and End Users shall be deemed acts or omissions, as the case may be, of Subscriber for purposes of determining Subscriber's obligations to defend, indemnify, and hold harmless MCWW as set forth in this Section.
- 10.4** THIS SECTION 10 SETS FORTH SUBSCRIBER'S SOLE REMEDIES AND MCWW'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT CRUZCONTROL INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-



PARTY.

ARTICLE XI
MISCELLANEOUS

- 11.1 Compliance.** Subscriber shall at all times comply with the terms of this Agreement and all applicable laws.
- 11.2 No Partnership.** Nothing contained herein shall be construed to create or imply a joint venture, partnership, or principal-agent relationship between MCWW and Subscriber, and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing by both Parties. Subscriber shall hire MCWW as an independent contractor to provide Services described in each Services Addendum.
- 11.3 Notices.** All notices under the Agreement will be made in writing and be deemed to have been duly given (i) on the date of delivery if delivered by hand; (ii) three business days following being mailed by first class mail, postage paid and addressed to the Party at the address set forth in the Agreement; (iii) one business day following being sent by a nationally recognized overnight courier service, addressed to the Party at the address set forth in the Agreement; or (iv) on date of email delivery to the contact address set forth in the Agreement; provided that in the case of email delivery the sending Party either receives a written acknowledgement of receipt from the receiving Party or does not receive by reply an email advising that the communication was unable to be delivered to the recipient.
- 11.4 Assignment.** MCWW may freely assign the Agreement and its rights and obligations therein to any individual or entity. Subscriber may not assign the Agreement or any of its rights or obligations hereunder without the prior written consent of MCWW.
- 11.5 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.
- 11.6 Entire Agreement; Amendments.** The Agreement and the Order Form constitutes the entire agreement between the Parties pertaining to its subject matter. In the event of a conflict between the terms of this Agreement and the Order Form, the terms of this Agreement shall control. No amendment, change, modification, or waiver of any of the terms of the Agreement is effective unless made in writing and executed by all Parties to the Agreement.
- 11.7 Waiver.** Failure of either Party to enforce the Agreement shall not be construed as a waiver or limitation of that Party's rights, in any respect. No waiver or modification may be introduced as evidence unless such waiver or modification is in writing and duly executed by the Parties.
- 11.8 Severability.** If any provision contained in the Agreement becomes illegal, null, or void or against public policy, the remaining provisions will not be affected.
- 11.9 Disputes.**
- 11.9.1** The Agreement shall be governed and construed by the laws of the State of Michigan, without regard to its law governing conflicts of laws. The Parties hereby irrevocably submit to the sole and



exclusive jurisdiction of the state courts located in Oakland County and the United States District Court for the Eastern District of Michigan for the purposes of any suit, action or other proceeding arising out of or based upon the Agreement or any document or instrument delivered pursuant hereto. To the extent permitted by applicable law, the Parties hereby waive, and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding brought in such courts, any claim that such Party is not subject personally to the jurisdiction of the above-named courts, that such Party is exempt or immune from attachment or execution by such courts in the event that any of the above-named courts enters an order of attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper.

11.9.2 Injunctive Relief. If Subscriber breaches this Agreement, monetary damages may not afford MCWW an adequate remedy, and irreparable harm may be presumed. Accordingly, MCWW shall be entitled to seek an injunction against any such breach by Subscriber without posting bond.

11.9.3 Limitations of Actions. No action relating to the performance of Service under this Agreement may be brought by either party more than two (2) years after the cause of action arises, except that an action for nonpayment may be brought within four (4) years of the date of the last payment made hereunder; provided, that this Section is not intended to extend applicable statutes of limitations and If the applicable statute of limitations is shorter than the contractual periods noted in this Section, the period prescribed in the applicable statute of limitations shall control; provided, further, that if an applicable statute of limitations is longer than the contractual periods noted above, and applicable law does not permit contractual modifications of such periods, then the longer period as embodied in such applicable statute shall apply.

11.10 Force Majeure. Neither Party shall be liable to the other for any failure to perform any of its obligations hereunder to the extent performance is prevented due to Force Majeure; provided that Force Majeure will not excuse making payments hereunder when due and payable prior to the occurrence of Force Majeure or performing indemnity obligations hereunder. The term "**Force Majeure**" includes fires or other casualties or accidents, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, any law, order, proclamation, regulation, ordinance, epidemic, pandemic, demand, or requirement of any governmental agency, which prevents performance, or any similar circumstance. In the event of a Force Majeure condition, the affected Party shall promptly notify the non-affected Party in writing of the particulars of such condition, shall use commercially reasonable efforts to remove such condition, and shall resume performance hereunder as soon as such condition is removed.

11.11 Publicity. Neither Party shall issue any marketing, advertising, and other promotional materials, which reference the other Party without first having obtained the prior written approval of such other Party.

11.12 Survival. The following Sections shall survive termination of this Agreement: 2.1, 2.2.1, 2.3.1, 2.4, 3, 4.1, 4.2, 6, 7.4, 8, 9.3, 9.4, 9.5, 9.6, 9.7, 10, and 11.

11.13 Counterparts. This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original, and all of which, considered together, shall constitute a single document.