

ARSENAULT

Associates

Dossier On-Demand Subscription Service Agreement

This Agreement is between City of Oxford (“Customer”) with corporate offices located at the address set forth at the end of this agreement, and Arsenault Associates (“Arsenault”) with corporate offices located at the address set forth at the end of this agreement, covering Customer’s subscription for and use of certain software service provided by Arsenault as set forth on Schedule “A” attached and made a part hereof (the “Applicable Dossier On-Demand Subscription Service”), hereinafter referred to as “DOD Service.” The DOD Service is a Software-as-a-Service (SaaS) offering of Arsenault’s software products collectively known as “Dossier.” This agreement also covers all sales of equipment, goods and materials (“Hardware”) and Consulting, Training and other Professional Services and Subscriber User Support Services (“Services”). The terms and conditions contained on any purchase order or request for quotation received by Arsenault from Customer are expressly superseded hereby and shall not be construed as part of the agreement between Customer and Arsenault. Unless otherwise specifically agreed in writing between the parties, this document constitutes the entire agreement between Customer and Arsenault with respect to the subject matter hereof. The parties, intending to be legally bound, hereby agree as follows:

- 1. Limited Use License.** Subject to the terms and conditions of this Agreement, Arsenault grants Customer a non-exclusive, non-transferable limited license to use, solely for Customer’s own internal business purposes, those features as specified in Schedule “A” of the DOD Service, on a single Dossier database, for the term of the active subscription. The DOD Service is licensed on a named user basis (one person, one login account). The DOD Service is specifically not licensed on a concurrent user basis, and Customer will be in violation of this agreement if a login account is used by more than one individual.
- 2. Subscription Registration.** Customer will provide subscription set up data as requested in a standard form to be provided by Arsenault for each named user covered by this Agreement that shall include, but not be limited to, user name, title, mailing address, phone #, fax #, e-mail address (the “Set Up Data”). Customer will be responsible at all times to maintain and update the accuracy and completeness of the Set Up Data and to notify

Arsenault of any changes.

- 3. Subscriber User ID and Password.** Upon receipt of all Set Up Data and applicable fees, Arsenault will set up Customer's account. Arsenault will assign and send each Customer named user a unique login User ID and password. Customer will maintain the confidentiality of all User ID(s) and password(s) and will ensure that each User ID/password is used by only one designated individual in Customer's organization; sharing of User ID/Password for use by multiple individuals is expressly prohibited under this agreement. Customer is responsible for the use of Customer's account and all activity under Customer's account, whether used under any name or by any person, and for ensuring full compliance with this Agreement by all users of that account. Customer agrees to indemnify, defend, and hold harmless Arsenault for any liability or expense arising from misuse of Customer's User ID and password. Customer agrees to notify Arsenault of any unauthorized use of Customer's User ID and password account within 24 hours of becoming aware of the occurrence.
- 4. Fees.** Customer will pay Arsenault the fees for the DOD Service as set forth on Schedule "A" attached hereto.
- 5. Delivery.** Certain optional features available in conjunction with DOD may involve the purchase of Hardware from Arsenault. Delivery of any Hardware purchased hereunder to the carrier at the point of origin shall constitute delivery of the Hardware to Customer and thereafter the shipment of Hardware shall be at Customer's risk. Delivery and shipment dates as shown on quotations, acknowledgments or invoices are estimates only. Arsenault shall not be liable for delays in delivery of the Hardware, Services or Software. Arsenault shall have the right to make partial shipments.
- 6. Data Ownership and Use.**

 - (a) Data Ownership:** The data entered and accumulated by Customer during its use of the DOD Service is Customer's proprietary property. Arsenault will not release any information specific to Customer without its written permission.
 - (b) Use of Data:** Arsenault intends to develop in the future a proprietary application that aggregates "cleansed" fleet databases into a composite database that may be used for benchmarking, establishing industry best practices, and other commercial uses. Customer databases hosted in the DOD environment will be automatically included in this benchmarking database. Cleansed data is defined as data that has had all customer identifying names, marks, numbers, licenses, registrations, serial numbers, references, inferences, indicators, designators and symbols of any kind removed to such an extent so as to make it

impossible to identify, detect or separate the owners of individual data aggregated in the new database. If you do not wish to have your cleansed data included in the industry benchmark database, please mark an “x” in the opt out checkbox at the end of this agreement.

(c) Access to Service: Customer is responsible to obtain access to the Internet at its own expense. **NOTE:** Performance of the DOD Service is directly dependant on the speed and throughput of the Customer’s internet connectivity. SLOW INTERNET ACCESS SPEED NEGATIVELY AFFECTS THE SPEED OF THE DOD SERVICE.

7. Restrictions. Customer will not use the DOD Service, the Interface and Software, except through the subscription service provided hereunder. Customer will not do any of the following: (i) copy (except as permitted herein), translate or modify the DOD Service, Software or content including without limitation the user interface (look and feel) or any software coding; (ii) merge the Interface, Software or any content provided under this Agreement with another program or modify such Interface, Software or such content; (iii) reverse-engineer, disassemble, de-compile, or make any attempt to discover the source code of the Interface or Software; (iv) sublicense, license, sell, rent, lease, distribute, resell for profit or otherwise give to any third party any portion of the DOD Service, Interface, Software or any content provided under this Agreement; or (v) perform any data entry, import or database updating in any other manner other than through the use of the DOD Service’s user interface. Arsenault and its licensors shall retain all copyrights, title and interest, including all intellectual property rights, in and to the DOD Service, Interface, Software, any content provided under this Agreement and related names, logos and websites. Customer acknowledges that the limited license granted hereunder does not provide Customer with title or ownership of the DOD Service, Interface, Software and any content provided under this Agreement, but only a right of limited use. For purposes hereof, the “Interface” means the search interface which is part of DOD Service, and the “Software” means the source and operating code which comprises the DOD Service.

8. Proprietary Rights. The DOD Service contains copyrighted material, trademarks, and other proprietary information of Arsenault and its licensors. In addition, Customer and other subscribers to Arsenault’s DOD Service may post copyrighted information. Except for information which is in the public domain or for which Customer has been given written permission, Customer will not copy, modify, publish, transmit, distribute, perform, display, or sell any such copyrighted or proprietary information.

9. Modifications to Applicable DOD Fleet Service. Customer will not modify or attempt to modify for any reason the DOD Service, Interface or Software except as provided by the standard self customization features (configurable settings) of the DOD service or Interface. Under no circumstances shall Customer modify any textual references to the Arsenault or DOD Service name, remove entirely or tamper with Arsenault logos or trademarks, delete the marketing phrases, or change the structure of the links to Arsenault (including URL and “come-from” tag). Arsenault reserves the right to install new releases of the Interface or Software from time to time, and in such event the license granted herein shall apply to such new release and Customer will no longer have access to the previous release. Arsenault makes no commitment, express or implied, as to the frequency or timing of new releases but will notify Customer in advance before installing any new releases.

10. File Storage. The DOD Service provides storage space for files (often referred to as Documents within Dossier) which can be associated with records in the Dossier database. These files are stored in the DOD environment and receive the same backup and disaster recovery services as the Customer’s Dossier database. The following file types may be stored: JPG, PDF, DOC, and XLS. The Total Storage Quota, and definition of which Dossier records to which they may be associated, is dependent on the number of Units and the Edition of Dossier included in Customer’s subscription as defined below, and as quantified in “Schedule A”. The storage quota is cumulative, and can be deployed as desired by Customer, so long as the total quota is not exceeded.

- Dossier Silver Edition: Documents may be associated with Units and Repair Orders. Total Storage Quota is 2.5MB x the number of active units defined in Schedule A, unless additional storage is specified in Schedule A. For example, a 50 active unit Silver agreement would include 125 MB of storage, unless specifically delineated in Schedule A.
- Dossier Platinum Edition: Documents may be associated with Units, Parts, Personnel, and Repair Orders. Total Storage Quota is 5MB x the number of active units defined in Schedule A, unless additional storage is specified in Schedule A. For example, a 50 active unit Platinum agreement would include 250 MB of storage, unless specifically delineated in Schedule A.

11. Data Security and Backup Services. Arsenault will employ commercially reasonable technical and security measures intended to avoid unauthorized access to Customer’s entered data (customer’s database) within the DOD Service. Customer’s data will be backed up (copied) daily to two backup locations:

- A “local” copy will be placed in the DOD secure storage backup array. Each backup will be maintained for

seven (7) days so that the seven (7) most recent backups will be retained in online storage (the oldest backup will be deleted each day).

- In addition to the local storage, the daily backup will be copied to a secure off-site location every night. The offsite backups are also maintained for seven (7) days so that the seven (7) most recent backups will be retained in storage (the oldest backup will be deleted each day). This backup process provides for seven (7) days of both SaaS local and offsite copies of daily backup data.

12. Disaster Recovery Service. Arsenault will perform disaster recovery services if the DOD Service fails or if Customer's data becomes damaged or corrupted for any reason other than Customer's willful misconduct or gross negligence. This disaster recovery service includes restoring the most current version of the Software and the most current backup of Customer's database, and if necessary, restarting computer hardware and rebooting operating systems, or in the most severe circumstances, switching the DOD Service to other computers and/or servers as may be required to get the DOD Service operational.

13. Subscriber User Support Services. Normal User Support Services (Customer Support, End user help desk services) are available from 8:30 a.m. to 5:00 p.m. Eastern Standard or Daylight Time as applicable, Monday through Friday, on normal business days of Arsenault, on a first come, first served basis by telephone and/or e-mail. Normal User Support Services do not include training services which are optionally available and provided at prevailing fees. Arsenault will also provide Emergency Support Service for the DOD Service on a 24/7/365 basis. Emergency Support Service is limited to situations where the DOD Service is down (not available or not accessible via internet connection) in which case services will be provided to repair, replace, or restore the DOD service. Normal User Support Services are not available via the Emergency Support Service.

14. Service Availability Guarantee. The DOD Service will be available for Customer use 24 hours a day, 365 days per year with a guarantee of not less than 98.5% uptime on a monthly basis excluding scheduled maintenance outages. In the event that Arsenault fails to achieve this uptime guarantee, Arsenault may be penalized for each hour less than guaranteed as a percentage of the Customer's monthly service fee based on the number of hours in that month (720 hours in a 30 day month, etc.). Any penalty incurred by Arsenault will be applied as a credit toward future Customer DOD Service fees. Downtime due to Internet failure, failure of your local internet connection or your Internet Service Provider (ISP) connection service, failure of your computer hardware or software, scheduled maintenance, or Force Majeure, are excluded from the service availability

guarantee. The Applicable DOD Service may be unavailable from time to time due to routine maintenance or upgrades, patches or in response to hardware, software, power, or communication failures, or other technical issues. Arsenault will use commercially reasonable efforts to minimize any service disruption. Arsenault will give advance notice for planned outages which are expected on a regular basis for maintenance, upgrades, etc. Downtime associated with planned outages is excluded from the service availability guarantee.

15. Term, Termination. The term of this Agreement shall be as set forth in Schedule “A” (the “Term”). Either party may terminate the Agreement at any time for any reason by giving the other party thirty (30) days advance written notice, subject to the following terms:

(a) Customer Termination: Customer may cancel this entire Subscription Agreement and/or reduce the number of Named Users and/or optional features or modules by giving Arsenault thirty (30) days advance written notice by certified mail to Arsenault at its current corporate address identifying the exact number of Named Users and/or optional features or modules to be cancelled and by paying a cancellation fee of 50% of the Subscription Fees for the remaining portion of the Term of this agreement (the “Cancellation Fee”). Only in the event of receipt of a Cancellation Notice for the entire Subscription Agreement and upon receipt of the applicable Cancellation Fee that may be due Arsenault, Customer’s DOD fleet database as of the last backup will be made available for Customer download from Arsenault’s secure FTP site, in its original file format. To the extent that Customer cancels individual User Licenses and/or optionally licensed software features or modules, the applicable monthly service fees will be adjusted accordingly. To reinstate and re-activate any licenses that are cancelled, the then prevailing set-up and monthly service fees will apply.

(b) Arsenault Termination: If Arsenault terminates the Agreement, upon receipt of any and all fees due Arsenault, Customer’s DOD fleet database as of the last backup will be made available for Customer download from Arsenault’s secure FTP site, in its original file format.

16. LIMITATION OF LIABILITY. ARSENAULT AND ITS AFFILIATES WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE DOD SERVICE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ARSENAULT’S LIABILITY TO CUSTOMER FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES

BE LIMITED TO MONTHLY SERVICE FEES PAID, IF ANY, BY CUSTOMER TO ARSENAULT FOR THE DOD SERVICE DURING THE TERM. IN ADDITION, ARSENAULT WILL NOT BE LIABLE FOR THE ACTS OR OMISSIONS OF OTHER USERS (INCLUDING UNAUTHORIZED USERS, OR "HACKERS") OF ANY DOD SERVICE. THE TERMS OF THIS SECTION WILL SURVIVE ANY TERMINATION OF THIS SUBSCRIPTION AGREEMENT.

17. Service Operations. Customer is solely responsible for its use of the DOD Service and for the quality of the data contained therein, including all initial and subsequent entry of data, production and use of provided reports, and any and all content in Customer's DOD Service database.

18. Indemnification. Customer shall defend, indemnify and hold harmless Arsenault, its officers, directors, employees, agents and licensees, from and against any and all claims, liabilities, demands, damages, losses and expenses including cost of litigation and reasonable attorney's fees arising out of or relating to (i) the negligent data entry, operation or use of the DOD Service, and (ii) Customer's use of the DOD Service, including without limitation, any violation by Customer of these terms and conditions. This section will survive any termination of this Agreement.

19. Force Majeure. Arsenault will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency beyond its reasonable control, including without limitation Internet outages, communications outages, fire, flood, war or act of God.

20. Limited Warranty

(a) Arsenault warrants that the Services will be performed in a good and workmanlike manner. If the Services should fail to meet the above warranty, Arsenault will, at its sole option, either correct or replace the Services free of charge if Arsenault is notified of the problem in writing within one (1) year from the date such Services in question were performed and the problem persists without resolve for a period of thirty (30) days. Customer shall reproduce such problem as a condition precedent to such corrective action. Customer agrees that its sole and exclusive remedy will be limited to such corrective action.

(b) Any Hardware sold hereunder is not manufactured by Arsenault and is sold under the respective brand or trade names of third party manufacturers. ARSENAULT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AS TO SUCH HARDWARE, AND ALL SUCH HARDWARE IS SOLD AS

IS. If requested by Customer, Arsenault will use its commercially reasonable efforts to assist Customer in submitting a warranty claim to the applicable manufacturer.

(c) Arsenault warrants, except as provided below, that the DOD Service will perform substantially in accordance with Arsenault's published specifications. If the DOD Service does not meet the above warranty, Arsenault's sole obligation hereunder shall be to provide to Customer the Subscriber User Support Services described in section 12. Arsenault does not warrant that the functions contained in the DOD Service will operate in combination with other software which may be used by the Customer, or that the Software is free from errors in the nature of what is commonly categorized by the software industry as "bugs."

OTHER THAN THE LIMITED WARRANTIES SET FORTH ABOVE, ARSENAULT MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SERVICES AND HARDWARE INCLUDING WITHOUT LIMITATION FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR AS TO ANY OTHER MATTER, AND SUCH WARRANTIES SUPERSEDE ANY ORAL OR WRITTEN WARRANTIES MADE OR IMPLIED BY ARSENAULT OR IN ANY OF ARSENAULT'S BROCHURES, CATALOGS, LITERATURE OR OTHER MATERIALS.

21. Non-Solicitation. During the Term of this agreement and for twelve (12) months thereafter, Customer shall not directly or indirectly solicit or induce any employee or independent contractor of Arsenault to terminate or refrain from renewing or extending his or her employment or services with Arsenault, or employ, solicit or induce any such employee or independent contractor to become employed by or enter into an independent contractor relationship with Customer.

22. General Terms. This Agreement constitutes the entire agreement between Customer and Arsenault with respect to the subject matter hereof and supersedes all prior agreements between Customer and Arsenault. Arsenault and Customer agree that no failure to exercise and delay in exercising any right, power, or privilege hereunder on the part of either party shall operate as a waiver of any right, power or privilege. Arsenault and Customer further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise. In the event that a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect. All

notices under this Agreement shall be in writing to the addresses provided herein. This Agreement will be governed by the laws of the state of New Jersey (excluding its choice of law rules). The parties agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Customer hereby consents to jurisdiction and venue in the state courts of New Jersey for any action arising out of this Agreement. Nothing in this Agreement will be construed as creating a joint venture, partnership, employment or agency relationship between Customer and Arsenault. Customer may not assign this Agreement by operation of law or otherwise, without Arsenault's written consent, which shall not be unreasonably withheld. This Agreement will be binding on, inure to the benefit of and be enforceable against Customer and Arsenault and their respective permitted successors and assignors. The terms of this Section will survive any termination of this Agreement.

SCHEDULE “A” - DOSSIER ON-DEMAND SUBSCRIPTION SERVICE AGREEMENT

This Schedule “A” is added to and made part of the DOD Subscription Service Agreement between Arsenault Associates (“Arsenault”) and City of Oxford (“Customer”).

- 1. **Subscription:** This subscription covers the following DOD Service(s) functions, features, and options: Dossier Professional, 500 maximum units, three (3) Full Named User Licenses, four (4) Read Only Named User Licenses, four (4) Mechanic Named User Licenses, one (1) Bar Coding Option, and one (1) Fuel and Meter Import Option.
- 2. **Subscription Term:** Thirty-six (36) months beginning _____ and continuing until expiration on _____.
- 3. **Subscription Fees:** The DOD Service described above will be provided at a one-time setup fee of \$8,650.00 and at a quarterly subscription fee of \$2,745.00 for three (3) Full Named User Licenses, four (4) Read Only Named User Licenses, four (4) Mechanic Named User Licenses, one (1) Bar Coding Option, and one (1) Fuel and Meter Import Option, based on a guaranteed minimum of three (3) Full Named User Licenses, four (4) Read Only Named User Licenses, four (4) Mechanic Named User Licenses, one (1) Bar Coding Option, and one (1) Fuel and Meter Import Option for the term of the subscription, and a maximum unit limit of 500 units in your Dossier system database. Additional services purchased as follows:

Five (5) Days Onsite Training (2 separate trips)*	\$8,000.00
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*Travel and Living Expenses To Be Billed Upon Completion

- 4. **Subscription Fee Payment Terms & Conditions:** Subscription fees are payable quarterly in advance of use of the DOD Service via check or wire transfer, however, regardless of payment method, all payments must be received before the DOD Service is provided and made accessible. All invoices will be due and payable within thirty (30) days after the invoice date. All payments are to be made in US Dollars. Payments are considered delinquent if not paid within thirty (30) days after the applicable invoice date stated on the invoice (“Due Date”). A late payment charge of one and one half percent (1.5%) per month will be applied to the Customer’s account if invoices are not paid by the Due Date. If Arsenault is required to take action to collect any delinquent payments hereunder, Customer will reimburse Arsenault for reasonable attorney and/or collection fees incurred in collecting the account. In addition to any collection remedies Arsenault may use, Arsenault reserves the right to disconnect or otherwise discontinue the DOD service; provided, prior to Arsenault

exercising its right of Disconnection of Non-Payment, Arsenault shall have provided Customer written notice and opportunity to cure non-payment within thirty (30) days of receipt of said written notice. If Customer fails to cure its payment default and Arsenault exercises its right of Disconnection for Non-Payment, a reactivation of a service suspended for non-payment will occur upon receipt of payment in full of the amount then due, including late fees, plus a reactivation fee of \$100 per subscriber user. Customer shall pay all applicable sales, use and excise taxes.

- 5. Internet Service Connection & Minimum Computer Hardware:** Customer is responsible for providing its own computers that operate on Microsoft Windows operating systems (Windows XP, Windows Vista, Windows 7, Windows Server 2003, Windows Server 2003 R2, Windows Server 2008, Windows Server 2008 R2), the Microsoft RDP client, and Internet connection (ISP). The Tricerat Screwdrivers client to support remote printing is supplied as part of the DOD Service but must be installed on client computers by Customer.
- 6. System Coordinator:** Customer agrees to appoint and maintain a “Dossier On-Demand Fleet Service Coordinator” who is authorized to act on its behalf to make authoritative decisions, to perform its user administration services and actions, and who will be Arsenault's single contact source for the Company's subscription. Customer names the following as its Coordinator: _____.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth below. This Agreement shall be effective upon the last date set forth below.

City of Oxford
717 Mollybar Road
Oxford, MS 38655

Arsenault Associates
6 Terri Lane
Suite 700
Burlington, NJ 08016

By: _____

By: _____

Name: _____

Name: Andrea Harper

Title: _____

Title: Controller

Date: _____

Date: _____

OPT OUT. By checking this box, customer opts to exclude their cleansed data from the industry benchmark database as described in Data Ownership and Use - Section 6 (b) of the Dossier On-Demand Subscription Service Agreement.