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# TERMS AND CONDITIONS

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## GENERAL CODE, LLC LAW AND ORDINANCE CODIFICATION, SUPPLEMENTATION SERVICES AND ECODE360<sup>®</sup> UPDATES

These Terms and Conditions, together with General Code, LLC's Proposal (the "Proposal"), constitute a legally binding agreement (this agreement) between the Client/Licensee (Client) and General Code, LLC (General Code)

### **1. Responsibility of General Code.**

General Code shall be responsible for the performance of the services provided for in this agreement in accordance with the "Performance Schedule." General Code shall be responsible for the correctness and accuracy of its work, based upon the material and information supplied by the Client, as reflected in the completed codification, supplementation and eCode360 updates delivered to the Client. Regardless of the Client's acceptance of completed materials when delivered, General Code shall correct errors found either by the Client or General Code. See "Warranties; Limitations" for General Code's liability for all services.

### **2. Responsibility of Client.**

The Client shall be responsible for the correctness and accuracy of the information it supplies to General Code (the "Client Content"). By purchasing eCode360<sup>®</sup>, Client hereby requests that content be posted online, and Client will be responsible for the presentation, accuracy and completeness of the content provided, and General Code will be entitled to post that content without review or editing. Further, the Client is responsible for providing General Code with timely decisions and answers to questions raised by General Code, for inclusion of sufficient funds in the budget to pay General Code for services, and for the prompt payment of invoices. The Client shall also be responsible for completing its work in accordance with the "Performance Schedule."

### **3. Responsibility of Client's Counsel.**

In conjunction with the services rendered by General Code and the work of the Client and General Code, any and all questions requiring legal advice or opinion, analysis of legislation for legal sufficiency, interpretation of cases or statute, etc., shall be directed by the Client and General Code to the Client's counsel. At the request of the Client or its counsel, General Code shall make available to the Client's counsel information in its possession relating to legal issues or opinions obtained during its work with other clients, as well as sample copies of legislation as requested by the Client.

### **4. Protection of Confidential Information.**

During the time this agreement is in effect, both the Client and General Code may have access to or receive information that is of a confidential nature. This information may include data relating to client information, products, product development, designs, processes, systems, computer software, computer hardware, methods of production, costs, pricing, finances, sales or marketing plans, customers, business partners, vendors, vendor prospects, employees and municipal records and data. All such information, including any materials embodying such information, whether disclosed orally or otherwise and whether or not marked "Confidential" or "Proprietary," will be considered by officials of the Client and by General Code and General Code's employees as proprietary and confidential. Both the Client and General Code will use reasonable efforts to protect the confidentiality of the other's Confidential Information but in no case less than the same efforts as it uses to protect its own confidential information, and will not use any Confidential Information of the other for any purpose other than fulfilling its obligations under this agreement.

## **5. Computer Hardware.**

Any computer hardware being delivered in accordance with this agreement is being delivered with the manufacturer's warranty. The manufacturer's warranty is in lieu of all other warranties, express or implied, and General Code shall have no obligation or liability under "Warranties; Limitations" or otherwise with respect to hardware.

## **6. Indemnification.**

Client hereby agrees to indemnify, defend and hold General Code harmless from and against any and all liability, losses, costs, and expenses (including reasonable attorneys' fees) incurred by General Code in connection with any claim arising out of or relating to:

- A. Client's use of eCode360;
- B. The content, the quality, or the performance of Client Content;
- C. Client's violation of this agreement; or
- D. Client's violation of the rights of any other person or entity.

## **7. Client Primary Contact.**

Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the "Primary Contact" with whom General Code should communicate matters regarding the eCode360, such as maintenance notifications, and who has the authority to make requests including release of Client data, both internally to General Code and to the Client, restoration of data, and other configuration changes.

## **8. System Monitoring.**

General Code will not systematically monitor Client content, but General Code reserves the right to review Client content from time to time at its discretion. General Code reserves the right to (a) disable access to or delete any Client Content which it determines in its sole discretion (such discretion to be exercised in good faith) to be illegal, obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive, and (b) disable access to or delete any other Client content under justified exigent circumstances, as such circumstances are determined in good faith by General Code.

## **9. Payment Terms.**

All invoices will be processed in accordance with the Payment Schedule set forth in the Proposal. However, the Client may choose to pay in advance of Payment Schedule for products and services provided in this agreement, if so desired. In such a case, General Code shall hold the funds on account and draw from them in accordance with the Payment Schedule until the Contract is completed, or for up to 12 months, whichever is later. If any funds remain on account after 12 months, or end of Contract, General Code will contact the Client regarding disposition of said funds. Unless otherwise specified in the Payment Schedule, all payments shall be made within 30 days of receipt of the invoice/voucher. The Client shall not discount nor withhold any portion of the amount for any reason. Late payments will be charged interest at the rate of 1.5% for each month or part thereof that such payment is in arrears. General Code reserves the right to issue progress billings for services that span several months.

## **10. Software.**

### **A. DEFINITIONS**

- (i) "Licensed Program" shall mean the General Code software product eCode360<sup>®</sup>.
- (ii) "Update" means a new release of the Licensed Software made available by General Code to its customers, containing bug fixes and minor modifications or enhancements, but not a new version containing significant new features, as determined by General Code in its sole discretion.
- (iii) "Use" shall mean the downloading, copying or duplication of any portion of a Licensed Program from the Internet, storage units or media into a computer for processing or the utilization of the Licensed Program for its intended purpose.

## **B. LICENSE GRANT**

General Code hereby grants Client a non-exclusive, non-transferable, non-licensable, non-assignable license to Use the Licensed Program.

## **C. PROPRIETARY RIGHTS; RESTRICTIONS**

The Licensed Program is owned by General Code and/or its suppliers and is copyrighted and proprietary in nature. The Licensed Program is being licensed, not sold to Client. Client shall respect such proprietary rights and shall not use such Licensed Program except as permitted by this Section 10 and shall not decompile, disassemble or reverse engineer the Licensed Program, and shall not sublicense, sell, distribute, rent, or disclose the Licensed Program, in whole or in part, in whatever form without the express written permission of General Code. Client will not use the Licensed Program to take any actions that (i) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation (including those regarding export control); or (iii) are defamatory, trade libelous, threatening, harassing, or obscene.

## **D. LIMITED WARRANTY; LIMIT OF LIABILITY**

(i) **Limited Warranty.** General Code warrants to Client that the Licensed Program will perform substantially in accordance with the accompanying written materials for a period of one year from the date of receipt. General Code's entire liability and Client's exclusive remedy shall be, at General Code's option, either repair or replacement of the Licensed Program that does meet this Limited Warranty. Claims under this Limited Warranty must be received by General Code during the one year period. Any repaired or replaced Licensed Program shall be warranted for the remainder of the original one year warranty period or 30 days from the date of receipt, whichever is longer. This Limited Warranty applies only to the Client and does not apply to failures caused by abuse, misuse or casualty loss, including power outages and surges.

(ii) **NO OTHER WARRANTY. GENERAL CODE DOES NOT WARRANT THAT THE LICENSED PROGRAM IS FREE FROM ALL BUGS, ERRORS AND OMISSIONS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SUBSECTION D(I) , GENERAL CODE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY LICENSED PROGRAM AND/OR RELATED MATERIALS TO BE FURNISHED BY GENERAL CODE.**

(iii) **Limitation of Liability.** In no event shall General Code be liable for any lost profits, lost data, indirect, special, punitive or consequential damages in connection with or arising out of the existence, furnishing, failure to furnish, or use of any licensed program and/or related material and/or device. In any case, General Code's total liability shall be limited to the price paid by Client for the licensed program.

## **E. MAINTENANCE OF LICENSED PROGRAM**

(i) **Fees for Maintenance.** Upon termination of the warranty period specified in subsection D(i), General Code will invoice Client for maintenance services for the twelve (12) months following expiration of the warranty period. If Client pays the annual maintenance fee within thirty (30) days after invoice, General Code shall provide such maintenance services for such twelve (12) month period. If Client does not timely pay the annual maintenance fee, then General Code shall have no further obligation to provide maintenance or support of the Licensed Program to Client. If Client pays the first annual maintenance fee, General Code will thereafter invoice Client annually for the maintenance fee for so long as Client pays the annual maintenance fee. If Client timely pays the annual maintenance fee, General Code's maintenance services shall continue for that annual period. If Client does not timely pay the annual maintenance fee, then General Code shall have no further obligation to provide maintenance or support to Client, and General Code may terminate this Agreement pursuant to Section 9B. If Client allows the maintenance services to lapse, it may not reinstate maintenance services unless it first pays all maintenance fees for the lapsed period.

(ii) **Updates.** During any annual period for which Client has paid the annual maintenance fee, Client shall be provided with any Updates produced by General Code at no additional charge. Nothing herein shall convey any rights to Client with respect to any new version of the Licensed Program.

## **F. TRANSFER OF LICENSE**

Client agrees that it shall not assign or transfer this license granted herein without the prior written consent of General Code.

## **G. GENERAL**

(i) If the Licensed Program is acquired by an agency or other part of the U.S. Government, the Licensed Program and accompanying written materials are provided with Restricted Rights and use, duplication, or disclosure by the Government is subject to restrictions as set forth in Rights in General Data Alternative III at 48 CFR 52.227.14 or in subparagraphs (c) (1) and (2) of the Commercial Computer Program-Restricted Rights clause at 48 C.F.R. 52.227-19, as applicable.

(ii) This Section 10 is a license of software and is not a sale of goods. Neither Article 2 of the Uniform Commercial Code or the U.N. Convention on Contracts for the International Sale of Goods shall be applicable to the Licensed Program.

### **11. Delivery of Completed Materials.**

General Code will deliver completed materials via USPS, UPS, motor freight, air freight, FTP or whichever method offers the most efficient delivery at the time. Delivery, handling, packaging, insurance and/or shipping charges will be prepaid by General Code and added to the invoice/voucher for services to be paid by the Client.

### **12. Title; Copyright.**

- A.** The Client will retain all rights, including copyrights, and title to the text of the Code but hereby grants to General Code the right and license to use, reproduce, adapt, distribute, display and advertise the Code, and to digitize the Code and to prepare, reproduce, publish and sell, distribute, transmit, perform, display, broadcast, upload, download, communicate to the public, rent, lend or otherwise transfer or make available or store in any medium a copy of the Code whether or not adapted or abridged on its own or in combination with any other work by means of or through any electronic medium, including, digital, optical and magnetic information storage and retrieval platforms or systems, on-line, electronic or other reproduction, transmission or publication, or by any other means whether now known or subsequently developed.
- B.** All computer software and other intellectual property of General Code used in performing its services shall remain the property of General Code.

### **13. Term and Termination.**

- A.** Unless otherwise specified in the Proposal, the initial term of this agreement, unless sooner terminated as hereafter provided, shall be for one year, commencing on the date hereof, and will then be automatically extended for additional successive one-year periods unless either party notifies the other in writing not less than 90 days prior to the end of the initial term or any extension period that this agreement will not be extended. Services and support provided during any extension period will be provided at General Code's then-current price.
- B.** If the Client fails to pay any amount payable to General Code under this agreement, including maintenance fees, when due, General Code may terminate this Agreement upon 30 days prior written notice to the Client. Services and support provided during any extension period will be provided at General Code's then-current price.
- C.** Either party shall have the right to terminate this agreement with immediate effect if the other party fails to cure to such party's reasonable satisfaction any material breach or violation of this agreement within 60 days after such party has given the other written notice thereof.
- D.** Upon termination, all work prepared by General Code shall, at the option of the Client, become Client's property, and General Code shall be entitled to receive just and equitable compensation for all services performed.
- E.** If this agreement terminates, General Code may, upon ten-days prior notice to the Client, cease hosting on General Code's website the Client's municipal code and other content posted by the Client.
- F.** Section 4, 5, 6, 10D, 12, 13, 14 and 16 through 24 shall survive any expiration or termination of this agreement.

#### **14. Warranties; Limitations.**

- A. General Code warrants that the services provided hereunder will be performed by qualified personnel in a good and workmanlike manner and that any deliverables will be free of material defects. General Code's liability and the Client's exclusive remedy for failure of any service or deliverable to meet this warranty shall be limited to reperformance, at General Code's cost, of such service or deliverable. General Code's warranty does not extend to failures arising out of (i) incorrect or insufficient data, specifications or instructions provided by the Client or (ii) work or services performed by others.
- B. GENERAL CODE DOES NOT WARRANT THAT SOFTWARE WILL BE ERROR FREE OR WILL OPERATE UNINTERRUPTED. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY SHALL NOT APPLY. GENERAL CODE'S WARRANTY OBLIGATIONS AND THE CLIENT'S REMEDIES HEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN.**
- C. The limitations and protections against liability afforded General Code herein shall apply to any action or claim in connection with the services, whether based on contract, tort, statute or otherwise (including negligence, warranty and strict liability). The cumulative liability of General Code for all obligations, warranties and guaranties, whether express or implied, with respect to services performed hereunder shall be limited to the amount paid to General Code pursuant to this agreement. General Code shall not be liable to the Client or any other person or entity for lost profits, lost data, indirect, special, incidental, punitive or consequential damages arising from the performance or nonperformance of services or the use or inability to use any software or product, irrespective of whether the claims or actions for such damages are based upon contract, tort, negligence, strict liability, warranty or otherwise.
- D. No action may be maintained or proceeding commenced by the Client or others against General Code with respect to services unless such action or proceeding is commenced within one year after completion by General Code of the particular services to which such action or proceeding relates.

#### **15. Changes.**

The Client may at any time request changes in the scope of this agreement. Moreover, General Code may suggest changes. Where changes are agreed to by the parties, General Code shall issue a Change Order for the Client's review and signature describing the changes as well as the adjustments in schedule and fees occasioned by the changes in scope. General Code shall not be required to implement any change until the Client has signed and returned the Change Order.

#### **16. Notices.**

All notices and other communications which are required or permitted to be given pursuant to this agreement shall be in writing and shall be delivered either personally, by facsimile, by reputable overnight courier or by registered or certified mail and shall be deemed effectively received (i) if delivered in person, on the date of such delivery, (ii) if transmitted by facsimile, on the date indicated on the sender's receipt of confirmation, (iii) if delivered by overnight courier, on the next business day following deposit thereof with such overnight courier, or (iv) if sent by mail, upon the third business day following the deposit thereof, postage prepaid.

#### **17. Force Majeure.**

If any performance by any party shall be prevented, hindered or delayed by reason of any cause beyond the reasonable control of such party (such event being hereafter called an "event"), including, without limitation, acts of God, riots, fires, floods, unusually severe weather, curtailment or termination of sources or supplies of energy or power, inability to obtain or delay in obtaining materials or supplies, strikes or other disputes involving such party or its subcontractors or suppliers, acts of war, insurrection, civil unrest, terrorism, elevated risk of terrorism, riot or disorder, acts of governmental authorities, changes in law or regulation, or any other cause beyond the reasonable control of such party, whether similar or dissimilar to those expressed hereinabove, such party shall be excused from performance to the extent that its performance is so prevented, hindered or delayed. Such excuse from performance shall extend so long as the event continues to prevent, hinder or delay the performance by such party. The party whose performance is affected shall give the other parties notice within 15 days of the event specifying the event, the performance affected and the anticipated date, if any, performance can be made.

**18. Disclaimer of Association.**

This agreement shall not be construed as creating a partnership, joint venture, agency or any other association which would impose upon one party liability for the acts or omission of the other, and neither party shall have the right to bind the other.

**19. No Waiver.**

Any failure by either party hereto to enforce at any time any term or condition shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition.

**20. Severability of Provisions.**

If any part of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, that part shall be severed from this Agreement and shall be deemed to have never been a part of this Agreement and shall not affect the validity of the remainder of this Agreement.

**21. Entire Agreement.**

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter.

**22. Dispute Resolution.**

The parties mutually agree to seek mediation as the preferred alternative of dispute resolution in the event of any disagreement over the terms of this contract.

**23. Governing Law; Jurisdiction.**

This agreement is governed by the laws of New York, without regard to its conflict of laws doctrine. Each party consents to the exclusive jurisdiction of the courts sitting in Monroe County, State of New York with respect to any disputes arising out of this agreement. In any action or proceeding arising out of this agreement, the prevailing party shall be entitled to recover its reasonable legal fees and expenses.

**24. Counterparts; Signatures.**

This Agreement may be executed in any number of counterparts with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures delivered by facsimile or by electronic mail shall be deemed original signatures for all purposes of this Agreement.