

Application Services Agreement Terms and Conditions

Envala, Inc. ("Envala") offers an information processing service (the "Application Services") that is accessible via the Internet to its Customers, giving them access to the Software hosted on Envala's servers (the "Servers") to support the Customers' internal business information processing activities.

Subject to the terms and conditions of this Application Services Agreement (this "Agreement") Envala will provide the following services to the Customer:

I. SERVICES PROVIDED:

A. Data Storage. Envala will provide the Customer free of charge with up to 500 MB of average monthly storage space on the Servers for the Customer to store documents, material and other content provided and uploaded by the Customer (the "Customer's Data"). Envala will make and keep backups of the Customer's Data at the times and held for the retention periods as set out in the Service Level Agreement. Upon termination or expiration of this Agreement for any reason, Envala will return the Customer's Data to the Customer.

B. Remote Access. Envala will provide the Customer with the ability to remotely access the Customer's Data and the software hosted on the Servers. The Customer's access and use of the Application Services shall be via User Name and Password. Such access shall be provided on a twenty-four hours-a-day, seven days-a-week basis, except during scheduled and unscheduled maintenance downtime.

C. Customer Service. During the Hours of Support, Envala will use reasonable commercial efforts to provide email and online support for the Customer's data storage and use of the Application Services.

D. Service Levels. Envala will provide Application Services to the Customer in accordance with the Service Level Agreement.

II. FEES

A. Service Level Fees. The Customer shall pay Fees to Envala in accordance with the Service Level Agreement. Payment shall be made via credit card, and shall be paid in advance on an annual basis.

B. Disk Storage Fees. If at any time the Customer's disk storage exceeds the limit set forth in the Service Level Agreement, the Customer will be charged the then-current storage fees.

C. Sales and Use Taxes. The Customer shall be responsible for all sales taxes, use taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement. When Envala has the legal obligation to pay or collect such taxes, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Envala with a valid tax exemption certificate authorized by the appropriate taxing authority.

III. THE CUSTOMER'S RESPONSIBILITIES

A. Equipment. The Customer will be solely responsible for, and will bear the cost of, providing all equipment, facilities and connectivity, including without limitation any Internet access, browser interface or telecommunications services necessary to use and access the Application Services.

B. Passwords. The Customer is responsible for ensuring that the Customer's User Name and Password is reasonably safeguarded. Envala shall deem that any person accessing or using the Application Services

using the Customer's User Name and Password is the Customer. If the Customer becomes aware or has reason to suspect that there has been any unauthorized use of the Customer's User Name and Password, the Customer shall notify Envala immediately. In the event the Customer loses or forgets the User Name and/or Password, Envala will reset the Customer's password via email.

C. Training. The Customer will be solely responsible for ensuring that the Customer and its authorized users receive sufficient training to enable proper use of the Application Services and the Envala Website, and that they comply with any terms and conditions surrounding the use of the Application Services.

D. Customer's Data. The Customer shall have sole responsibility for the quality, accuracy and appropriateness of the Customer's Data.

IV. ENVALA'S RESPONSIBILITIES

A. Confidentiality of Customer's Data. Envala will not use Customer's Data for any purpose other than providing the Application Services, or in the possible provision of complementary services as may be provided by Envala or its affiliates or successors or for trouble shooting purposes in connection with the Application Services. No part of Customer's Data will be disclosed, sold, assigned, licensed or otherwise disposed of by Envala. Notwithstanding the foregoing, Envala may at its discretion use the services of a third party hosting provider that will be required to host and store the Customer's Data upon terms and conditions provided herein.

B. Disk Space Capacity. Envala will use its best efforts to advise the Customer when the Customer's storage space is reaching its limit. However, Envala's failure to notify the Customer shall not affect the Customer's responsibility to pay additional storage fees as incurred.

C. Repairs and Maintenance. Envala shall be responsible for reasonable repairs and maintenance to the Servers and the Software installed therein. Envala may deactivate or disconnect all or part of the Envala Website or the Application Services to carry out system maintenance, upgrading, testing or repairs, or when it is required to do so by any third party hosting providers, in order to comply with an order, instruction or request of a government or regulatory authority, or where legally advisable or necessary, all as determined in Envala's sole discretion. Notwithstanding the foregoing, Envala will use its best efforts to perform any scheduled downtime outside of normal business hours, to minimize the effect that such activities have on the Customer's use of the Application Services, and to give the Customer reasonable notice of any anticipated downtimes, if possible.

V. CUSTOMER RESTRICTIONS

A. Prohibited Activities. Except as otherwise permitting in this Agreement, the Customer shall not:

1) Copy, modify, enhance or adapt the Application Services;

2) Attempt to create any software which has features or functions that are the same as or similar to the features and functions of the Application Services;

3) Reverse engineer or decompile the Application Services or any part thereof;

4) Reproduce, duplicate, copy, sell, trade, resell or exploit for commercial purposes, any portion of the Application Services or access thereto;

5) Assign or grant sublicenses of Customer's rights under this Agreement;

6) Allow third parties to use the Customer's User Name and/or Password to gain access to or use the Application Services.

7) Use the Application Services for unlawful purposes or otherwise transmit any information or material that is false or misleading, harasses or invades another's privacy, harms minors, or promotes hatred in any way;

8) Create, transmit or uploaded any data that may be considered obscene, or that in any way may not comply with any or all applicable laws, statutes, ordinances and regulations;

9) Allow the sharing of access rights between users;

10) Provide the Application Services either directly or indirectly to any third party; and/or

11) Otherwise exploit the Application Services in any manner.

B. Immediate Suspension of Service. In the event Envala reasonably believes that the Customer has committed any of the foregoing prohibited activities, Envala may immediately limit or suspend Customer's access to the Envala Website or the Application Services without notice to the Customer until such time as the situation is resolved to Envala's satisfaction.

VI. INTELLECTUAL PROPERTY RIGHTS

A. Licensee Status. Envala grants the Customer a non-exclusive, nontransferable, revocable license to access and use the Application Services pursuant to this Agreement.

B. No Intellectual Property Rights Conferred. This Agreement does not assign to the Customer any intellectual property rights whatsoever, whether in the Application Services, the Envala Website or otherwise. Envala retains all rights in the Envala Website and in the Application Services, including without limitation all trademarks in its name and logo and all names associated with the Application Services. No right is granted to the Customer to use them unless and as specifically authorized by Envala pursuant to a separate written agreement.

C. Customer Feedback. Any and all ideas, suggestions, recommendations, enhancement requests, and/or customizations undertaken by Envala at the Customer's request (collectively "Customer Feedback") shall be considered the exclusive property of Envala. The Customer hereby irrevocably assigns all right, title and interest in all Customer Feedback to Envala.

VII. EXCLUSIONS AND LIMITATIONS OF LIABILITY

A. Disclaimers. Except as specifically provided herein, the Application Services are provided on an "As Is" basis, and the Customer's use of the Application Services is at the Customer's own risk. Envala does not make any other warranties, whether express or implied, including the implied warranties of merchantability, fitness for a particular purpose, noninfringement and title, and any warranties arising from a course of dealing, usage, or trade practice. Envala makes no warranty that the Application Services will meet the Customer's specific requirements or that they will always be available uninterrupted, timely, secure, or error-free or will operate in combination with any other hardware, software or system. Envala makes no warranties about the quality of any products and services, information or other material purchased or obtained by the Customer through the Applications Services or the Envala Web-Site or that they will meet the Customer's expectations. Any material downloaded or otherwise obtained through the use of the Application Services or the Envala Web Site is done at the Customer's own discretion and risk.

B. Limitations of Liability. In no event shall Envala be liable for any consequential, exemplary, indirect, special, economic, consequential or incidental losses or damages, or damages for loss of profits, revenue, goodwill, bargain or opportunities, loss or corruption of data or use, or loss of anticipated savings, whatsoever

incurred by the Customer or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages.

C. Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ENVALA'S MAXIMUM AGGREGATE LIABILITY TO THE CUSTOMER RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT AND/OR THE APPLICATION SERVICES WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY THE CUSTOMER TO ENVALA HEREUNDER FOR THE TERM OF THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM THE CUSTOMER'S USE OF A SPECIFIC SERVICE, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE SERVICE GIVING RISE TO THE LIABILITY.

VIII. TERMINATION AND REFUND

A. Term. This Agreement shall commence on the date Envala provides the Customer with access to the Application Services (the "Access Date") and continue as follows:

1) DIA and/or SHINE USERS. For customers using the DIA or SHINE applications, the Term shall be one year from the Access Date.

2) CHIME USERS. For customers using the CHIME application, the Term shall be one year from the access date, unless Envala receives a written request to terminate the agreement AT ANY TIME PRIOR TO THE CONCLUSION OF THE 90 DAY PILOT PROGRAM.

B. Automatic Renewal. This Agreement shall automatically renew for the same Term period(s) unless the Customer contacts Envala to cancel service at least thirty (30) days prior to the expiration of the current service Term. At that time the Customer's credit card shall be automatically billed for an additional Term at the then-current Service Level Fees.

C. Early Termination. In the event the Customer terminates the agreement prior to the expiration of the Term, the Customer shall not be entitled to a refund for any prepaid fees.

D. Termination upon Breach. Either party may terminate this Agreement if the other party breaches any provision of this Agreement, and the breach has not been remedied within 30 days after receiving written notice of the breach. Envala may terminate this Agreement and cease to provide the Application Services to the Customer if:

- 1) The Customers fail to make any payments due under this Agreement; and/or
- 2) The Customer uses the Application Services in breach of this Agreement.

E. Survival Clauses. Sections V (Customer Restrictions), VI (Intellectual Property Rights), VII (Exclusions and Limitation of Liability) and IX (Indemnity) shall survive any termination or expiration of this Agreement.

IX. INDEMNITY

The Customer will at all times indemnify and keep indemnified Envala and its officers, employees, agents and related bodies corporate (the "Indemnified") from and against any loss (including reasonable legal fees, costs and expenses through and including litigation and appeals) or liability incurred by any of the Indemnified arising from any claim, demand, suit, action or proceeding by any person against any of the Indemnified where such loss or liability arose out of, in connection with, or in respect of (i) any breach or alleged breach of this Agreement by the Customer; (ii) any of the

Customer's Data that is electronically transmitted to Envala, and any of the Customer's Data that is processed or generated by the Application Services; (iii) the Customer's access or use of the Application Services; and/or (iv) any person accessing or using the Application Services using the Customer's User Name and Password.

X. AMENDMENTS AND FURTHER TERMS AND CONDITIONS

Use of the Application Services and the Envala Website by the Customer may be subject to further or amended terms and conditions which the Customer hereby acknowledges and agrees to be bound by and which relate to specific Application Services. Envala may modify this Agreement and the Service Level Agreement at any time. Envala will use reasonable commercial efforts to give the Customer 30 days' notice of such modification. If the Customer does not agree to be bound by the modified terms, the Customer may terminate the use of any of the Application Services in accordance with Section VIII (Termination and Refund). Envala reserves the right to amend its general practices relating to the price of and limits to storage space but shall give the Customer 30 days' notice of any such change to its practices.

XI. MISCELLANEOUS

- A. Paragraph headings used herein are for convenience only and shall not be construed as controlling the scope of any provision hereof.
- B. The parties acknowledge that the only relationship between the parties is that of licensor and licensee and that no employment, trust, partnership or fiduciary relationship is created by this document.
- C. Envala may subcontract or delegate the provision of any or all of the Application Services or otherwise assign its rights in this Agreement at any time.
- D. Any notice, demand, consent or other communication required under this Agreement will be deemed sufficiently given if in writing and delivered personally, sent by prepaid mail to the addresses of the parties as set out in this Agreement, sent by facsimile or email delivery to the addresses of the parties as notified in writing from time to time, or in the case of a notice from Envala to the Customer, if the notice is posted to the Envala Website. The Customer hereby agrees to check the Envala Website for such notices.
- E. This Agreement, and the Service Level Agreement, which is incorporated herein by this reference, constitutes the entire understanding between Envala and the Customer to the exclusion of any previous communications, representations or agreements between the parties whether verbal or written.
- F. This Agreement shall be governed by the laws in the State of Florida, USA, without regard to the provisions for choice of law thereunder. The Customer irrevocably submits to the non-exclusive jurisdiction and venue in the applicable federal and/or state courts in that jurisdiction.**
- G. No waiver of any breach of the terms of this Agreement is effective unless that waiver is in writing and signed by the waiving party. No waiver of any breach is a waiver of any other or subsequent breach.
- H. If any part of this Agreement is void or unenforceable that part will be severable from and will not affect the enforceability of the remaining provisions.
- I. Notwithstanding any other clause of this Agreement, neither party will be liable for any failure to fulfill any term of this Agreement where that fulfillment is delayed, prevented, restricted or interfered with for any reason outside that party's control, provided the party unable to perform its obligations promptly notifies the other party of any such delay and uses reasonable efforts to resume performance in accordance with this agreement as soon as possible. This clause shall not apply to Sections V (Customer Restrictions), VI



(Intellectual Property Rights), VII (Exclusions and Limitation of Liability), IX (Indemnity), or any obligation to pay Fees.

J. The Customer agrees that Envala may, at its discretion and in the interest of both parties, use the Customer's name and/or logo as a customer reference on the Envala Website or in other forms of public disclosure, including press releases, during the term of this Agreement.

THE CUSTOMER'S ACCESS AND USE OF ENVALA'S APPLICATION SERVICES SIGNIFIES AND CONFIRMS THE CUSTOMER'S UNDERSTANDING OF, AND AGREEMENT TO BE BOUND BY, THESE TERMS AND CONDITIONS OF THIS APPLICATION SERVICES AGREEMENT, AS AMENDED FROM TIME TO TIME.

get · serve · keepTM
more customers



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