



Order Form

Organizational Information

Organization:	Cuyahoga County
Address:	1219 Ontario Street, 4th Floor
City, State Zip	Cleveland, Ohio 44113
Executive Contact:	Ken Surratt
Departments/Programs licensed to use Outcome Tracker:	Cuyahoga County Child Savings Program

Comments

Professional services are provided on an hourly basis. Three modifications are included in this order form:

#5819 - Portal branding. Provide the ability to specify colors and fonts used in the portal.

#5820 - Portal User Account setup using Bank-supplied Activation Code. Since Cuyahoga will not have an email address, the bank will provide an activation code to the client's family, who will use that code to create their portal account.

#5885 - Add FTP protocol for automated daily file transfer process. This modification provides a transfer process that is supported by KeyBank.

Payments are spread between 2013 and 2015. After the initial subscription term, annual subscription invoices will begin in 2015 and will cover November through the following October.

Data conversion comments

Data imports and exports will be configured with Cuyahoga County's banking partner and with the source of school data.

Prices valid through:

1/20/2014

Order Form

Products & Services Ordered

Initial subscription term 24 months

Subscription payment method Monthly: automatic electronic funds transfer
x Annually: prepay via check

Date to begin service/subscription: 11/1/2013

Outcome Tracker

Setup includes:

- Fifteen (15) hours remote training/consulting/configuration
- Support via e-mail, forum, and on-line help

Monthly subscription includes:

- Product enhancements
- Database hosting, security and technical support
- Support via e-mail, forum, and on-line help

Total number of users licensed	5
Monthly subscription for each additional user	\$10
Total client portal user accounts	15,000
Monthly subscription per additional 1000 portal users	\$10

Modules	<u>Quantity</u>
Outcome Tracker Network - limited sites	0
Child Savings Accounts	1
Document Storage (80GB)	0
Spreadsheet Import Utility	1

Professional Services

On-site consulting days (min. 2.5 days)	0.0 days
Remote consulting/training hours	25.0 hours
Custom report writing assistance	15.0 hours
Data conversion services	40.0 hours
#5819 - Custom theme (font, color scheme) in portals	
#5920 - Alter portal account setup to use activation code	
#5885 - Add FTP protocol for automated daily file transfer	

* Professional services must be used within 12 months of the date this signed order form is received by VistaShare.

Order Form

Payment Details

I. Investment summary

	Total Setup	Total Monthly*
Total Software	\$9,800	\$460
Total Professional Services	\$12,100	
Total:	\$21,900	\$460

II. Payments

	<u>Amount Due</u>
Setup fee(s) + Professional Services	\$21,900

Subscription prepayment amount:*

Prepay subscription?	Yes	
# of months to prepay	24	\$11,040

* Additional subscription charges may apply based on number of clients or users.

Order Form Total: \$32,940

Payments:	<u>Product/Service</u>	<u>Costs</u>
	Software	\$9,800
	Professional Services	\$3,700
	Subscription (Nov - Dec 2013)	\$920
	Due Nov 2012	\$14,420
	Professional Services	\$8,400
	Subscription (Jan - Dec 2014)	\$5,520
	Due Jan 2013	\$13,920
	Professional Services	\$0
	Subscription (Jan - Oct 2015)	\$4,600
	Due Jan 2014	\$4,600
	Total payments	\$ 32,940

III. Monthly subscription

You have chosen to prepay your monthly subscription by check. The subscription is included in the payments above.

Monthly subscription amount: \$460

Order Form

Items not included in purchase price

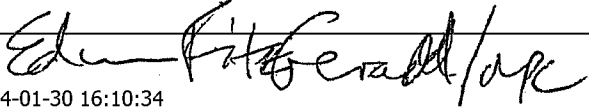
- * Expenses for on-site work by VistaShare employees. Customer is responsible for travel (including change fees on non-refundable airline tickets), meals & lodging expenses.
- * Conference call expenses (required if multiple sites participate in remote training/consulting session).
- * Data conversion services (unless specified as part of professional services).
- * VistaShare does not perform data entry as part of the installation, conversion, or training.
- * Modification to VistaShare standard products.
- * Additional training services or other professional services not specified. Additional services may be purchased at published prices.
- * Hardware, software, or internet connection services from customer's location.
- * Training/support for third party products, such as Microsoft Word, Excel, and Outlook.

Terms of Service

VistaShare provides its service to you subject to the Terms of Service posted at www.VistaShare.com. When using specific VistaShare products, you and VistaShare will be subject to any guidelines or rules applicable to these Services, which VistaShare may communicate to you or post at www.VistaShare.com from time to time.

Signature

Organization: Cuyahoga County
Edward FitzGerald, County Executive

Authorized by: (sign here) 

Print Name 2014-01-30 16:10:34

Title: _____

Date: _____

Announcements: ☐ VistaShare may announce our purchase (e.g., via web site or newsletter)
(check one) ☐ Please do not announce this purchase

1. Fax the signed order form (4 pages) to:
Or, scan the order form and e-mail it to:

540-433-1909
info@vistashare.com

2. Mail the order form & payment (see pg. 3) to:

VistaShare
1400 Technology Drive
Harrisonburg, VA 22802

VISTASHARE, L.L.C.

ADDENDUM TO TERMS OF SERVICE FOR VISTASHARE ONLINE SERVICES

This addendum to the Terms of Service of VistaShare Online Services ("TOS") by and between VistaShare LLC and Cuyohoga County, Ohio ("Customer"), 1219 Ontario St., 4th Floor, Cleveland, OH 44113, to be attached to and made a part of VistaShare Order Form to be signed and dated by Customer on December 23, 2013, as an Exhibit thereto. The parties acknowledge and agree to the TOS, revisions and amendments as follows:

1. Change the opening paragraph to the following: "VistaShare, L.L.C. ("VistaShare") provides its service to Customer ("Customer" or "you") subject to the following Terms of Service ("TOS"), an Order Form executed and delivered to VistaShare by Customer (the "Order Form") and VistaShare's Privacy Policy for its VistaShare Online Services (collectively, the "Agreement"). In addition, when using specific VistaShare Online Services, you and VistaShare will be subject to any guidelines or rules applicable to these Services, which VistaShare may communicate to you or post at www.VistaShare.com from time to time. VistaShare shall notify Customer prior to any change in the guidelines or rules applicable to these Services. These guidelines or rules and VistaShare's Privacy Policy shall be deemed part of the TOS."
2. Insert the following at the beginning of Section 4 (YOUR OBLIGATION TO PAY FEES): "All pricing provided on the VistaShare Order Form is an estimate of reasonably anticipated services based on Customer's need. For any services prepaid by Customer, VistaShare shall monitor the prepaid services provided and prepaid services remaining. VistaShare shall create a report of prepaid services provided and remaining and will send this report to Customer in January 2014, April 2014, and as requested by Customer."
3. Rename Section 5 (TERM RENEWAL) to "TERM". Insert the following sentence at the beginning of the paragraph: "The Base Term of this Agreement shall run for twenty-four (24) months immediately following the Effective Date."
4. Add Section 25 ("TERMINATION"): "This Agreement may be terminated prior to the expiration of the Term upon occurrence of any of the following:

For Cause: If either party breaches a term of this Agreement, the non-breaching party reserves the right to immediately suspend performance and supply written notice of an intent to terminate to the breaching party. The breaching party shall have thirty (30) calendar days to cure the breach from the date of its receipt of the notice of breach. If the breaching party successfully cures the breach, the Agreement shall not terminate and the non-breaching party must resume performance. If the breaching party fails to cure the breach within thirty (30) calendar days, the Agreement shall immediately and automatically terminate for cause.

For Convenience: The Customer shall have the right to terminate the Agreement at any time during the base term, or any extension thereof, upon thirty (30) calendar days advance notice."

5. Replace Section 10.3 (INDEMNITY) with the following: "VistaShare acknowledges that as a political subdivision of the State of Ohio, Customer is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Agreement or any other

contract or agreement between VistaShare and Customer may be interpreted to obligate Customer to indemnify or defend VistaShare or any other party. This Section shall survive termination and cancellation of this Agreement.”

6. Add Section 10.5: “All of Customer’s obligations under this Agreement are contingent upon the appropriation of funds on an annual basis necessary for the continuation of this Contract in any contract year. In the event the funds necessary for the continuation of this Contract are not appropriated or approved, Customer will notify VistaShare of such occurrence in writing. This Contract shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Contract and shall not be considered to be a breach or default on the part of Customer, and shall not result in Customer having liability to VistaShare or any third party for any penalty, liability, or other expense.”
7. Replace Section 11.2 (CONSULTATIONS) with the following: “During the first six months of service, VistaShare shall provide to Customer's trained users reasonable telephone consultations in answering questions concerning use of the Software. After you have been a VistaShare customer for six months, support may be requested as described in Section 11.1. Telephone consultation may be purchased on an hourly basis.”
8. Replace Section 11.6 (PROFESSIONAL SERVICES) with the following: “You have the right to request additional Professional Services from VistaShare by submitting a written request to VistaShare. Upon VistaShare acceptance of the written request, VistaShare shall provide you with Professional Services. All Professional Services performed pursuant to a written request shall be subject to the discretion of VistaShare and shall be deemed delivered by VistaShare and deemed accepted by you upon performance.”
9. Rename Section 13 (VISTASHARE’S PROPRIETARY RIGHTS) to “PROPRIETARY RIGHTS” and add the following to the end of the first paragraph: “VistaShare agrees that any and all data provided by the Customer to VistaShare is, and shall remain, the property of the Customer.”
10. Remove Section 17 (INDEMNITY).
11. In Section 18 (MODIFICATIONS TO OR DISCONTINUATION OF SERVICES), replace the first sentence with the following: “VistaShare reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof). One hundred eighty (180) days prior notice will be provided to Customer when such notice is feasible.”
12. Replace Section 24 (GENERAL PROVISIONS) with the following: “The TOS, as amended by this Addendum, together with the Order Form and the Privacy Policy, constitute the entire agreement between you and VistaShare and govern your use of the Services, superseding any prior agreements between you and VistaShare with respect to the subject matter thereof. The TOS and/or Order Form may only be modified or amended as set forth above in Section 18 or otherwise in a writing signed by VistaShare and you. The Agreement and the relationship between you and VistaShare shall be governed by the laws of the State of Ohio without regard to its conflict of law provisions. You and VistaShare agree to submit to the personal and exclusive jurisdiction of the courts located within the County of Cuyahoga, Ohio. The failure of either party to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a

court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement shall remain in full force and effect. The parties agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. The Section titles in the Agreement are for convenience only and have no legal or contractual effect.

All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this agreement, including but not limited to breach thereof, shall be referred to non-binding mediation in Cuyahoga County, Ohio prior to the initiation of any adjudicative action or proceeding. Mediation shall be conducted by a third party mutually agreed upon by the parties and mediation fees, if any, shall be divided equally among the parties involved."

13. Add Section 25 (ELECTRONIC SIGNATURE): VistaShare agrees on behalf of the submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, that all contract documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. VistaShare also agrees on behalf of the aforementioned entity and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

Signatures

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their names and on their behalves:

Customer: ^{Edward FitzGerald, County Executive}

By: Ed FitzGerald/apc
2014-01-27 17:15:54

Title: _____

Date: _____

VistaShare

By: David Smucker
David Smucker

Title: President

Date: 02/24/2013

VISTASHARE, L.L.C.

TERMS OF SERVICE FOR VISTASHARE ONLINE SERVICES

VistaShare, L.L.C. ("VistaShare") provides its service to Customer ("Customer" or "you") subject to the following Terms of Service ("TOS") and VistaShare's Privacy Policy for its VistaShare Online Services. In addition, when using specific VistaShare Online Services, you and VistaShare will be subject to any guidelines or rules applicable to these Services, which VistaShare may communicate to you or post at www.VistaShare.com from time to time. These guidelines or rules and VistaShare's Privacy Policy shall be deemed part of the TOS.

1. DESCRIPTION OF THE SERVICES

VistaShare currently provides users with online client and outcome tracking applications branded as Outcome Tracker and Outcome Viewer (the "Services"). Unless explicitly stated otherwise, any new features that augment or enhance the current Services, including any new VistaShare Online Services, will be subject to the TOS.

2. WHAT YOU MUST DO TO USE THE SERVICES

In order to use the Services, you must obtain access to the World Wide Web, either directly or through devices that access Web-based content, and pay any service fees associated with such access. You must provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device.

3. YOUR REGISTRATION INFORMATION MUST BE ACCURATE, CURRENT AND COMPLETE

In consideration of your use of the Services, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the registration form of the Services (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or VistaShare has reasonable grounds to believe that such information is untrue, inaccurate, not current or incomplete, VistaShare has the right to suspend or terminate your account and to refuse any and all current or future use of the Services (or any portion thereof).

4. YOUR OBLIGATION TO PAY FEES

You agree to pay all applicable subscription, service and use fees, VistaShare charges you for the Services. You agree to pay all travel and per diem costs incurred by VistaShare in providing any on-site services pursuant to the TOS or Work Order. You agree to pay all costs (including attorney's fees), if any, incurred by VistaShare in collecting overdue fees from you, and to pay a late charge on any overdue fees at a rate equal to the lesser of 1.5% per month or the maximum rate allowed under applicable law. You may choose to prepay your subscription fees annually by check or authorize VistaShare to automatically transfer funds electronically each month from your bank account. In the event an authorized electronic funds transfer is rejected (due to insufficient funds, a closed account, or other reasons), you agree to pay a fee of \$20 per rejected transaction. You also agree to pay all foreign, federal, state and local taxes applicable to your access, use or receipt of the Services.

5. TERM RENEWAL

The Term shall automatically renew for successive 12-month Terms unless Customer notifies VistaShare of its intention not to renew the Term within thirty (30) days preceding expiration of the Term.

6. ACCESS, PASSWORDS AND SECURITY

You may designate users under your account and you may provide and assign access and passwords to such users. You will be responsible for the confidentiality and use of your user name(s) and password(s). You will be responsible for all electronic communications, including account registration and other account holder information, e-mail, and other data ("Electronic Communications") entered through or under your user name(s) and password(s). VistaShare will act as though any Electronic Communications it receives under your user name(s) will have been sent by you. You agree immediately to notify VistaShare if you become aware of any loss or theft or unauthorized use of any of your user name(s) and/or password(s).

7. THE WAY WE HANDLE ELECTRONIC COMMUNICATION BETWEEN YOU AND VISTASHARE

The Services allow you to send Electronic Communications directly to VistaShare and interact within applicable areas of the Services. Electronic Communications include your organization's client data that you send through the Services (the "Data"). You acknowledge and agree to the following with respect to use of Electronic Communications through the Services:

1. VistaShare shall be entitled, but is not obligated, to review or retain your Electronic Communications for your compliance with the TOS and the security of the Services. VistaShare may also review or retain Electronic Communications (other than Data) for other reasons that VistaShare believes in good faith will improve the quality of the Services;
2. VistaShare may disclose Electronic Communications if required to by law or in the good-faith belief that such disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any Electronic Communications violate the rights of third parties; or (iv) protect the rights, property, or personal safety of VistaShare, its users or others;
3. You will not use any Electronic Communication for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening. Neither you, nor someone on your behalf, will use the Services to solicit VistaShare customers or others for any purpose;
4. You will not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights;
5. You will not in any way express or imply that any opinions contained in your Electronic Communications are endorsed by VistaShare;
6. You agree to provide VistaShare with your e-mail address, promptly provide VistaShare with any changes to your e-mail address and accept Electronic Communications from VistaShare at the e-mail address you specify;
7. You agree that VistaShare may provide notices, statements and other communications to you solely through e-mail, posting on the Services or other electronic transmission; and
8. You understand that the technical processing and transmission of the Services, including your Electronic Communications, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.
9. You acknowledge and agree that you shall be solely responsible for all data tracked in the database. Such responsibilities include, without limitation, creating, modifying or inputting the data. Customer hereby acknowledges and agrees that VistaShare shall not be responsible for assisting you in creating, modifying, or inputting data.

8. SECURITY OF DATA TRANSMISSION

You agree to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by VistaShare. Until notified otherwise by VistaShare, you agree to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by VistaShare and to follow VistaShare's logon procedures for Services that support such protocols. You acknowledge that VistaShare is not responsible for notifying you of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. You acknowledge that it is possible that Electronic Communications may be accessed by unauthorized third parties when communicated between you and VistaShare using the Internet, other network communications facilities, telephone or any other electronic means.

9. GENERAL PRACTICES REGARDING USE OF THE SERVICES

You acknowledge that VistaShare may establish general practices and limits concerning use of the Services. You acknowledge that VistaShare reserves the right to disable accounts that are inactive for an extended period of time. You further acknowledge that VistaShare reserves the right to change these general practices and limits at any time, upon notice as provided in Section 22 below.

10. CUSTOMER'S OBLIGATIONS

1. 10.1 Each Customer shall be responsible for all materials used or displayed by the customer at the Web site, and all acts or omissions that occur at the Web site or in connection with the Customer's account or password.
 1. 10.1.1 Each Customer agrees that any and all press releases and other public announcements related to its participation in the Services and subsequent transactions between VistaShare and the Customer, including the method and timing of such announcements, must receive express prior written approval from VistaShare. VistaShare reserves the right to withhold approval of any public announcement in its sole discretion. Without limitation, any breach of the Customer's obligation regarding public announcements shall be a material breach of its agreement with VistaShare.
 2. 10.1.2 Each Customer represents and warrants that it will not engage in any activities:
 1. That constitute or encourage a violation of any applicable law or regulation;
 2. That defame, impersonate or invade the privacy of any third party or entity;
 3. That infringe on the rights of any third party, including but not limited to the intellectual property, business, contractual, or fiduciary rights of others; and,
 4. That are in any way connected with the transmission of "junk mail," "spam" or the unsolicited mass distribution of e-mail, or with any unethical marketing practices.
2. 10.2 MAINTENANCE
 1. 10.2.1 The Customer is responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for its access to and use of the Web site and the Customer shall be responsible for all charges related thereto.

3. 10.3 INDEMNITY

The Customer agrees to indemnify and hold harmless VistaShare and their subsidiaries, affiliates, officers, directors, shareholders, employees and agents, from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the Customer's conduct, the Customer's use of the Services, any alleged violation of the VistaShare Terms of Service or any alleged violation of any rights of another, including but not limited to the Customer's use of any content, trademarks, service marks, trade names, copyrighted or patented material, or other intellectual property used in connection with the Services. VistaShare reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the Customer, but doing so shall not excuse the Customer's indemnity obligations. This Section shall survive termination and cancellation of this Service agreement.

4. 10.4 VistaShare reserves the right to refuse to host or continue to provide Services to any Customer which it believes, in its sole discretion: (1) uses or displays materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate; (2) has become the subject of a government complaint or investigation; or (3) has violated or threatens to violate the letter or spirit of the VistaShare Terms of Service.

11. SERVICES AND SUPPORT

1. 11.1 SUPPORT: The Customer can obtain assistance with any technical difficulty that may arise in connection with the Customer's utilization of the Services by requesting assistance by e-mail to support@VistaShare.com. VistaShare reserves the right to establish limitations on the extent of such support, and the hours during which it is available.
2. 11.2 CONSULTATIONS: During the first six months of service, VistaShare shall provide to Customer's trained users up to two (2) hours per month of reasonable telephone consultations in answering questions concerning use of the Software. After you have been a VistaShare customer for six months, support may be requested as described in Section 11.1. Telephone consultation may be purchased on an hourly basis.
3. 11.3 BACKUP SERVICES: VistaShare shall provide backup services during the Service Term using commercially reasonable procedures.
4. 11.4 UPDATES: VistaShare shall periodically release Updates to the Services and any necessary software used in connection with the Services ("Software"). Updates shall be deemed accepted by Customer upon VistaShare providing access to such Update.
5. 11.5 DOWNTIME: You acknowledge and agree that the System may be inaccessible for a period of time for purposes of maintenance, installation, update implementation, replacements, backup, or modifications of the Software.
6. 11.6 PROFESSIONAL SERVICES: You have the right to request additional Professional Services from VistaShare by submitting a Work Order to VistaShare. Upon VistaShare acceptance of a Work Order, VistaShare shall provide you with Professional Services. All Professional Services performed pursuant to a Work Order shall be subject to the discretion of VistaShare and shall be deemed delivered by VistaShare and deemed accepted by you upon performance.

12. SECURITY AND STORAGE OF DATA

The security of your Data may be maintained through the use of data encryption, data security protocols, passwords and other methods which VistaShare may employ, or which VistaShare may suggest or require that you employ. You agree that VistaShare has no responsibility or liability either for the deletion or failure to store any Data transmitted by you or anyone else to the Services or the operation, or failure, or weakness, of any data encryption, data security protocols, passwords or other security methods employed by VistaShare.

13. VISTASHARE'S PROPRIETARY RIGHTS

You acknowledge and agree that the Services and any necessary software used in connection with the Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Services or the Software, in whole or in part. You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services.

VistaShare grants you a non-transferable, non-exclusive and terminable right and license to use the Software; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Software or any part thereof or otherwise attempt to discover any source code, or sell, assign, sublicense, grant a security interest in or otherwise transfer any right in or to the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Services. You agree not to access the Services by any means other than through the interfaces that are provided by VistaShare for use in accessing the Services.

14. TRADEMARK INFORMATION

"VistaShare," the VistaShare logo, Outcome Tracker, Outcome Viewer, and other VistaShare trademarks, service marks, logos and product and service names are marks of VistaShare (the "VistaShare Marks"). You agree not to display or use either the VistaShare Marks in any manner without the owner's express prior written permission. You agree not to contest or aid in contesting the ownership or validity of the trademarks, trade secrets, service marks or copyrights of VistaShare.

15. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF THE SERVICES ARE AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. VISTASHARE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
2. VISTASHARE MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED.
3. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM VISTASHARE, OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.
4. NO, FINANCIAL, LEGAL OR TAX ADVICE OR COUNSEL IS GIVEN, OR SHALL BE DEEMED TO HAVE BEEN GIVEN, BY THE SERVICES.

5. NEITHER THESE TOS, NOR ANY DOCUMENTATION FURNISHED UNDER THEM, ARE INTENDED TO EXPRESS OR IMPLY ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE OR THAT THE SOFTWARE PROVIDED BY VISTASHARE WILL PROVIDE UNINTERRUPTED, TIMELY OR ERROR-FREE SERVICE. THE SECURITY MECHANISM INCORPORATED IN THE SOFTWARE HAS INHERENT LIMITATIONS AND CUSTOMER MUST DETERMINE THAT THE SOFTWARE ADEQUATELY MEETS ITS REQUIREMENTS. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT ITS OWN DISCRETION AND RISK AND THAT THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. VISTASHARE AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES OR LEGAL THEORIES WHATSOEVER, FOR ANY LOSS OF BUSINESS, PROFITS OR GOODWILL, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, EVEN IF VISTASHARE IS AWARE OF THE RISK OF SUCH DAMAGES, THAT RESULT IN ANY WAY FROM THE CUSTOMER'S USE OR INABILITY TO USE THE SERVICES OR THE SOFTWARE, OR THAT RESULT FROM ERRORS, DEFECTS, OMISSIONS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY OTHER FAILURE OF PERFORMANCE OF THE SERVICES OR THE SOFTWARE. VISTASHARE'S LIABILITY TO THE CUSTOMER SHALL NOT, FOR ANY REASON, EXCEED THE AGGREGATE PAYMENTS ACTUALLY MADE BY THE CUSTOMER TO VISTASHARE OVER THE COURSE OF THE EXISTING TERM.
6. THE CUSTOMER AGREES NOT TO RESELL OR ASSIGN OR OTHERWISE TRANSFER ITS RIGHTS OR OBLIGATIONS UNDER THESE TOS WITHOUT THE EXPRESS PRIOR WRITTEN AUTHORIZATION OF VISTASHARE.
7. NEITHER VISTASHARE NOR THE CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY DELAY OR FAILURE IN PERFORMANCE UNDER THESE TOS RESULTING DIRECTLY OR INDIRECTLY FROM FORCE MAJEURE EVENTS INCLUDING, BUT NOT LIMITED TO: NATURAL DISASTER; TERRORISM; RIOT; SABOTAGE; LABOR DISPUTES; WAR; ANY ACTS OR OMISSIONS OF ANY GOVERNMENT OR GOVERNMENTAL AUTHORITY; DECLARATIONS OF GOVERNMENTS; OR TRANSPORTATION DELAYS.
8. THE PROFESSIONAL SERVICES TO BE PROVIDED BY VISTASHARE, INCLUDING BUT NOT LIMITED TO TRAINING, CONSULTING, AND DATA CONVERSION SERVICES, HEREUNDER SHALL BE PERFORMED ON A BEST EFFORTS BASIS AND SHALL CONFORM TO THE STANDARDS GENERALLY OBSERVED IN THE INDUSTRY FOR SIMILAR SERVICES.

16. LIMITATION OF LIABILITY

IN NO EVENT WILL VISTASHARE BE LIABLE TO YOU OR ANYONE ELSE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE ITEMS) EVEN IF VISTASHARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR WHETHER SUCH DAMAGES OR LOSSES ARE REASONABLY FORESEEABLE. YOU AGREE THAT THE LIABILITY OF VISTASHARE ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT OR OTHERWISE) IN ANY WAY CONNECTED WITH THE SERVICES WILL NOT EXCEED THE SUBSCRIPTION FEE AMOUNT YOU PAID TO VISTASHARE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE SUCH CLAIMED DAMAGE OR INJURY OCCURRED. VistaShare shall not be liable for any loss resulting from a cause over which VistaShare does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines; telephone or other

interconnect problems; bugs, errors, configuration problems or incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to your computer; problems with intermediate computer or communications networks or facilities; problems with data transmission facilities or your telephone or telephone service; unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes; failure of Customer to cooperate with the reasonable requests of VistaShare; breach of the Agreement by Customer; misuse of the Service by you or third parties; or any other events reasonably beyond the control of VistaShare. VistaShare is not responsible for any damage to your computer, software, modem, telephone or other property resulting from your use of the Services. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS SECTION SHALL SURVIVE TERMINATION AND CANCELLATION OF THIS SERVICE AGREEMENT.

17. INDEMNITY

You agree to defend, indemnify and hold VistaShare harmless from and against any and all claims, losses, liability costs and expenses (including but not limited to attorneys' fees) arising from your violation of the TOS, state or federal laws or regulations, or any third party's rights, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights. This Section shall survive termination and cancellation of this Service agreement.

18. MODIFICATIONS TO OR DISCONTINUATION OF THE SERVICES.

VistaShare reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) upon notice to you. You agree that VistaShare shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

19. TERMINATION OF THE SERVICES

You agree that VistaShare, in its sole discretion, may terminate your password, account (or any part thereof) or use of the Services, and remove and discard any Electronic Communications within the Services, for lack of use or if VistaShare believes that you have violated or acted inconsistently with the letter or spirit of these TOS. VistaShare may also in its sole discretion and at any time discontinue providing the Services, or any part thereof. You agree that any termination of your access to the Services under any provision of these TOS may be effected upon notice to you, and acknowledge and agree that thereafter VistaShare may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or Services; however, in the event that your Services with VistaShare terminates, VistaShare will use commercially reasonable efforts to return your Data to you electronically, in an appropriate format selected by VistaShare, as promptly as is reasonably possible after such termination, provided you have complied with the TOS and have paid in full all amounts owed to VistaShare. Further, you agree that VistaShare shall not be liable to you or any third party for any termination of your access to the Services; provided, however, that if the termination is unrelated to your acts or omissions VistaShare will refund the pro rata portion of any fee that may have been paid by you for the portion of the Services not furnished to you as of the date of such termination.

20. SOURCE CODE

VistaShare shall maintain a current copy of the source code for the Software with a third party as provided under the terms and conditions of that certain Source Code Escrow Agreement between VistaShare and Layman & Nichols, P.C., 268 Newman Avenue Harrisonburg, VA 22801. VistaShare represents and warrants that the Escrow Agent will have a copy of the current source code. VistaShare represents and warrants that it will add Customer's name to the Escrow Agreement as a third-party beneficiary so that in the event VistaShare is no longer supporting or maintaining the Software System, the source code will be made available to Customer.

21. LINKS

The Services may provide, or third parties may provide, links to other World Wide Web sites or resources. Because VistaShare has no control over such sites and resources, you acknowledge and agree that VistaShare is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that VistaShare shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

22. NOTICES

Notices to you from VistaShare may be made by either e-mail or regular mail. VistaShare may provide notices of changes to the TOS, modification or termination of the Services or other matters by e-mail to you or by displaying notices or links to notices to you on the Services.

23. MODIFICATIONS

VistaShare may modify the TOS upon notice to you. If VistaShare sends you notice, via e-mail, posting on the Services or otherwise, of a modification, you confirm your acceptance of the modification by not closing and/or by continuing to use the Services.

24. GENERAL PROVISIONS

The TOS constitute the entire agreement between you and VistaShare and govern your use of the Services, superseding any prior agreements between you and VistaShare with respect to the subject matter contained in the TOS. The TOS may only be modified or amended as set forth above in Section 18 or otherwise in a writing signed by VistaShare and you. The TOS and the relationship between you and VistaShare shall be governed by the laws of the State of Virginia without regard to its conflict of law provisions. You and VistaShare agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Rockingham, Virginia. The failure of VistaShare to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred. The Section titles in the TOS are for convenience only and have no legal or contractual effect.