

## “eSoft Planner” User Agreement

**Thank you for your interest in PPC Communications’ services. IMPORTANT--READ CAREFULLY:** This User Agreement ("Agreement") is a legal contract between you (either an individual or a single business entity) (the “Customer”) and PPC Communications (“PPC”) for the services related to technology developed by or for PPC (“eSoft Planner Technology”) identified in the order form (the "Customer Order") submitted with this Agreement (the "Services"). All terms and conditions set forth in this Agreement are automatically incorporated in, and deemed part of, each such Customer Order. Unless otherwise shown in the Customer Order, each Customer Order is intended to be a separate contract providing for separate Software and Services as identified therein.

**BY CLICKING THE “I ACCEPT” BUTTON BELOW, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ORDER PPC’S SERVICES, AND EXIT NOW. AS USED IN THIS PPC AGREEMENT, THE TERM “CUSTOMER” ENCOMPASSES THE ENTITY OR PERSON RESPONSIBLE FOR THIS ACCOUNT AND EACH USER ACCESSING THE SERVICES BY MEANS OF A VALID ACCOUNT ESTABLISHED BY YOU, INCLUDING, IF YOU ARE A CORPORATION, ALL EMPLOYEES OF YOUR CORPORATION. IF YOU DO NOT HAVE THE REQUISITE AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT USE THIS SERVICE.**

1. This Agreement and the Customer Order call for the Customer to use PPC’s software based on eSoft Planner Technology operated and maintained by PPC as described in the Customer Order (the "Software"). To do so, PPC agrees to (a) install and operate the host portion of the Software, together with necessary operating systems and utilities, in PPC’s host computer system, (b) provide Customer with Services based on such Software via Internet browsers, and (c) license the right to use PPC’s Services and Software.

### PRIVACY POLICY

2. PPC’s privacy policy may be located at [http://www.esoftplanner.com/privacy\\_policy.php](http://www.esoftplanner.com/privacy_policy.php). PPC reserves the right to modify its privacy policy in its reasonable discretion from time to time.

### SECURITY POLICY

3. PPC’s security policy may be located at <http://www.esoftplanner.com/security.php>. PPC reserves the right to modify its security policy in its reasonable discretion from time to time.

### LICENSE TERMS

4. Pursuant to the terms of this Agreement, PPC grants to Customer a non-exclusive, non-

transferable right to use the Services and Software in the United States for your own benefit (the "License"). This License shall be for one (1) year. The License shall commence on the effective date designated in the Customer Order ("Initial Term"), and will be automatically renewed for successive terms, each for one year ("Renewal Term") unless terminated by either party upon at least thirty (30) days prior written notice to the other party. PPC and its licensors, if applicable, reserve all rights not expressly granted to Customers.

#### THE SERVICE AND HOSTING OBLIGATIONS

5. PPC will provide Customer with use of the Service, including a browser interface, , access, and data storage. PPC will provide all equipment, software and services necessary for operation and maintenance of its host computer systems. PPC agrees to operate and maintain the Software as described in the Customer Order.
6. Pursuant to the Services, PPC agrees to allow Customer to access and use the Software via any Internet browser. PPC reserves the right to change the configuration of its systems and change or delete equipment or software at any time. Customer is responsible for separately obtaining an ISP account with a PPTP Internet connection for communicating to PPC's server.
7. PPC makes no guarantees as to the continuous availability of the Services or Software or of any specific feature(s) of the Services or Software. The Services may be subject to delays or other problems common and inherent with the Internet and electronic communications. PPC is not responsible for any delays, delivery failures or other consequences caused by problems with the Internet or electronic communications. PPC will inform Customer of any significant changes to the Services or Software or interruptions with communications.

#### SCOPE OF USE

8. The Services and Software may be used by Customer only for Customer's internal business in relation to scheduling events and appointments, performing administrative functions pertaining thereto and for no other purpose.
9. Except as expressly permitted in Paragraphs 8 and 11, Customer agrees not to sublicense, license, rent, sell, loan, assign, transfer, give or otherwise distribute all or any part of the Services or Software to any third party.
10. Customer agrees not to reverse engineer, disassemble, decompile, modify, or alter the Software or any copy thereof, in whole or in part, including but not limited to graphics, ideas, functions of the Services and Software. If Customer uses, copies, or modifies the Software, or any part thereof, or if Customer transfers possession of any copy, adaptation, transcription, or merged portion of the Software to any other party in any way not expressly authorized by PPC , this license is automatically terminated.

11. If Customer is merged, consolidated or sold, or if Customer sells or transfers all or substantially all of its assets relating to the use of the Software or Services, Customer shall have the right to transfer its rights and obligations under this Agreement to the surviving or buying entity, provided that Customer shall not be relieved of its obligations hereunder, the successor must assume the terms and conditions of this Agreement in a manner acceptable to PPC, and the scope of use of the Software or Services may not be altered without prior written consent of PPC, which consent shall not be unreasonably withheld.

## FEES AND PAYMENTS

12. Customer shall pay the fees indicated on each Customer Order for the corresponding Software or Services. Fees for each identified item of Software will be fully earned and non-refundable when and as such Software is delivered or available for use. Fees for Services will be fully earned and non-refundable when and as the Services are performed.
13. The initial fee for the License for the right to use the Services (“Use Fee”) will be equal to the Use Fee currently in effect under PPC’s current schedule of Use Fees for the edition selected in the Customer Order. You must pay this Use Fee directly to PPC with a credit card upon execution of this Agreement and upon delivery of the Software and/or Services. Thereafter the Use Fee will be payable in advance monthly, commencing on the effective date of the Initial Term.
14. Customer must provide PPC with valid credit card information, including Customer’s legal name, address, telephone number and an email address, as a condition to signing up for the Services or Software, and agrees to update that information within 30 days of any changes thereto. PPC will automatically bill the credit card provided by Customer five (5) days in advance of the end of a billing period for payment of the Use Fee for the following billing period. In the event that Customer’s credit card is rejected for the first time, PPC will notify Customer. Customer must submit to PPC within ten (10) business days of such notification the rejected payment by check, money order, or equivalent means of payment. If Customer’s credit card is rejected more than once, PPC has the right and will immediately terminate this Agreement. PPC will send to Customer its Client Data in accordance with Paragraph 20 of this Agreement.
15. Customer is responsible for paying all Use Fees ordered for the Initial Term and each subsequent Renewal Term. PPC’s fees and charges are exclusive of all taxes, levies or duties. Customer is solely responsible for payment of any taxes, levies or duties (including sales or use taxes, and intangible taxes) resulting from Customer’s acceptance of this license and your use of the Services or Software, exclusive of taxes based on PPC’s income. Customer agrees to hold harmless PPC from all claims and liability arising from your failure to report or pay such taxes.
16. PPC may change its prices following the Initial Term, provided that Customer is provided at least 30 days advance notice of the change.

17. Unless otherwise stated in the applicable Customer Order, all amounts due shall be paid in U.S. Dollars.
18. Customer must notify PPC within 60 days of its credit card being charged of any discrepancies or questions related to the monthly fees to be eligible for a possible credit.

#### CUSTOMER RESPONSIBILITY AND CLIENT DATA

19. Customer is responsible for all activity occurring by Customer's users or under Customer's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Services or Software. Customer's users include all employees, representatives, consultants, contractors or agents who are authorized under the License made by this Agreement to use the Services or Software and who have been supplied User identifications and passwords by Customer or PPC, at Customer's request ("User(s)"). Customer shall: (i) notify PPC immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to PPC immediately and use reasonable efforts to stop immediately, any copying or distribution of content that is known or suspected by Customer or any User under this License; and (iii) not impersonate another PPC User or provide false identity information to gain access to or use the Service.
20. By this License, PPC does not acquire ownership in any data, information or material that Customer submits to PPC in the course of using the Services or Software ("Client Data"). Customer, not PPC, is solely responsible for the accuracy, quality, legality, reliability of the Client Data and is solely responsible for the intellectual property ownership or right to use of all Client Data. PPC shall not be responsible or liable for the damage, loss or alteration any Client Data. PPC shall use reasonable efforts to protect Client Data pursuant to its Privacy and Security Policies. In the event this Agreement is terminated or not renewed, PPC will send to Customer a .csv file of the Client Data within 15 business days, including public holidays, of termination. Customer agrees and acknowledges that PPC has no obligation to retain the Client Data, and may delete such Client Data, on the 16<sup>th</sup> business day, including public holidays, after termination. PPC reserves the right to withhold, remove and/or discard Client Data, without notice, for any breach, including, but not limited to, Customer's non-payment.

#### OTHER LIMITATIONS

21. PPC may provide you with support services related to the Software or Services ("Support Services"). Use of Support Services is governed by PPC policies and programs described in "online" documentation, and/or in other PPC-provided materials. Any supplemental software code or other proprietary information provided to you as part of the Support Services shall be considered part of PPC's Services or Software and subject to the terms and conditions of this Agreement. With respect to technical information Customer provides to PPC as part of the registration of your license or in connection with the Support Services, PPC may use such information for its business purposes, including for product support and development.

## GOVERNING LAW

22. This Agreement shall be governed by the laws of the State of Ohio, excluding its principles of conflicts of law.

## PROPRIETARY RIGHTS

23. **Copyright.** All title and copyrights in and to the Software and Services (including, without limitation, any images, animations, video, audio, music, text, and "applets"), the accompanying media and printed materials, and any copies of the Software are owned by PPC. Copyright laws and international treaty provisions protect the Software. Therefore, you must treat the Software like any other copyrighted material, subject to the provisions of this Agreement.
24. **All Other Intellectual Property.** PPC exclusively owns all right, title and interest, including goodwill associated therewith, in the intellectual property rights related to the eSoft Planner Technology, the content and the Services related thereto, including, but not limited to, trademarks, inventions, ideas, patents, design rights, domain name rights, trade secrets and derivatives thereof.
25. **Submissions.** Should Customer decide to transmit to PPC's website by any means or by any media any materials or other information (including, without limitation, ideas, concepts or techniques for new or improved services and products), whether as information, feedback, data, questions, comments, suggestions or the like, Customer agrees such submissions are automatically assigned to and owned by PPC and its assigns, with the right to sublicense, to use, copy, transmit, distribute, create derivative works of, display and perform the same. Customer does not obtain any rights in or to the Software, Services, the eSoft Planner Technology or any intellectual property owned by PPC.

## TERMINATION

26. Without prejudice to any other rights, PPC, at its option, may terminate the Customer's license to the Software and Services and Customer's right to receive any remaining Software or Services if Customer commits a breach of this Agreement and fails to cure the breach as quickly as PPC reasonably requires. PPC reserves the right to suspend or terminate without prior notice Customer's account in the event Customer becomes delinquent in paying its bills. Customer agrees that PPC has no responsibility to maintain the Client Data and that such data may be lost or deleted after 45 days of termination.
27. Notwithstanding the above, either party may terminate this Agreement by giving written notice at least 30 days prior to the next monthly billing charge to Customer.
28. Upon termination of this Agreement, regardless of the reason, Customer shall immediately cease use of the Software and follow PPC's instructions for the return of all

copies of Software-related documentation. Customer agrees to certify its compliance with the foregoing requirement upon PPC's request. As stated above in Paragraph 20, PPC will send to Customer a .csv file of the Client Data within 15 business days, including public holidays, of termination.

29. **Force Majeure.** Neither party shall be responsible for failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, natural disasters, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside its reasonable control.

#### REPRESENTATIONS AND WARRANTIES

30. Customer represents and warrants that Customer has complete authority to enter into this Agreement on behalf of a company or other legal entity. If Customer is using the Services or Software as an individual, then Customer represents that Customer is over the age of 18. Customer also represents and warrants that it has provided true and accurate information to identify yourself.
31. The Services and Software are warranted to be in substantial conformity with PPC's standard documented technical specifications for a period of ninety (90) days after delivered to Customer or put in use.
32. PPC does not warrant that operation of its Services and Software shall be uninterrupted or error free or that it shall meet Customer's needs. Customer is solely responsible for the accuracy and integrity of Customer's own data and documentation.
33. The exclusive remedy of Customer, and PPC's sole obligation, in the event of any warranty claim or any other contract deficiency shall be for PPC to repair or replace the defect or, if such repair or replacement is not provided or does not correct the defective item, to refund an equitable part of the Customer's payments for the defective item determined in reference to prior use and impact of the defect.
34. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NO WARRANTY OR ASSURANCE, EXPRESS, IMPLIED, OR STATUTORY, IS GIVEN BY PPC WITH RESPECT TO SOFTWARE, SERVICES OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION (AND PPC SPECIFICALLY DISCLAIMS) ALL WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### LIMITATION OF LIABILITY AND INDEMNIFICATION

35. IN NO EVENT SHALL PPC BE LIABLE TO CUSTOMER, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE)

FOR LOST PROFITS OR REVENUES, LOSS OR INTERRUPTION OF USE, LOST OR DAMAGED DATA, REPORTS, DOCUMENTATION OR SECURITY, OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR FOR ANY CLAIM MADE AGAINST CUSTOMER BY ANY OTHER PARTY, EVEN IF PPC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.

36. IN NO EVENT SHALL PPC'S LIABILITY UNDER ANY CLAIM MADE BY CUSTOMER OR A THIRD PARTY EXCEED THE TOTAL AMOUNT OF FEES THERETOFORE PAID BY CUSTOMER TO PPC RELATING TO THE AFFECTED SOFTWARE OR SERVICES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE FIRST TO OCCUR OF (I) THE TERMINATION OR EXPIRATION OF THIS AGREEMENT OR (II) THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION. NEITHER PARTY SHALL BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND ARISING OUT OF OR RELATED IN ANY WAY TO THE SERVICES OR SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE INTERRUPTION OF SERVICE.
37. Customer shall hold PPC, including its subsidiaries, affiliates, officers, directors and parent organization, harmless against any claim, cost, liability, losses, expenses arising out of any claim alleging that the use of Client Data infringes a third-party's rights, a claim resulting from Customer's representations or warranties, or any breach arising from Customer's failure or breach with Customer's own clients.
38. PPC shall hold Customer, including its subsidiaries, affiliates, officers, directors and parent organization, harmless from any claim arising from by third-parties alleging infringement of any intellectual property rights related to eSoft Technology, the Services and/or Software.

#### DISCLAIMER OF WARRANTY

39. THIS SOFTWARE AND THE ACCOMPANYING FILES ARE PROVIDED "AS IS." PPC AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE OR SUCH FILES. PPC AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO TITLE OR INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. In particular, there is no warranty for the virus scanning feature -- the Software does not scan for viruses, it simply runs external programs that claim to perform this function.

40. IN NO EVENT WILL PPC OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A PPC REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY.
41. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties or limitations on how long a given warranty may last, so the above limitations may not apply to Customer.

#### MISCELLANEOUS

42. **Modification of Agreement.** PPC reserves the right to modify this Agreement at any time by posting an amended Agreement that is always accessible on its website's home page and by giving Customer prior notice of such amendments. Customer's continued use of the website after notice of a modification indicates its acceptance of the amended Agreement. Customer should check this Agreement periodically for modifications by clicking on the link provided near the top of the Agreement for a listing of material changes and their effective dates.
43. **Notices.** PPC may give notice to Customer by means of (i) a general notice in Customer account information, (ii) by email to Customer e-mail address on record, or (iii) by written communication sent by first class mail to Customer's address on record. Such notice shall be deemed to have been given upon the expiration of forty eight (48) hours after mailing or posting (if sent by first class mail) or twelve (12) hours after sending (if sent by email).
44. No failure or delay of either party to exercise any rights or remedies under this Agreement or any Customer Order shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be construed as a waiver thereof with respect to any other circumstances.
45. If any provisions of this Agreement or any Customer Order is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement and such Customer Order, and the application of such provisions in any other circumstances, and in any other jurisdiction, shall not be affected thereby.
46. The terms and conditions of this Agreement, as applied to and incorporated in each separate Customer Order, shall be construed to be a separate contract for each separate Customer Order.
47. Invoices, purchase orders, acknowledgments, confirmations and other communications submitted by Customer shall not be considered part of any Customer Order or this



Agreement unless signed and approved by an authorized representative of PPC clearly indicating the Customer Order in which it is incorporated. In the event of any conflict between this Agreement and a Customer Order, the terms of this Agreement shall control unless the conflict is expressly noted in the applicable Customer Order and the Customer Order provides to the contrary.

This Agreement is effective on June 28, 2012, for current Customers, and upon acceptance for new Customers.

[ENTER TO ACCEPT]

[CLICK HERE TO DECLINE AND  
EXIT]