

This Subscription Agreement (the "Agreement") together with any appendices referenced herein and attached hereto, is dated the \_\_\_\_ day of \_\_\_\_\_, 2018;

**BETWEEN:**

**eSCRIBE Software Ltd. ("eSCRIBE")**

- and -

**Township of North Huron ("Customer")**

**WHEREAS**, eSCRIBE (and/or its affiliates) has developed certain proprietary software applications and platforms for the purpose of meeting and agenda automation which it makes available as services via the internet (the "Services").

**NOW THEREFORE**, the Customer desires to use the Services in accordance with the terms and conditions of this Agreement.

**Definitions**

**"Customer Data"** shall mean electronic data and information uploaded or inputted to the Services or created, generated or produced by the Customer during Use of the Services.

**"Documentation"** includes any and all printed or electronic guides and manuals, including sales, marketing and training materials provided by eSCRIBE for the proper Use of the Services.

**"Support Services"** shall mean the technical support and product updates for the Services as made available under eSCRIBE's Support Services set out in Appendix B.

**"Taxes"** refers to all present or future sales tax, consumption tax and similar taxes.

**"Use"** shall mean the ability for the Customer to login with user name and password and access the Services via the internet.

**1. Services**

- a. eSCRIBE shall provide the Implementation Services, the Services and the Documentation to the Customer subject to the terms of this Agreement.
- b. eSCRIBE shall provide the Implementation Services in a professional, timely, and competent manner and in accordance with industry standards. eSCRIBE shall make every effort and take all appropriate steps to carry out the Implementation Services to the reasonable

satisfaction of the Customer, in such a manner as is in the best interests of the Customer, and in compliance with all federal and provincial laws, municipal by-laws, and policies and procedures of the Customer.

- c. eSCRIBE shall make the Services available twenty-four (24) hours a day, seven (7) days a week, and will credit the Customer 10% of the equivalent monthly Subscription Fees listed in Appendix A for each three (3) hour period for which the Services are unavailable for Use by the Customer in a monthly period. "Uptime" and "Downtime" is recorded and calculated on a monthly basis and will be applied as a credit towards the annual Subscription Fees listed in Appendix A, for the next year. Downtime does not include scheduled outages for software updates, server or network maintenance (which will generally be scheduled for weekends or after midnight eastern time), notification of which will be provided to the Customer's designated Support Contacts five (5) days in advance. Unsuitable Customer operating environment, including, but not limited to, inadequate end user computer configuration, installed third party software, internet connection issues or general internet congestion issues are excluded from any downtime calculations. Account credits of eSCRIBE for any twelve (12) month period is hereby limited to a maximum of twenty percent (20%) of the annual Subscription Fees listed in Appendix A paid by the Customer during the prior twelve (12) month period up to the outage. Downtime is measured from the time that a trouble ticket is registered with Support Services by the Customer for the Services being unavailable for Use or the time that eSCRIBE becomes aware that the Services are unavailable for Use (whichever is earlier), to the time the problem is resolved and the Services are restored. In the event that eSCRIBE becomes aware that the Services are unavailable for Use, eSCRIBE shall notify the Customer immediately.
- d. The Customer may not make available the Service for Use by any third parties.
- e. The Customer may not directly or indirectly through any third parties attempt to reverse-engineer or de-compile the operation of the Services in any manner through current or future available technologies, except that Customer may modify the Customer Data to the extent and in the manner described in the Documentation.
- f. The Customer Data, which shall be hosted in Canada along with all copies and backups, together with all intellectual property rights therein, will belong to the Customer and the Customer remains the sole and exclusive owner of the Customer Data. During the Term of this Agreement, the Customer may retrieve such data from the Services at any time and, within ten (10) days of the Customer's request, eSCRIBE

will make available any Customer Data for export or download in native file format. eSCRIBE shall not access, use, disclose, sell, rent, transfer or copy the Customer Data for any purpose (or authorize or permit a third party to perform such acts) other than as required to perform eSCRIBE's obligations pursuant to this Agreement.

- g. At the execution of this Agreement and during the Term, eSCRIBE represents and warrants to and in favour of the Customer and acknowledges that the Customer is relying thereon as follows:
- i. eSCRIBE has the legal capacity and right to execute this Agreement and carry out and observe the provisions thereof to be performed or observed by eSCRIBE hereunder and to take all actions pursuant hereto and all necessary approvals have been given or obtained to authorize eSCRIBE to execute this Agreement and perform thereunder and to take all actions required pursuant hereto;
  - ii. eSCRIBE's execution, delivery, and performance of this Agreement will not constitute a violation of any judgment, order or decree, a default under any agreement by which it or any of its assets are bound or an event that would, with notice or lapse of time, constitute such a default;
  - iii. eSCRIBE has the full and unencumbered right to grant to the Customer access to and use of the Services as provided in this Agreement, either through ownership or licence, including upgrades, updates, improvements, modifications or enhancements to the Services including any third party components embedded in the Services, and that the rights granted herein will not violate the terms of its agreements with any third parties;
  - iv. The Implementation Services and the Customer's access to or use of the Services or of the Documentation do not and will not conflict with, infringe upon or violate and are not alleged by any person to conflict with, infringe upon or violate the intellectual property rights of any other person. In addition, there are no existing or threatened legal proceedings brought against eSCRIBE in respect of the Services, the Documentation or the Implementation Services, or eSCRIBE's right to grant others the right to access and use the Services or the Documentation. Should eSCRIBE become aware of any such conflict, infringement or violation or potential conflict, infringement or violation, eSCRIBE will notify the Customer immediately;

- v. eSCRIBE's proprietary software applications and platforms are free of spyware and malware of any kind;
  - vi. The Services and the Implementation Services provided by eSCRIBE hereunder will comply with the service and functional specifications set out in this Agreement, including the Documentation;
  - vii. eSCRIBE will provide personnel who have the necessary technical skills, qualifications, experience, and training to provide information and expertise to the Customer in accordance with this Agreement; and
  - viii. The Documentation is complete and will allow the Customer to access and use the Services.
- h. eSCRIBE shall retain such records in respect of the provision of the Implementation Services or of the Services and the fulfillment of its obligations hereunder as the Customer may from time to time reasonably require and shall make such records available at any time for inspection by the representatives of the Customer.

## **2. Support Services**

- a. During the Term of this Agreement, eSCRIBE will provide the Customer the Support Services as described in Appendix B.

## **3. Fees**

- a. The first years Subscription Fees and the Implementation Fees as described in Appendix A, are due upon the date of this Agreement, and the Subscription Fees are due annually thereafter.
- b. All fees and other charges set forth in this Agreement are exclusive of any and all applicable Taxes due to eSCRIBE from Customer. Payment of all applicable Taxes shall be the responsibility of the Customer. If any such Taxes has to be withheld under this Agreement, Customer shall increase payment under this Agreement by such amount as to ensure that eSCRIBE has received an amount equal to the payment otherwise required after such withholding or deduction.
- c. All payments are due thirty (30) days from the date of invoice.
- d. All references to currency are in Canadian Dollars.

## **4. Term**

- a. The term of this Agreement commences on the date of this Agreement for a period of three (3) years, and will automatically renew for an additional Term unless notice of cancellation is received 60 days prior to the expiry of the Term (the "Term").

## 5. **Termination**

- a. Either party may terminate this Agreement upon written notice to the other party in the event the other party becomes bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, makes any arrangement for the liquidation of its debts or a receiver or a receiver and manager is appointed with respect to all or any part of its assets, or commences winding up proceedings, or bankruptcy or insolvency proceedings are instituted by or against such party, and such proceedings are not removed within sixty (60) days.
- b. If this Agreement is terminated by the Customer before the end of the Term other than for a breach of this Agreement on the part of eSCRIBE, the Customer will be liable for a termination penalty amounting to 35% of the remaining Subscription Fees (Annual Software and Support Fee) due to the end of the Agreement if terminated in the first year, 25% of the remaining Subscription Fees (Annual Software and Support Fee) due to the end of the Agreement if terminated in the second year and 15% of the remaining Subscription Fees (Annual Software and Support Fees) due to the end of the Term if terminated in the third year or subsequent year of the Agreement.
- c. Either party may terminate this Agreement upon written notice to the other party in the event that one party breaches any term or condition of this Agreement, provided that the non-breaching party gives the other party notice of the breach, and such breach is not remedied to the non-breaching party's satisfaction within ten (10) days after delivery of such notice.
- d. Within thirty (30) days after the termination of this Agreement pursuant to section 5 (a) or section 5 (c), eSCRIBE shall refund to the Customer any fees paid by the Customer for the period from the date of termination to the end of the Term on a pro-rated monthly basis commencing with the month following the date of termination.
- e. Within thirty (30) days after the termination or expiration of this Agreement, eSCRIBE shall make available to the Customer any Customer Data stored on the Services for export or download in native file format. After the thirty (30) day period, eSCRIBE will delete or destroy all copies of Customer Data in its possession or control, unless legally

prohibited and upon request, provide the Customer with a Certificate of Destruction.

**6. Limitation of Liability**

- a. Liability of eSCRIBE under this Agreement will be limited to the maximum amount of the annual Subscription Fees listed in Appendix A. eSCRIBE will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Customer arising out of the use or failure to use the Service.

**7. Indemnity**

- a. eSCRIBE shall indemnify and hold harmless the Customer (including its elected officials, officers, representatives, agents, employees, volunteers, and affiliates) against any and all claims, demands, losses, suits, damages (including indirect, special, consequential, remote, and economic damages), fees, fines, royalties, liability, and expenses (including reasonable lawyer's fees) arising out of any suit, claim or action relating to eSCRIBE's performance or non-performance of its obligations pursuant to this Agreement, including any breach of any representation or warranty, or for actual or alleged direct or contributory infringement of, or inducement to infringe, any intellectual property right relating to the Implementation Services, the Services or the Documentation or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from eSCRIBE's action. These obligations of indemnity will survive the termination or expiration of this Agreement however caused.
- b. eSCRIBE shall have no liability hereunder for any claim of intellectual property infringement based on the combination, operation or use of the Service with software, hardware or other materials not furnished or approved in writing by eSCRIBE if such infringement would have been avoided without such software, hardware or other materials.
- c. In the event the Service or a component part thereof is held by a court of competent jurisdiction, or is believed by eSCRIBE, to infringe or potentially infringe a third party's rights, eSCRIBE shall, with prior notice to the Customer, (i) modify, at its expense, the Service to be non-infringing; provided that such modification does not adversely affect the Service as set out in this Agreement, or (ii) obtain for Customer the right to continue using the Service in its current state at no additional

expense to the Customer, or (iii) if eSCRIBE determines that neither of the foregoing options are reasonably available, eSCRIBE may terminate this Agreement and refund any prepaid Fees to the Customer for which it has not received Services.

## 8. **Confidentiality**

- a. **"Confidential Information"** means all information disclosed by one party **(the "Disclosing Party")** to the other party **(the "Receiving Party")**, whether verbal or in writing, that is marked as confidential or that reasonably should be understood to be confidential given the nature of the information. The Customer's confidential information includes Customer Data, and eSCRIBE's confidential information includes the Services and Documentation. Confidential information of each party includes, the terms of this Agreement, as well as current and future technical specifications, product plans, features and roadmaps, business and marketing plans, customer lists and relationships, costs and pricing strategies, financial and employee information and records, as they may be disclosed by either party during the Term of this Agreement.
- b. Confidential information does not include any information that (i) is or becomes publicly available without a breach of the terms of this Agreement, (ii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iii) the Receiving Party is entitled to disclose in response to a court order or as otherwise required by law; provided that the Receiving Party notified the Disclosing Party prior to such disclosure forthwith after receipt of such order to give the Disclosing Party time to contest such order.
- c. All Confidential Information shall remain the sole property of the Disclosing Party.
- d. The Receiving Party shall not divulge or disclose any Confidential Information communicated to or acquired by it, or disclosed by the Disclosing Party in the course of carrying out this Agreement. No Confidential Information will be used by the Receiving Party on any other project or for any other purpose without the prior written consent of the Disclosing Party, which consent may be unreasonably withheld. The Receiving Party shall receive and store the Confidential Information with the same degree of care that it uses to protect the confidentiality of its own confidential information from unauthorized use, duplication or disclosure to third parties; provided such standard is no less than a reasonable standard considering the nature of the Confidential Information.

- e. Upon termination or expiration of this Agreement, the Receiving Party shall immediately cease to use Confidential Information in any manner whatsoever, shall return to the Disclosing Party or securely destroy all Confidential Information, and shall not retain any copies of the Confidential Information.
- f. These obligations of confidentiality will survive the termination or expiration of this Agreement however caused.

## 9. **Insurance**

- a. eSCRIBE shall obtain and maintain in force during the Term of this Agreement the following policies of insurance:
  - i. General liability insurance insuring eSCRIBE's obligations and responsibilities with respect to the performance of services as set out in this Agreement. The policy will be extended to include bodily injury and property damage, products and completed operations, personal and advertising injury, Implementation Services, contingent employer's liability, and contractual liability to a limit of no less than two million dollars (\$2,000,000) per occurrence. The policy will include a cross liability and severability of interest clause and be endorsed to name the Client as an additional insured;
  - ii. Non-owned automobile insurance to a limit of no less than one million dollars (\$1,000,000);
  - iii. If applicable, automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of no less than one million dollars (\$1,000,000); and
  - iv. Errors and omissions liability insurance insuring eSCRIBE to a limit of no less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. The coverage under the policy will be maintained continuously during the Term of this Agreement and for an additional two (2) years after the termination or expiration of this Agreement and will cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to complete and provide the services as set out in this Agreement. Coverage under the policy will respond to, but not be limited to the following occurrences:
    - A. Privacy breach and violations as a result of but not limited to unauthorized access to or wrongful disclosure or dissemination

of private information, failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use, and accuracy. Coverage will extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defence of any regulatory action involving a breach of privacy;

- B. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within eSCRIBE's computer network or other third party computer information systems and will further include expenses related to third party computer forensics;
- C. Privacy Breach Expenses including crisis management related to electronic and non-electronic breaches;
- D. Content or media liability including personal and advertising liability, intellectual property infringement coverage (copyright, trademark, trade name, service mark, trade dress or trade secret) arising out of media content created, produced or disseminated by eSCRIBE;
- E. Coverage for delay in performance of a contract or agreement resulting from an error or omission; and
- F. Coverage for damages resulting from dishonest and criminal acts committed by an employee of eSCRIBE.

If coverage is to be cancelled or non-renewed for any reason, eSCRIBE shall provide the Customer with ninety (90) day notice of said cancellation or non-renewal. The Customer may request an Extended Reporting Endorsement be purchased by eSCRIBE at eSCRIBE's expense. The term of the Extended Reporting Endorsement will be decided by the Customer and eSCRIBE.

b. eSCRIBE shall ensure that all policies of insurance will:

- i. be written with an insurer properly licensed to do business;
- ii. contain an undertaking by the insurers to notify the Customer in writing no less than thirty (30) days prior to any termination or cancellation of coverage unless otherwise required by law; and

- iii. be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the Customer.
- c. Any deductible amounts will be borne by eSCRIBE.
- d. eSCRIBE shall deliver to the Customer certificates of insurance evidencing renewal or replacement of policies required under this Agreement at least fifteen (15) days prior to the expiration or replacement of the current policies without demand by the Customer.
- e. If eSCRIBE fails to maintain in force any insurance required to be maintained by it hereunder, then the Customer, without prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of eSCRIBE.
- f. eSCRIBE and its agents, volunteers, contractors, subcontractors, employees, and insurer(s) hereby release the Customer from any and all liability or responsibility, including anyone claiming through or under them, by way of subrogation or otherwise for any loss or damage which eSCRIBE may sustain incidental to or in any way related to eSCRIBE's obligations under this Agreement.

#### **10. Advertising**

- a. Customer agrees that eSCRIBE may use and disclose Customer's name in its marketing material with prior written approval of the Customer, which will not be unreasonably withheld.

#### **11. Trademarks**

- a. Any trademarks and service marks ("Trademarks") adopted by eSCRIBE to identify the Services, Documentation and other products and services, belong to eSCRIBE. Nothing herein grants, or shall be construed to grant, to Customer any rights to such Trademarks.

#### **12. Development Input**

- a. Customer shall be entitled to provide eSCRIBE with information and feedback concerning the Service's functional requirements and product definition which eSCRIBE shall consider when formulating the product development roadmap and plans. This co-operative process between eSCRIBE and the Customer does not create any obligation upon eSCRIBE to adhere to Customer's feedback, nor does it create any ownership interest in the Services on the part of Customer should

eSCRIBE incorporate any of Customer's suggestions into the development plan or ultimately into the Services.

### 13. **General Provisions**

- a. **Relationship of Parties.** In all matters relating to this Agreement Customer and eSCRIBE are independent contractors, and nothing in this Agreement shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners, or joint ventures.
- b. **Entire Agreement.** This Agreement, including all Appendices, is the entire Agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter hereof. No amendment or modification of this Agreement shall be made except by written agreement of both parties.
- c. **Ride Along:** The terms of this Agreement may be extended for use by other parties, including: municipalities, school boards and government agencies upon execution of an addendum outlining the associated Services and Fees applicable. This term is not intended to circumvent any procurement rules and regulations of the additional party.
- d. **No Waiver.** The failure of either party to exercise any right or the waiver by either party of any breach shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of the Agreement.
- e. **Partial Invalidity.** Should any provision of this Agreement be held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such provisions were deleted.
- f. **Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, act of government, or any other similar cause beyond the reasonable control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within ten (10) days of discovery thereof and uses its reasonable efforts to cure the delay. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds ten (10) days from the receipt of notice of the Force Majeure event, the party whose

performance has not been affected may, by giving written notice, immediately terminate this Agreement.

- g. **Assignment; Enurement.** Either party may assign this Agreement or any of its obligations hereunder without the prior written consent of the other party. This Agreement shall be binding upon and enure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors, and permitted assigns
- h. **Injunctive Relief.** The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to either party's Confidential Information will not be adequate for the non-breaching party's protection, and accordingly the non-breaching party shall have the right to seek, in addition to other relief and remedies available to it, injunctive relief to enforce the provisions of this Agreement in any court of competent jurisdiction.
- i. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein.
- j. **Calendar Days.** All references to a day or days in this Agreement mean a calendar day or calendar days.
- k. **Time of the Essence.** Time is of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement will operate as a waiver of this provision.
- l. **Survival.** All obligations of the parties which expressly or by their nature survive termination or expiration of this Agreement will continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expire.
- m. **Headings.** Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.
- n. **Notice.** Any notice required or permitted to be sent hereunder shall be in writing and shall be sent in a manner requiring a signed receipt, such as courier delivery, or if mailed, registered or certified mail, return receipt requested. Notice is effective upon receipt. Notice to both

parties shall be to the address and contact set forth below and updated from time to time.

eSCRIBE Software Ltd.  
204-60 Centurian Drive  
Markham, ON L3R 9R2

Attention: Office of the President

**Customer Contact Info for Notices:**

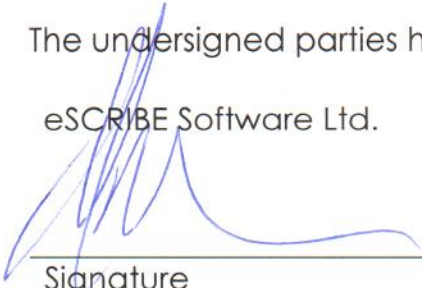
Township of North Huron  
P.O. Box 90, 274 Josephine Street  
Wingham, ON N0G 2W0

Attention: Richard Al

The undersigned parties hereby enter into this Agreement,

eSCRIBE Software Ltd.

Township of North Huron



Signature

Signature

President - CEO

Authorizing Officer

Authorizing Officer

Signature

Authorizing Officer

I have the authority to bind the organization