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WSM International

Service Level Agreement and  
Statement of Work

Pre-Migration Assessment

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#### **RECITALS**

You ("Client" or "Customer" or "You" or "Your") request a server(s) migration cost estimate from WSM International LLC ("WSM"). You authorize WSM to perform a Pre-Migration Assessment of your source server(s) during which WSM will review and document the visible inventory of your web, workload and application/data services. Services performed under this SOW shall be subject to WSM's Terms and Conditions attached hereto and incorporated herein by reference.

#### **SERVICE LEVEL AGREEMENT**

##### IN SCOPE

WSM will conduct a visual technical review and inventory of source server(s) and visible web/data services to include:

- OS Type
- OS Version
- CPU
- RAM
- IIS and/or Apache versions
- Disk stats
- IP addresses
- Server Control Panel details
- System accounts list
- Web server type/version; Enabled modules/extensions
- Services/Daemons
- Websites; Data volume of all domains; number of SSL certificates
- Databases; Type, number of unique databases, data volume, scheduled jobs; DTS/SSIS packages and/or stored procedures
- Web components (e.g. ASP components, PHP, Ruby, ColdFusion)
- Gateway libraries
- Email Server; type, number of accounts/aliases, data volume
- Cron jobs/Scheduled tasks
- DNS Settings; version; zones (if active)
- SVN
- FTP software and accounts
- Antivirus tools; MS Office components

##### DELIVERABLES

At the conclusion of the assessment, WSM will prepare and present to Customer the following deliverables:

- 1) A categorized documented inventory report of accessible and visible web/data services according to listed services herein
- 2) An itemized migration project cost estimate with primary migration tasks, and if applicable, any notable migration project considerations and/or concerns

##### PROJECT OPERATIONS

Customer understands and agrees that it is required to provide WSM with remote login access credentials source server(s) requiring assessment. Such access privileges should be at administrative or "root" level, if possible. If Customer provides



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WSM only limited and/or shared-level server access, such as FTP and/or Control Panel access, WSM cannot warrant the assessment of all hosted web/data services and/or a qualified migration project cost estimate.

Project correspondence will be processed using Basecamp, WSM's secure online project management and communication portal. WSM will provide Customer with Basecamp project access at no cost to customer. Customer agrees to place all its written project correspondence in Basecamp.

WSM will start the assessment within 3 (three) business days from the time it obtains and validates the source server access from Customer. WSM will produce its best effort to complete each individual source server assessment within 2 (two) business days from receiving validated source server access from Customer, however WSM cannot warrant assessment completion schedule in the case of any delays outside of WSM control or remedy.

#### OUT OF SCOPE

Any services not specifically defined herein as IN SCOPE shall be considered OUT OF SCOPE and are not included in this Pre-Migration Assessment service. Any out of scope work ("Additional Work") you request for WSM to undertake shall be estimated in billable time and charged to your account at WSM's prevailing hourly billing rate at time you approve such estimates for additional work.

Examples of Additional Work include but are not limited to the following:

- Review of server Operating System (OS) customizations (e.g. SSH, bash, network configuration, kernel configuration) and hardware drivers and disk drivers
- Software code review, diagnostics and remediation
- Review of any third-party software including API's or proprietary services not visible at source server(s)
- Migration services
- Technical consultation including but not limited to recommendations or advice about servers, hosting, architecture, software applications and related
- Testing, tuning or other performance improvement tasks

#### **PAYMENT OF SERVICE FEES**

##### SERVICE FEES

\$249.00 USD per assessment for each unique physical or cloud source server, **and** each unique virtual server\*

*\*For virtual server instances i.e. vmWare containers, the parent source server counts as 1 (one) unique server and each virtual server instance hosted on the parent server counts as an additional unique source server*

##### **PAYMENT TERMS:**

Payment due in full in advance of assessment service engagement. Pre-paid service fee are non-refundable should customer fail to:

- Respond to WSM request for source server access within 5 (five) business days from date of WSM request for access
- Provide WSM with valid login access credentials and/or sufficient level of remote access to Customer source server(s)
- Customer cancellation of project at any time



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## **WSM INTERNATIONAL TERMS AND CONDITIONS**

These Terms and Conditions ("Terms and Conditions") govern the services ("Services") to be provided by WSM International, a Michigan limited liability corporation ("WSM"), to Client, which such Services are described further in that certain Statement of Work between WSM and Client (as amended, modified, restated or supplemented from time to time, the "SOW", and together with the Terms and Conditions, the "Agreement"). The terms of the SOW are incorporated herein by this reference. In the event of any conflict or inconsistency between the SOW and this Agreement, the SOW shall control. Any and all capitalized terms used but not defined herein shall have the respective meaning ascribed to such terms in the SOW.

### **1. Fees and Payment.**

a. **Fees.** Client shall pay to WSM the applicable fees for the Services as set forth in the SOW, which such fees shall relate to and include, without limitation, the minimum estimated time approved for the Services. Client acknowledges and agrees that WSM's fees are subject to change from time to time, in which case WSM shall use commercially reasonable efforts to notify Client in advance of any such fee change. In addition, certain additional fees, costs and expenses may be charged to Client's account/method of payment at the then prevailing WSM rate at the time of performance, including any and all fees, costs and expenses relating to WSM's unforeseen additional work or services requested by Client and/or required to be performed by WSM during the course of providing Services as set forth in the SOW, after hours and weekend support, onsite support, and post-engagement support, work, materials and/or services not identified in the SOW (collectively, "Additional Work"), together with any and all of WSM's out of pocket costs incurred in conjunction with the Additional Work.

b. **Payment by Credit Card.** In the event that Client desires to make payment by credit card, Client acknowledges and agrees that WSM will not begin to perform the Services described in the SOW until Client has authorized WSM to charge said credit card. In addition, if Client initializes a charge back with its credit card issuer to reverse payment without WSM's prior written consent, then Client acknowledges and agrees that Client shall pay WSM a charge back fee in the amount of \$150.00 USD per charge back occurrence.

**2. Term; Termination.** This Agreement shall commence on the last execution date of the SOW and shall continue in full force and effect for as long as WSM provides Services and/or Additional Work to Client ("Term"), unless terminated earlier as provided herein. Either party hereto (each a "Party", and collectively, "Parties") may terminate this Agreement at any time and for any reason upon ten (10) days' prior written notice to the other Party. In the event of any termination or expiration of this Agreement, Client shall pay to WSM in immediately available funds the greater of (i) any and all fees, costs and expenses for Services and any Additional Work provided by WSM up to and including the date of termination or expiration; or (ii) the cancellation charge as described in the SOW. Sections 4, 5, 6, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement in accordance with their respective terms.

**3. Independent Contractor; Subcontractors.** The Parties acknowledge and agree that the relationship between Client and WSM is that of independent contractor, and that each Party has no right or authority to assume or create any expenses, liabilities or obligations of any kind, whether express or implied, on behalf of the other Party except as provided in this Agreement. Nothing in this Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between the Parties. Client acknowledges and agrees that WSM may perform Services and any Additional Work under this Agreement through one or more subcontractors.

**4. No Interference with Employment Relationships.** The Parties acknowledge and agree that during the Term and for a period of two (2) years thereafter, neither Party shall, either individually or on behalf of another person, entity or third party encourage, solicit or otherwise attempt to persuade any other employee of the other Party to leave the employ of such Party. The Parties further acknowledge and agree that the restrictions in this Section 4 are reasonable and fair in all respects, including in both duration and geographic scope.

**5. Intellectual Property.** Neither Party shall be permitted to use the other Party's copyrights, patents, trademarks and trade names, or other proprietary or intellectual property (collectively, "Intellectual Property") in connection with this Agreement or otherwise. All Intellectual Property of a Party shall be and remain forever the sole and exclusive property of such Party. Each Party represents and warrants that such Party has all right, power and authority to use its Intellectual Property, if any, in connection with performing its obligations under this Agreement.

**6. Indemnification.** Each Party shall indemnify, defend and hold harmless the other Party and such other Party's subsidiaries and affiliates, and their respective members, shareholders, managers, directors, officers, employees, attorneys, agents and other representatives (collectively, "Representatives"), from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost and expense (including, without limitation, reasonable attorneys' fees and expenses reasonably incurred in defending against or prosecuting any litigation or claim, action, suit, proceeding or demand) (collectively, "Damages"), of any kind or character, arising out of or in any manner relating to any alleged or actual act or omission of a Party involving: (a) infringement by such Party of a copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any third party; (b) violation by such Party of any and all applicable federal, state and local laws, rules and regulations; and (c) breach of any covenant, representation or warranty set forth in this Agreement, including the Terms and Conditions and the SOW. Notwithstanding anything to the contrary in this Agreement, each Party shall assume full responsibility for any and all Damages related to such Party's indemnification obligations under this Section 6 with respect to third parties.

**7. Limitations on Liability.** Under no circumstances shall WSM's aggregate liability under this Agreement to Client exceed the amount of fees actually paid by Client for the Services and any Additional Work. Under no circumstances shall WSM be liable to Client for any indirect, incidental, punitive, special or consequential damages of any type, including without limitation lost profits, exemplary damages, loss due to business interruption or lost data, arising out of or



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relating to this Agreement, the Services or any Additional Work, even if a Party has been advised by the other Party of the damage and even if a Party asserts or establishes a failure of essential purpose of any limited remedy provided in this Agreement.

8. **Disclaimer.** Notwithstanding anything to the contrary in the SOW, WSM makes no guarantees with respect to the Services it provides to Client or its clients. The Services and any Additional Work provided by WSM to Client will be provided in accordance with industry standards and in a workmanlike and professional manner. Client acknowledges and agrees that any and all materials downloaded or otherwise obtained through the use of the Services and any Additional Work is done at Client's own discretion and risk and Client will be solely responsible for any and all damages to Client's computer system or other device or loss of data resulting therefrom. To the fullest extent under applicable law, the Services and any Additional Work are provided "AS IS" by WSM to Client. WSM does not make, and hereby disclaims, any and all other express, implied or statutory warranties, including implied warranties of merchantability, fitness for a particular purpose, noninfringement of third party rights, and any warranties arising from a course of dealing, usage or trade practice.

9. **Confidential Information.**

a. **Definition.** The term "Confidential Information" as used herein shall collectively mean any and all information or materials disclosed or provided by either Party and their respective Representatives in writing or otherwise either prior to or after execution of this Agreement, concerning any confidential, proprietary, business or technical information or trade secrets, including without limitation any aspect of a Party's business, business plan or affairs, and any and all other information, materials and records of a Party relating to such Party's business that have not been made available to the general public, whether or not marked or designated as "Confidential" and/or "Proprietary" or the like, in any form, including electronic or optical data storage and retrieval mechanisms regardless of whether any such information is protected by applicable trade secret or similar laws. "Confidential Information" also includes any notes, analyses, compilations, studies or other material or documents prepared by the Receiving Party (as defined below) which contain, reflect or are based, in whole or in part, on the other Party's Confidential Information. In addition, "Confidential Information" shall include all of the terms and conditions of this Agreement.

b. **Non-Disclosure Obligations.** The Party receiving Confidential Information (the "Receiving Party") shall not, at any time, disclose Confidential Information to any third party without the prior written consent of the Party disclosing such Confidential Information (the "Disclosing Party") and shall restrict dissemination of Confidential Information only to its Representatives who clearly have a need to know the Confidential Information in conjunction with the purposes described in this Agreement. The Receiving Party agrees to protect Confidential Information by using the same degree of care as it would use to protect its own information of like importance, but in no case less than reasonable care. Any use of Confidential Information shall be solely for the purpose authorized above. Each Party shall be and remain fully liable and responsible for its Representatives' unauthorized disclosure or use of the Disclosing Party's Confidential Information. The Receiving Party agrees not to reverse engineer, disassemble, or otherwise restructure and/or copy or in any way recreate in whole or in part any of the Disclosing Party's Confidential Information. WSM relies exclusively on Client for specifying and using adequate password and/or encryption prior to transferring Confidential Information or any other Client data to WSM.

c. **Exceptions to Confidential Information.** The Receiving Party shall have no obligation with respect to information which: (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, as evidenced by the Receiving Party's records; (ii) is or becomes part of the public domain without breach of this Agreement by Receiving Party; (iii) becomes known or available to Receiving Party from a source other than the Disclosing Party with the legal right to use and disclose such information; (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency, provided, however, that the Receiving Party provides the Disclosing Party: (A) prior written notice of such obligation; and (B) the opportunity to oppose such disclosure or obtain a protective order.

d. **Return or Destruction of Confidential Information.** Upon the earlier of the termination or expiration of this Agreement, or the Disclosing Party's request for any reason, the Receiving Party shall: (i) cease using the Confidential Information; (ii) promptly return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand; and/or (iii) destroy all such Confidential Information, including copies thereof, and furnish the Disclosing Party with written certification of such destruction. Notwithstanding the foregoing, the Receiving Party shall have no obligation to remove or destroy files or data resident in unallocated computer space, back-up or storage. Receiving Party's legal counsel may retain one copy of the Confidential Information for use solely as a record of the disclosure.

10. **Equitable Relief.** The Parties acknowledge and agree that the restrictions contained in this Agreement are reasonable and necessary to protect the legitimate interests of each Party and their respective affiliates and that each Party would not have entered into this Agreement in the absence of such restrictions. The Parties further acknowledge and agree that any money damages may be both incalculable and an insufficient remedy for any breach of this Agreement by the other Party, and that any such breach would cause irreparable harm to the non-breaching Party. Accordingly, in the event of any breach or threatened breach of this Agreement, each Party, in addition to other remedies at law or in equity that it may have, shall be entitled to seek equitable relief, including injunctive relief and specific performance.

11. **Miscellaneous.**

a. **Assignment.** This Agreement, including these Terms and Conditions and the SOW, shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that this Agreement may not be assigned by Client in whole or in part, including by operation of law, in a merger or stock or asset sale, without WSM's prior written consent. Any attempted assignment in violation of this Section 11(a) shall be deemed null and void and of no force or effect.

b. **Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties. No third party beneficiaries are contemplated or created under operation of this Agreement.



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c. Force Majeure. Neither Party shall be deemed in default of this Agreement to the extent that performance of its obligations under this Agreement (other than any payment obligations) are delayed or prevented solely by supervening conditions or causes beyond a Party's reasonable control, including without limitation natural disasters, war, terrorism, strikes, power outages, internet connectivity outages, labor disputes, and government demands or requirements (each, a "Force Majeure"); provided, however, that such Party gives the other Party written notice thereof within fifteen (15) days of its discovery of a Force Majeure that prevents the performance of its obligations under this Agreement (other than any payment obligations). The time for performance shall be extended for a period equal to the duration of the Force Majeure, not to exceed three (3) months.

d. Waiver. No waiver of any term or condition herein by any Party shall be valid unless in writing and signed by the Parties, and any such waiver shall be limited to the specific situation for which it is given. No failure or delay by a Party in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right or power hereunder.

e. Governing Law; Venue; Waiver of Jury Trial. This Agreement, including the Terms and Conditions and the SOW, shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to any conflicts of law principles. The Parties agree to submit all disputes, controversies or claims between the Parties arising out of or in connection with this Agreement, including the Terms and Conditions and the SOW, in either any state court of competent jurisdiction located in Oakland County, Michigan, or in the United States District Court for the Eastern District of Michigan, and the Parties waive any objection to submitting to the personal jurisdiction and venue therein. Client expressly (i) waives trial by jury with respect to any disputes, controversies or claims that it may assert against WSM arising out of or in connection with the terms of this Agreement, and (ii) agrees that Client shall commence any and all disputes, controversies or claims that it may have or may assert against WSM within thirty (30) days of the accrual of any such dispute, controversy or claim, or such dispute, controversy or claim is expressly waived.

f. Attorney Fees. In the event legal action is brought by a Party to enforce or interpret the terms of this Agreement, including the Terms and Conditions and the SOW, such Party shall be entitled to recover, in addition to any other relief, its reasonable attorneys' fees, costs and disbursements from the other Party.

g. Notices. All notices, requests, demands and other communications which are required or permitted under this Agreement, including the Terms and Conditions and the SOW, shall be in writing and shall be deemed to have been duly given and received (i) upon delivery, if personally delivered, or upon confirmed transmittal, if by facsimile; (ii) on the next business day, if sent by a nationally recognized overnight courier and receipted for by the recipient or an agent of the recipient; or (iii) three (3) business days after mailing, if mailed by registered or certified United States mail, postage prepaid and return receipt requested, to the address of a Party on the signature page of the SOW, or to such other address as either Party may from time to time duly specify by notice given to the other Party in the manner specified above.

h. Severability. Whenever possible, each provision of this Agreement, including the Terms and Conditions and the SOW shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement, including the Terms and Conditions and the SOW, shall be held to be void or unenforceable by any competent court or tribunal, the remaining provisions of this Agreement, including the Terms and Conditions and the SOW, shall continue in full force and effect.

i. Entire Agreement; Counterparts. This Agreement, including the Terms and Conditions, the SOW, and any other exhibits, schedules or documents referenced therein, constitute the entire agreement and understanding between the Parties regarding the subject matter thereof, supersede all prior or contemporaneous agreements or understandings between the Parties, whether written or oral, regarding the subject matter thereof, and may be amended, supplemented or modified only in writing signed by the Parties. This Agreement may be executed in counterparts (including counterparts delivered via facsimile or other electronic transmission), each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.