



**CIO / CTO Master Services Agreement**

<b>Client Legal Name</b>	<b>DSM.Net</b>
Sumter County Board of County Commissioners	DSM.Net, Inc.
<b>Client Address</b>	<b>DSM Address</b>
910 N. Main St. Bushnell, FL 33513	6810 New Tampa Highway Suite 600 Lakeland, Florida 33815
<b>Client Contact</b>	<b>DSM Contact</b>
Mr. Bradley Arnold, County Administrator <a href="mailto:Bradley.Arnold@sumtercountyfl.gov">Bradley.Arnold@sumtercountyfl.gov</a> 352-793-0200	Mike McMillan, Director of Systems Integration <a href="mailto:mmcmillan@dsm.net">mmcmillan@dsm.net</a> 863-802-8888

This Agreement consists of the attached General Terms and Conditions and all service Attachments attached hereto or subsequently signed by the parties and that reference this Agreement.

This Agreement shall become effective at the date signed by both parties and shall remain in effect for the duration of the engagement, unless prior termination in accordance with the provisions of this Agreement occurs.

<b>Attached Document</b>	<b>Date/Revision</b>
Attachment A: Pricing Schedule	10/21/2009

The signatures below indicate the parties hereto have agreed to the content of this Agreement

Client

DSM.Net

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print: David Robinson

Title: \_\_\_\_\_

Title: President / CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Please initial each Attachment**

## Master Services Agreement

This Master Services Agreement (the "Agreement") is made and effective this 10<sup>th</sup> day of November 2009, between DSM.Net, a Florida corporation with its principal place of business in Lakeland, Florida ("Company") and Sumter County Board of County Commissioners with its principal place of business in Sumter County, Florida (hereinafter "Client").

WHEREAS, Client finds that the Company is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Client finds that the Company is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Client's business.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

### 1. DEFINITIONS

- A. Attachments – Shall mean and refer to documents referencing this Agreement and specifying work to be accomplished by Company and to be paid for by Client. Schedules shall, once executed, become a part of this Agreement and they shall define the scope of work to be accomplished in conjunction with a specific project and provide a fee for accomplishment of this work. Project details concerning methodologies, deliverables and project plans shall be provided in the project Proposal or Statement of Work (if applicable) which shall be attached to the corresponding Schedule.
- B. Schedule – Shall mean and refer to documents referencing this Agreement and specifying work to be accomplished by Company and to be paid for by Client. Schedules shall, once executed, become a part of this Agreement and they shall define the scope of work to be accomplished in conjunction with a specific project and provide a fee for accomplishment of this work. Project details concerning methodologies, deliverables and project plans shall be provided in the project Proposal (if applicable) which shall be attached to the corresponding Schedule.
- C. Proposal – Shall mean and refer to the project Proposal that shall provide specific project details and shall be prepared and submitted by Company and accepted by Client. The Proposal shall be attached to the appropriate Schedule and shall provide specific project methodologies, deliverables and project plans. The Proposal shall be attached to an appropriate Schedule and shall be made part of this Agreement upon acceptance by Client.
- D. Statement of Work – Shall mean the body of work provided by the Company. Company services include Systems Integration, Security and IT Consulting, fields in which the Company has extensive experience, but is not necessarily limited to these fields, as the Company will upon request provide Specialists for services related to Company's area of expertise.
- E. Ad Hoc Work - Shall be permissible upon verbal instructions from the Client for an engagement that either do not warrant a written proposal due to their size or in urgent situations, were time does not permit a written definition.

### 2. SERVICES TO CLIENT

The Company shall provide Services to Client as defined by its Attachments. In case of dispute between the Master Services Agreement and the Attachments, the Attachments shall prevail.

### **3. PAYMENT AND INVOICING TERMS**

#### **3.1 Payment for Services**

Company shall be compensated for all services performed within the scope of this Agreement at the prices or rates set forth in the Schedules and Proposals attached hereto. The prices stated for services include all taxes, except that Client shall pay any state and local sales or use tax imposed thereon. Client shall not pay for any services outside the scope of this Agreement unless Client has authorized these additional services in advance.

#### **3.2 Reimbursable Costs**

Client shall reimburse the Company all costs incurred in connection with the Services rendered as described in Attachment A or the Statement of Work. Reimbursable costs include, but are not limited to, travel costs, subcontractors, materials, computer costs, telephone, copies, delivery, etc. that are attributable to a project or Service (the "Reimbursable Costs"). Travel costs are defined as air travel, lodging, meals and incidentals, ground transportation, tools, and all costs associated with travel. All extraordinary travel expenses must receive Client's approval. The Company shall provide to Client substantiation of Reimbursable Costs incurred.

#### **3.3 Invoicing/Terms**

Invoices will be submitted monthly by the Company for payment by Client. Payment is due upon receipt and is past due fifteen (15) business days from receipt of invoice. If Client has any valid reason for disputing any portion of an invoice, Client will so notify the Company within ten (10) calendar days of receipt of invoice by Client, and if no such notification is given, the invoice will be deemed valid. The portion of the Company's invoice that is not in dispute shall be paid in accordance with the procedures set forth herein.

A finance charge of 1.5% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on past due accounts. Payments by Client will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorney fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client. If payment of invoices is not current, the Company may suspend performing further work.

#### **3.4 Taxes**

All amounts payable pursuant to this Agreement are exclusive of taxes. Accordingly, there will be added to any such amount payable by Client the monetary sum equal to any and all current and future applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement or the Services, including without limitation state and local privilege, excise, sales, services, withholding, and use taxes and any taxes or other amounts in lieu thereof paid or payable by Client (other than taxes based on the Company's net income). If Client does not pay such taxes, the Company may make such payments and Client will reimburse the Company for those payments. Client will hold the Company harmless for any payments made by Client pursuant to this Section.

### **4. CHANGES**

Client may, with the approval of the Company, issue written directions within the general scope of any Services to be ordered. Such changes (the "Change Order") may be for additional work or the Company may be directed to change the direction of the work covered by the Change Order, but no change will be allowed unless agreed to by the Company in writing.

### **5. STANDARD OF CARE**

The Company warrants that its services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software developed. THIS PARAGRAPH SETS FORTH THE ONLY WARRANTIES PROVIDED BY THE COMPANY CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

## **6. LIMITATION OF LIABILITY**

### **6.1 Disclaimer,**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED HEREUNDER, OR THE CUSTOM WORK PRODUCT, INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL COMPANY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **6.2 Total Liability.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **6.3 Remedy**

Client's exclusive remedy for any claim arising out of or relating to this Agreement will be for the Company, upon receipt of written notice, either (i) to use commercially reasonable efforts to cure, at its expense, the matter that gave rise to the claim for which the Company is at fault, or (ii) return to Client the fees paid by Client to the Company for the particular engagement.

### **6.4 Design Specifications.**

Client understands that the services to be provided by Company may involve program coding and/or unit and system testing and/or implementation, all based upon design specifications supplied by Client. Company is not responsible for the design specifications and makes no representation or warranty as to their adequacy or suitability for any particular purpose.

## **7. TERMINATION**

The term of this Agreement ("Term") shall continue in full force and effect until all projects are completed. This Agreement may be terminated by either party, without cause, upon sixty (60) calendar days' written notice provided that any such termination shall only be effective as to an ongoing assignment specified in a Schedule when the minimum term for such assignment specified in a Schedule has been completed. In the event of termination by Client other than for a material breach of this Agreement by Company, and in the event of termination by Company because of Client's breach of this Agreement, Company shall be entitled to receive payment for all services performed up to the effective date of termination at the labor rates set forth in the Schedule. In the case of a Schedule providing for services at a fixed price, Company shall be entitled to receive payment of a percentage of the agreed aggregate fixed price proportionate to the amount of work completed. Client shall also reimburse Company for any additional travel, living and relocation expenses incurred by Company as a result of such early termination including, without limitation, any costs associated with breaking apartment leases which have been approved in writing by Client for Company's employees assigned to Client's projects. Early termination by either party shall immediately trigger the invoicing of all services and expenses incurred up to the time of the receipt of the termination notice. Termination notices must be given in writing to the parties defined in paragraph 8.6, Notices. All payments due to termination shall be made within 15 days after receipt of final invoice.

## **8. MISCELLANEOUS**

### **8.1 Insecurity and Adequate Assurances**

If reasonable grounds for insecurity arise with respect to Client's ability to pay for the Services in a timely fashion, the Company may demand in writing adequate assurances of Client's ability to meet its payment obligations under this Agreement. Unless Client provides the assurances in a reasonable time and manner acceptable to the Company, in addition to any other rights and remedies available, Company may partially or totally suspend its performance while awaiting assurances, without liability to Client.

## **8.2 Severability**

Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.

## **8.3 Confidentiality**

**Acknowledgment of Confidentiality.** Each party hereby acknowledges that it may be exposed to confidential and propriety information of the other party including, without limitation, Custom Work Product, and other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how" and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records and the like) and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient, (ii) information in the public domain through no wrongful act of the recipient, (iii) information received by the recipient from a third party who was free to disclose it or (iv) information that is subject to Florida Statutes governing open records for local governments.

**Covenant Not to Disclose.** With respect to the other party's Confidential Information, the recipient hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know" (and who are themselves bound by similar nondisclosure restrictions), and to such other recipients as the other party may approve in writing, provided, that all such recipients shall have first executed a confidentiality agreement in a form acceptable to the owner of such information.

Client also agrees to inform DSM.Net prior to the installation/consultancy if any form of agreement including but not limited to a non-disclosure agreement is required to be signed prior to any access to information or facilities being granted. DSM personnel are not authorized to sign such an agreement and will refer the request to management.

## **8.4 Modification and Waiver**

Waiver of breach of this Agreement by either part shall not be considered a waiver of any other subsequent breach.

## **8.5 Independent Contractor**

The Company is an independent contractor of Client.

## **8.6 Notices**

Client shall give the Company written notice within five (5) days of obtaining knowledge of the occurrence of any claim or cause of action which Client believes that it has, or may seek to assert or allege, against the Company, whether such claim is based in law or equity, arising under or related to this Agreement or to the transactions contemplated hereby, or any act or omission to act by the Company with respect hereto. If Client fails to give such notice to the Company with regard to any such claim or cause of action and shall not have brought legal action for such claim or cause of action within said time period, Client shall be deemed to have waived, and shall be forever barred from bringing or asserting such claim or cause of action in any suit, action or proceeding in any court or before any governmental agency or authority or any arbitrator. All notices or other communications hereunder shall be in writing, sent by courier or the fastest possible means, provided that recipient receives a manually signed copy and the transmission method is scheduled to deliver within forty-eight (48) hours and shall be deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

If to the Company:

6810 New Tampa Highway, Suite 600  
Lakeland, Florida 33815  
ATTN: Contracts  
Phone: (863) 802-8888  
Facsimile: (863) 802-8887

If to Client:

910 N. Main St.  
Bushnell, FL 33513  
ATTN: Bradley Arnold  
**Phone:** 352-793-0200  
Facsimile

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

#### **8.7 Assignment**

The Agreement is not assignable or transferable by Client. This Agreement is not assignable or transferable by the Company without the written consent of Client, which consent shall not be unreasonably withheld or delayed.

#### **8.8 Residuals**

Nothing in this Agreement or elsewhere will prohibit or limit the Company's ownership and use of ideas, concepts, know-how, methods, models, data, techniques, skill knowledge and experience that were used, developed or gained in connection with this Agreement. The Company and Client shall each have the right to use all data collected or generated under this Agreement.

#### **8.9 Non-solicitation of Employees**

Client acknowledges that personnel to be provided by Company represent a significant investment in recruitment and training, and that the loss of such personnel would be detrimental to Company's current and future business and profits. In consideration of the foregoing, Client agrees that for the term of this Agreement and for a period of one (2) years after its termination, Client will not directly or indirectly:

(a) Recruit, hire, engage or attempt to recruit, hire, engage or discuss employment with, or otherwise utilize the services in any capacity of any person who shall have been an employee, agent or consultant to Company at any time during the term of this Agreement: or

(b) Induce any person who is an employee, agent of or consultant to Company at any time during their term of this Agreement to terminate his or her relationship with Company or any related company or introduce such person to any potential employer.

#### **8.10 Non-Exclusivity**

It is agreed by the parties hereto that this is not an exclusive agreement and that Client has the right to use or contract for the use of similar services from other contractors or providers. Likewise, Company has the right to provide and contract to provide similar services to other clients.

#### **8.11 Cooperation**

Client will cooperate with the Company in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that the Company's performance is dependent on Client's timely and effective cooperation with the Company. Accordingly, Client acknowledges that any delay by Client may result in the Company being released from an obligation or scheduled deadline or in Client having to pay extra fees for the Company's agreement to meet a specific obligation or deadline despite the delay.

#### **8.12 Governing Law and Construction**

This Agreement will be governed by and construed in accordance with the laws of Florida, without regard to the principles of conflicts of law. The language of this Agreement shall be deemed to be the result of negotiation among the parties and their respective counsel and shall not be construed strictly for or against any party. Each party (i) agrees that any action arising out of or in connection with this Agreement shall be brought solely in courts of the State of Florida (ii) hereby

consents to the jurisdiction of the courts of the State of Florida and (iii) agrees that, whenever a party is requested to execute one or more documents evidencing such consent, it shall do so immediately.

#### **8.13 Default**

Either party may be declared in default of this Agreement if it breaches any material provision hereof and fails within thirty (30) days after receipt of written notice of default to correct such default or to commence corrective action reasonably acceptable to the other party and proceed with due diligence to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days.

#### **8.14 Disputes**

The Company and Client recognize that disputes arising under this Agreement are best resolved at the working level by the parties directly involved. Both parties are encouraged to be imaginative in designing mechanism and procedures to resolve disputes at this level. Such efforts shall include the referral of any remaining issues in dispute to higher authority within each participating party's organization for resolution. Failing resolution of conflicts at the organizational level, the Company and Client agree that any remaining conflicts arising out of or relating to this Contract shall be submitted to non-binding arbitration unless the Company and Client mutually agree otherwise. If the dispute is not resolved through non-binding arbitration, then the parties may take other appropriate action subject to the other terms of this Agreement.

#### **8.15 Entire Agreement**

This Agreement, including any Attachments, states the entire Agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Client and the Company respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto.

#### **8.16 Force Majeure**

The Company shall not be responsible for delays or failures (including any delay by the Company to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

#### **8.17 Use By Third Parties**

Work performed by the Company pursuant to this Agreement is only for the purpose intended and may be misleading if used in another context. Client agrees not to use any documents produced under this Agreement for anything other than the intended purpose otherwise Client agrees to waive Company's responsibility associated with the product or services provided. This Agreement shall, therefore, not create any rights or benefits to parties other than to Client and the Company.

#### **8.18 Rights upon Termination**

Upon termination or other expiration of this Agreement, Company agrees to immediately return to Client all papers, material, and other properties of Client held by Company relating to the services performed hereunder.

#### **8.19 Representations; Counterparts**

Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed (by original or telecopied signature) in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

Attachment A: Pricing Schedule

Item	Description	CIO (Business)			CTO (Technology)			Total Hours (CIO/CTO)	Total Budget
		Estimated CIO Hours	State Contract Rate	Budget Extended	Estimated CTO Hours	State Contract Rate	Budget Extended		
1	Review, if permitted, the assessment recently performed. Understand the BOCC's direction and how the CA plans to implement. <i>CIO - Business Review; CTO - Technology Review.</i>	2	\$160.00	\$320.00	2	\$160.00	\$320.00	4	\$640.00
2a	Meet and interview each department head and understand their current issues, and future direction. Work with them to resolve outstanding issues relating to technology and help them with business process improvement.	20	\$160.00	\$3,200.00	4	\$160.00	\$640.00	24	\$3,840.00
2b	Perform a Capability Maturity Assessment to determine IT strengths and weaknesses within the County. Result is a gap between present status and desired status. This assessment will help drive the technology planning and alignment with the business and customer needs. <i>(See CMM Sheet)</i>	128	\$160.00	\$20,480.00	32	\$160.00	\$5,120.00	160	\$25,600.00
3	Business to IT alignment by aligning the County to meet the needs of their customers. Our plan should be innovative and based upon item #1 and the gaps in item #2. First goal is to develop an IT Technology Plan to bridge gaps.	52	\$160.00	\$8,320.00	8	\$160.00	\$1,280.00	60	\$9,600.00

Item	Description	CIO (Business)			CTO (Technology)			Total Hours (CIO/CTO)	Total Budget
		Estimated CIO Hours	State Contract Rate	Budget Extended	Estimated CTO Hours	State Contract Rate	Budget Extended		
	Plan should cover a three (3) year period and may be modified as technology emerges or budgets permit. <i>(write 36 month Technology Plan)</i>	4	\$160.00	\$640.00	20	\$160.00	\$3,200.00	24	\$3,840.00
2	Department alignment within the County. All IT procurement and standards should be monitored to ensure we have minimum requirements for procurement of hardware and software. In addition, licensing programs can be leveraged to reduce license cost, compliance issues which often will relinquish consulting dollars directly from Microsoft.	12	\$160.00	\$1,920.00	12	\$160.00	\$1,920.00	24	\$3,840.00
	Discuss folding in the Constitutionals into County IT support. Create appropriate Service Level Agreements and support all constitutionals.	16	\$160.00	\$2,560.00	8	\$160.00	\$1,280.00	24	\$3,840.00
3	Interview each constitutional to determine their requirements, current pain points and future direction. Work with them to accomplish their goals in a timely fashion and build confidence in the County IT Services Solutions. "There is a new Sheriff in town"	40	\$160.00	\$6,400.00	20	\$160.00	\$3,200.00	60	\$9,600.00
4	Have meaningful meetings with BOCC, CA, Department Heads and Constitutionals on a regular basis. The goal is to listen and understand their needs. <i>(Quarterly)</i>				24	\$160.00	\$3,840.00	24	\$3,840.00

Item	Description	CIO (Business)			CTO (Technology)			Total Hours (CIO/CTO)	Total Budget
		Estimated CIO Hours	State Contract Rate	Budget Extended	Estimated CTO Hours	State Contract Rate	Budget Extended		
5	Work with each department on processes to improve productivity leveraging appropriate <u>technologies</u> to automate manual processes and output. If we have to cut positions in the future, let's be prepared by ensuring our staff is prepared and trained. The concept, "This is the way we have always done this" should be replaced with original thinking. "Thinking outside the box" <b>(Estimate)</b> Example, DSM cannot help the county build a bridge better or more efficiently, but can help determine what technologies can help them become more productive using a database to track vendors or procurement.	120	\$160.00	\$19,200.00	24	\$160.00	\$3,840.00	144	\$23,040.00
<b>GRAND TOTAL --- CIO / CTO SERVICES</b>		<b>394</b>	<b>\$160.00</b>	<b>\$63,040.00</b>	<b>154</b>	<b>\$160.00</b>	<b>\$24,640.00</b>	<b>548</b>	<b>\$87,680.00</b>

Initial \_\_\_\_\_