

**CASELLE, INC.**  
**Software as a Service Agreement**

Caselle, Inc.  
1656 S East Bay Blvd  
Suite 100  
Provo, UT 84606

City of The Dalles  
313 Court St.  
The Dalles, OR 97058

**TERMS OF SERVICE**

These Terms of Service constitute an agreement (this "Agreement") by and between Caselle, Inc., a Utah Corporation, ("Provider") and the City of The Dalles, OR, ("Recipient").

**1. Definitions.**

- (a) "Account" refers to the Service plans and features selected by Recipient at the time of this Agreement and accepted by Provider, as such plans and features may change by mutual consent of the parties, as recorded by Provider.
- (b) "AUP" refers to Provider's acceptable use policy as described in Schedule B.
- (c) "Authorized Representative" refers to an individual who is authorized under applicable law to bind and/or consent on behalf of the Provider or Recipient.
- (d) "Data Policy" refers to Provider's standard data deletion policy as described in Schedule A of this Agreement.
- (e) "Effective Date" refers to the date of this Agreement.
- (f) "Materials" refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, and designs, whether provided by Provider, another customer of the Service, or any other third party.
- (g) "Recipient Data" refers to data in electronic form input or collected through the Service by or from Recipient.
- (h) "Service" refers to Provider's hosted version of the Caselle Connect software. The Service includes such features as are set forth on Provider's website ([www.caselle.com](http://www.caselle.com)), as Provider may change such features from time to time, in its sole discretion.
- (i) "Service Failure" refers to an event during which Recipient is unable to access or use the Service for more than four (4) hours.

**2. Service & Payment.**

- (a) *Service.* Provider will provide the Service to Recipient pursuant to its standard policies and procedures then in effect.

- (b) *Payment.* Upon completion of data conversion and training, Recipient will pay Provider a monthly Service fee of \$3,320.00. The Service fee will be considered due five (5) days before the start of the calendar month of Service. The Service fee will not increase for seven years, provided Recipient does not license new software applications or add additional users.

**3. Service Level Agreement.**

In the event of any "Service Failure," as that term is defined above, Provider will issue Recipient a credit. Credit will be 10% of the Recipient's monthly Service fee. Credits issued will apply to outstanding or future payments only and are forfeited upon termination of this Agreement. Provider is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation termination of this Agreement. Credits issued are the Recipient's sole remedy for the Service Failure in question. Provider shall not be liable for service failures caused by factors beyond the reasonable control of the Provider, such as, but not limited to, strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction, quality of data from the customer's software or acts of third parties.

**4. Materials, Software, & IP.**

- (a) *Materials.* Recipient recognizes and agrees that: (i) the Materials are the property of Provider or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) Recipient does not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for Recipient's use of the Service.
- (b) *Intellectual Property in General.* Provider retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant Recipient any intellectual property rights in or to the Service or any of its components.

**5. Online Policies.**

- (a) *AUP.* Recipient will to comply with the AUP. In the event of Recipient's material breach of the AUP, including without limitation any copyright infringement, Provider may suspend or terminate Recipient's access to the Service, in addition to such other remedies as Provider may have at law or pursuant to this Agreement. Neither this Agreement nor the AUP requires that Provider take any action against Recipient or any other customer for violating the AUP, but Provider is free to take any such action it sees fit.
- (b) *Privacy Policy.* The Privacy Policy applies only to the Service and does not apply to any third party site or service linked to the Service or recommended or referred to through the Service or by Provider's employees.

**6. Each Party's Warranties.**

- (a) *Recipient's Identity.* Recipient warrants: (i) that it has accurately identified itself through its Account and will maintain the accuracy of such identification; and (ii) that it is a corporation or other business entity authorized to do business pursuant to applicable law.

- (b) *Right to Do Business.* Each party warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- (c) *Disclaimers.* Except for the express warranties specified in this section, THE SERVICE IS PROVIDED “AS IS” AND AS AVAILABLE, AND PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Without limiting the generality of the foregoing, (i) PROVIDER HAS NO OBLIGATION TO INDEMNIFY OR DEFEND RECIPIENT AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; and (ii) Provider does not warrant that the Service will perform without error or immaterial interruption.

## **7. Limitation of Liability.**

IN NO EVENT: (a) WILL PROVIDER’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR 60 DAYS OF SERVICE; AND (b) WILL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF RECIPIENT’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 7, Provider’s liability will be limited to the maximum extent permissible.

## **8. Data Management.**

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Recipient’s prior written consent, Provider: (i) will not access or use Recipient Data other than as necessary to facilitate the Service; and (ii) will not give any third party access to Recipient Data. Notwithstanding the foregoing, Provider may disclose Recipient Data as required by applicable law or by proper legal or governmental authority. Provider will give Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in any effort to seek a protective order or otherwise to contest such required disclosure, at Recipient’s expense.
- (b) *Recipient’s Rights.* Recipient possesses and retains all right, title, and interest in and to Recipient Data, and Provider’s use and possession thereof is solely as Recipient’s agent.
- (c) *Retention & Deletion.* Provider will retain all Recipient Data until erased pursuant to the Data Policy.
- (d) *Injunction.* Provider agrees that violation of the provisions of this Section 8 might cause Recipient irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Recipient will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- (e) Upon termination, Recipient Data will be sent to Recipient in an MS-SQL backup format.

## **9. Term & Termination.**

- (a) *Term.* This Agreement will continue for one (1) year following the Effective Date (a “Term”). Thereafter, this Agreement will renew for subsequent terms (“Terms”) of thirty (30) days, unless either party notifies the other of its intent not to renew thirty (30) or more days before the beginning of the next Term.
- (b) *Termination for Cause.* Either party may terminate this Agreement for material breach by written notice, effective in 30 days, unless the other party first cures such breach.
- (c) *Effects of Termination.* The following provisions will survive termination of this Agreement: (i) any obligation of Recipient to pay for Service rendered before termination; (ii) Sections 4, 5(b), 6(c), and 7 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

## **10. Miscellaneous.**

- (a) *Notices.* Provider may send notices pursuant to this Agreement to Recipient’s address at City of The Dalles, 313 Court St., The Dalles, OR 97058, and such notices will be deemed received ten (10) days after they are sent. Recipient may send notices pursuant to this Agreement to Caselle, Inc, 1656 S East Bay Blvd, Suite 100, Provo, UT 84606, and such notices will be deemed received ten(10) days after they are sent.
- (b) *Amendment.* Provider may amend this Agreement (including the SLA and Data Policy) from time to time by posting an amended version at its website and sending Recipient written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”) unless Recipient first gives Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Recipient’s next Term following the Proposed Amendment Date (unless Recipient first terminates this Agreement pursuant to Section 9 above). Recipient’s continued use of the Service following the effective date of an amendment will confirm Recipient’s consent thereto. This Agreement may not be amended in any other way except through a written agreement executed by Authorized Representatives of each party. Notwithstanding the foregoing, Provider may amend the AUP or Privacy Policy at any time by posting a new version at its website and/or sending Recipient notice thereof, and such amended version will become effective 30 business days after such notice is sent.
- (c) *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.
- (d) *No Waiver.* Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- (e) *Force Majeure.* To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement.
- (f) *Assignment & Successors.* Neither party may assign this Agreement or any of its rights or obligations hereunder without the other’s express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to

the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

- (g) *Choice of Law & Jurisdiction.* This Agreement will be governed and construed solely by the laws of the State of Oregon, without reference to such State's principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the state courts of Oregon.
- (h) *Severability.* To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- (i) *Certain Notices.* Pursuant to 47 U.S.C. Section 230(d), Provider hereby notifies Recipient that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist in limiting access to material that is harmful to minors. Information regarding providers of such protections may be found on the Internet by searching "parental control protection" or similar terms.
- (j) *Conflicts among Attachments.* In the event of any conflict between the terms of this main body of this Agreement and those of any accompanying schedule, the terms of this main body will govern. In the event of any conflict between this Agreement and any Provider policy posted online, including without limitation the AUP and Privacy Policy, the terms of this Agreement will govern.
- (k) *Software Assurance.* Caselle will provide software updates and upgrades within the same operating system at no extra charge if this agreement is still in effect at the time the update or upgrade is made available. This includes training, setup and conversion, if necessary.
- (l) *Entire Agreement.* This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

Note: The attached proposal is considered part of this Agreement.

The signatures below indicate each party's acceptance of the Agreement. Each party has caused this Agreement to be executed by its duly Authorized Representative.

**CASELLE, INC.**

**CITY OF THE DALLES, OR**

By:

By:

Name: Alan S. Hutchings

Name:

Title: President

Title:

Date: November 2, 2015

Date:

## Schedule A – Data Policy

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Recipient’s prior written consent, Provider: (i) will not access or use data in electronic form collected through the Services from Recipient’s customers or other third parties, or collected or accessible directly from Recipient, (collectively, “Data”) other than as necessary to facilitate the Services; and (ii) will not give any third party access to Data. Notwithstanding the foregoing, Provider may disclose Data as required by applicable law or by proper legal or governmental authority. Provider will give Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in any effort to seek a protective order or otherwise to contest such required disclosure, at Recipient’s expense.
- (b) *Recipient’s Rights.* Recipient possesses and retains all right, title, and interest in and to Project Data, and Provider’s use and possession thereof is solely as Recipient’s agent.
- (c) *Retention & Deletion.* Provider will retain any Data in its possession until Erased. Provider will Erase: (i) all copies of Data promptly after Recipient’s written request; and (ii) all copies of Data no sooner than 90 days after termination of this Agreement and no later than 120 days after such termination. Promptly after Erasure pursuant to this Subsection (c), Provider will certify such Erasure in writing to Recipient. (“Erase” and “Erasure” refer to the destruction of data so that no copy of the data remains or can be accessed or restored in any way.)
- (d) *Individuals’ Access.* Provider will not allow any of its employees to access Data, except to the extent that an employee needs access in order to facilitate the Services and executes a written agreement with Provider agreeing to comply with Provider’s obligations set forth in this Section.
- (e) *Compliance with Law & Policy.* Provider will comply with all applicable federal and state laws and regulations governing the handling of Data.
- (f) *Leaks.* Provider will promptly notify Recipient of any actual or potential exposure or misappropriation of Data (any “Leak”) that comes to Provider’s attention. Provider will cooperate with Recipient and with law enforcement authorities in investigating any such Leak, at Provider’s expense. Provider will likewise cooperate with Recipient and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Provider’s expense, except to the extent that the Leak was caused by Recipient. The remedies and obligations set forth in this Subsection (f) are in addition to any others Recipient may have.

## Schedule B – Acceptable Use Policy

### A. Unacceptable Use

Provider requires that all customers and other users of Provider's service (the "Service") conduct themselves with respect for others. In particular, please observe the following rules in your use of the Service:

- 1) *Privacy*: Do not violate the privacy rights of any person. Do not collect or disclose any personal address, social security number, or other personally identifiable information without each holder's written permission. Do not cooperate in or facilitate identity theft.
- 2) *Intellectual Property*: Do not infringe upon the copyrights, trademark rights, trade secret rights, or other intellectual property rights of any person or entity. Do not reproduce, publish, or disseminate software, audio recordings, video recordings, photographs, articles, or other works of authorship without the written permission of the copyright holder.
- 3) *Hacking, Viruses, & Network Attacks*: Do not access any computer or communications system without authorization, including the computers used to provide the Service. Do not attempt to penetrate or disable any security system. Do not intentionally distribute a computer virus, launch a denial of service attack, or in any other way attempt to interfere with the functioning of any computer, communications system, or website. Do not attempt to access or otherwise interfere with the accounts of other users of the Service.
- 4) *Fraud*: Do not issue fraudulent offers to sell or buy products, services, or investments. Do not mislead anyone about the details or nature of a commercial transaction. Do not commit fraud in any other way.
- 5) *Violations of Law*: Do not violate any law.

### B. Consequences of Violation

Violation of this Acceptable Use Policy (this "AUP") may lead to suspension or termination of the Recipient's use of the Service or legal action. In addition, the Recipient may be required to pay for the costs of investigation and remedial action related to AUP violations.

### C. Reporting Unacceptable Use

Provider requests that anyone with information about a violation of this AUP report it to the following address: Caselle, Inc. 1656 S East Bay Blvd, Suite 100, Provo, Utah 84606. Please provide the date and time of the violation and any identifying information regarding the violator, including e-mail or IP (internet protocol) address if available, as well as details of the violation.

### D. Revision of AUP

Provider may change this AUP at any time by posting a new version on its website ([www.caselle.com](http://www.caselle.com)) or by sending the Recipient written notice thereof. The new version will become effective on the date of such notice.