

SUBSCRIPTION SERVICE AGREEMENT

This Subscription Service Agreement (this "Agreement") is made as of the Effective Date 4-1-2011 by and between CAPLUCK, Inc. ("COMPANY" or "LICENSOR") and **Gila County CAP** ("SUBSCRIBER" or "LICENSEE"). COMPANY and SUBSCRIBER hereby agree that the following terms and conditions will apply to the services and software provided (Community Action Management System) by COMPANY to SUBSCRIBER.

WHEREAS, COMPANY provides certain software services via a website ("Website") to Designated Log In page provided by Company (the "Services"); and

WHEREAS, SUBSCRIBER desires to use the Services upon the terms contained herein.

THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1. "Authorized Platform" means the computer or operating system, or both, on which Licensee is authorized to use the Software pursuant to this Agreement. The Authorized Platform, Windows Operating System with Internet Explorer.

1.2. "Authorized Site" means a location at which Licensee is authorized to use the Software. The Authorized Site is Agency Locations.

1.3. "Documentation" means all user manuals and other written material created by Licensor to describe the functionality or assist in the use of the Software.

1.4. "Licensee" means Agency and includes any employee, consultant, or contractor of Licensee, provided that the employee, consultant, or contractor is using the Software in the performance of his or her duties as an employee, consultant, or contractor of Licensee.

1.5. "License Fee" means the fee to be paid by Licensee to Licensor as consideration for the license granted under this Agreement and the right to use the Software and the Documentation.

1.6. "Licensor" means CAPLUCK Solutions, Inc.

1.7. "Software" means the computer program or programs marketed as "Community Action Agency Data Management System" in object code form only, and the any Product Documentation. Software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version of the Software that constitutes a separate product because of differences in function or features.

2. **THE SERVICE.** Subject to all terms and conditions of this Agreement, COMPANY will provide the SUBSCRIBER with the use of the Community Action Agency Management System

3. **TERM.** The initial term of this Agreement shall be twelve months from the Effective Date (the "Initial Term"). Thereafter, this Agreement can be renewed for additional one (1) year terms ("Renewal Terms") unless Subscriber notifies Company in writing no later than 60 days prior to the expiration of the then current Term that it desires to terminate the Agreement (collectively, the Initial Term and any Renewal Terms constitute the "Term").

4. **Subscription FEE.** The yearly Total Annual Usage Fee in the amount of **\$3500.00 / Year** and as set forth in Exhibit A of is due upon execution of this Agreement.

5. **BILLING PERIOD AND PAYMENT METHOD.** COMPANY shall charge and collect subscription fees on an annual basis. An invoice will automatically be issued to a SUBSCRIBER at the beginning of this Agreement for the initial Total Annual Usage Fee and any Setup Fees. Invoices are billed in U.S. Dollars and payable by check or money order in U.S. Dollars drawn on a U.S. Bank. The SUBSCRIBER agrees to pay the Total Annual Usage Fee annually, for its account in accordance with the usage fee and billing terms in effect at the time the fees are due and payable. Invoice amounts are exclusive of all taxes, levies, or duties that may be imposed by taxing authorities having jurisdiction over the SUBSCRIBER's access location.

6. **INVOICE ERRORS.** The SUBSCRIBER must contact COMPANY in writing within 45 days of the date of an invoice claimed to reflect a billing error to be eligible to receive a credit or adjustment.

7. **NON-PAYMENT.** In the event the SUBSCRIBER account becomes more than 30 days overdue, COMPANY reserves the right to suspend the Service provided to the SUBSCRIBER and terminate this Agreement without any obligation and liability to SUBSCRIBER.

8. **SERVICE ACCESS AND AVAILABILITY.** The SUBSCRIBER shall be solely responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Service, and for paying all third-party access charges incurred while using the Service.

9. **SECURITY.** SUBSCRIBER shall notify COMPANY immediately of any unauthorized use of its account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by SUBSCRIBER) or any other breach of security. COMPANY will not be liable for any loss or damage arising from SUBSCRIBER's failure to comply with these requirements

10. **PROPRIETARY SOFTWARE AND LICENSE.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a nonexclusive, nontransferable license in the Software, to use and reproduce the Software exclusively for the Service as described in paragraph 1 above. Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software,

Documentation, or any related materials to Licensee or any third party. Licensee shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees, consultants, or contractors. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

10.1 Licensee may not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this Agreement without Licensor's prior written consent, which will not be unreasonably withheld. This Agreement shall be binding upon the successors and assigns of the parties to this Agreement.

10.2-The SUBSCRIBER acknowledges, and agrees, that the SUBSCRIBER, its employees and agents, are expressly prohibited, directly or indirectly, from attempting to discover the source code, underlying algorithms, or technology of the Software; renting, leasing, selling, assigning, or transferring rights to the Software; modifying or making derivative works based on the Software; or using the Software in any service bureau or timeshare capacity. The SUBSCRIBER acknowledges, and agrees, that COMPANY retains exclusive ownership throughout the world of its Software, including portions or copies, and all rights not expressly granted to the SUBSCRIBER are reserved by COMPANY.

11. USE RESTRICTIONS. SUBSCRIBER may not use the Service for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such list. SUBSCRIBER agree not to transmit, or permit SUBSCRIBER's employees to transmit, through the Service any unlawful, harassing, libelous, abusive, threatening, vulgar, obscene or otherwise objectionable material of any kind. SUBSCRIBER agree to only use the Service for purposes authorized herein, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm. SUBSCRIBER AGREES TO DEFEND, INDEMNIFY AND HOLD COMPANY HARMLESS AGAINST ANY CLAIM OR ACTION THAT ARISES FROM SUBSCRIBER'S USE OF THE SERVICE IN AN UNLAWFUL MANNER OR IN ANY MANNER INCONSISTENT WITH THE RESTRICTIONS AND POLICIES STATED HEREIN.

12. TERMINATION OF SERVICE AGREEMENT. The SUBSCRIBER or COMPANY may terminate this Service Agreement by notifying the other party with a 180 day written notice before the beginning of the next annual billing period. Contract cannot be terminated during the annual subscription. Upon termination of the Service Agreement for any reason, the SUBSCRIBER, and all users accessing the Service using the SUBSCRIBER account, will

immediately be denied access to the Service. After termination, COMPANY will remove all data in the SUBSCRIBER account.

13. **RIGHTS ON TERMINATION.** Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software. On termination all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination. All indemnity provisions set forth herein shall survive any termination of this Agreement, as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default. All client data can be available to client after the contact is terminated with no outstanding invoices. Data will be exported from CAP60 Data Base and transferred to client.

14. **SUBSCRIBER SUPPORT.** COMPANY, or its designee(s), shall provide Email or Telephone support during normal business hours (9:00am to 5:00pm Pacific Standard Time Zone) Monday-Friday, except on holidays.

15. **SUBSCRIBER DATA.** COMPANY warrants that all data inputted into the Service by the SUBSCRIBER (SUBSCRIBER Data), or its agents, is and shall remain the exclusive property of the SUBSCRIBER. The SUBSCRIBER acknowledges, and agrees, that SUBSCRIBER shall remain solely responsible for the accuracy, integrity, reliability, quality, and legality, of SUBSCRIBER Data, and COMPANY shall not be held accountable or liable for any correction, deletion, loss, destruction, or failure to store any such SUBSCRIBER Data. All SUBSCRIBER Data is considered confidential. COMPANY will not share, rent, sell, trade or otherwise disclose any personally identifiable information or SUBSCRIBER identifiable information.

16. **SUBSCRIBER'S REPRESENTATIONS AND WARRANTIES.** SUBSCRIBER represent and warrant to us that (a) SUBSCRIBER are at least 18 years old; (b) SUBSCRIBER have the right, power and authorization necessary to enter into and perform this Agreement; and (c) that SUBSCRIBER will obtain all necessary consents from the parents or guardians of children that may be required to comply with applicable law, rule or authority for use, collection, transmission and storage of SUBSCRIBER Data on the Internet,

17. **RELATIONSHIP OF PARTIES.** COMPANY, in providing the Services, is acting as an independent contractor and does not undertake by this Agreement or otherwise to perform any regulatory or contractual obligation of the SUBSCRIBER. COMPANY has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by COMPANY under this Agreement.

18. DISCLAIMER OF WARRANTIES. SUBSCRIBER ACKNOWLEDGE AND AGREE THAT THE PRODUCT AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NONE OF COMPANY, ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "COMPANY PARTIES") GUARANTEES THE TIMELINESS, ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY THE PRODUCTS OR SERVICES, OR THAT USE OF THE WEBSITE WILL BE UNINTERRUPTED, ERROR FREE OR VIRUS FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS WEBSITE AND THE TIMELINESS, USEFULNESS, ACCURACY OR COMPLETENESS OF THE PRODUCTS AND SERVICES IS ASSUMED SOLELY BY SUBSCRIBER. ALL OF THE COMPANY PARTIES HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL OF THE COMPANY PARTIES DISCLAIM ANY WARRANTIES WITH RESPECT TO ANY RESULTS THAT MAY BE OBTAINED FROM THE USE OF THIS WEBSITE, THE PRODUCTS OR SERVICES.

19. OWNERSHIP. COMPANY is the sole and exclusive owner of; the Software and Documentation and all Intellectual Property Rights therein. Except for the limited license granted herein the SUBSCRIBER acquires no rights therein.

20. INDEMNITY. SUBSCRIBER shall defend COMPANY against any third party claim, action, suit or proceeding resulting from SUBSCRIBER's use of the Product or Services, SUBSCRIBER's acts, omissions or misrepresentations under this Agreement, and/or SUBSCRIBER's breach of this Agreement. SUBSCRIBER shall indemnify COMPANY for all losses, damages, liabilities and all reasonable expenses and costs (including attorneys' fees) incurred by COMPANY as a result of any such claim, action, suit or proceeding. COMPANY shall provide SUBSCRIBER with reasonable written notice of any claim, action, suit or proceeding for which COMPANY is seeking indemnity, grant control of the defense and settlement to SUBSCRIBER, and reasonably cooperate with SUBSCRIBER at the SUBSCRIBER's expense. Notwithstanding the foregoing, SUBSCRIBER shall not enter into any settlement that would in any way affect COMPANY's continued use of the Products or the Website and/or continued offering of the Services.

21. LIMITATION OF LIABILITY. In the event of any Software is defective, Licensee's exclusive remedy shall be for Licensor to replace defective Software media; if Licensor is

unable to replace the media within thirty (30) days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement, at which time Licensor will refund any and all license or other fees paid by Licensee pursuant to this Agreement.

IN NO EVENT SHALL COMPANY, TOTAL LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY THE SUBSCRIBER TO COMPANY. FOR THE SERVICE UNDER THIS SERVICE AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER COMPANY NOR ITS LICENSORS SHALL BE LIABLE TO ANYONE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OR INACCURACY OF DATA, REVENUE, OR PROFITS) ARISING OUT OF, OR IN CONNECTION WITH, THIS SERVICE OR THE INABILITY TO USE THE SERVICE, EVEN IF COMPANY, LLC HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

22.1 CONFIDENTIALITY: Licensee acknowledges that the Software and Documentation, and all information relating to the business and operations of the Licensor that Licensee learns or has learned during or prior to the term of this Agreement, are the valuable, confidential, and proprietary information of the Licensor. During the period this Agreement is in effect, and at all times afterwards, Licensee, and its employees, contractors, consultants, and agents, will: (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor.

22.2. Limitations on Confidentiality Restrictions. Section 22.1 does not apply to any information that: (a) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order therefore); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this agreement.

GENERAL PROVISIONS.

24. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of California, United States of America, without giving effect to principles

of conflict of laws. Any dispute arising under this Agreement shall be resolved by binding arbitration to be administered by ADR Services, Inc.; or if that entity is not available; or if that entity is not available by American Arbitration Association; or if that entity is not available, by a retired judge agreed to by the parties or appointed by a court of competent jurisdiction

- 25. **Severability; Waiver.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 26. **Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.
- 27. **Notice.** Any notices provided pursuant to this Agreement shall be in writing.
- 28. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.
- 29. **Survival.** All provisions of this Agreement relating to proprietary rights, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of the Services or any termination of this Agreement.
- 30. **No Publicity.** SUBSCRIBER may not use COMPANY's name, or any trademark, service mark, trade name or logo of COMPANY without the prior written consent of COMPANY in each instance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written

COMPANY

By: Hamid Kohan

Its: President



SUBSCRIBER

Gila County CAP

By: _____

Michael A. Pastor, Chairman
Title: Gila County Board of Supervisors

Approved as to form:

Bryan Chambers
Chief Deputy County Attorney

Exhibit A

Pricing Schedule Head Start Solution

COST SCHEDULE

	Includes	Fee
Setup	Installation and Setup (one time only) Includes: Unlimited Online Training Paid by the AZCAA	----- \$1,500.00
Annual Subscription	Unlimited Web-Access to CAP60 Solutions Unlimited Live Technical Support Unlimited Users Application Hosting and Bandwidth Regular Updates and Enhancements Regular Nightly Backup <u>Annual Subscription Fee Payable by AZCAA</u> <u>Using reporting system only**</u>	Net \$3,500.00 _____



ATTACHMENT "A"

(CAP60)

LEGAL ARIZONA WORKERS ACT COMPLIANCE

Firm hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Firm's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Firm shall further ensure that each subcontractor who performs any work for Firm under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Firm and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Firm's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Firm to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Firm shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

Firm shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Firm. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Firm's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Firm shall be entitled to an extension of time, but not costs.

ANTI-TERRORISM WARRANTY

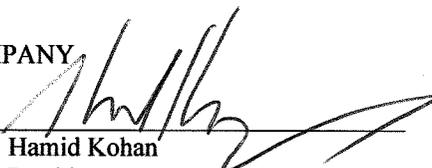
Pursuant to A.R.S. §35-397 the Firm certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

CANCELLATION

This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

COMPANY

By:


Hamid Kohan
President