

**DIGITAL FUEL TECHNOLOGIES INC.  
FREE TRIAL AGREEMENT**

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE FREE TRIAL, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF DIGITAL FUEL'S CONFIDENTIAL INFORMATION, DIGITAL FUEL'S USE OF YOUR CONFIDENTIAL INFORMATION, AND ACCESS TO ANY FREE TRIAL. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE FREE TRIAL.

For good and valuable consideration, the Parties agree as follows:

**1. PURPOSE**

Digital Fuel develops and markets ServiceFlow™ Pre-Defined IT Service Portfolio and Catalog solution, a proprietary service management software product ("Software"). You, as Digital Fuel's potential customer, wish to identify your needs for defining, creating, and publishing an IT service portfolio and catalog. Digital Fuel will provide online access to a limited version of the Software for you to evaluate. ("Free Trial").

**2. ACCESS AND LIMITED LICENSE**

Subject to the terms and restriction of this Agreement, Digital Fuel will grant you access to view such Free Trial via the Internet. Digital Fuel may also, in its sole discretion, provide you continued access to the Free Trial that enables you or your employee, agent, independent contractor, consultant, or any other person who is authorized by Digital Fuel to a personal, limited, non-transferable, non-sublicensable, non-exclusive, royalty-free license, during the term of this Agreement, to access and view the Free Trial to demonstrate the Software. This limited license shall not grant any rights to you to sell, license, or use the Free Trial or its underlying Software and under no circumstances will the Free Trial or its underlying Software be used in a production setting. Connection to, access and use of the Free Trial is your sole responsibility including, but not limited to, providing and maintaining at your own expense necessary equipment, hardware, software, and services.

**3. THIRD PARTY HOSTING SERVICE PROVIDERS**

You acknowledge that in the providing access to the Free Trial, Digital Fuel may utilize certain Hosting Providers. For the purposes of this Agreement, "Hosting Provider" means a third party hosting service provider engaged by Digital Fuel to provide hosting, support, maintenance and training services with respect providing access to the Free Trial. You authorize Digital Fuel to grant to any Hosting Provider the right to use the Confidential Information to the same extent that Digital Fuel is authorized to use the Confidential Information under this Agreement provided such Hosting Provider is subject to the restrictions on use and disclosure of Confidential Information set forth herein for the sole purpose of providing access to the Free

Trial. Digital Fuel will use its commercially reasonable efforts to enforce any Hosting Provider's compliance with the terms and conditions of this Agreement applicable to the use of the Confidential Information.

#### 4. YOUR CONFIDENTIAL INFORMATION

You retain all right, title and interest in and to all Confidential Information, including, but not limited to, any data and all other, materials, content, other items provided or made available to Digital Fuel under this Agreement and all proprietary rights associated with the foregoing. For the purposes of this Agreement, "Confidential Information" shall mean means information or data that you or Digital Fuel maintains as confidential and proprietary that is designated as such in the manner required by this paragraph. Confidential Information disclosed in tangible form will be conspicuously labeled as such at the time of disclosure. Confidential Information disclosed orally or visually will be designated as such immediately prior to disclosure and will then be summarized by you or Digital Fuel in writing delivered to the other within ten (10) business days from the date of disclosure.

Notwithstanding the foregoing, Confidential Information is not information that: (i) is or becomes available to the public other than through breach of this Agreement by the receiving party; (ii) is lawfully obtained by, or disclosed by a third party to, the receiving party without restriction on disclosure or any obligation of confidentiality; (ii) is independently developed by the receiving party; or (iv) is disclosed by the disclosing party to a third party without an obligation of confidentiality.

The disclosure of your Confidential Information collected or accessed by Digital Fuel in the performance of providing you access to the Free Trial shall be limited to that which is strictly necessary to perform such Free Trial or to fulfill any legal requirements and not for any other purpose whatsoever. Digital Fuel will return or destroy your Confidential Information upon thirty (30) days of your written request. Digital Fuel may disclose information required to comply with a subpoena or court order, provided that the Digital Fuel will inform you of the subpoena or order to allow you to seek confidential treatment for the Confidential Information.

#### 5. DIGITAL FUEL'S CONFIDENTIAL INFORMATION

The Free Trial and its underlying Software are Digital Fuel Confidential Information. Digital Fuel and its licensors retain ownership of the Free Trial, its underlying Software, and Digital Fuel trademarks, service marks, logos, and other brand designations, and all intellectual property rights therein. All rights not expressly granted to you are reserved by Digital Fuel. You hereby assign to Digital Fuel, your entire right, title and interest in any modifications or improvements to the Software that you may propose to Digital Fuel. You may not disclose Digital Fuel Confidential Information to any third party without Digital Fuel's prior written consent. You shall keep and maintain as confidential the Digital Fuel's Confidential Information with the same degree of care as is used by you with respect to your own information of like importance that is to be kept secret, but in no event less than reasonable care.

#### 6. NO SUPPORT OR WARRANTY

Digital Fuel is under no obligation to support Software or to provide upgrades or error corrections to the Software.

THE FREE TRIAL AND ITS UNDERLYING SOFTWARE ARE PROVIDED BY DIGITAL FUEL "AS IS." DIGITAL FUEL MAKES NO WARRANTIES IN CONNECTION WITH THE FREE TRIAL PROVIDED OR TO BE PROVIDED HEREUNDER AND ITS UNDERLYING SOFTWARE, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

#### 7. LIMITATION OF LIABILITY

IN NO EVENT WILL DIGITAL FUEL BE LIABLE TO YOU FOR ANY DIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, FOR LOST PROFITS OR LOST DATA, OR FOR ANY OTHER DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IF FOR ANY REASON THE PRECEDING CLAUSE IS NOT ENFORCED, DIGITAL FUEL'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED \$1,000.

#### 8. NO OBLIGATION

Nothing herein shall obligate Digital Fuel or you to proceed with any transaction. Furthermore, nothing herein shall prohibit Digital Fuel from independently developing and marketing any products or services or pursuing other business opportunities separately or with any other party. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or employment relationship. Neither you nor Digital Fuel may bind the other or act in any manner that expresses or implies a relationship between you and Digital Fuel other than that of independent contractors.

#### 9. TERM AND TERMINATION

The term of this Agreement shall be seven (7) days from the Effective Date or a longer period set forth by Digital Fuel in writing in its sole discretion. This Agreement may be terminated immediately by Digital Fuel upon written notice. Upon termination of this Agreement, all licenses granted to you by Digital Fuel will immediately cease and you shall return all Digital Fuel Confidential Information to Digital Fuel. Sections 4 (Your Confidential Information), 5 (Digital Fuel Confidential Information), 7 (Limitation of Liability), 9 (Term and Termination), and 10 (General) shall survive termination of this Agreement.

#### 10. GENERAL

You may not download, use, transfer, export or re-export the Free Trial or its underlying Software, and may not transfer, export or re-export any technical data provided by Digital Fuel, except as authorized by United States law and the laws of the jurisdiction in which the Free Trial and its underlying Software were obtained. In particular, but without limitation, the Software may not be downloaded, used, exported or re-exported (a) in or to (or by or to a national or resident of) any country then under U.S. economic embargo or (b) to any person or entity on the U.S. Treasury Department's list of Specially Designated Nationals or on the U.S. Department of Commerce's Denied Persons List or Entity List.

The validity, interpretation, and performance of this Agreement will be controlled by and construed under the laws of the State of California and the United States of America, as if

performed wholly within the state of California, and without giving effect to the principles of conflict of law. You agree that any action arising from or in connection with this Agreement will be brought exclusively in the United States District Court for the Northern District of California or the California Superior Court for the County of San Mateo, as applicable, and the parties hereby submit exclusively to the personal jurisdiction and venue of those courts.

No waiver of any rights under this Agreement will constitute a waiver of the same or any other right under this Agreement at any other time. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. You may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Digital Fuel. If any term or provision of this Agreement is found to be unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.

This Agreement is the complete agreement between you and Digital Fuel concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications or agreements between you and Digital Fuel. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of both you and Digital Fuel.