

SOFTWARE-AS-A-SERVICE (SAAS) AGREEMENT

15383
C-5383

This Software-as-a-Service (SaaS) Agreement (including any Order Schedules, as amended and in effect from time to time, the **Agreement**), effective as of 2-12-13 2012 (**Effective Date**), is between PublicStuff Inc., a Delaware corporation, with an address at 286 5th Avenue, 6th Floor, New York, NY 10001, USA (**PublicStuff**), and Newport Beach, a California Municipality, with an address at 3300 Newport Blvd, Newport Beach, CA 92663 (**Customer**). PublicStuff and Customer agree as follows:

INTRODUCTION.

PublicStuff provides a tool that Customer can use to understand issues surfaced by users of the PublicStuff applications in respect of Customer's city, municipality, facility, complex, building or campus. By subscribing for the PublicStuff Service, PublicStuff allows Customer to interact directly with individuals in the Customer's location by providing such individuals with tools and applications to report issues, concerns or problems to Customer for efficient resolution. The PublicStuff Services are made available to Customer through a password-protected hosted interface and dashboard provided by PublicStuff.

1. DEFINITIONS.

Implementation Services means services provided to Customer to integrate and implement the PublicStuff Services, as may be mutually agreed upon by the parties.

Platform means all ideas, concepts, inventions, systems, platforms, software, dashboards, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information that are used by PublicStuff in providing the PublicStuff Services.

PublicStuff Data means all data and information created, received, processed or provided by PublicStuff in performing the PublicStuff Services, or that result from performance of the PublicStuff Services.

PublicStuff Services means, collectively, the interface and dashboard hosted by PublicStuff and provided to Customer from time to time, the PublicStuff Data, the Platform, the Implementation Services and the documentation. The PublicStuff Services include any change, improvement, extension or other new version thereof that is developed or otherwise made available to Customer.

Third-Party Applications means online, Web-based applications and offline software products that are provided by third parties, interoperate with the PublicStuff Services, and are identified as third-party applications.

2. PUBLICSTUFF SERVICES.

2.1 Order Schedules. This Agreement will be implemented through one or more written orders that reference this Agreement and contain such information as generally illustrated in Exhibit A attached hereto (**Order Schedules**). Any change to the terms of this Agreement within an Order Schedule will apply only to the PublicStuff Service described therein. PublicStuff may provide the PublicStuff Services directly, or indirectly using contractors or other third party vendors
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or service providers. PublicStuff agrees that it shall be fully responsible for performance of PublicStuff Services for Customer by any such third party contractors, vendors or service providers.

2.2 PublicStuff Services. Subject to all terms and conditions of this Agreement, PublicStuff will use commercially reasonable efforts to operate and host the Platform in connection with making the PublicStuff Services available to Customer in accordance with the service levels attached hereto as Exhibit B. PublicStuff reserves the right to modify the PublicStuff Services (in whole or in part) at any time, provided that PublicStuff will not materially reduce the functionality of the PublicStuff Services.

2.3 Analytics. PublicStuff hereby grants Customer all necessary rights to access and analyze PublicStuff Data, solely via the PublicStuff Services during the term of this Agreement.

2.4 Third-Party Products and Services. PublicStuff may offer Third-Party Applications for sale under Order Schedules. Any other acquisition by Customer of Third-Party Applications, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. PublicStuff does not warrant or support third-party products or services, except as specified in an Order Schedule. No purchase of third-party products or services is required to use the PublicStuff Services.

2.5 Third-Party Applications and Customer Content. If Customer installs or enables Third-Party Applications for use with the PublicStuff Services, Customer acknowledges that PublicStuff may allow providers of those Third-Party Applications to access Customer Content as required for the interoperation of such Third-Party Applications with the PublicStuff Services. PublicStuff shall not be responsible for any disclosure, modification or deletion of Customer Content resulting from any such access by Third-Party Application providers.

2.6 Availability of Third Party Applications. PublicStuff Service features that interoperate with Third Party Applications depend on the continuing availability of such Third Party Applications. If such Third Party Applications cease to be available on reasonable terms for inclusion in the PublicStuff Services, PublicStuff may cease providing such Third Party Applications without entitling Customer to any refund, credit, or other compensation.

2.7 Support. PublicStuff will use commercially reasonable efforts to provide Customer with technical support and updates for the PublicStuff Services as set forth in Exhibit B attached hereto.

2.8 Limitations. PublicStuff will not be responsible or liable
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for any failure in the PublicStuff Services resulting from or attributable to (a) usage in excess of the usage for which Customer has ordered pursuant to an applicable Order Schedule, (b) failures in any telecommunications, network or other service or equipment that are not within PublicStuff's reasonable control, (c) Customer's negligence, acts or omissions, (d) any force majeure or other cause beyond PublicStuff's reasonable control, (e) scheduled maintenance in accordance with Exhibit B or (f) unauthorized access, breach of firewalls or other hacking by third parties, except to the extent such access, breach or hacking is caused by PublicStuff's negligence or willful misconduct.

2.9 Privacy. PublicStuff shall collect, process and store personally identifiable information in accordance with PublicStuff's privacy policy located at <http://www.publicstuff.com/privacy>.

2.10 Feedback Customer may, from time to time and in its sole discretion, make suggestions for changes, modifications or improvements to the PublicStuff Services (**Feedback**). All Feedback shall be solely owned by PublicStuff (including with respect to all intellectual property rights therein) and shall also be PublicStuff's confidential information. Customer shall and hereby does make all assignments necessary to achieve such ownership.

3. PROPRIETARY RIGHTS.

3.1 PublicStuff Services. Except for the limited rights and licenses expressly granted to Customer hereunder, no other license is granted, no other use is permitted and PublicStuff (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the PublicStuff Services.

3.2 Customer Content. Customer shall own all rights in all content and data created or provided by Customer (**Customer Content**), subject to the rights and licenses granted herein. During the term of this Agreement, Customer hereby grants PublicStuff and its successors a worldwide royalty-free, nonexclusive, sublicensable right and license to exploit and use Customer Content in connection with the provision or exploitation of the PublicStuff Services. All customer content designated in the PublicStuff system as private will remain private and unavailable for public distribution by PublicStuff.

3.3 Restrictions. Except as expressly permitted in this Agreement, Customer shall not directly or indirectly (a) use any of PublicStuff's Confidential Information to create any service, software, documentation or data that is similar to any aspect of the PublicStuff Services, provided that the foregoing does not prohibit independent development of similar functionality by Customer or third parties, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Platform, or the underlying ideas, algorithms or trade secrets therein, (c) encumber, sublicense, transfer, rent, lease, time-share or use the PublicStuff Services in any service bureau arrangement or otherwise for the benefit of any third party, (d) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the PublicStuff Services,

(e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to engage in any of the foregoing proscribed acts.

4. CONFIDENTIALITY. Each party agrees that the business, technical and financial information, that is designated in writing as confidential, or is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party. Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, and independent contractors. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to the disclosing party, and receiving party will make no further use of such materials. The return of confidential information will occur via the original means of transfer back to the disclosing party in the original format. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor.

5. PAYMENTS.

5.1 Fees. Customer agrees to pay PublicStuff all fees and expenses in the amounts and at the times specified in the applicable Order Schedule or as otherwise provided in this Agreement.

5.2 Payment Terms. Unless specified otherwise or subject to a good faith dispute, all amounts due hereunder shall be paid in full (without deduction, set-off or counterclaim) within 30 days after Customer's receipt of invoice in US dollars at PublicStuff's address or to an account specified by PublicStuff.

6. LIMITED WARRANTY AND DISCLAIMERS.

6.1 General. Each party represents and warrants that: (a) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (b) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (c) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement does not and will not conflict with any

agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

6.2 PublicStuff. PublicStuff warrants to Customer that (i) the PublicStuff Services will be provided in a professional and workmanlike manner; (ii) the PublicStuff Services will perform in accordance with the documentation in all material respects; (iii) the PublicStuff Services as delivered by PublicStuff do not contain any Trojan horses, worms, or undocumented disabling devices; and (iv) PublicStuff scans the PublicStuff Services and the hosted environment for known viruses using industry standard virus detection techniques.

6.3 Disclaimers. PUBLICSTUFF DOES NOT WARRANT THAT THE PUBLICSTUFF SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, PUBLICSTUFF HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PUBLICSTUFF SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

7. INDEMNIFICATION.

7.1 Infringement. Except as provided below, PublicStuff agrees to (a) defend Customer against any claim by a third party that the PublicStuff Service infringes a valid US patent (issued as of the Effective Date), or any copyright or trade secret, of such third party and (b) indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If any PublicStuff Service becomes or, in PublicStuff's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, PublicStuff may, at its option (i) obtain for Customer the right to continue using the PublicStuff Service or (ii) replace or modify the PublicStuff Service so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to PublicStuff then it may (iii) terminate this Agreement upon written notice to Customer and refund to Customer any PublicStuff Service fees that were pre-paid for the then current term, pro-rated for the remainder thereof.

7.2 Exclusions. PublicStuff shall have no liability or obligation hereunder with respect to any claim based upon (a) use of any PublicStuff Service in an application or environment or on a platform or with devices for which it was not designed or contemplated, (b) modifications, alterations, combinations or enhancements of the PublicStuff Service not created by or for PublicStuff (c) any Customer Content, (d) any portion of the PublicStuff Service that implements Customer's requirements, (e) Customer's continuing allegedly infringing activity after being notified thereof or its continuing use of any version after being provided modifications that would have avoided the alleged

infringement or (f) any intellectual property right in which Customer or any of its affiliates has an interest.

7.3 Procedures. Any claim for indemnification hereunder requires that (a) the indemnified party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim. The indemnifying party shall not make any settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned or withheld). The indemnifying party shall not be liable for any settlement made without its prior written consent.

7.4 Entire Liability. The foregoing states the entire liability of PublicStuff and Customer's exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the PublicStuff Services, any part thereof or its use or operation.

8. LIMITATION OF LIABILITY.

EXCEPT FOR ANY BREACH OF SECTION 4 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 7 OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO IT (IN THE CASE OF PUBLICSTUFF) OR PAID AND PAYABLE BY IT (IN THE CASE OF CUSTOMER) HEREUNDER DURING THE PREVIOUS 12 MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERM AND TERMINATION.

9.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect until terminated in accordance with the Order Schedule.

9.2 Termination. This Agreement may be terminated (in whole, or in respect of any Order Schedule) by a party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within 30 days (10 days in the case of non-payment) after receiving written notice of such breach from the non-breaching party or (b) as otherwise set forth in the Order Schedule.

9.3 Effects of Termination. Upon any expiration or termination of any Order Schedule or this Agreement, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive and (b) the provisions of Sections

3 (Proprietary Rights), 4 (Confidentiality), 5 (Payments), 6 (Limited Warranty and Disclaimers), 7 (Indemnification), 8 (Limitation of Liability), 10 (General Provisions) and this Section 9.3 shall survive.

10. GENERAL PROVISIONS.

10.1 Entire Agreement. This Agreement (Including the Order Schedules) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom). Any inconsistent or additional terms on any related purchase order, confirmation or similar form, even if signed by the parties hereafter, shall have no effect under this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original, but taken together constituting one and the same instrument. Execution of a facsimile/electronic copy shall have the same force and effect as execution of an original, and a facsimile/ electronic signature shall be deemed an original and valid signature. No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is in English only, which language shall be controlling in all respects.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its conflicts of law provisions.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Unless waived by PublicStuff in its sole discretion, exclusive jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in New York having jurisdiction over PublicStuff's offices, and both parties consent to the jurisdiction of such courts with respect to any such action. In any action or proceeding to enforce this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

10.3 Remedies. Except as specifically provided otherwise herein, each right and remedy in this

Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 3 or 4, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.4 Notices. All notices under this Agreement will be in writing, in English and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.5 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

10.6 Publicity. Neither party shall use the other party's trademarks, trade names or make any public statements concerning this Agreement or the relationship between the parties without the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, Customer hereby grants to PublicStuff the right to use, reproduce and publish, Customer's name, trademarks, service marks, brand names and brand marks in connection with advertising, marketing and sales. Use of the Customer's City seal is strictly prohibited

10.7 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld. However, without consent, either party may assign this Agreement to any successor to all or substantially all of its business (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

10.8 Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their duly authorized officers to execute this Agreement as a sealed instrument, as of the Effective Date.

PUBLICSTUFF INC.

By: _____

Name: _____

Title: _____

CUSTOMER: CITY OF NEWPORT BEACH

By: Rob Housaw

Name: Rob Housaw

Title: Assistant to the CM / IT Manager

Approved as to form:
CITY ATTORNEY'S OFFICE

Aaron C. Harp (cc)

Aaron C. Harp, City Attorney

Attest:
CITY CLERK'S OFFICE


Leilani I. Brown

Leilani I. Brown, City Clerk

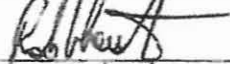


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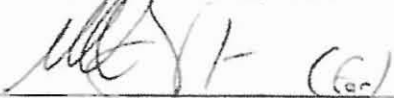
PUBLICSTUFF INC.

By: 
Name: LILY LIU
Title: CEO

CUSTOMER: CITY OF NEWPORT BEACH

By: 
Name: Rob Klausman
Title: Assistant to the CM / IT Manager

Approved as to form:
CITY ATTORNEY'S OFFICE


Aaron C. Harp, City Attorney

Attest:
CITY CLERK'S OFFICE

Leilani I. Brown, City Clerk

ORDER SCHEDULE # 1118

This Order Schedule # 1118 is entered into in connection with that certain Software-as-a-Service (SAAS) Agreement, dated Feb 12, 2012 (Agreement), between PublicStuff Inc. (PublicStuff) and the Customer identified therein. This Order Schedule shall have no effect separate and apart from the Agreement, and all capitalized terms used herein without definition will have the same meanings as specified therefor in the Agreement. PublicStuff and Customer agree as follows:

Customer	
Name	
Division	
Address	
Website	

PublicStuff Service		
PublicStuff Service	PublicStuff Interface, Dashboard, and Mobile Apps	
Third-Party Applications		
Subscription Fees	Annual Subscription Fee (payable annually in advance)	Maximum Number of Simultaneous Users of the Interface and Dashboard
	\$8,800*	Unlimited
	*{Less one-time MISAC attendee credit of \$4,400}	
Implementation Services (if any)	One-time Set-up: \$2,000	
Term	This Order Schedule shall begin on the date of _____, 2012, and continue for one year with the option to renew.	
Termination	This Order Schedule shall remain in effect for the term specified above, unless and until terminated with a minimum of 7 days notice or as set forth in Section 9.2 of the Agreement.	

AGREED as of 2/12/13:

PUBLICSTUFF INC.

By: [Signature]
 Name: LILY LIU
 Title: CEO

CUSTOMER

By: [Signature]
 Name: Rah Houston
 Title: Assistant to CM

1. SERVICE LEVEL COMMITMENT.

1.1 General. PublicStuff shall use commercially reasonable efforts to maintain the Minimum Service Level during the Term of the Agreement.

Service Category	Measurement	Measurement Window	Minimum Service Level
Uptime	Availability of the PublicStuff Service with all material functionality	Monthly	99%

1.2 Service Disruption PublicStuff will inform Customer, by email (or other prompt means if email is unavailable), of any service disruption, unless such disruption is of an insignificant nature (less than 1 hour). PublicStuff will use commercially reasonable efforts to restore service as soon as reasonably practicable and inform Customer by email (or other prompt means if email is unavailable) once service is restored.

1.3 Exceptions. The following downtime minutes will be excluded from the measurement of compliance with the Minimum Service Level: (i) downtime minutes related to scheduled maintenance; (ii) downtime minutes related to any matter constituting force majeure pursuant to Section 10.5 of the Agreement; (iii) downtime minutes resulting from acts by Customer other than in accordance with the Agreement, including but not limited to any negligence, willful misconduct or use of the PublicStuff Service in breach of the Agreement and (iv) downtime minutes resulting from data or transmission quality issues outside of PublicStuff's reasonable control. All scheduled maintenance will be conducted between the hours of 12:00 a.m. ET and 5:00 a.m. ET. PublicStuff at its sole discretion may plan additional scheduled maintenance which will be communicated by email to Customer at least 24 hours in advance with notice of how many hours of downtime is expected.

1.4 Support Hours. Normal hours of operation are 9am – 8pm ET, Monday through Friday, excluding PublicStuff-observed holidays (**Support Hours**). Outside of Support Hours, Customer can access PublicStuff support at <http://account.publicstuff.com/contact>. PublicStuff will use commercially reasonable efforts to address issues within 4 hours during Support Hours and within 12 hours outside of Support Hours.

1.5 Remedy. If PublicStuff fails to meet the Minimum Service Level as set forth above, then as PublicStuff's sole obligation and Customer's exclusive remedy, Customer shall be entitled to one-month access pursuant to the Agreement for each period below the Minimum Service Level set forth above that the PublicStuff Service remains unavailable, provided that in no event shall service credits in any calendar month exceed two months for the given year. Any such credit shall be applied to fees owed by Customer to PublicStuff in the following calendar month. Customer must request such service credit within 10 business days following the end of the calendar month in which the failure occurred.