

PROGNOSE

Prognose License and Support Agreement

April 1, 2022

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1. LICENSE AND SUPPORT AGREEMENT

THIS AGREEMENT made this _____ day of _____, _____.

BETWEEN:

THIMGAN & ASSOCIATES ("Thimgan Assoc.") with its principal place of business at 17361 County Road 21, La Junta, Colorado, and Oklahoma County ("Client") with its principal place of business at 320 Robert S. Kerr #313, Oklahoma City, Oklahoma 73102.

WHEREAS Thimgan Assoc. is the developer and owner of a certain set of software products marketed using the trade name Prognose;

AND WHEREAS Client desires to obtain from Thimgan Assoc. a limited, non-transferable, non-sub-licensable, and non-exclusive license to use Thimgan Assoc.'s Licensed Programs and services;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the parties agree as follows:

Appendices

The following appendices are attached to form part of this Agreement:

Appendix	Description
Appendix A	Products and Prices for License Fees
Appendix B	Professional Services Rates

In the event of a conflict between the main body of this Agreement and an Appendix to this Agreement, the terms of the Appendix shall prevail.

2. Definitions

- 2.1. Agreement. The agreement set forth in this document.
- 2.2. Licensed Materials. The term "Licensed Materials" shall mean computer programs, in object form, and all related documentation and materials provided to Client under the terms of this Agreement. Licensed Materials shall not include Thimgan Assoc. Source Code.
- 2.3. Licensed Programs. The term "Licensed Programs" shall mean the object code version of the software, as well as all updates, enhancements and releases. Licensed Programs are a sub-set of the Licensed Materials.
- 2.4. Thimgan Assoc. Source Code. The term "Thimgan Assoc. Source Code" shall mean a full source language statement of the programs owned by Thimgan Assoc. used to prepare the Licensed Programs, including any updates, enhancements, revisions and modifications thereto that are provided to Client under this

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Agreement. Thimgan Assoc. Source Code shall not include any source language statements for any portion of the Licensed Programs owned by or sublicensed from third parties.

- 2.5. Effective Date. The term "Effective Date" shall mean a specific mutually agreed upon date as defined in Section 4, Dates and Term.
- 2.6. Anniversary Date. The term "Anniversary Date" shall mean a specific mutually agreed upon date as defined in Section 4, Dates and Term.
- 2.7. Initial Term. Initial term is the one year time frame ending on the anniversary date.
- 2.8. Successive Term(s). Successive term is the year(s) immediately following the initial term starting on the anniversary date of the contract.
- 2.9. Version. The term "Version" shall mean an issue of Licensed Programs, which has been made available to the Client.
- 2.10. Professional Service Request (PSR). The term "PSR" shall mean the document and process required to authorize professional services which are outside of those agreed to in Professional Services Agreement, Exhibit A, Statement of Work.
- 2.11. Prognose. The term Prognose shall mean the trade name for the Licensed Programs provided under this Agreement as described in Appendix A.
- 2.12. SPSS. SPSS is the predictive analytic software owned and operated by IBM.
- 2.13. SPSS Syntax. SPSS Syntax is the interface language developed by users of SPSS to automate functions, data manipulation and calculations within the SPSS software.
- 2.14. De-normalized Flat File. The de-normalized flat file(s) are view representations of data from the Client.
- 2.15. Model. Model is a mathematical representation used to predict property values or some component of the three approaches to value. The model is a creation of SPSS syntax code that starts with the de-normalized flat file data structure and includes all data transformations necessary for the prediction. Models are created using a sub-set from the population (sales – income) and are expected to be applied to a population of properties.

3. License

- 3.1. Thimgan Assoc. hereby grants to Client, and Client hereby accepts from Thimgan Assoc., subject to the terms and conditions of this Agreement, a limited, non-transferable, non-sub-licensable, and non-exclusive license ("License") to use the Licensed Materials solely for Clients own use. The License shall be restricted for use with one (1) production server database with a single set of master code tables.
- 3.2. Client may not assign, sublicense or otherwise transfer, in whole or in part, the License, the Licensed Materials, this Agreement or any of its rights or obligations hereunder, whether voluntarily, by operation of law or otherwise, without the prior written consent of Thimgan Assoc..
- 3.3. Client agrees not to allow access to the Licensed Programs by any third party without written permission from Thimgan Assoc.

4. Dates & Term

- 4.1. This Agreement shall become effective as specified below ("Effective Date") or when Thimgan Assoc. provides the Licensed Programs or services hereunder, whichever is earlier.

- 4.2. The month and day of the Effective Date shall determine the anniversary date (hereinafter “Anniversary Date”).
- 4.3. This Agreement shall have a term of one (1) year, and may be renewed for two (2) additional one-year successive terms by written agreement of the Parties.

Summary	
Effective Date:	Date entered on page 1 of this Agreement
Implementation Start Date:	Within ninety (90) Days of Effective Date
Anniversary Date:	One (1) Year from Implementation Start Date
Agreement Term Begins:	Effective Date
Agreement Term Ends:	Anniversary Date, with 1-year successive terms possible thereafter.

5. Ownership

- 5.1. Thimgan Assoc. is the lawful owner or licensee of all proprietary rights whatsoever in the Licensed Materials including any changes, additions, and enhancements in the form of new or partial programs or documentation, but not as to limit the generality thereof, all copyright interests in the Licensed Materials. All copies of the Licensed Materials provided to, or reproduced by, the Client pursuant to this Agreement are, and remain the property of Thimgan Assoc. No rights in the Licensed Materials are granted to anyone other than those set forth in this Agreement. The Client shall use its commercially reasonable best efforts to prevent any violations of Thimgan Assoc.'s property rights in the Licensed Materials and shall, under no circumstances, sell, lease, sublease, sublicense, assign, barter, encumber or otherwise transfer the Licensed Materials or use the Licensed Materials for anything but its own business purposes, except as provided herein.
- 5.2. The Client shall have no right to modify, enhance or otherwise change the Licensed Materials in any way without the prior written consent of Thimgan Assoc. However the Client may merge the Licensed Materials into other materials to form a system, provided that upon termination of the License granted by this Agreement, the Licensed Materials will be removed from the system and treated as though permission to merge had never been granted. Use of the Licensed Materials in a system shall remain subject to all other terms of this Agreement.
- 5.3. The Licensed Materials and all other data or materials supplied by Thimgan Assoc. to Client are confidential and proprietary to Thimgan Assoc., protected by law and of substantial value to Thimgan Assoc., and their use and disclosure must be carefully and continuously controlled.
- 5.4. The Licensed Materials and the Thimgan Assoc. Source Code are protected by the Copyright Laws of the United States.
- 5.5. All logos, trademarks and trade names of Thimgan Assoc. are proprietary to Thimgan Assoc. and may only be used as authorized in writing by Thimgan Assoc.
- 5.6. Client shall keep all property of Thimgan Assoc. free and clear of all claims, liens and encumbrances.
- 5.7. Client shall notify Thimgan Assoc. immediately of the unauthorized possession, use or knowledge of any item supplied to Client pursuant to this Agreement.

- 5.8. In the event Client breaches or attempts to breach any of the provisions of this Section 5, Thimgan Assoc. shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate. The provisions of this Section 5 shall survive termination of this Agreement.
- 5.9. Thimgan Assoc. agrees to place the source code for the software and any upgrades supplied to an agency in escrow with a third party acceptable to the client and to enter into a source code escrow agreement which includes a provision that entitles Oklahoma County to receive everything held in escrow upon the occurrence of any of the following:
1. A bona fide material default of the obligations of Thimgan Assoc. under this agreement;
 2. An assignment by Thimgan Assoc. for the benefit of its creditors;
 3. A failure by Thimgan Assoc. to pay, or an admission by the vendor of its inability to pay, its debts as they mature;
 4. A filing of a petition in bankruptcy by or against Thimgan Assoc. when such petition is not dismissed within sixty (60) days of the filing date;
 5. The appointment of a receiver, liquidator or trustee appointed for any substantial part of Thimgan Assoc.'s property;
 6. The inability or unwillingness of Thimgan Assoc. to provide the maintenance and support services in accordance with the agreement with the agency; or
 7. The ceasing of maintenance and support of the software by Thimgan Assoc.

The fees of any third-party escrow agent subject to this section shall be borne by Thimgan Assoc. Thimgan Assoc. also agrees that upon occurrence of any of the above stated events, Oklahoma County is entitled to maintenance rights, including but not limited to the right to copy, adapt and modify the source code for Oklahoma County's internal use and support. Thimgan Assoc. further agrees that upon occurrence of any of the above slated events, Oklahoma County is relieved of any obligation to make royalty or license payments to vendor, its estate, or vendor's successors or assigns.

6. Product Prices and Professional Services Rates

- 6.1. The price for the one time license fee for Prognose as well as the support and maintenance fee are contained in Appendix A. The rates for professional services that are not a part of this agreement are contained in Appendix B.
- 6.2. After the initial term and for the successive terms thereafter, Thimgan Assoc. may attempt to justify an increase to prices for the successive terms, but such an increase will not take place without written amendment to this Agreement signed by both Parties.
- 6.3. Thimgan Assoc. reserves the right to withhold services for non-payment of fees.
- 6.4. Section 8 lists products and services that are not included in the license and support fee.

7. Support Services

The following services are included in the license and support fees:

- 7.1. Technical Data Support. Thimgan Assoc. will create and maintain the de-normalized flat file view(s) necessary for the interface with the modeling process.
- 7.2. Technical Model Support. Thimgan Assoc. will provide model interface support for the input and maintenance of models created through the use of SPSS syntax.
- 7.3. Web-based Support. All clients have 24-hour access to our web resources. This includes all system documentation, Prognose and upgrade files. Web resources allow clients to instantly send issues to Thimgan Assoc. technical support staff via an online support form.
- 7.4. Licensed Programs Maintenance. Thimgan Assoc. will provide Licensed Programs maintenance, which includes defect fixes, and any other required modifications to keep the Licensed Programs in conformance with the specifications contained in the current Thimgan Assoc. Licensed Materials. Thimgan Assoc. will amend the specifications only to remove documentation errors, provide consistency of interpretation or describe improvements to the Licensed Programs. Thimgan Assoc. will correct any error or malfunction in the Licensed Programs that prevents them from operating in conformance with the then current Licensed Materials, or Thimgan Assoc. will provide a commercially reasonable alternative that will conform to the then current Licensed Materials.
- 7.5. If Client's system is inoperable due to a reproducible error or malfunction, and Client is using the current release of the Licensed Programs, Thimgan Assoc. will provide continuous effort to correct the error or malfunction.
- 7.6. A maximum of four days of on-site assistance with installation or training of Prognose will be provided by Thimgan Assoc.

8. Version and Module Upgrades

- 8.1. Thimgan Assoc. will periodically make Licensed Programs upgrades and enhancements available to Client. Thimgan Assoc. will provide the necessary instruction and software tools so Client can install the upgrades and modifications.

9. Items Not Covered by this License and Support Fee

The following services are not covered by this license and support agreement but may be provided on a fee basis. Contact Thimgan Assoc. for quotes on specific items.

- 9.1. Model Training. Determining the value-contributory components needed for the model and how to structure your data for regression analysis.
- 9.2. Model Building. Analyzing data using one, two, and three way comparisons including regression as well as graphical analysis, and making appropriate data transformations.
- 9.3. Support Initiated Outside Normal Working Hours. Thimgan Assoc.'s normal working hours are 8:00 A.M. to 5:00 P.M., Arizona Time, Monday through Friday, with Federal holidays excluded. If Client requires

or initiates service outside these hours, Client shall pay for such support at Thimgan Assoc.'s prevailing rates.

- 9.4. Client will reimburse Thimgan Assoc. for additional on-site assistance with installation or training of Prognose beyond four days per current term.
- 9.5. Client will reimburse Thimgan Assoc. for additional travel and hotel expenses beyond one trip per current term and exceeding four days.
- 9.6. Thimgan Assoc. will obtain Client's prior approval **by separate written contract** before initiating additional on-site assistance or travel arrangements.

10. Warranty and Limitation of Liability

- 10.1. THIMGAN ASSOC. warrants that as of the installation date the Licensed Software will perform in accordance with its intended purpose and will perform all such functions in accordance with the product's documentation and applicable specifications.
- 10.2. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, THE LICENSED MATERIALS OR ANY UPDATES, ENHANCEMENTS OR RELEASES THERETO, OR ANY OTHER SERVICES OR GOODS PROVIDED BY THIMGAN ASSOC. TO CLIENT IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT'S SOLE AND EXCLUSIVE REMEDIES AND THIMGAN ASSOC.'S ONLY OBLIGATIONS UNDER THE WARRANTY SET FORTH ABOVE AND THIS AGREEMENT IS TO CAUSE THE LICENSED PROGRAMS TO OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THIMGAN ASSOC.'S THEN-CURRENT LICENSED MATERIALS OR TO CORRECT THE THEN-CURRENT LICENSED MATERIALS.
- 10.3. NOT WITHSTANDING PROVISIONS OF PARAGRAPH 7.2, THIMGAN ASSOC. SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUFFERED OR INCURRED BY CLIENT AS A CONSEQUENCE OF THE USE OR PERFORMANCE OF THE LICENSED PROGRAMS OR OTHERWISE, EVEN IF THIMGAN ASSOC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, UNDER NO CIRCUMSTANCES SHALL THIMGAN ASSOC. BE LIABLE FOR ANY LOSS, COST, EXPENSE OR DAMAGE TO CLIENT IN AN AMOUNT EXCEEDING THE SUM OF THE INITIAL LICENSE FEE ACTUALLY PAID BY CLIENT TO THIMGAN ASSOC. UNDER THIS AGREEMENT, WHETHER ARISING AS A RESULT OF: (A) ANY BREACH OF THIS AGREEMENT BY THIMGAN ASSOC.; OR (B) ANY ACT OR FAILURE TO ACT OF THIMGAN ASSOC. CLIENT AGREES THAT IT SHALL NOT ASSERT ANY CLAIMS AGAINST THIMGAN ASSOC. BASED ON ANY THEORY OF STRICT LIABILITY.
- 10.4. Thimgan Assoc. agrees to indemnify, hold harmless, and defend Client, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third Parties, including Thimgan Assoc., its subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, Thimgan Assoc.'s breach of this Agreement or any acts or omissions of or by Thimgan Assoc., its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement. Thimgan Assoc. agrees that its duty to defend and indemnify Client under this Agreement

includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against Client for the defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of Client.

11. Early Termination

- 11.1. Either party may terminate this Agreement within ninety (90) days advance notice of termination. Payments shall be pro-rated to the last day of the month of termination date without penalties.

12. Actions Upon Termination

- 12.1. Client will cease using Licensed Materials immediately upon termination.
- 12.2. Within ninety (90) days after termination for any reason, Client will furnish Thimgan Assoc. an affidavit certifying that the original and all copies, in whole or in part, of the Licensed Materials have been returned to Thimgan Assoc. or destroyed by Client.
- 12.3. Client will pay all amounts due Thimgan Assoc., subject to Dispute Resolution as specified in Section 13 below.

13. Dispute Resolution

- 13.1. General: Differences between Thimgan Assoc. and the Client, arising under and by virtue of the contract documents, shall be brought to the attention of the Client or Thimgan Assoc. at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.
- 13.2. In the event a party does not accept the outcome of the above dispute resolution process, said party may bring a civil action in Oklahoma County, Oklahoma.

14. Access to Client Systems

- 14.1. Client agrees, within the constraints of Client's IT policies and protocol, to allow remote access to Client's computer system. This access will be used to provide technical support and problem resolution. Client shall install its own security measures to prevent unauthorized access, and shall be solely responsible for any breach of said security measures. In the event Thimgan Assoc. must access the Client's system remotely, within the constraints of Client's IT policies and protocol, Client is responsible for all expenses associated with obtaining and installing the infrastructure required to support Thimgan Assoc.'s remote access.

15. General

- 15.1. Any clause of this Agreement found to be unenforceable shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect.
- 15.2. Any waiver of any clause of this Agreement shall not constitute a subsequent waiver of that clause or any other clause. Failure or delay of either party to enforce compliance with any clause shall not constitute a waiver of such clause.
- 15.3. This Agreement shall be governed by Oklahoma law, and the court of competent jurisdiction shall be in Oklahoma City, Oklahoma.
- 15.4. In the event litigation is required to enforce performance of this Agreement, each party shall be responsible for their own associated costs of enforcement. No other reimbursement shall occur.
- 15.5. This Agreement replaces all other prior agreements, orally or in writing, relating to the subject matter contained herein, including any made by other parties such as distributors, consultants, dealers or resellers. This Agreement can only be modified in writing as approved by authorized signatories of both parties.
- 15.6. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the parties.

15.7 NON-FUNDING CLAUSE.

Client intends to request the appropriation of funds to be paid for the services provided by Thimgan Assoc. under this Agreement. If funds are not available beyond the end of June of any effective fiscal year of this Agreement, Client's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on Client as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Thimgan Assoc., its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

If funds are not appropriated for a succeeding fiscal year to fund performance by Client under this Agreement, Client shall promptly notify Thimgan Assoc. of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

15.8 ASSIGNMENT

Thimgan Assoc. shall not assign or transfer its duties of performance nor its rights to compensation under this Agreement, without the prior written approval of Client. Client reserves the right to assert any claim or defense it may have against Thimgan Assoc. and against any assignee or successor-in-interest of Thimgan Assoc.

16. Acceptance of Agreement

Thimgan Assoc. and Client have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below:

Client

{Name & Title}- Signature

Date Accepted

For: Oklahoma County

Phone:

E-mail:

The person signing this Agreement on behalf of the Client warrants that they have read and understand all the terms and conditions contained herein, are authorized to sign on behalf of the Client and accept personal responsibility for damages if they are not so authorized.

Thimgan Assoc.



James R. Thimgan, President

Date Agreed

For: Thimgan Assoc.

Phone: (623) 570 – 4502

E-mail: russ@prognose.us

April 1, 2022

Appendix A -- Products and Prices for License Fees

A.1 Licensed Programs

Prognose Product Suite—Licensed Programs Included in this Agreement:

- ☒ Prognose Models
- ☒ Prognose Values
- ☒ Prognose Comparables
- ☒ Prognose Reports

A.2 Prognose Prices

License and Support Fees	Annual Support & Maintenance
Prognose Product Suite	\$51,150

A.3 Payment Frequency

Payment for the subsequent years' License and Support fees, if the Parties renew the Agreement for successive terms, is payable within the 30 days following the beginning of each Successive Term.

A.4 Client Contact for Billing Issues

James R. Thimgan
Partner
PO BOX 668
La Junta, CO 81050

Phone: 623.570.4502
Fax: 719.384.5997
E-mail: russ@prognose.us

April 1, 2022

Appendix B -- Professional Services Rates

Any services requested outside of those agreed to in Professional Services Agreement will require authorization through Professional Service Requests (PSR) signed by both parties.

The following rates will apply for the listed professional services.

Item	Rate	Per Unit
Professional Services		
• Custom Programming	\$175.00	Hour
• Consultation	\$175.00	Hour
• Report Development	\$175.00	Hour
Training		
• Training at Client Facility	\$2,000.00	Day
• Training Online Using WebEx	\$175.00	Hour
Support		
• Support Outside Normal Service Hours	\$175.00	Hour
Travel Expenses		
• Travel and per diem costs will be provided at time of service request.		

These prices may be increased annually on the Anniversary Date, upon at least sixty (60) days prior notice to client.



Bill To OKLAHOMA COUNTY ASSESSOR 320 ROBERT S. KERR SUITE 313 OKLAHOMA CITY, OK 73102	Requisition 12300689-00 FY 2023 Acct No: UNDEFINED ACCOUNT. Review: Buyer: 6065armarhof Status: Created
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Vendor
THIMGAN & ASSOCIATES
PO BOX 668

LA JUNTA, CO 81050

Ship To
OKLAHOMA COUNTY ASSESSOR
320 ROBERT S. KERR
SUITE 313
OKLAHOMA CITY, OK 73102

Deliver To
OKLAHOMA COUNTY ASSESSOR
320 ROBERT S. KERR
SUITE 313
OKLAHOMA CITY, OK 73102

Date Ordered	Vendor Number	Date Required	Ship Via	Terms	Department	
06/24/22	000597				Assessor Revaluation	
LN Description / Account				Qty	Unit Price	Net Price
001 BLANKET FOR PROFESSIONAL SERVICES				51150.00	1.00000	51150.00
				EACH		

Ship To
OKLAHOMA COUNTY ASSESSOR
320 ROBERT S. KERR
SUITE 313
OKLAHOMA CITY, OK 73102

Deliver To
OKLAHOMA COUNTY ASSESSOR
320 ROBERT S. KERR
SUITE 313
OKLAHOMA CITY, OK 73102

Requisition Link

Requisition Total

51150.00

***** General Ledger Summary Section *****
Account

Amount Remaining Budget