

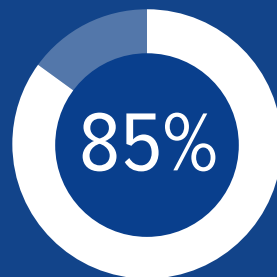
TERMS AND CONDITIONS HANDBOOK



PREPARED BY:

KG THE KAPLAN GROUP

B2B DEBT COLLECTION EXPERTS



85% SUCCESS RATE ON LARGE VIABLE CLAIMS

CONTINGENCY RATES: 10% TO 25%

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“

As a CFO for 20+ years, over 95% of the contract problems I experienced with customers were non-payment of invoices.

As a collection agency owner for 10+ years, over 95% of the software, SaaS and technology service contracts our clients use are missing one or more key provisions that would give us more leverage to solve this most common problem. ”

**DEAN KAPLAN**

Negotiator | Consultant | Debt Collector

We will cover these key default provisions and over 75 other common legal provisions in this document, along with 20 examples of actual B2B terms & conditions from a wide variety of technology industry companies. Our comments are focused on issues that impact our ability to successfully resolve collection problems. We'll let your attorneys provide commentary on the 75 other legal terms that are covered in this eBook.

DISCLAIMER: We are not attorneys and we are not giving legal advice. We encourage you to have your attorney review your terms and conditions and discuss the key issues facing your specific business. This ebook is presented to share information only. We make no representation regarding the accuracy or completeness. You agree to not hold The Kaplan Group or its owners, officers, directors or employees liable in any way based on your use of the information provided in this ebook.

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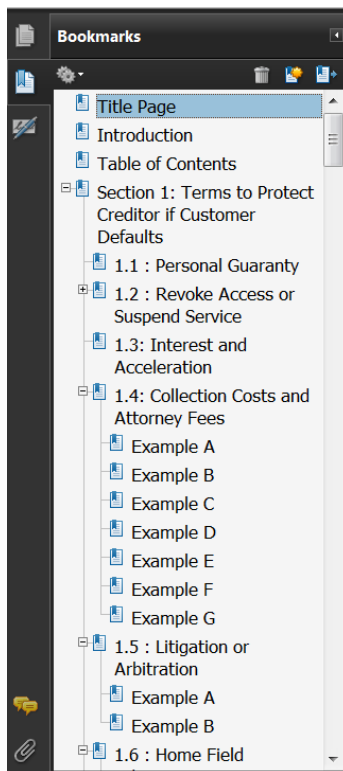
In Section 1, we discuss the rationale for including these specific default provisions in contracts, along with sample language which is not found in the sample contracts.

Throughout the remainder of this ebook, we provide lists of topics by category with Bookmark links to actual language in the sample contracts. View this eBook in Acrobat (not your browser's plugin) for full navigation and link functionality.

To show the Bookmarks Navigation Panel, click on the Bookmarks icon in the left-side menu



**Click Icon To
Show Panel**



To view various actual examples for a specific term or condition, simply click on the corresponding example in a subsection



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SECTION 1:
TERMS TO PROTECT
CREDITOR IF CUTOMER
DEFAULTS



DEFAULT PROVISIONS

Default Provisions can have a big impact on your eventual ability to collect when a customer does not pay on time. These provisions can give the Vendor significantly more leverage when dealing with delinquent accounts. This leverage may be enough to make your invoices go to the top of the debtor's pay list, whether collecting in house, when turned over to a collection agency, or if litigation becomes necessary. As a collection agency specializing in large B2B claims, **we know that the better these terms are covered correctly in the paperwork, the higher our success rate and the faster we collect more money.**

As discussed in detail below, just adding the three following sentences can have a profound impact:

Should Applicant default on any payment(s), Vendor reserves the right to declare all remaining payments for the balance of term of the contract immediately due and payable without notice to Applicant. Vendor shall have the right to charge interest of 1.5% (or the highest rate allowed by law, if less) per month, for any invoice that is past due. In the event that Vendor commences any action to collect delinquent invoices, Applicant agrees to pay collection expenses and attorney fees, whether or not suit is filed.

“ Only ONE of the sample contracts we have included herein included a Collection Fee provision – yet this can give us significant leverage during that process ”

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Many of the sample contracts herein include language discussing venue, jurisdiction and law if litigation is required. Unfortunately, several do not cover this properly, and **NONE** have the most important language when it comes to debt collection. In our opinion, this is the second most important default provision to give you and your retained professionals the most leverage to successfully collect, as we explain below in Section 1F.

In this section, we cover the following items:

1. Personal Guaranty
2. Suspension of Service
3. Interest and Acceleration
4. Collection Costs and Attorney Fees
5. Litigate or Arbitrate
6. Home Field Advantage Option
7. Jury Waiver

For companies that use credit applications, these default provisions may be included in the application rather than in the service contract and terms and conditions. For more information, see our **Credit Application Handbook**.



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1.1 PERSONAL GUARANTY

This can be extremely helpful when dealing with small companies. While the majority of potential customers may not agree to provide a personal guaranty, it doesn't hurt to ask. Many individuals will agree simply because it is in your Application. Individuals can always cross it out or not sign it if they refuse to guaranty the Applicant's purchases. A personal guaranty does not guaranty that you will get paid, but it does have many advantages: 1) it does provide a secondary source of repayment, 2) If the company does go out of business, you can still try to collect from the personal guarantor, and 3) obligations with a personal guaranty have priority over corporate-only obligations in the eyes of the personal guarantor. We've seen many situations where a business owner determines the company is likely to fail, and they spend the last several months of the business's existence getting non-guaranteed credit and using the ultimate proceeds to pay down obligations that are personally guaranteed.

Some guarantees can be multiple pages long, others simply a paragraph, and others simply part of a sentence. Who needs to sign is different in community property states. How a guaranty is signed is very important. The more money at stake, the more thorough the personal guaranty should be. We have a free ebook dedicated to this subject available on our website to discuss this in further detail. Below are two of the simpler examples:

For and in consideration of the allowance to Applicant of an open account, I/we, the undersigned Guarantor(s), hereby personally guarantee, unconditionally and at all times, to Vendor, the payment of all obligations, indebtedness, and liability which may be now or hereafter owing by Applicant to Vendor, including, but not limited to, all monthly service charges, attorney's fees, costs, and interest.

Or

I/we, the undersigned guarantor(s), understand that this agreement of personal guarantee as provided herein shall be a continuing obligation and may not be revoked except by written agreement expressly canceling this personal guarantee signed by the Vendor.

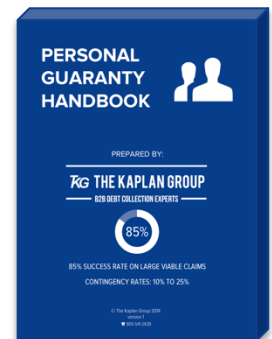
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In other situations, we have seen this simple sentence (which is not 100% definitive) in the signature block of the Application result in recovery primarily because of the personal guaranty provision.

NOTWITHSTANDING THAT THIS ACCOUNT IS ESTABLISHED IN THE NAME OF A BUSINESS, I PERSONALLY GUARANTEE PAYMENT OF THE ACCOUNT (MUST BE AN OFFICER TO SIGN ON BEHALF OF THE COMPANY)

For more information and 20 examples, see our **Personal Guaranty** ebook.



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1.2 REVOKE ACCESS OR SUSPEND SERVICE

We are amazed at the number of times a non-paying customer says that because the Vendor stopped making the service available (as a result of customer's breach for non-payment), the customer is no longer bound by the contract and therefore does not have to pay. While this is not legally valid argument, it can be helpful to simply state this in the contract. Six of the sample contracts have suspension provisions.

1.3 INTEREST AND ACCELERATION

It is important to indicate that interest is due at a certain rate (not to exceed the maximum allowed so you don't violate usury laws) from the past due date. Without this clause, interest may not start to accrue until the date you sue and get a judgment, and it will be at the much lower statutory rate determined by state law that has jurisdiction. On a 2 year old invoice of \$10,000, the accrued interest at 18% of \$3,600 provides significant leverage to negotiate a resolution to avoid court. And if you have to go to court, you may eventually collect all of this interest which will offset your collection and attorney costs.

Should Applicant default on any payment(s), Vendor reserves the right to declare all invoice amounts due and payable without notice to Applicant and shall have the right to charge interest of 1.5% (or the highest rate allowed by law, if less) per month, for any invoice that is past due.



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Note that this sentence has an acceleration clause, where once one invoice is past due, all invoices become due immediately. If things go wrong and you have to send this to collections or litigate, you want to be able to pursue the full amount you are owed, even amounts that would not currently be owed if there was no delinquency. For service providers who enter into long-term contracts with payments over time, the following acceleration language can be used:

Should Applicant default on any payment(s), Vendor reserves the right to declare all remaining payments for the balance of the term of the contact immediately due and payable without notice to Applicant.

For other examples of how interest is mentioned in the example contracts, see Section 2.

“ Acceleration language is critical for long-term contracts with future payments ”

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1.4 COLLECTION COSTS AND ATTORNEY FEES

In the USA, typically, you will not have the legal right to recover collection costs or attorney fees unless there is a signed written agreement with this provision. Just having this provision on your invoices is not necessarily enough. You want to have a document signed by your customer indicating they agree to this provision and the Application is typically the best document to memorialize this term. You want to specifically include collection costs so that collection agencies can add this fee into the amount they are trying to recover on a pre-litigation basis, as they cannot add “potential” attorney fees at this stage. Whether or not you actually collect these costs, it gives you and your agents much more leverage during collection agency, litigation, and judgment collection activities.

In the event that Vendor commences any action to collect delinquent invoices, Applicant agrees to pay collection expenses and attorney fees, whether or not suit is filed.

We see the following version less frequently, but it has the advantage of spelling out the liquidated damages in the event of default. Some courts use a schedule to determine the fee to be awarded to attorneys for getting a judgment. This fee typically is substantially less than the contingency or hourly fee paid to the attorney. By having an agreed attorney cost in the executed Application, the Vendor has a much better chance of being awarded the full attorney cost, thereby offsetting the cost of having to litigate to get paid. It also helps at the collection agency stage, and gives in house collectors more leverage during the threat to send to collections:

We further agree to pay a 25% collection charge, in the event of default, if the account is placed with an attorney or bonded collection agency.

Six of the sample contracts mention attorney fees, but only one mentions collection costs.

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1.5 LITIGATION OR ARBITRATION

Many people believe that arbitration is better than going to court, and this may be true in a number of situations. But, in our opinion, for the vast majority of debt collection matters, we believe that litigation is the better approach. In most cases, the out of pocket costs for arbitration are higher than the filing fees associated with going to court, primarily because you have to pay the arbitrator for their time. Further, you don't have the ability to do discovery to the same extent as you have in court proceedings, and this can be very important if your customer is disputing the balance, especially with completely fabricated disputes. Many courts allow you to request pre-judgment attachments, putting additional pressure on Applicants much faster, but this is not allowed in arbitration. Finally, when you have attorneys willing to do the collection effort on a contingency fee basis (our collection agency has a network of attorneys across the country who work on contingency for collection matters), there usually is no difference in the attorney fees. One of the main arguments in favor of arbitration is potentially lower attorney costs, but that does not apply to the vast majority of collection matters we have encountered. Most of the credit applications we have seen call for litigation and not arbitration.

Two of the sample contracts have arbitration language.



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1.6 HOME FIELD ADVANTAGE OPTION

If you do have to sue, most likely you will have to sue where your customer is located unless you have a clause stating otherwise. While we have a nationwide attorney network to provide this coverage, in the remote possibility that there is a trial, you may have to send a witness to the courtroom where your customer is located. No one wants to incur this added cost and inconvenience.

Alternatively, if you can sue where you are located, this makes it more difficult and expensive for your customer to defend if they are located far away. This provision can be very important if there is a dispute, and it also gives you greater leverage in collections at the pre-litigation stage. Suing in your local courthouse makes it more likely you will get a default judgment rather than the riskier and lengthier process of a trial where the Applicant is located. As a collection agency, we can get higher pre-litigation settlements in cases where the Applicant realizes we can sue in our client's home court and they won't travel or hire an out of state attorney to defend the lawsuit.

The language regarding location of litigation must be very precise. In one well known case, a clause that stated that "the courts of California, Orange County shall have jurisdiction over the parties..." was held to not require litigation in Orange County. The word "jurisdiction" was considered "permissive", not "mandatory". To avoid this problem, we recommend that the clause include venue, jurisdiction and state law references for the Vendor's home court, and not include any permissive modifiers:

The parties expressly agree that any and all disputes of whatever character arising under this agreement or under any statute or common law relating, directly or indirectly, to the subject matter of this agreement or the dealings of the parties relating thereto, shall be litigated only in the _____ court of _____ County, State of _____, or in the federal district court having jurisdiction for such county, and Applicant hereby consents to the jurisdiction of said courts and that said disputes shall be governed by the laws of said state.

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However, if your customer's assets are out of state and you have to do court ordered judgment collection activities, there will be increased costs associated with transferring the matter to a collection attorney located in the venue of the debtor's assets. In cases where disputes are unlikely, it is less expensive and faster to sue where your customer is located. The best approach is to have the Applicant agree that the Vendor gets to choose where litigation can be initiated:

The parties expressly agree that any and all disputes of whatever character arising under this agreement or under any statute or common law relating, directly or indirectly, to the subject matter of this agreement or the dealings of the parties relating thereto, shall be litigated, at the Creditor's sole discretion, either in the _____ court of _____ County, State of _____, or in the federal district court having jurisdiction for such county, or, alternatively, in the state or the federal district court having jurisdiction for the county in which Applicant's business is located at the time of filing of suit. Applicant hereby consents to the jurisdiction of said courts and that said disputes shall be governed by the laws of said respective states.

The extra 33 words in this paragraph could be worth thousands to tens of thousands in lower legal costs and higher pre-litigation recoveries each year.



Almost all of the sample contracts address venue, jurisdiction, and law (viewable from the links below). We believe many of these may not be written precisely enough to achieve the provider's objectives. None have the Home and Away option we discussed above. One contract (TC102 Paragraph 8) based these items on the continental location (e.g. Europe, North America, etc.) of the customer.

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1.7 JURY WAIVER

In our experience, trials are very rare in collection litigation, and jury trials even rarer. But, if there are significant amounts involved, and potential disputes, you may prefer that a judge rather than a jury would decide your fate.

THE PARTIES HERETO KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE OR DISPUTE THAT MAY ARISE BETWEEN THEM.

Or

Trial by jury is waived.



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SECTION 2: MONEY PROVISIONS



2. MONEY PROVISIONS

About 50% of the sample contracts and terms and conditions include provisions on fees, how customer will be invoiced, when payment is due, and/or who is responsible for taxes. In some cases, the company reserves the right to change its fees or payment terms with the customer having the option to terminate the contract if that occurs.

As mentioned in the last section, there is significant value in addressing interest or finance charges for late payments. Indicating that the customer is responsible for sales tax is very important for companies selling physical products. Companies providing services internationally have other taxes to consider.

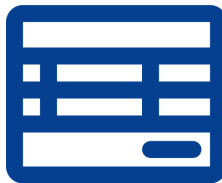
We frequently receive claims where the customer asserts that they are being billed more than they had budgeted, yet the amount owed is based on the customer's usage which the customer controls. Unfortunately, many contracts in these situations are somewhat ambiguous, resulting in our clients having to compromise to reach an out of court resolution. A single sentence indicating that the amount owed or being billed is tied to the customer's volume usage eliminates this argument.

In addition to the items mentioned below, the Term and Termination provisions discussed in Section 7 can also significantly impact the financial terms between Buyer and Vendor.

The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.



1. Fees



2. Invoicing



3. Taxes

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SECTION 3:
SERVICE PROVISIONS
AND PROVIDER
RESPONSIBILITIES



3. SERVICE PROVISIONS AND PROVIDER RESPONSIBILITIES

It is important to detail what the provider is and is not responsible for when providing services or software. In this section, we have identified 16 terms that are included in the sample contracts herein.

From a collections standpoint, the most common dispute is customers claiming they didn't get any value from the service provided. Often this is related to advertising or marketing services.

Contracts that include a simple statement that there are no guaranty of results is very helpful in these situations. We only found one example of this is the sample contracts.

Another comment complaint we see is the customer claiming the service did not work the way they expected. Often we hear "we were told by the salesman it would". Contracts with language that eliminate this excuse for non-payment give us a stronger position during the collection process.

The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.

1. Provision of Services
2. Right to Modify Service
3. Subscription terms
4. Service Availability and Internet Delays
5. Use of Website
6. Technical Support
7. Privacy
8. Security
9. Data Extraction
10. Third Party Websites
11. Third Party Vendors
12. Authorized Users
13. Password
14. Trial Use
15. No Guaranty of Results

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SECTION 4:
CUSTOMER
RESPONSIBILITIES AND
REPRESENTATIONS



4. CUSTOMER RESPONSIBILITIES AND REPRESENTATIONS

For many service and software providers, it is equally important to include the customer's responsibilities in the relationship. Providers should not be held responsible for delays caused by the customer and it is undesirable to have these delays impact when fees are due.

Many of the terms in this section detail what customers should not do and hold them accountable for the cost if they violate these provisions.

The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.

1. General Customer Responsibilities
2. No Violation of Laws
3. Accuracy of Data
4. Unauthorized Use
5. Hacking, Spam, etc.

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SECTION 5:
INTELLECTUAL PROPERTY,
DATA OWNERSHIP AND
LICENSE GRANTS



5. INTELLECTUAL PROPERTY, DATA OWNERSHIP AND LICENSE GRANTS

Since the intellectual property of service providers is often one of the company's most important assets, these provisions are critical. In addition, several companies include provisions related to their customers, such as requiring a testimonial, using customer names for marketing purposes, use of customer data and use of ideas from customers.

The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.

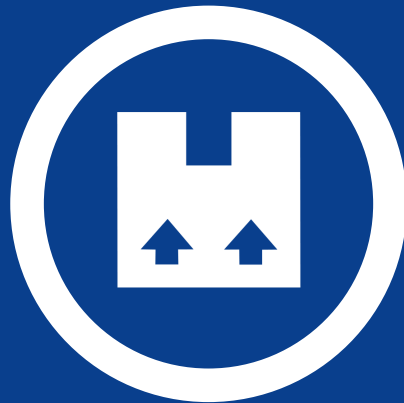
1. General Intellectual Property Provisions
2. License Grants
3. License Restrictions
4. License of Data
5. Ownership of Service
6. Ownership and Use of Customer Data
7. User generated Content
8. Trademark/Copyright/DMCA
9. Marketing Use of Customer Name
10. Use of Customer Ideas

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SECTION 6:

SELLING PHYSICAL PRODUCTS



6. SELLING PHYSICAL PRODUCTS

Companies selling physical products need a variety of terms different from software and service providers. We have four examples contracts (TC501 through TC504) that cover the 15 items listed below.

The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.

1. Price
2. Orders
3. Changes & Cancellation
4. Delays
5. Shortage or Damage
6. Rejection
7. Returns
8. Risk of Loss
9. Recalls
10. Alterations to Product Sold
11. Reselling
12. Product Information
13. Warranty
14. Co-op Advertising Program
15. Security Interest

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SECTION 7:
GENERAL LEGAL
PROVISIONS



7. GENERAL LEGAL PROVISIONS

Many of the terms in this section are found in a wide variety of contracts, not just those related to the sale of products or services or licensing. In general, these terms are more ‘boilerplate’ than specific to the product or service a company provides.

Many companies can anticipate needing to make changes to certain terms and conditions over time. Perhaps the best way to handle this issue is to have the contract state that it includes terms and conditions as posted on the company’s website which can be revised by the company. Language examples are provided in item 16 below, with a great example in Paragraph 7 of TC204.

Term and Termination provisions may be standard boilerplate or have significant financial terms. Some provide for auto-renewal of the contract. Others provide the right to suspend service while Buyers are in default, whether for payment or other violations. These provisions should address whether the Buyer is responsible for the entire amount due under a contract in the event of termination by Vendor for Buyer’s breach. The Buyer’s rights to terminate long-term contracts may be clearly defined, including the Vendor’s right to cure breaches to prevent termination. The survival of any contract terms after termination is also commonly defined.

One caution on assignability of contracts: make sure the contracts that should carry-over to the buyer if you sell your company (either a stock or asset purchase) have the correct language. Having been through dozens of transactions, it can take significant effort to get key contracts assigned if permission from the other party is required. Many of the example assignment provisions limit only the customer’s ability to assign the contract, although they may have the same concern with respect to possible future sale of their company.

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The sample contracts herein have language on the following topics, which you can access through the Bookmark Menu or the links below.

1. Term and Termination
2. Warranty and Disclaimers
3. Limitation of Liability
4. Indemnification
5. Non-Waiver
6. Relationship of Parties
7. No Benefit to Others
8. Confidentiality
9. Assignment
10. Notices
11. Electronic Communications
12. Severability
13. Survival
14. Force Majeure
15. Entire Agreement
16. Modify Agreement and/or Policies
17. Language
18. Non-Solicitation
19. European Union Laws on Personal Information
20. Export Laws
21. Authority and/or Age Representation
22. COPPA
23. US Government Customers

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SECTION 8: INDEX TO SAMPLE CONTRACTS



CLICK HERE TO
DOWNLOAD MS
WORD VERSIONS



8. INDEX TO SAMPLE CONTRACTS

1. SaaS Service Providers
 - TC101
 - TC102
 - TC103
 - TC104

2. SaaS Email Marketing Providers
 - TC201
 - TC202
 - TC203
 - TC204
 - TC205

3. Digital Marketing Services
 - TC301
 - TC302
 - TC303

4. Other Digital Products
 - TC401 Content Subscription
 - TC402 Software
 - TC403 Apps
 - TC404 Software Tools

5. Sellers of Physical Products
 - TC501
 - TC502
 - TC503
 - TC504

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Terms of Service

1. Legal Agreement

Thank you for registering to be a user of **Creditor Name**. These Terms of Service apply to you, a user of the Service, and constitute a binding, legal agreement (“**Agreement**”) between you, as an individual, or if you are purchasing or using the service as part of your job responsibilities, the legal entity that you represent as specified on the Order Form, and **Creditor Name**. Please read all the terms and conditions of this Agreement carefully. **By registering for and/or using the Service, you agree that you are bound by the terms and conditions of this Agreement, and you represent and warrant that you have full power, authority and legal capacity to enter into this Agreement.** Please contact **CREDITOR NAME** at **Creditor’s email address** if you have any questions about this Agreement.

2. Definitions

“**Downloaded Software**” means client software downloaded by an Authorized User (defined below) from the Site that augments your use of the Service, including add-ins and ancillary programs.

“**Enterprise Customer**” means a **CREDITOR NAME** customer who has acquired the “Enterprise” version of the Service.

“Order Form” means a web-based or signed paper order form completed by you or by an authorized employee of the legal entity for whom you work when ordering the Service.

“**External User**” means a single individual generally located outside of your organization who is invited to access a document or folder within the Service. An External User has access only to limited features of the Service, and is not considered a licensed Named User under the Service.

“**Named User**” means a single individual with a corresponding user name and password who is authorized by the administrator for the entity entering into this Agreement to be a user of the Service. A Named User has full license rights to use the Service, subject to limitations that may be imposed by the administrator.

“**Service**” means the provision by **CREDITOR NAME** to you of online document management, work flow and related services, in accordance with the tiers of service and other options as set forth in the Order Form. The Service includes the provision on a Software as a Service basis of non-exclusive use and access to proprietary **CREDITOR NAME** software, and associated hosting and support services as described herein.

“**Site**” means the web site at www.knowledgetree.com and/or such other web site or sites that **CREDITOR NAME** communicates to you where you may access the Service.

“**Software**” means **CREDITOR NAME**’s proprietary software used by **CREDITOR NAME** to deliver the Service, made available to you through the Site on a “Software as a Service” basis,

and all updates and associated documentation thereto made available as a part of the Service pursuant to this Agreement. The term “Software” includes the Downloaded Software.

“**Trial Use**” means your use of the Service during a free trial period (up to 14 days), as further described on the Site.

3. Service.

3.1 Under the terms of and subject to the restrictions in this Agreement, including payment of all applicable fees, **CREDITOR NAME** will provide the Service on a subscription basis to you during the term of this Agreement. You may use and access the Service and Software solely through the Site. Your rights to use the Service are non-exclusive and non-transferable. You may use the Service only for your own benefit, and not for the benefit of any other third party.

3.2 As part of the Service, **CREDITOR NAME** will provide reasonable technical support to you via e-mail and an online support portal during **CREDITOR NAME**'s regular business hours. As applicable, additional terms and limitations regarding support for the Service based on the selected Service tier will be included on the Site.

3.3 **CREDITOR NAME** will use commercially reasonable efforts to make the Service available on a 24 hours a day, 7 days a week, and 365 days a year basis, subject to Section 13.2 (Force Majeure) below and to downtime for maintenance purposes. **CREDITOR NAME** will, to the extent practicable, schedule maintenance downtime outside of regular business hours, as further defined and stated on the Site. If you are an Enterprise Customer, the Service Level Agreement set forth in Exhibit A will apply to the Service, and is incorporated herein by reference.

3.4 **CREDITOR NAME** may from time to time modify the Site and the Service and add, change, or delete features of the Service in its sole discretion, without notice to you. Your continued use of the Service after any such changes to the Service constitutes your acceptance of these changes. **CREDITOR NAME** will use commercially reasonable efforts to post information on the Site regarding material changes to the Service.

3.5 The Service may be used and accessed for your internal business purposes and only by your Named Users and External Users (collectively the “Authorized Users”).

All usage rights are personal to the Authorized User. You must keep your user name and password confidential and not authorize any other person, including but not limited to any other individual within your organization, to access or use the Service using your user name and password. It is a violation of this Agreement for Named Users to share their user name and passwords with other individuals, allowing more than one individual to use the Service with the same user name and password.

External Users authorized by you may use the Service only for the purpose of facilitating business transactions with you or for providing services to you, and in no event may External Users use and access the Service provided to you as a document management solution for their own or for another person's benefit. You agree not to charge any Authorized Users to use the

Service, either directly or indirectly. You shall be fully responsible for use of the Service by Authorized Users and their compliance with the terms of this Agreement.

3.6 You acknowledge that you are solely responsible for: (a) all use of the Service made using your Authorized Users' user names and passwords, and (b) maintaining the confidentiality of your Authorized Users' user names and passwords. You agree to notify **CREDITOR NAME** immediately of any unauthorized use of an Authorized User's email address, user name or password, or any other breach of security regarding the Service of which you become aware.

3.7 If you have acquired Trial Use of the Service, the following terms shall apply in connection with your Trial Use, notwithstanding anything to the contrary herein:

3.7.1 The Trial Use is provided "AS-IS", without warranty or support of any kind, express or implied;

3.7.2 Unless you have notified **CREDITOR NAME** that you wish to convert the trial to a full subscription prior to the end of the Trial Use period, your account will automatically terminate at the end of the Trial Use period; and

3.7.3 Upon termination of your Trial Use Period, unless you have previously converted to a full subscription, all Client Documents stored by you as part of the Service will be permanently deleted without notice to you, and you will have no right to access the Service or any of your Client Documents after termination.

3.8 You warrant and agree not to:

- Violate any local, state, national or international law or regulation in connection with use of the Service, or otherwise use the Service in any way that is in furtherance of criminal, fraudulent, or other unlawful activity
- Interfere with or disrupt the Service or servers or networks connected to the Service
- Violate any codes of conduct, requirements, terms of use, policies or regulations of networks connected to the Service
- Interfere with or attempt to interfere with any other person's use of the Service
- Gain access to or attempt to gain access to any account, computers or networks related to the Service without authorization
- Use the Service to send or otherwise make available any viruses, Trojan horses, worms, corrupted files, or any other similar software that may damage the operation of another's computer or property
- Use the Service in a manner that results in excessive bandwidth usage, as determined in **CREDITOR NAME**'s sole discretion

- Impersonate any other person or entity, or misrepresent your affiliation with any other person or entity
- Forge headers or otherwise manipulate identifiers in order to disguise the origin of any content or communication transmitted through the Service

3.9 As part of the Service, **CREDITOR NAME** may offer access to one or more application programming interfaces (“APIs”). **CREDITOR NAME** provides the APIs on an “AS-IS” basis, without warranty or support of any kind, express or implied. You acknowledge and agree that your use of the APIs is at your own risk, and that the APIs may be removed at any time from the Service without notice to you.

4. Intellectual Property

4.1 You agree that **CREDITOR NAME** and its licensors own all intellectual property rights in and to the Service, the Software, and the Site, including but not limited to the look and feel, structure, organization, design, algorithms, templates, data models, logic flow, text, graphics, logos, and screen displays associated therewith. You will not reverse engineer, decompile or disassemble the Software, or otherwise attempt to reconstruct or discover the source code for the Software. You further agree not to resell, lease, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party for such third party’s benefit. You may make a single copy of the Downloaded Software for backup purposes only; provided that any such copies contain the same proprietary rights notices that appear on the Downloaded Software. **CREDITOR NAME** reserves all rights in the Service and the Software not expressly granted to you hereunder.

4.2 You shall retain ownership of the documents and related materials and information you upload in connection with the Service (“**Client Documents**”). **CREDITOR NAME** shall not access or otherwise use the contents of any Client Documents, unless you give specific written permission to such access in connection with **CREDITOR NAME**’s handling of a support or implementation issue. Solely in order to provide the Service to you, **CREDITOR NAME** may copy, archive, index, and create metadata relating to the Client Documents. **CREDITOR NAME** may derive and compile from your usage of the Service certain aggregated and/or analytical information, so long as such aggregated or analytical information does not reveal the contents of any Client Documents. Such aggregated data and metadata may be used for **CREDITOR NAME**’s own purposes without restriction, including, but not limited to, using such data in conjunction with data from other sources to improve **CREDITOR NAME**’s products and services and create new products.

4.3 **CREDITOR NAME** shall have a royalty-free, worldwide, transferable, and perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, or other information provided by you or any Authorized User relating to the Service.

4.4 **CREDITOR NAME**’s trademarks, logo and any other company or product names used on the Site or in connection with the Service are the property of the respective trademark owner.

5. Fees and Expenses

5.1 You (or the legal entity you are employed by) shall pay **CREDITOR NAME** all applicable fees associated with the Service as set forth in the Site and/or Order Form, and in accordance with the terms set forth therein. All payments under this Agreement are non-refundable and, unless otherwise agreed, shall be made in United States dollars. Past-due payments will be subject to late payment charges of the lesser of: (a) one and one-half percent (1 ½ %) per month, or (b) the maximum rate allowed by law. The fees and rates under this Agreement are subject to change by **CREDITOR NAME** upon at least thirty (30) days written notice, which notice may include by posting the updated fees and rates on the Site.

5.2 You shall be responsible for all applicable taxes, however designated, incurred in connection with this Agreement, including but not limited to state and local privilege, excise, sales, VAT, and use taxes and any taxes or amounts in lieu thereof paid or payable by **CREDITOR NAME**, but excluding taxes based upon the net income of **CREDITOR NAME**.

5.3 If a payment becomes past due, **CREDITOR NAME** reserves the right to suspend or terminate the Service as covered in section 7.3. **CREDITOR NAME** has the right to change payment terms, including by requiring upfront payment for the Service, in its discretion based on your payment history and/or financial status.

6. Confidentiality and Security

6.1 “**Confidential Information**” means any information or data that is disclosed by one party to the other party pursuant to this Agreement that is marked as confidential. In addition, your Confidential Information includes the Client Documents (whether or not marked), and Confidential Information of **CREDITOR NAME** (whether or not marked) includes the Service and Software, as well as the structure, organization, design, algorithms, templates, data models, logic flow, and screen displays associated with the Service and Software. Confidential Information does not include information that the receiving party can show: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records.

6.2 A receiving party agrees: (a) to hold the disclosing party’s Confidential Information in confidence, and to protect the disclosing party’s Confidential Information in the same manner that it protects the confidentiality of its own similar confidential information (but in no event using less than reasonable care); and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the disclosing party’s Confidential Information. Without limiting the foregoing, you shall disclose and allow access to the Service only for the purpose of supporting and augmenting your use of the Service. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law, applicable regulatory authorities, or court order; in such event, such party shall use diligent efforts to inform the other party prior to any such required disclosure.

6.3 Each party acknowledges and agrees that any violation of this Section 6 may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.

6.4 **CREDITOR NAME** will take reasonable security measures designed to protect your Confidential Information, including your Client Documents. These measures will include the use of reasonable physical, administrative, and technical security techniques and systems designed to prevent unauthorized access and disclosure, maintain data accuracy, and ensure appropriate use of your Confidential Information.

6.5 You agree to the terms of **CREDITOR NAME**'s privacy statement, which is located at <http://www.knowledgetree.com/legal/privacy> and is incorporated herein by reference (including any changes to **CREDITOR NAME**'s privacy statement made in accordance with its terms).

6.6 Upon termination or expiration of this Agreement, the receiving party will return to the disclosing party or destroy all Confidential Information delivered or disclosed to the receiving party (including, with respect to you as receiving party, the Downloaded Software), together with all copies in existence thereof at any time made by the receiving party; provided that return of Client Documents by **CREDITOR NAME** to you is covered by Section 7.6 below.

7. Term and Termination

7.1 This Agreement will be effective as of the Effective Date and, unless sooner terminated as herein provided, will continue for the period of time set forth in the Order Form (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive renewal terms (each renewal term being the same length as the Initial Term) based on **CREDITOR NAME**'s then-current fees, unless either party provides written notice of its intent to terminate this Agreement at least thirty (30) days prior to the end of the Initial Term or applicable renewal term.

7.2 Either party may terminate this Agreement upon thirty (30) days prior written notice if the other party materially breaches any of the terms and conditions of this Agreement and such material breach is not cured within the thirty (30) day period. **CREDITOR NAME** will have the right to suspend your use of or access to the Service in the event **CREDITOR NAME** determines in its sole discretion that you have breached this Agreement. Notwithstanding the foregoing, termination and suspensions relating to late payments by you are covered in Section 7.3 below.

7.3 If a payment becomes thirty (30) days or more overdue, **CREDITOR NAME** reserves the right to suspend your access to the Service without liability to you, until payment is made in full. If any payment becomes forty-five (45) days or more overdue, **CREDITOR NAME** may terminate this Agreement upon notice to you.

7.4 **CREDITOR NAME** may terminate this Agreement without cause upon at least sixty (60) days prior written notice. In such event, you will be entitled to a refund of any prepaid amounts for Service not delivered.

7.5 The terms provided in Sections 4, 6, 9, 10, 11, 12, 13, and 14 of this Agreement shall survive any termination of this Agreement. In addition, upon termination you shall promptly pay **CREDITOR NAME** all outstanding amounts due to **CREDITOR NAME** under this Agreement. If this Agreement is terminated by **CREDITOR NAME** due to your breach, which you fail to cure after receipt of written notice, or if you terminate this Agreement without cause prior to the end of the then-current term, then all fees unpaid for the remainder of the current term shall become immediately due and payable by you to **CREDITOR NAME** as liquidated damages, without any further demand by **CREDITOR NAME**. The parties acknowledge that **CREDITOR NAME**'s actual damages arising from such termination would be difficult to determine with accuracy and, accordingly, have agreed to the foregoing liquidated damages, which the parties acknowledge is a reasonable estimate of **CREDITOR NAME**'s potential losses.

7.6 Within thirty (30) days after termination, you may request in writing that **CREDITOR NAME** provide you with access to a copy of all Client Documents, and **CREDITOR NAME** will provide such Client Documents so long as you pay the then-current fee for such service.

8. Independent Contractors; Publicity

8.1 The parties are and intend to be independent contractors with respect to the services contemplated hereunder. **CREDITOR NAME** agrees that neither it, its employees nor its contractors shall be considered as having an employee status with you. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

8.2 You agree that **CREDITOR NAME** may include you as a customer in promotional material for the Service and/or for **CREDITOR NAME**, including use of your logos, trademarks, trade names and similar identifying material. You can revoke this right by submitting a request via e-mail to **CREDITOR NAME** at marketing@knowledgetree.com. Upon receipt of such request, **CREDITOR NAME** will use commercially reasonable efforts to remove any reference to you from such promotional material within 30 days and make no further reference to you. Upon **CREDITOR NAME**'s request, you agree to participate in a mutually agreed press release regarding the relationship established by this Agreement. In addition, you agree from time to time, as reasonably requested by **CREDITOR NAME** and subject to your approval, to participate in **CREDITOR NAME** promotional activities, such as preparation of case studies; participation in media interviews; and preparation of quotes and other marketing materials for **CREDITOR NAME**.

9. Warranties; Disclaimers

9.1 You and **CREDITOR NAME** each warrant that they have full authority to enter into this Agreement and are not bound by any contractual or legal restrictions from fulfilling their

obligations hereunder. In addition, **CREDITOR NAME** warrants that the Service will substantially conform to the written or electronic documentation provided by **CREDITOR NAME** in connection with the Service. In the event of a breach of this warranty by **CREDITOR NAME**, as your sole and exclusive remedy, **CREDITOR NAME** will, at its expense, use commercially reasonable efforts to cause the Service to conform.

9.2 You represent and warrant that all Client Documents and associated content and data (“**Client Data**“) provided to **CREDITOR NAME** in connection with your use of the Site and the Service: (i) is owned by you, or you have the full right to provide the Client Data to **CREDITOR NAME**; (ii) does not infringe or misappropriate any copyright, trademark, trade secret or other intellectual property right; (iii) does not violate any person’s right of privacy or publicity; and (iv) does not contain any unlawful, obscene, defamatory or libelous material. You further represent and warrant that your use of Client Data on the Site or in connection with the Service is not in breach of any covenant or obligation of confidentiality that you have to any other person or entity. You are solely responsible for the Client Data, and acknowledge that **CREDITOR NAME** has no responsibility or intent to review or monitor any Client Data.

9.3 You shall be solely responsible for your use of the Service, and, except as otherwise agreed in writing by the parties, for maintaining backup copies of the Client Documents. You acknowledge and agree that the Service is strictly a tool to be used in conjunction with good and reasonable business judgment by competent personnel.

9.4 In connection with the provision of the Service, **CREDITOR NAME** may use third-party content, software, web sites, and/or systems (“**Third-Party Systems**“). **CREDITOR NAME** does not provide any warranties or guarantees regarding any Third-Party Systems, and you waive any claim against **CREDITOR NAME** with respect to such Third-Party Systems. However, **CREDITOR NAME** agrees to use reasonable efforts to correct, replace or provide workarounds for any issues with Third-Party Systems reported by Customer that affect the functioning of the Service. Your use and access of Third-Party Systems may be subject to the terms published or otherwise made available by the third-party providers of the Third-Party Systems.

9.5 **CREDITOR NAME** does not warrant that the Service will operate without interruption or error-free, or that the Service will be totally secure. Under no circumstances will **CREDITOR NAME** be held liable for any loss of Client Documents. To the extent that data is being transmitted over the Internet hereunder, you acknowledge that **CREDITOR NAME** has no control over the functioning of the Internet, and **CREDITOR NAME** makes no representations or warranties of any kind regarding the performance of the Internet. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, **CREDITOR NAME** MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CUSTOMER USAGE IN THE TRADE OR BY COURSE OF DEALING.

10. Indemnification

You, at your expense, shall indemnify, defend and hold **CREDITOR NAME** and its officers, directors, owners, employees, and affiliates harmless from and against all liability, damages, injuries, losses, costs and expenses (including attorney's fees) arising out of or relating to your use of the Service, including but not limited to liability, damages, injuries, losses, costs and expenses arising from any claims relating to: (a) your breach of any representations, warranties, or covenants in this Agreement, (b) your compliance with applicable laws and regulations, and (c) the Client Documents. **CREDITOR NAME** shall provide you with prompt written notice of any such claim.

11. Liability

11.1 The limit of **CREDITOR NAME**'s liability (whether in contract, tort, negligence, strict liability in tort, or by statute or otherwise) to you or to any third party concerning performance or non-performance by **CREDITOR NAME**, or in any manner related to this Agreement or the Service, for any and all claims shall not exceed in the aggregate the Subscription Fees paid by you to **CREDITOR NAME** hereunder with respect to the Service at issue (excluding any fees or charges relating to approved expenses incurred by **CREDITOR NAME** on behalf of you) during the three (3) months prior to the date that the relevant cause of action accrued.

11.2 In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damage or expenses whether arising in contract or tort (including but not limited to lost profits, loss of data, or the cost of recreating lost data), even if it has been advised of their possible existence.

11.3 The allocations of liability in this Section represent the agreed and bargained for understanding of the parties and **CREDITOR NAME**'s compensation reflects such allocation. These limitations of liability will apply notwithstanding any failure of essential purpose of any limited remedy.

12. Dispute Resolution

12.1 The parties agree to work together in good faith to resolve any dispute regarding this Agreement internally and by escalating it to higher levels of management and optional mediation, prior to resorting to binding arbitration.

12.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, that cannot be resolved by good faith negotiations shall be finally settled by binding arbitration conducted in the English language in Raleigh, NC (USA), under the commercial arbitration rules of the American Arbitration Association ("AAA"). The prevailing party shall be entitled to an award of reasonable attorney fees incurred in connection with the arbitration in such amount as may be determined by the arbitrator. The award of the arbitrator shall be the sole and exclusive remedy of the parties and shall be enforceable in any court of competent jurisdiction. Notwithstanding anything contained in this Section to the contrary, each party shall have the right to institute judicial proceedings against the other party or

anyone acting by, through or under such other party, in order to enforce the instituting party's rights hereunder through specific performance, injunction or similar equitable relief.

12.3 This Agreement shall be interpreted, construed, and governed by the laws of **Creditor's State**, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13. Miscellaneous

13.1 If you are located in the European Union, you consent to the processing of personal information in the United States by **CREDITOR NAME** in connection with the Service.

13.2 Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, strikes or other labor shortages, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, failure of telecommunication or internet service providers.

13.3 This Agreement (including the Order Form and any attachments thereto specifically agreed by the parties) constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral communications, understandings or agreements with respect to its subject matter. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance. The failure by any party to exercise any right provided herein shall not be deemed a waiver or forfeiture of any such right. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

13.4 You shall have no right to assign this Agreement or any of your obligations hereunder. **CREDITOR NAME** may assign this Agreement and any of its rights hereunder to third parties.

13.5 Every provision of this Agreement is intended to be severable. If any section of this Agreement is found to be invalid or unenforceable, then such section will be deemed amended and interpreted, if possible, in a way that renders it enforceable. If such an interpretation is not possible, then the section will be deemed removed from this Agreement and the rest of this Agreement will remain in full force and effect.

13.6 This Agreement does not designate either party as the agent, employee, legal representative, partner or joint venturer of the other party for any purpose whatsoever. There are no intended third-party beneficiaries under this Agreement.

13.7 You agree to comply with all relevant export laws and regulations, including, but not limited to, the U.S. Export Administration Regulations and Executive Orders ("**Export Controls**"). You warrant that you are not a person, company or destination restricted or prohibited by Export Controls ("**Restricted Person**"). You will not, directly or indirectly, export,

re-export, divert, or transfer the Software or Service, any portion thereof or any materials, items or technology relating to **CREDITOR NAME**'s business or related technical data or any direct product thereof to any Restricted Person.

14. Agreement and Amendments

14.1 By completing the registration process, and/or using the Service, you represent that you are 18 years old or older, are authorized to bind any legal entity that you represent, and agree to all of the terms in this Agreement. You may print or download and keep a copy of this Agreement.

14.2 **CREDITOR NAME** reserves the right, in its sole discretion, to modify or change this Agreement at any time by posting the changes to the Site. Your continued use of the Site or Service following the posting of such changes constitutes acceptance of those changes. **CREDITOR NAME** will use reasonable commercial efforts to provide notice of material changes to you. **CREDITOR NAME** also reserves the right to modify the Site and the Service at any time without prior notice to you.

14.3 **CREDITOR NAME** will periodically send emails regarding the Service, including general information about **CREDITOR NAME**'s technology and business. You can unsubscribe from email communications using our unsubscribe process.

EXHIBIT A

SERVICE LEVEL AGREEMENT ("SLA")

This SLA applies to Enterprise Customers only.

1. Technical Support and Training

- a. **CREDITOR NAME** will provide reasonable customer support service by telephone and via an online support portal ("**Support Services**") Monday through Friday (excluding **CREDITOR NAME** holidays), from 8:00 a.m. until 5:00 p.m. (GMT and Eastern Time). Support Services will be limited to issues surrounding suspected errors or failures in the Service, and general questions regarding usage of features of the Service.
- b. Support Services by telephone will be provided only to a single individual who is designated by you as your "**Administrator**", and a designated Administrator backup. **CREDITOR NAME** will not provide telephone support to your end users and you are responsible for all such end user support.
- c. You agree to perform tasks as reasonably requested by **CREDITOR NAME** to aid in the resolution of problems. Prior to calling **CREDITOR NAME**, you will take reasonable steps to verify issues reported by end users and to confirm that issues are associated with the Service and not with your computing or networking infrastructure.

- d. **CREDITOR NAME** will have no obligation to provide support or assistance with respect to Third-Party Materials.
- e. **CREDITOR NAME** will designate an account manager as a central point of contact within **CREDITOR NAME** for addressing any technical Service issues. **CREDITOR NAME** may change the designated account manager from time to time by providing notice to you.
- f. **CREDITOR NAME** is not obligated to provide support for any APIs or any integrations created by you based in whole or in part on any APIs.

2. Support Levels

Subject to Section 1, you may request support services from **CREDITOR NAME** in accordance with the following:

Support Level	Name	Description	Target Time to Response
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1	Blocker	A severe business impact that requires an immediate solution. The service is experiencing downtime or extensive degradation in performance; there is significant risk of corruption of data or data loss; there is a severe vulnerability to a remote security exploit or denial of service attack. End users are affected and no workaround exists for platforms and tools supported by KnowledgeTree.	4 business hours
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2	Major	Some business impact. The service is operating, but with a short-term work-around in place, or degraded service. End users may be affected but a workaround is in place for supported platforms and tools, or service is degraded but still	1 business day
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viable for use.

3	Minor	Minimal business impact. End users are not significantly impacted and service is not impaired.	3 business days
4	Future Request	Little to no immediate business impact. A cosmetic issue or a future feature enhancement request.	Logged on our Ideas and Improvements forum: http://support.knowledgetree.com/Evaluated for roadmap based on market feedback, feasibility and other criteria.

Target time to response begins when you notify **CREDITOR NAME** of an issue by logging issue ticket on **CREDITOR NAME**'s Enterprise Support Portal (credentials provided on contracting to designated Administrator and Administrator backup).

Target time resolution is delivered on a commercially reasonable, best-effort basis, and may be delivered as a fix or workaround.

Support business hours are defined in Section 1(a).

3. Availability

- a. The Service is an on-demand offering that currently runs in the Amazon Elastic Compute Cloud ("EC2™"), a commercial hosting service provided by Amazon Web Services, LLC ("AWS"). This Availability SLA is based on the AWS EC2™ Service Level Agreement. **CREDITOR NAME** however reserves the right to changes its hosting service provider from time to time.
- b. **CREDITOR NAME** will use commercially reasonable efforts to make the Service available with an Annual Uptime Percentage (defined below) of at least 99.9% during the Service Year (defined below). In the event **CREDITOR NAME** does not meet the Annual Uptime Percentage commitment, you will be eligible to receive a Service Credit as described below.
- c. Definitions:
 - "Service Year" is the preceding 365 days from the date of an SLA claim.
 - "Annual Uptime Percentage" is calculated by subtracting from 100% the percentage of 15 minute periods during the Service Year in which the Service was in the state of "Unavailable." If you have been using the Service for less than 365 days, your Service Year is still the preceding 365 days but any days prior to your

use of the Service will be deemed to have had 100% Availability. Any downtime occurring prior to a successful Service Credit claim cannot be used for future claims. Annual Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Service Agreement Exclusion (defined below).

- “**Unavailable**” means that your instance of Service was down, or experienced extensive degradation in performance, or normal functioning was so impaired as to have a severe impact on your business, each during a five minute period in which **CREDITOR NAME** is unable to launch replacement instances to correct such issue.
 - A “**Service Credit**” is a dollar credit, calculated as set forth below, that may be credited back to you under this SLA.
- d. **CREDITOR NAME** will use commercially reasonable efforts to: (1) provide at least 5 days of notice to you prior to any scheduled maintenance, and (2) perform scheduled maintenance during weekend hours.
- e. If the Annual Uptime Percentage for you drops below 99.9%, you are eligible to receive a Service Credit equal to 10% of your monthly fee (or the equivalent pro-rated amount of your quarterly or annual fee). To file a claim, you do not have to have wait 365 days from the day you started using the Service or 365 days from your last successful claim. You can file a claim any time your Annual Uptime Percentage over the trailing 365 days drops below 99.9%.
- f. **CREDITOR NAME** will apply any Service Credits only against future Service payments otherwise due from you. Service Credits shall not entitle you to any refund or other payment from **CREDITOR NAME**. Service Credits may not be transferred or applied to any other person or account. Your sole and exclusive remedy for any unavailability or non-performance of Service or other failure to provide Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.
- g. To receive a Service Credit, you must submit a request by sending an e-mail message to **Creditor’s email address**. To be eligible, the credit request must (i) include your unique account URL in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each incident of Unavailability that you claim to have experienced; (iii) include any information that document the errors and corroborate your claimed outage (any confidential or sensitive information should be removed or replaced with asterisks) detail as to the nature of the unavailability, including any error messages and/or service logs; and (iv) be received by **CREDITOR NAME** within thirty (30) business days of the last reported incident in the Agreement claim. If the Annual Uptime Percentage of such request is confirmed by **CREDITOR NAME** and is less than 99.9% for the Service Year, then **CREDITOR NAME** will issue the Service Credit to you within two months following the month in which the request occurred. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

- h. The Availability SLA does not apply to any unavailability, suspension or termination of Service, or any other Service performance issues: (i) that result from suspensions or terminations of your Service for any reason described in the **CREDITOR NAME** Terms; (ii) caused by factors outside of **CREDITOR NAME**'s reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Service; (iii) that result from any of your or a third party's actions or inactions; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within the direct control of **CREDITOR NAME** or its computing service provider); or (v) that result from scheduled maintenance events (collectively, the "**CREDITOR NAME** Agreement Exclusions"). If availability is impacted by factors other than those explicitly listed in this SLA, **CREDITOR NAME** may issue a Service Credit considering such factors in **CREDITOR NAME**'s sole discretion.

4. Fair Use

CREDITOR NAME does not include any limits for Enterprise Customers on their use of disk storage and bandwidth as part of the Service. However, this commitment is subject to your fair use of the Service. Fair use means that: (a) your use is in compliance with all applicable laws and does not infringe any third party intellectual property rights; (b) your use is for your own enterprise and does not include an outsourcing, service bureau or general file sharing function; and (c) your use is otherwise in compliance with the **CREDITOR NAME** Terms and does not affect **CREDITOR NAME**'s ability to provide the Service to other users. Currently, storage of over 2 Terabytes of data stored or transferred per month is considered an unfair usage of our Service. Your use of the Service that exceeds this amount or that otherwise constitutes unfair usage is subject to additional fees, in **CREDITOR NAME**'s discretion. **CREDITOR NAME** reserves the right to modify this limit from time to time.



Service Provider Terms and Conditions

These Service Provider Terms and Conditions ('Agreement') govern the use of the services provided by **Creditor Name**, a **Creditor's State** corporation having offices at **Creditor's Street Address, City, State, Zip Code**, to the customer identified on applicable Subscription Order Form that references this Agreement (the 'Customer').

This Agreement sets forth the terms under which **Creditor Name** will provide Customer with access to and use of certain software-as-a-service offering(s) ('SAAS') identified in the applicable Subscription Order Form (collectively, the 'Services'). The term 'Subscription Order Form' shall mean any ordering document used to order such Services which is executed by the Customer and either **Creditor Name** or one of its authorized resellers and references this Agreement.

The parties hereby agree as follows:

ARTICLE 1 - LICENSE TO USE SERVICES

1.1 Access Rights. **Creditor Name** hereby grants Customer, during the Term, a limited, non-transferable and non-exclusive license for Customer's employees, prospective employees and third party consultants ('Authorized Users') to use the Services in accordance with the use parameters described in the Subscription Order Form, solely for Customer's internal business purposes consistent with the terms and conditions of this Agreement.

1.2 Administration. **Creditor Name** will issue to one Authorized User ('Administrator') an individual logon identifier and password ('Administrator's Logon') for purposes of administering the Services. Using the Administrator's Logon, the Administrator shall assign each remaining Authorized User a unique logon identifier and password and assign and manage the business rules that control each such Authorized User's access to the Services. Customer shall ensure that each Authorized User will: (a) not disclose their logon identifier to any person or entity; (b) not permit any other person or entity to use their logon identifier and (c) use the Services solely in accordance with the terms and conditions of this Agreement.

1.3 Restrictions. Customer and its Authorized Users shall be prohibited from and will not: (a) sell, lease, license or sublicense the Services; (b) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Services or any software included in the Services; (c) provide, disclose, divulge or make available to, or permit use of the Services by, any third party (except as expressly provided for herein); (d) copy or reproduce all or any part of the Services (except as expressly provided for herein); (e) knowingly interfere, or attempt to interfere, with the Services in any way; (f) use the Services to engage in spamming, mail bombing, spoofing or any other fraudulent, illegal or unauthorized use of the Services; (g) knowingly introduce into or transmit through the Services any virus, worm, trap door, back door; or (h) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the Services.

ARTICLE 2 - FEES; PAYMENT TERMS

2.1 Application and Use Fee. In consideration of the license rights to the Service(s) granted in Section 1.1., Customer shall pay the fees specified in the Subscription Order Form. **Creditor Name** (or its authorized reseller identified on the applicable Subscription Order Form) shall invoice Customer for all amounts payable to **Creditor Name** hereunder which shall be due within 30 days of Customer's receipt of such invoice. Late payments will incur interest in an amount equal to the lesser of 1.0% per month or the maximum allowable under applicable law.

2.2 Taxes. All fees quoted or specified on the Subscription Order Form do not include, and Customer will pay or reimburse **Creditor Name** (or its authorized reseller identified on the applicable Subscription Order Form) for, any applicable sales tax, use tax, and value added taxes (VAT) or other taxes which are levied or imposed by reason of the performance by **Creditor Name** under this Agreement, excluding income taxes. If Customer is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Customer will provide **Creditor Name** with any required documentation to verify its tax exempt status with the applicable taxing authorities.

ARTICLE 3 - LIMITED WARRANTIES

3.1 Customer Warranty. Customer represents, warrants and covenants to **Creditor Name** that: (a) it has the authority to enter into this Agreement and perform its obligations hereunder; and (b) it and its Authorized Users will only use the Services for lawful purposes and will not use the Services to violate any law of any country or the intellectual property rights of any third party.

3.2 **Creditor Name** Warranty. **Creditor Name** warrants that: (a) **Creditor Name** has the authority to enter into this Agreement; (b) the Services will operate and conform to the Documentation (defined below); and (c) **Creditor Name** shall perform the obligations specified in the Service Level Agreement attached as Schedule A and workarounds, and fixes as specified in the Customer Support Guide attached as Schedule B. 'Documentation' shall mean the reference, administrative and user manuals, delivered by **Creditor Name** to Customer with the Services. Documentation shall not include marketing materials.

3.3 Disclaimer. Except as set forth in Section 3.2, **Creditor Name** makes no representations or warranties, whether express or implied regarding or relating to any of the Services or any other matter covered by this Agreement. **CREDITOR NAME SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** **Creditor Name** does not guarantee that Customer's access to the Services will be uninterrupted or error free. **Creditor Name** does not warrant the accuracy, reliability, completeness or timeliness of the content of Internet Web sites or other data received by Customer via the Internet.

ARTICLE 4 - LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO THE OTHER PARTY'S

CONTENT OR DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ALLEGED AS A BREACH OF CONTRACT, TORT OR OTHER FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **CREDITOR NAME'S** LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES OF ANY KIND WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO **CREDITOR NAME** UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

ARTICLE 5 - CONFIDENTIAL INFORMATION

'Confidential Information' means information that Customer and its authorized users upload in its usage of the Services hereunder ('Customer Data'), the terms of this Agreement, the Services, any software provided by **Creditor Name** under this Agreement, the logon identifiers and passwords provided to Customer and its Authorized Users, the fees charged under this Agreement, any other materials marked confidential by Customer or **Creditor Name** and any other information conveyed under this Agreement that is identified in writing as confidential at the time of its conveyance. Each party acknowledges and agrees that: (a) the Confidential Information may constitute valuable trade secrets of the party owning such Confidential Information; (b) it will use Confidential Information solely in accordance with the provisions of this Agreement; and (c) it will not disclose, or permit to be disclosed, the Confidential Information of the other party to any third party without the disclosing party's prior written consent. Each party will take all reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information including, at a minimum, those precautions taken by a party to protect its own Confidential Information, which will in no event be less than a reasonable degree of care. Confidential Information will not include information that is: (d) publicly available; (e) already in the other party's possession and not subject to a confidentiality obligation; (f) obtained by the other party from any source without any obligation of confidentiality; (g) independently developed by the other party without use of or reference to the disclosing party's Confidential Information; or (h) required to be disclosed by order of a court or other governmental entity; provided no less than ten days' notice is given to the party owning such Confidential Information so that such party may obtain a protective order or other equitable relief.

ARTICLE 6 - PROPRIETARY RIGHTS; INDEMNITY

6.1 Proprietary Rights. Except for the license granted in Section 1.1, no right title or interest of intellectual property or other proprietary rights in and to the Services made available under this Agreement is transferred to Customer hereunder. **Creditor Name** and its third party licensors retain all right, title and interests, including, without limitation, all copyright and other proprietary rights in and to the Services and all, modifications, enhancements and derivatives thereof. Customer will retain all right, title and interest to the data and documents created by Customer using the Services.

6.2 Indemnity. **Creditor Name** shall indemnify and defend Customer against any third party claims that the Services infringe any patent, copyright or other intellectual property right owned

by a third party; provided that **Creditor Name** is given prompt notice of such claim and is given information, reasonable assistance and sole authority to defend or settle the claim.

ARTICLE 7 - TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be the term specified on the Subscription Order Form. After expiration of the initial term specified on the Subscription Order Form the Customer's subscription to the Services shall automatically renew for successive one-year periods (the initial term and each renewal term, a 'Term') unless either party provides written notice of non-renewal at least 30 days prior to commencement of the applicable renewal term. Written notice of an increase in fees for any renewal term shall be provided to Customer at least 30 days prior to commencement of the applicable renewal term.

7.2 Termination by **Creditor Name**. **Creditor Name** shall have the right, upon notice to Customer, to suspend the Services and/or terminate this Agreement if: (a) Customer fails to pay **Creditor Name** any amount due hereunder and such failure to pay is not cured within 30 days following **Creditor Name's** notice to Customer of such breach; (b) Customer materially breaches any term or condition of this Agreement, provided such breach is not cured by Customer within 30 days following **Creditor Name's** notice to Customer of such breach; or (c) Customer (i) terminates or suspends its business activities; (ii) liquidates all or a substantial portion of its assets for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority to effect such liquidation of assets; or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes to effect such liquidation of assets.

7.3 Termination by Customer. Customer will have the right, upon notice to **Creditor Name**, to terminate this Agreement if **Creditor Name** is in material breach of this Agreement and **Creditor Name** fails to remedy such material breach within 30 days of its receipt of such notice or (c) **Creditor Name** (i) terminates or suspends its business activities; (ii) liquidates all or a substantial portion of its assets for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority to effect such liquidation of assets; or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes to effect such liquidation of assets.

7.4 Data Extraction. Upon any termination and for a period of 30 days thereafter, Customer may request and **Creditor Name** shall provide Customer with a copy of the data/files uploaded pursuant to the Services provided under the Agreement by Customer and its third party candidates in a the applicable format indicated below. Customer may request and **Creditor Name** shall provide such date at any time during the term of this Agreement for its then current administrative fee for such service (currently \$500 per database per time). **Creditor Name** shall provide the Customer with access to an FTP file server for the purpose of retrieving files. These files are then purged from the **Creditor Name** FTP site after 14 days.

7.5 Survival. Any provisions necessary to interpret the respective rights and obligations of the parties hereunder shall survive any termination or expiration of this Agreement, regardless of the cause of such termination or expiration.

ARTICLE 8 - GOVERNING LAW; VENUE; SUPPLEMENTAL TERMS

8.1 Americas. If the Customer address referenced in the Order Form is located in North America, Central America or South America:

- a. This Agreement will be governed by the laws of the State of Illinois, excluding its rules regarding conflicts of law.
- b. Venue for any dispute hereunder shall be a court of competent jurisdiction located in Cook County, Illinois, and the parties irrevocably submit to the exclusive jurisdiction of such courts.
- c. All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

8.2 EMEA. If the Customer address referenced in the Order Form is located in Europe, the Middle East or Africa:

- a. This Agreement will be governed by the laws of England and Wales, excluding its rules regarding conflicts of law.
- b. Venue for any dispute hereunder shall be a court of competent jurisdiction located in London, England, and the parties irrevocably submit to the exclusive jurisdiction of such courts.
- c. In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranties provision set out above at Article 3 of this Agreement or the Limitation of Liability provision set out above at Article 4 of this Agreement. The territorial scope of such Limited Warranties is worldwide.
- d. The last sentence of Article 4 of this Agreement shall be replaced by the following: **CREDITOR NAME'S LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES OF ANY KIND WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO CREDITOR NAME UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED OR \$10,000, WHICHEVER IS GREATER.**
- e. All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

8.3 Asia. If the Customer address referenced in the Order Form is located in Asia:

- a. This Agreement will be governed by the laws of the Republic of Singapore, excluding its rules regarding conflicts of law.

b. Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law. The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

c. All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

8.4 Oceana. If the Customer address referenced in the Order Form is located in Australia or New Zealand:

a. This Agreement will be governed by the laws of New South Wales, Australia, excluding its rules regarding conflicts of law.

b. Venue for any dispute hereunder shall be a court of competent jurisdiction located in Sydney, Australia, and the parties irrevocably submit to the exclusive jurisdiction of such courts.

c. The warranties specified in this Section are in addition to any rights Customer may have under the Trade Practices Act 1974 or other legislation in Australia and New Zealand and are only limited to the extent permitted by the applicable legislation. Limitation of Liability (Article 4): The following is added: Where **Creditor Name** is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other legislation in Australia and New Zealand, **Creditor Name's** liability is limited to the repair or replacement of the goods or services, or the supply of equivalent goods or services. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, than none of the limitations in this paragraph apply.

d. All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

ARTICLE 9 - GENERAL PROVISIONS

Creditor Name and Customer are independent contractors. Any notice required or permitted to be delivered pursuant to this Agreement shall be in writing. Customer may not assign or otherwise transfer this Agreement, nor delegate or subcontract any of its rights or obligations hereunder, without **Creditor Name's** prior written consent provided, that such consent shall not be required for assignment to the purchaser of all or substantially all of the Customer's assets or

equity securities. Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement. Customer grants **Creditor Name** the right to use Customer's name in its website, press releases, product brochures and financial reports to indicate that Customer is a **Creditor Name** client. This Agreement may be executed in counterparts (including by means of telecopied signature pages), all of which shall be considered one and the same agreement. The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. No purchase order or any hand written or typewritten text on a purchase order which purports to modify or supplement the printed text of this Agreement or any Subscription Order Form shall add to or vary the terms of this Agreement. All such proposed variations or additions (whether submitted by **Creditor Name** or Customer) are objected to and shall have no force or effect. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract. This Agreement will not create any right or cause of action for any third party beneficiary or any other third party. This Agreement (including the Schedules hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

Schedule A

Software as a Service (SAAS) Service Level Agreement

This Service Level Agreement ('SLA') shall apply to **Creditor Name's** proprietary Software-as-a-Service ('SAAS') offerings (collectively, the 'Services') during the Term of the Customer's Subscription for such Services as set forth in the applicable Subscription Order Form. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

1. Availability.

a. Formula. The Service will, subject to the exceptions listed below, be available 99% of the time during each calendar month from the time that the Services go-live in Customer's production environment (referred to herein as the 'Availability Commitment'). The availability of the Service for a given month will be calculated according to the following formula (referred to herein as the 'Availability'):

Where: Total minutes in the month = TMM

Total minutes in the month the Service is unavailable = TMU

And: $((\text{TMM-TMU}) \times 100) / \text{TMM}$

b. For purposes of this calculation, the Service will be deemed to be unavailable (referred to herein as 'Unavailable') only (i) if the Service does not respond to HTTP requests issued by **Creditor Name's** monitoring software, or (ii) for the duration of a Severity-1 Error as defined in Schedule B to the Agreement. Further, the Service will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in Section 2 of this SLA. **Creditor Name's** records and data will be the basis for all SLA calculations and determinations.

c. Maintenance performed at Customer's request outside of the normally scheduled maintenance will not be considered an outage.

2. Exceptions

a. The Service will not be considered to be Unavailable for any outage that results from any maintenance performed by **Creditor Name** (a) during the standard **Creditor Name** implementation window(s) agreed upon by **Creditor Name** and Customer during Customer's implementation period; or (b) during **Creditor Name's** standard maintenance windows which occur Saturdays and Sundays between 12:01 am 6 am Eastern Standard Time (collectively referred to herein as 'Scheduled Maintenance').

b. The **Creditor Name** network extends to, includes and terminates at the data center located router that provides the outside interface of each of **Creditor Name's** WAN connections to its backbone providers (referred to herein as the '**Creditor Name** Network'). The Service will not be considered Unavailable for any outage unavailability of the Service due to (a) Customer's information content or application programming, acts or omissions of Customer or its agents; (b) delays or failures due to circumstances beyond **Creditor Name's** reasonable control that could not be avoided by its exercise of due care; or (c) failures of Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability outside of the **Creditor Name** Network.

3. Remedies. Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.

a. If the total Availability (as calculated in Section 1 above) for a given month is less than the Availability Commitment, Customer will receive one Service Credit. In addition, for the first 100 minute increment by which the allowable Unavailability is exceeded, Customer will receive one-half (1/2) of a Service Credit. Thereafter, for each additional 100-minute increment by which the allowable outage is exceeded, Customer will receive one (1) additional Service Credit.

b. For purposes of this SLA, a Service Credit will be deemed to be an amount equal to the pro-rata fee for one (1) day of the Subscription to the affected Service (herein referred to as 'Service

Credit'). The total Service Credits for a given month will, in no event, exceed an amount equal to fifty percent (50%) of the then-current pro-rata monthly fee for the applicable Subscription to use the affected Service. Service Credits will be applied to extend the Term of the applicable Subscription.

c. Remedies will not accrue (i.e., no Service Credits will be issued and an outage will not be considered unavailability for purposes of this SLA) if Customer is not current in its payment obligations.

d. Upon written request from Customer, **Creditor Name** shall promptly provide a report specifying the level of Unavailability and Service Credits due (if any) for the requested month. To receive Service Credits, Customer must submit such request within 90 days after the end of the month in which the Service was Unavailable.

Schedule C

Software as a Service (SAAS)
Customer Support Guide

SUPPORT FOR **CREDITOR NAME** SAAS OFFERINGS

This Support Guide sets forth the terms, conditions, and procedures under which maintenance and support ('Support') is offered for **Creditor Name**'s proprietary Software-as-a-Service ('SAAS') offerings (collectively, the 'Services') during the Term of the Customer's Subscription for such Services as set forth in the applicable Subscription Order Form. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

1. GENERAL

Scope. Support will consist of: (i) telephone support; (ii) correction of errors to keep the Services in conformance with the user Documentation included in the Services; and (iii) updated versions of the Services provided by **Creditor Name** to its general customer base of subscribers at no additional charge. Support will not include: (i) set-up, installation, or configuration of hardware and software required for the Customer to access the Service; or (ii) consultation, error correction, or research with respect to Customer-created documents and information.

Representative. The Representative designated in the Subscription Order Form will be **Creditor Name**'s contact for communicating with **Creditor Name** concerning Support, or making any other request or providing any notice. Customer may change the Representative upon written notice to **Creditor Name**.

2. CUSTOMER SUPPORT

Technical Support. Customer will have access to **Creditor Name**'s technical support personnel ('Technical Support') as follows:

Creditor's Hours of Operation, Creditor's Phone Numbers, Creditor's Email, Creditor's Website

Communications with Technical Support may be via telephone or e-mail. **Creditor Name** provides a single entry point of contact that routes requests/problems to the appropriate Technical Support. In addition to the support obligations listed above, **Creditor Name** shall provide the following support twenty (24) hours a day, seven (7) days a week: (a) pager support for Severity 1 level issues; and (b) web-based support. 3. SEVERITY LEVELS.

Technical Support shall prioritize problems/requests according to the severity levels set forth below. **Creditor Name** will use commercially reasonable efforts to respond according to the Response Specifications set forth below with respect to the Severity Level assigned to the problem:

Severity 1 – Critical

The Services suffer an error or issue in a production down situation which cannot be reasonably circumvented and which so substantially impairs the performance of the Services or any components of the Services, which are critical to the Customer's business, as to effectively render them unusable. **Creditor Name** will acknowledge any such reported error or issue within thirty (30) minutes and **Creditor Name** will work twenty-four (24) hours a day, seven (7) days a week to identify the error and provide an applicable workaround or fix.

Severity 2 – Serious

The Services suffer an error or issue, which cannot be reasonably circumvented, and which substantially impairs the use of one or more portions or features of the Services required by Customer to perform necessary business functions but does not effectively render the Services unusable as a whole. **Creditor Name** will acknowledge any such reported error or issue within two (2) hours and, if Customer is using the Services in production, will work continually within normal business hours to identify the error and provide an applicable workaround or fix.

Severity 3 – Moderate

The Services suffer a low impact error or issue (which is not of Severity 1 or Severity 2) which impairs the use of the features of the Services, but the reported error or issue can be reasonably circumvented. **Creditor Name** will acknowledge any such reported error or issue within eight (8) hours and will work within normal business hours to identify the error and provide an applicable workaround or fix.

Severity 4 – Minor

The Services do not incur an error and allow Customer to function normal business operations; however, Customer inquiries about existing Documentation, training, or standard use of the Services. **Creditor Name** will acknowledge any such inquiry within twenty-four (24) hours and will work within normal business hours to address and resolve Customer's inquiry.

* Response times are measured from the time Customer has spoken with or left a voicemail for a **Creditor Name** Customer support contact specifying the nature of the Customer's problem.

4. RESPONSE.

The severity level of the problems reported by Customer shall be reasonably determined by **Creditor Name**. **Creditor Name** will resolve each reported error or issue with the Services by using commercially reasonable efforts to provide: (i) a patch or fix as necessary; or (ii) a reasonable workaround for the error or issue; or, if either (i) or (ii) are not reasonably practicable, a specific action plan regarding how **Creditor Name** intends to address the reported error or issue and an estimate on how long it may take to correct or workaround the error or issue. Customer agrees to use commercially reasonable efforts to assist and provide information to **Creditor Name** as required to resolve errors or issues with the Services reported by Customer. In the event **Creditor Name** fails to meet its obligations under this Section, **Creditor Name** will provide a root cause analysis including definition, corrections and process improvement plan. If a permanent repair cannot be made, a temporary resolution (bypass and recovery) will be implemented to the extent possible.

5. CREDITOR NAME ISSUES.

Support covers any issue or problem that is the result of a verifiable, replicable error (**Creditor Name** will use all reasonable means to verify and replicate) in the Services ('Verifiable **Creditor Name** Issue'). An error will be a Verifiable **Creditor Name** Issue if it constitutes a material failure by the Services to function in accordance with the Documentation included in the Services. If Technical Support reasonably determines that Customer's problem is not caused by **Creditor Name** or its systems, equipment, or software, **Creditor Name** is not obligated to provide support under this Agreement. Nevertheless, **Creditor Name** will, if possible, offer suggestions as to how Customer can remedy the problem. If **Creditor Name** determines that the issue was not the result of a Verifiable **Creditor Name** Issue, **Creditor Name** may offer to provide for out of scope professional services at **Creditor Name's** then current rates upon its standard terms to address the issue.

6. ADDITIONAL SUPPORT.

Technical Support may also determine that Customer's request is a request for 'Additional Support.' Additional Support is any assistance not covered above. Examples of Additional Support include substantive questions regarding data or results, requests for Services customization, specialized training regarding use of the Services, custom documentation, and consulting. If **Creditor Name** believes that it can appropriately and effectively provide the requested services, it will offer do so at its then-current rates upon its standard terms.

7. CUSTOMER'S RESPONSIBILITIES.

Customer's designated representative shall initiate all requests for Support. The representative must be trained, qualified and authorized to communicate all necessary information, perform diagnostic testing under the direction of the **Creditor Name** service representative and be available during the performance of any Support if required.

8. SUBMITTING A REQUEST / GETTING AN ANSWER.

At the time of Customer's initial call or e-mail, please prepare to provide:

1. Representative's name, company name and Services Customer is using;
2. The type of browser (with release version) and hardware Customer is using;
3. Telephone number and alternate method of contact (i.e. a pager number or email address);
4. A concise description of Customer's problem or question;
5. The circumstances under which the problem does or does not occur; and
6. Specific error messages, error numbers, log files and program numbers.

For new cases, a **Creditor Name** Customer Support Specialist will use the following process to assist Customer with a new case (problem):

1. Document the supplied information;
2. Document Customer's questions or issues (symptom and function in which it occurs);
3. Answer Customer's questions or have Customer run tests to further identify and isolate the problem; and
4. Research the problem and provide resolution according to the aforementioned guidelines.



TERMS OF SERVICE

TERMS OF USE

WELCOME TO THE **CREDITOR NAME** WEBSITE. THE WEBSITE IS CONFIDENTIAL TO AND THE PROPERTY OF **CREDITOR NAME**. ALL ACCESS TO AND USE OF THIS SITE AND ALL WEBSITES (COLLECTIVELY, THE “WEBSITE”) AND THE FEATURES AT THE WEBSITE ARE GOVERNED BY THESE TERMS OF USE (“TERMS”). THESE TERMS APPLY TO ALL INDIVIDUALS WHO USE, VISIT OR BROWSE THE WEBSITE. IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT USE THE WEBSITE. BY ACCESSING OR USING THE WEBSITE, YOU AND THE ENTITY YOU ARE AUTHORIZED TO REPRESENT (“YOU” OR “YOUR”) SIGNIFY YOUR AGREEMENT TO BE BOUND BY THESE TERMS.

Access To Website

Access to this Website is limited to viewing the linked pages solely for legitimate business purposes, and subject to these Terms. Any access or attempt to access other areas of any **Creditor Name** computer system or other information contained on the system for any purposes is strictly prohibited.

1. Intellectual Property Rights

Unless otherwise indicated, **Creditor Name** or its licensors own and retain all proprietary rights in the Website and all material and information posted thereon, including without limitation photographs, text, graphics, logos, icons, content, sound recording, tutorials, audio/visual clips and design (collectively, “Content”). The mark **Creditor Name**; The Behavior Platform; Reputation Mechanics; Social Mechanics; Social Context; Behavior Engine; Engagement Layer and related trademarks, service marks and logos (collectively, the “**Creditor Name** Trademarks”) are owned by **Creditor Name** and may be registered in the United States and other countries.

All of the materials contained on the Website are copyrighted, except where explicitly noted otherwise. **Creditor Name** neither warrants nor represents that use of materials displayed on the Website by You will not infringe rights of third parties not owned by or affiliated with **Creditor Name**. Use of any materials on the Website is at Your own risk.

You may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify the **Creditor Name** Trademarks or the Content, without the express permission of **Creditor Name** in each instance, unless such Content is posted by you. The use of **Creditor Name** Trademarks or **Creditor Name** copyrighted materials on any other website is strictly prohibited. **Creditor Name** will aggressively enforce its intellectual property rights to the fullest extent of the law, including the seeking of criminal prosecution.

2. User Generated Content

You may be able to post, stream, transmit or otherwise provide photos, videos, ideas, remarks, questions, data, graphics, opinions, designs, customizations or other Content (including information, if any, on message boards or other forums) on the Website (collectively, “User Generated Content”). You retain ownership of User Generated Content submitted to the Website. However, User Generated Content will be considered Content and will be treated as non-confidential and non-proprietary and you understand that **Creditor Name** does not guarantee any

confidentiality with respect to the User Generated Content. By submitting User Generated Content to **Creditor Name**, you agree to grant, and shall be deemed to have automatically granted, to **Creditor Name** an irrevocable, perpetual, non-exclusive, fully-paid, worldwide license to host, store, reproduce, modify, create derivative works, communicate, publish, publicly perform, publicly display and distribute such Content for the purpose of operating, promoting and improving the Website and Services and to develop new ones. You represent and warrant that you have the right, power and authority to grant the foregoing license. You agree and warrant that User Generated Content that You submit will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the User Generated Content and grant to **Creditor Name** all of the license rights granted herein. You agree to release, discharge and agree to hold harmless **Creditor Name** from any and all claims or liability, whether known or unknown, in connection with the publication, production, processing, distribution or exploitation of Content posted by you, including any claims of infringement of any rights of publicity or rights of privacy. **Creditor Name** reserves the right to remove User Generated Content without notice.

You acknowledge, consent and agree that **Creditor Name** may, at its sole discretion and to the extent permitted by law, access, read, preserve and disclose your account information, usage history and submitted Content in order to: (a) comply with any applicable law, regulation, legal process, or governmental request; (b) respond to claims that any Content violates the rights of third parties, including intellectual property rights; (c) enforce this Agreement and investigate potential violations thereof; (d) detect, prevent, or otherwise address fraud, security, or technical issues; (e) respond to your requests for customer service; or (f) protect the rights, property, or personal safety or interests of **Creditor Name**, other users of the Website (“Users”), or the public.

3. Use of the Website

The following requirements apply to Your use of the Website: (a) You will not use any electronic communication feature of the Website for any purpose that is unlawful, tortious, abusive, intrusive on another’s privacy, harassing, libelous, defamatory, embarrassing, obscene, threatening, or hateful; (b) You will not upload, post, reproduce, or distribute any information, software, or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights; (c) You will not collect, store, use or disclose personal data about other users or any identifying health information other than in accordance with the End User Agreement as applicable to You and in compliance with applicable federal and state law and regulations; (d) You will not use the Website for any commercial transactions that are unrelated to the purposes for which the Website was provided; (e) You will not upload, post, email, or otherwise transmit on interactive features intended for the general public any advertising or promotional materials or any other form of solicitation or unauthorized communication; and (f) You will not upload, post, email, or otherwise transmit any material that contains viruses or any other computer code, files, or programs which might interrupt, limit, or interfere with the functionality of any computer software or hardware or telecommunications equipment.

IMPROPER USE OF THE WEBSITE MAY RESULT IN LOSS OF YOUR ACCESS TO THE WEBSITE AND SERVICES AND MAY RESULT IN CIVIL AND CRIMINAL LIABILITIES.

4. Consent to Electronic Communications

When you visit the Website or send emails to **Creditor Name**, you are communicating with **Creditor Name** electronically. You consent to receive communications from **Creditor Name** electronically. **Creditor Name** may communicate with you by email or by posting notices on the Website. You agree that all agreements, notices, disclosures and other communications that **Creditor Name** provides to you electronically satisfy any legal requirement that such communications be in writing.

5. Revocation of Access

Creditor Name may, in its sole discretion, and at any time, discontinue this Website or any part thereof, with or without notice, or may prevent Your use of this Website with or without notice to You. You agree that **Creditor Name**, in its sole discretion, may terminate or suspend Your use of the Website at any time and for any or no reason in its sole discretion, even if access and use continues to be allowed to others. Further, You agree that **Creditor Name** shall not be liable to You or any third party for any termination or suspension of Your access to the Website.

In the event that You use, or are suspected of using, the Website in a manner inconsistent with any federal or state laws, regulations, statutes or ordinances, in addition to discontinuance of Your permission to use the Website, **Creditor Name** shall have the right to take appropriate administrative and/or legal action, including criminal prosecution, as it deems necessary in its sole discretion.

6. Indemnification

You agree to indemnify and hold **Creditor Name**, its parents, subsidiaries, officers, employees, and website contractors and each of their officers, employees and agents harmless from any claims, damages and expenses, including reasonable attorneys' fees and costs, related to Your violation of these Terms.

7. Security of Website

Unfortunately, no website or services delivered over the Internet can be guaranteed to be absolutely secure. As a result, while **Creditor Name** strives to protect your information, it cannot ensure or warrant the security of any Content you transmit to us, and you do so at your own risk. In the event of a breach of the confidentiality or security of your personal information, **Creditor Name** may, in its sole discretion, notify you of such breach. Unless you indicate otherwise, we may notify you under such circumstances using the email address you provide to us.

8. Disclaimer of Warranties

Creditor Name assumes no liability or responsibility for any errors or omissions in the content of the Website, including any forms made available on the Website, any failures, delays or interruptions in the delivery of any content contained on the Website, or any losses or damages arising from the use of the content provided by the Website or from any viruses or other malicious code that may be transmitted through such use. **Creditor Name** is not responsible for any third party products or services offered on the Website, if any.

TO THE FULLEST EXTENT ALLOWABLE BY LAW, **CREDITOR NAME** SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, PROCESS, PRODUCTS AND/OR SERVICES OFFERED ON THE WEBSITE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, ACCURACY OR ANY OTHER WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

9. Limitation of Liability

CREDITOR NAME, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND LICENSORS ("THE **CREDITOR NAME** PARTIES") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO YOU OR ANY OTHER PERSON FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, LOST REVENUES, AND REDUCED, CANCELLED OR DENIED WORKERS' COMPENSATION BENEFITS OR PAYMENTS (COLLECTIVELY, THE "EXCLUDED DAMAGES"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY.

IN NO EVENT SHALL THE BADGEVILLE PARTIES' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED \$50(USD).

IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE **CREDITOR NAME** PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

10. Copyright Infringement – DMCA Notice

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under US copyright law. If you believe in good faith that content or material on the Website infringes a copyright owned by you, you (or your agent) may send **Creditor Name** a notice requesting that the material be removed, or access to it blocked. This request should be sent to: **Creditor Name, Address, City, State, Zip Code**.

The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed; (c) identification of the material that is claimed to be infringing or the subject of infringing activity; (d) the name, address, telephone number, and email address of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed

against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. Notices and counter-notices with respect to the Website should be sent to the address above.

11. Links

We may provide links to, or promote, websites or services of third parties on the Website. You agree that we are not responsible for, and do not control, those websites or services and we shall have no liability or responsibility to you or to any third party for such websites or services.

12. Privacy

By accessing the Website, You also agree that You have reviewed and agreed to the **Creditor Name** Notice of Privacy Practices, which is incorporated by reference in its entirety in these Terms.

13. COPPA

Creditor Name does not solicit personal information from children. Visitors twelve years of age and under should remember that they are required to obtain an adult's permission before submitting any personal information to this or any other website.

14. Modification

Creditor Name may modify these Terms at any time, with or without notice. Your continued use of the Website constitutes Your acceptance of any changes to the Terms. You are responsible for remaining knowledgeable as to any changes that **Creditor Name** may make to the Terms. The most current version of the Terms will be available on the Website and will supersede all previous versions.

15. Miscellaneous

All issues and questions concerning the construction, validity, interpretation and enforceability of these Terms shall be governed by, and construed in accordance with, the laws of **Creditor's State**, without giving effect to any choice of law or conflict of law rules or provisions (whether of **Creditor's State**, or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than **Creditor's State**. Any disputes arising out of these Terms will be resolved exclusively in the state or federal courts located within **Creditor's County, State**, and each party consents to such exclusive jurisdiction and agrees not to challenge such venue.

Any attempt by You to undermine the legitimate operation of the Website may be a violation of criminal and civil law, and, should such an attempt be made, **Creditor Name** reserves the right to seek damages from You to the fullest extent permitted by law. **Creditor Name's** failure to enforce any of these terms and conditions shall not constitute a waiver of that, or any other, provision.

These Terms are personal to you, which means that you may not assign your rights or obligations under these Terms to anyone. No third party, including but not limited to a workers' compensation claimant, the claimant's past or current employer, and the employer's carrier, is a beneficiary of these Terms. **Creditor Name** may assign its rights and obligations under these Terms to any third party. We may also use third parties to assist us in the provision of the Website under these Terms.

If any provision of these Terms is found to be invalid or unenforceable by a court of competent

jurisdiction, such provision shall be severed from the remainder of these Terms, which will otherwise remain in full force and effect.

These Terms constitute the entire agreement between You and **Creditor Name** regarding the use of the Website. By using the Website, You represent that You are capable of entering into a binding agreement, and that You agree to be bound by these Terms.



Terms of Service

Capitalized terms used in these Terms of Service (the “Terms”) may be defined in the “Definitions” section at the end of these Terms.

Thank you for using the **Creditor Name** (“**Creditor Name**”, “our”, “us” or “we”) website located at **Creditor Name’s Website** (the “Website”) and our Service(s). Please do not use our Website or any of our Services until after you carefully review and accept all terms and conditions in these Terms, including our Privacy Policy. **Creditor Name** and you may be referred to in these Terms individually as a “party” and collectively as “parties.”

BY ACCESSING OR USING OUR WEBSITE OR SERVICES, OR BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, OR BY EXECUTING AN ORDER FORM THAT MENTIONS THESE TERMS, YOU AGREE TO THESE TERMS. IF YOU ARE ACCESSING OR USING OUR WEBSITE OR SERVICES AS AN AGENT OR EMPLOYEE OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND, AND ARE BINDING, THAT LEGAL ENTITY TO THESE TERMS (IN WHICH CASE “YOU” AND “YOUR” REFER TO THAT LEGAL ENTITY). IF YOU DO NOT HAVE THAT AUTHORITY, OR IF YOU DO NOT (OR LACK THE LEGAL CAPACITY TO) AGREE TO ALL OF THESE TERMS, YOU ARE NOT PERMITTED TO USE OUR WEBSITE OR SERVICES.

CREDITOR NAME RESERVES THE RIGHT TO MODIFY ITS POLICIES AND SERVICES AND THESE TERMS AT ANY TIME. SUCH MODIFICATIONS WILL TAKE EFFECT WHEN **CREDITOR NAME** POSTS OR OTHERWISE PROVIDES AN UPDATED VERSION OF ITS POLICIES OR SERVICES OR THESE TERMS. ACCORDINGLY, YOU ARE RESPONSIBLE FOR REGULARLY REVIEWING THESE TERMS. YOUR CONTINUED USE OF ANY SERVICES AFTER SUCH MODIFICATIONS ARE POSTED OR OTHERWISE PROVIDED CONSTITUTES YOUR CONSENT TO SUCH CHANGES.

1. Creditor Name Service Offerings

Please see **Creditor Name’s Website** for additional information regarding our various **Creditor Name** Services, pricing tiers and feature differences. A high-level summary is also provided here:

a. Free Trial:

At **Creditor Name**’s option, we may make one or more Services available to you on a trial basis, free-of-charge, until the earlier of (a) the end of the free trial period for which you register, or (b) the start date of any Purchased Services you order. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into these Terms by reference and are legally binding. Any data you enter into or use with the Services, and any customizations made to the Services by or for you, during your free trial will be permanently lost unless you purchase a subscription to the same Services as those covered by the trial, purchase upgraded Services, or export such data, before the end of the trial period. Such free trial Services are provided "as-is" without

any warranty, notwithstanding anything to the contrary in the Representations & Warranties section of these Terms.

b. Purchased Services:

We will make Purchased Services available to you in accordance with these Terms and the relevant Order Forms during the applicable License Term. You agree that your purchases under these Terms are not contingent on the delivery of any future results, functionality or features, and are not dependent on any oral, written or implied representations, statements or commitments made by or for **Creditor Name** (for example, regarding any future results, functionality or features).

2. Term & Termination

a. Term:

The term of these Terms commences on the Effective Date. The Initial Term will be as you elect during the online sign-up on the Website, or as otherwise mutually agreed by the parties in an Order Form. Upon expiration of the Initial Term, these Terms will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at **Creditor Name's** then-current rates.

b. Termination:

For Convenience. Either party may terminate these Terms for any reason, effective only upon expiration of the then-current License Term, by notifying the other party in writing at least thirty (30) days prior to the end of the then-current License Term.

For Cause. **Creditor Name**, in its sole discretion, may suspend or terminate your account and use of the Website and Services at any time upon written notice if: (a) you fail to comply with these Terms; (b) you become the subject of any bankruptcy or other insolvency-related proceedings; or (c) you are considering acquiring, being acquired by or merging with, or actually acquire, are acquired by or merge with (meaning ownership or control of at least twenty-five percent (25%) of the relevant voting shares in each case), a direct competitor of **Creditor Name**. **Creditor Name** may also terminate a free or trial account at any time in its sole discretion.

c. Effect of Termination:

In the event of any termination or expiration of these Terms, those parts of the Terms which by their nature and all relevant circumstances reasonably should survive will survive (including, without limitation, the definitions, this Effect of Termination provision, the Fees and Payment provisions, the Ownership provisions, the License Restrictions provisions, the Disclaimer of Warranties provisions, the Indemnification provisions, the Limitation of Liability provisions, the Confidentiality provisions, the Assignment provisions, and the General Legal Terms).

If **Creditor Name** terminates these Terms for convenience (i.e., without cause), and you send a written request to **Creditor Name** before the termination effective date, **Creditor Name** will make available to you a file of your End-User Data and Customer Data within thirty (30) days after the termination effective date.

Subject to the preceding sentence, you agree and acknowledge that **Creditor Name** has no

obligation to retain or provide any End-User Data or Customer Data, and may delete such End-User Data or Customer Data, at any time (a) if you violate these Terms (including, but not limited to, any failure to pay outstanding fees), or (b) after the termination effective date.

d. Order Form

Any terms specified in your customer Order Form will supersede any terms specified in these Terms of Service.

3. Fees and Payment

a. Fees:

You will pay all fees or charges to your account in accordance with your applicable Order Form or other order. These include, but are not limited to, monthly service fees, messaging fees, voice call fees, short code fees, account fees, keyword fees, transaction fees, technical support fees and client services fees. **Creditor Name** reserves the right to modify its fees and charges, and to introduce new charges, at any time upon at least 30 days prior notice to you, which notice may be provided by email. You also agree to pay (or reimburse **Creditor Name**, if we are required to pay directly) for any and all fees in connection with the registration, provisioning, certification and use of your short code(s) including but not limited to content distribution fees, message transaction fees, and any surcharges, fines or penalties imposed by a wireless carrier or Authorized Distributor. All payment obligations are non-cancelable and all amounts paid are non-refundable. You are responsible for paying for all services you order for the entire License Term, whether or not such services are actually used. You must provide a valid credit card, or approved purchase order information, to **Creditor Name** as a condition of signing-up for the Service.

Your authorized License Administrator may add services by executing an additional written Order Form or using the Online Order Center. Added services will be subject to the following: (i) added account licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the fees and charges for the added services will be **Creditor Name's** then-current, generally applicable fees and charges; and (iii) services added in the middle of a billing month will be charged for a pro-rata portion of that billing month.

All pricing terms are **Creditor Name's** confidential information and you agree to treat them in accordance with the Confidentiality provisions below.

b. Payment:

Creditor Name charges and collects in advance for use of its Services. **Creditor Name** will automatically bill your credit card or issue an invoice to you each month, quarter or year as applicable, in accordance with the terms of your Order Form, or as otherwise mutually agreed. Fees for other services will be charged on an as-quoted basis. Payments must be made monthly, quarterly or annually in advance, per the terms mutually agreed in an Order Form or through the Online Order Center. **Creditor Name's** fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on **Creditor Name's** income. You agree to provide **Creditor Name** with complete and accurate billing and contact information. This information includes your legal company name, street address, email address, and name and telephone number of an authorized billing

contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, we reserve the right to terminate your access to the Services, in addition to any other legal remedies. Unless **Creditor Name** in its discretion determines otherwise, you will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes. If you believe your bill is incorrect, you must contact us in writing within 30 days of the relevant invoice date to be eligible to receive an adjustment or credit.

c. Consequences of Non-Payment:

In addition to any other rights **Creditor Name** may have, **Creditor Name** reserves the right to suspend or terminate these Terms and your access to the Services if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to a service fee of one and one-half percent (1.5%) per month, or the maximum penalty permitted by law (whichever is less), on any outstanding balance, plus all expenses of collection. You will continue to be charged for the Services during any period of suspension. If you or **Creditor Name** initiates termination of these Terms, you will be obligated to pay the balance due on your account computed in accordance with the Fees and Payment section of these Terms. You agree **Creditor Name** may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees. **Creditor Name** reserves the right to impose a reconnection fee if you are suspended and thereafter request access to the Service.

4. Acceptable Use of the Services

a. General:

Creditor Name may determine, in its sole discretion, whether you are violating these Terms. Using the Website or Services in an abusive manner or any other manner that diminishes or interferes with anyone else's use or enjoyment of the Website or Services is prohibited. You also may not use the Website or Services for any illegal activities or purposes, intentionally or unintentionally; you are responsible for all activity occurring under your User accounts, and you agree to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Website and Services

You must: (i) notify **Creditor Name** immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to **Creditor Name** immediately and use reasonable efforts to stop immediately any inappropriate copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Website user or provide false identity information to gain access to or use any of the Services or Content.

b. Short Codes, Use of Keywords, Provisioning / Carrier Certification:

Certain tiers of the Services allow you to use **Creditor Name's** shared short code(s), in **Creditor Name's** discretion. Use of the Services with a shared short code requires a unique keyword per campaign. You agree not to reserve keywords and attempt to sell such keywords to a third party, except with **Creditor Name's** prior written consent. Any such behavior will be grounds for immediate termination of these Terms and your account. Further, **Creditor Name** will have the right, at any time, to reclaim keywords that you have reserved but are not actively using. You also must not reserve or use any keywords that are a trademark, service mark or corporate name of another company (whether registered or

recognized under applicable common law). The Services allow you to use your own short code. **Creditor Name** can lease a short code on your behalf, or you can lease your own short code at www.usshortcodes.com. You are responsible for reimbursing **Creditor Name** fully and promptly for any payments made to reserve your own short code(s). We will help you get your short code(s) provisioned by the wireless carriers, and we will help you obtain all required certifications and authorizations. We will use commercially reasonable efforts to provision your short code(s) but cannot guarantee if or when your short codes(s) will be provisioned or certified by the wireless carriers. You may not use any phone number or short code provided by **Creditor Name** to route SMS messages over any other provider's network. All SMS messages sent and received for a phone number or short code provided by **Creditor Name** must be sent and received exclusively via **Creditor Name**'s Services.

c. Other Examples of Prohibited Conduct:

The following are some other examples of conduct using the Website or Services that are prohibited (this list is not exhaustive):

- Harming any minors;
- Engaging in any fraudulent conduct in connection with your account (including, without limitation, circumventing any classified advertising or other phone identification systems);
- Misleading anyone regarding the origin or sender of any phone call or message sent using your account (e.g., by creating a false or misleading identity, phone number or email address);
- Using the Website or Services in a way not expressly authorized by **Creditor Name** or that subjects **Creditor Name** or any third parties to any threat or liability;
- Participating in any activity prohibited by the U.S. Federal Communications Commission, or otherwise violating any U.S. or foreign laws regarding transmission of software, other technology or data;
- Transmitting material that contains any viruses, trojan horses, worms or other malicious or harmful code;
- Transmitting any material that violates any intellectual property rights (e.g., copyright, trademark or rights of publicity) of any third parties;
- Using any of the **Creditor Name** Marks in a manner not expressly permitted by these Terms;
- Engaging in any activities or transmitting any content that is libelous or defamatory, or that is otherwise illegally discriminatory, malicious, threatening, harassing, obscene, vulgar, harmful or invasive of anyone's privacy;
- Launching or facilitating (whether intentionally or unintentionally) a denial of service attack on any of the Services, or otherwise negatively affecting the availability or stability of the Services or of any networks connected to the Services;
- Reverse engineering or probing the Services, seeking vulnerabilities or attempting to circumvent any access controls, security measures or filtering;

- Participating in or facilitating any harassing or unwanted messages, phone calls, mobile push notifications, voicemail or faxes;
- With respect to outbound subscription-based messaging, Client must send no more than the maximum number of messages per contact for which the Client's dedicated short code is provisioned by the Carrier (typically 10 messages per month/contact).
- Conducting any unsolicited or otherwise illegal advertising or marketing activities (for example, any activities that violate anti-spamming laws and regulations like the CAN SPAM Act of 2003, the Telephone Consumer Protection Act and the Do-Not-Call Implementation Act);
- Violating any applicable carrier or wireless industry guidelines or best practices (e.g., those regarding data privacy or transmission of technical or personal data), the CTIA and Mobile Marketing Association's Code of Conduct for Mobile Marketing, or the U.S. Consumer Best Practice Guidelines located at www.ctia.org and www.mmaglobal.com;
- Using SMS or mobile push notifications in a manner inconsistent with the person-to-person nature of mobile communications;
- Collecting or storing any personal information about third parties (e.g., email addresses or phone numbers) without their express consent or in violation of any other provisions in the "Acceptable Use of Services" portion of these Terms;
- Using the Services in any manner that violates any applicable third party requirements or policies communicated by **Creditor Name**; and
- Offering to any users any services that permit a user to connect with emergency services personnel (e.g., 911 or E911).

5. Ownership, DMCA Compliance, Licenses & Data

a. Ownership:

Creditor Name alone (and its licensors, where applicable) own all right, title and interest (including all related Intellectual Property Rights) in and to the Website, **Creditor Name** Technology, the **Creditor Name** Content and the Services, as well as any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Website, **Creditor Name** Technology or Services (collectively, "Feedback"). If you choose to provide any Feedback to us, **Creditor Name** will own all right, title, and interest in and to it, even if you have designated it as confidential, and **Creditor Name** will have the right to use such Feedback without restriction. Similarly, any other information or content you post or provide to **Creditor Name** through comments, forums, emails or other communications (collectively, "Communications") will be deemed the property of **Creditor Name**. You hereby irrevocably assign all right, title and interest in and to the Feedback and Communications to **Creditor Name**, and agree to provide us any assistance we may require to perfect and maintain our rights in the Feedback and Communications. These Terms are not a sale and do not convey to you any rights of ownership in or related to the Website, Services, the **Creditor Name** Technology or any Intellectual Property Rights owned by **Creditor Name**. Unless otherwise

noted, the graphic images, text and other material on the Website are the exclusive property of **Creditor Name** and are Copyright © 2013 **Creditor Name** International Inc. All rights reserved.

The **Creditor Name** and logo, and the product and service names and logos associated with the Website and the Services are trademarks or registered trademarks of **Creditor Name** in the United States and foreign countries; you have no right or license to use any of them without **Creditor Name**'s express prior authorization. All uses of the **Creditor Name** trademarks, and all goodwill associated therewith, will inure to the benefit of **Creditor Name**. Other company, product, and service names mentioned on the Website or in the course of providing the Services may be trademarks and/or service marks of others. You must not remove, obscure, or alter any notice of any trademark, service mark or other intellectual property or proprietary right appearing on the Website or contained within the Services.

b. DMCA Compliance

Creditor Name respects the intellectual property of others, and we ask users of our Services to do the same. If you believe your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights otherwise have been violated, please notify **Creditor Name** of your claim in accordance with the procedure set forth below.

Creditor Name will promptly process and investigate notices of alleged infringement and take appropriate action under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws with respect to any alleged or actual infringement. You should send a notification of claimed copyright infringement to **Creditor Name**'s Copyright Agent by mail or facsimile (with the "Re" subject line titled "DMCA Takedown Request") to:

Attention: Copyright Agent

Creditor Name

Street Address

City, State, Zip Code

Facsimile Number

To be effective, the notification must be in writing and contain the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Website (with sufficient detail to enable **Creditor Name** to find it);
- Your address, telephone number, and email address;
- a statement that you have a good faith belief the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and

- o a statement by you, made under penalty of perjury, that the above information in your notice is accurate, and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

c. License Grant & Restrictions:

License Grant. Subject to the terms and conditions of these Terms, **Creditor Name** hereby grants to you a limited, non-exclusive, non-transferable, worldwide, revocable right and license (without right to sublicense) to use the Services during the Term of these Terms. All rights relating to the Services that are not expressly granted to you in these Terms are expressly reserved by **Creditor Name**. Certain Services offer integration capabilities via a **Creditor Name** application programming interface ("API"). The **Creditor Name** APIs enable others, including application developers and website operators, to retrieve data from **Creditor Name** Services or provide data to **Creditor Name** Services. Access to the **Creditor Name** APIs requires a separate developer account and API Key, which may be available from **Creditor Name** in **Creditor Name**'s sole discretion. The number of API calls you can make per account may be limited as more fully described in our developer portal located at **Creditor Name's website**.

License Restrictions. You may not access or use any of the Services if you are currently, or are actively considering becoming, a competitor of **Creditor Name**, except with **Creditor Name's** prior written consent. In addition, you may not access any of the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or purposes competitive with **Creditor Name**. You will not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any of the Services or the Content in any way, except with **Creditor Name's** prior written consent; (ii) modify or make derivative works based upon any of the Services or the Content or otherwise remove, decompile, disassemble or reverse engineer any Website software or use any network monitoring or discovery software to determine the Website architecture; (iii) create Internet "links" to any of the Services or "frame" or "mirror" any Content on any other server or wireless or Internet-based device or otherwise make any portion of the Website available through any timesharing system, service bureau, the Internet or any other technology now existing or developed in the future; or (iv) reverse engineer or access any of the Services to (a) build a competitive product or service, (b) build a product or service using similar ideas, features, functions or graphics of any of the Services, (c) copy, print, republish, display, distribute, transmit, sell, rent, lease, loan or otherwise make available in any form or by any means all or any portion of the Website, including ideas, features, functions or graphics, or any **Creditor Name** Content and Materials retrieved there from, (d) use the Website or any materials obtained from the Website to develop, or as a component of, any information, storage and retrieval system, database, information base, or similar resource (in any media now existing or hereafter developed), that is offered for commercial distribution of any kind, including through sale, license, lease, rental, subscription, or any other commercial distribution mechanism, (e) create any compilations or derivative works of any Content or Materials from the Website, (f) copy or resell any marketing, training or other materials such as slides, advice, guidance, or frameworks provided by **Creditor Name**, or (g) remove, change or obscure any copyright notice or other proprietary notice, or any Terms of Service contained in the Website,

You may use the Services only for legitimate business purposes, and you must not engage in any of the other Prohibited Conduct identified in these Terms.

d. Account Data:

As between **Creditor Name** and you, you will own any data collected from end-user consumers through your use of the **Creditor Name** Services (the "End-User Data"). However, **Creditor Name** also collects aggregate data that is not personally-identifiable, including, without limitation, end-user usage and behavioral data as they relate to the Services (the "Aggregate Data") You acknowledge and agree that **Creditor Name** will be the sole and exclusive owner of such Aggregate Data. Subject to the preceding sentence, **Creditor Name** does not own any data, information or material that you submit in the course of using the Services ("Customer Data"). You, not **Creditor Name**, have sole responsibility for ensuring the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. **Creditor Name** will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Notwithstanding the above, **Creditor Name** may remove any Customer Data from the Service that violates any guidelines or policies set forth by (i) a wireless carrier, (ii) the Mobile Marketing Association, (iii) the CTIA, (iv) mobile device manufacturers, (v) any Authorized Distributor, or (vi) **Creditor Name**.

6. Privacy and Publicity

Creditor Name's privacy policy is located at **Creditor Name's Website** and is hereby incorporated into these Terms by reference. We reserve the right to modify our privacy policy from time to time. You may be asked whether or not you wish to receive marketing and other non-critical communications relating to **Creditor Name** Services from time to time. You may opt-out of receiving such communications at that time, or at any subsequent time, by clicking a link at the bottom of any email. Note that because the Services are hosted and online, we occasionally may need to notify all users (whether or not they have opted-out as described above) of important announcements regarding the Services.

In accordance with the Telephone Consumer Protection Act and other applicable law, you must ensure that your customers and other users read and agree, in writing:

- a. to receive marketing text messages from each of your specific brands to the mobile number provided;
- b. that they understand they are not required to provide their consent as a condition of purchasing any goods or services. (The required written signature can be obtained via email, Web site form, text message, telephone key press or voice recording.);
- c. that, by signing up, they are confirming they are over the age of 13; and
- d. that they understand you will send them mobile text messages using automated technology.

You agree **Creditor Name** may use your name and logo to list you as a customer in our marketing and promotional materials (e.g., on the **Creditor Name** website).

7. Third-Party Applications & Interactions

While using the Services, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of, advertisers, sponsors or other third parties showing their goods and/or services through the Services. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between you and the relevant third parties. **Creditor Name** does not endorse, recommend or sponsor any products, services or websites that are promoted by Users or other third parties through the Services. You also acknowledge and agreed that certain third-party providers of ancillary or related software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

Creditor Name may offer integration of certain Third-Party Applications with the Services. If you install or enable Third-Party Applications for use with the Services, you acknowledge that **Creditor Name** may allow providers of those Third-Party Applications to access your data as required for the interoperation of such Third-Party Applications with the Services. **Creditor Name** will not be responsible for any disclosure, modification or deletion of your data resulting from any such access by Third-Party Application providers. Service features that interoperate with such Third-Party Applications (e.g., Facebook, Twitter, Apple, etc.) depend on the continuing availability of such Third-Party Application APIs for use with the Services. **Creditor Name** does not guarantee any aspect of a Third-Party Application, including, without limitation, the availability, security or reliability of third party APIs or data exchanges. If any Third-Party Application provider ceases to make their APIs available, or modifies the way in which their APIs work, **Creditor Name** may cease providing the corresponding Service feature(s) without entitling you to any refund, credit, or other compensation. **CREDITOR NAME AND ITS LICENSORS HAVE NO LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY CORRESPONDENCE, PURCHASE OR PROMOTION BETWEEN YOU AND ANY THIRD PARTIES. IN NO EVENT WILL CREDITOR NAME OR ITS LICENSORS BE RESPONSIBLE FOR, OR HAVE ANY LIABILITY IN CONNECTION WITH ANY THIRD PARTY CONTENT, PRODUCTS, SERVICES OR OTHER MATERIALS PROVIDED OR OBTAINED THROUGH ANY THIRD PARTY IN THE COURSE OF USING THE SERVICES.**

8. Limited Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into these Terms. You further represent and warrant that your billing information is correct and that you will not falsely identify yourself or provide any false information in the course of gaining access to or using any of the Services.

9. Disclaimer of Warranties

EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SECTION OF THESE TERMS:

A. THE **CREDITOR NAME** TECHNOLOGY, SERVICES, CONTENT AND ANY THIRD-PARTY APPLICATION ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS; **CREDITOR NAME** AND ITS OWNERS, EMPLOYEES, AGENTS, AFFILIATES AND

LICENSORS MAKE NO REPRESENTATION, WARRANTY OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, PERFORMANCE, SUITABILITY, RESULTS, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES, THE **CREDITOR NAME** TECHNOLOGY, OR ANY CONTENT OR THIRD-PARTY APPLICATION;

B. WITHOUT LIMITING THE PRECEDING SENTENCE, **CREDITOR NAME** AND ITS OWNERS, EMPLOYEES, AGENTS, AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT THAT (i) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (ii) THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (iii) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (v) ERRORS OR DEFECTS WILL BE CORRECTED, OR (vi) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND

C. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS), ARE HEREBY DISCLAIMED.

CREDITOR NAME'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, INCLUDING THOSE UNDER THE CONTROL OF WIRELESS CARRIERS, **CREDITOR NAME'S** AUTHORIZED DISTRIBUTORS AND THIRD-PARTY APPLICATION PROVIDERS. **CREDITOR NAME** IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

THE SERVICES DO NOT, AND ARE NOT INTENDED TO, SUPPORT OR CARRY EMERGENCY CALLS TO POLICE, FIRE, AMBULANCE OR ANY EMERGENCY SERVICES (FOR EXAMPLE 911 OR E911). ACCORDINGLY, **CREDITOR NAME** AND ITS OWNERS, EMPLOYEES, AGENTS, AFFILIATES AND LICENSORS EXPRESSLY DISCLAIM ANY WARRANTIES OR LIABILITY (AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION) ARISING FROM OR RELATING TO YOUR INABILITY TO USE THE SERVICES TO CONTACT ANY EMERGENCY SERVICES.

The Website may include statements concerning **Creditor Name's** operations, prospects, strategies, financial condition, future economic performance and demand for our products or services, as well as our intentions, plans and objectives (particularly with respect to product and service offerings), that are forward-looking statements. These statements are based upon a number of assumptions and estimates that are subject to significant uncertainties, many of which are beyond our control. When used on our Website, words like "anticipates," "expects," "believes," "estimates," "seeks," "plans," "intends," "will", and similar expressions are intended to identify forward-looking statements designed to fall within securities law safe harbors for forward-looking statements. The Website and the information contained herein does not

constitute an offer or a solicitation of an offer for sale of any securities. None of the information contained herein is intended to be, and it will not be deemed to be, incorporated into any of our securities-related filings or documents.

If you are dissatisfied with any aspect of the Services, please review our Support and Maintenance Policy located at **Creditor Name's Website**.

10. Indemnification

You will defend, indemnify and hold **Creditor Name**, its affiliates and their respective parent organizations, subsidiaries, affiliates, officers, directors, shareholders, employees, attorneys, representatives and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including, without limitation, attorneys' fees, costs and expenses) arising out of or in connection with: (i) any claims alleging that your use of the Services or any End-User Data (including, without limitation, Content or Customer Data), or any third party transaction you enter into or attempt to enter into in connection with the Services, infringes the rights of, or has caused harm to, any third parties; (ii) any claims, which if true, would constitute a violation by you of your representations or warranties in these Terms; and (iii) any claims arising from any breaches of these Terms by you or your Users.

With respect to any claims that are subject to the indemnity in the preceding sentence, **Creditor Name** will: (a) give you written notice of the claim promptly; (b) give you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release **Creditor Name** of all liability and such settlement does not affect **Creditor Name's** business or Service); and (c) give you reasonable information, cooperation and assistance in connection with the claim.

11. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

- A. IN NO EVENT WILL **CREDITOR NAME** OR ITS OWNERS, EMPLOYEES, AGENTS, AFFILIATES, REPRESENTATIVES OR LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO (i) THE SERVICES OR THESE TERMS (INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OF DATA, REVENUE, PROFITS, USE, GOODWILL OR OTHER ECONOMIC ADVANTAGE, OR BASED ON ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, OR DUE TO ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION IN THE SERVICE), (ii) THE USE OF ANY INFORMATION OR SOFTWARE PROVIDED ON THE **CREDITOR NAME** WEB SITE, OR (iii) ANY FAILURE BY **CREDITOR NAME** TO PROVIDE ANY SUCH INFORMATION OR SOFTWARE;
- B. IN NO EVENT WILL THE TOTAL, AGGREGATE LIABILITY OF **CREDITOR NAME** AND ITS OWNERS, EMPLOYEES, AGENTS, AFFILIATES, REPRESENTATIVES AND LICENSORS FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE SERVICES OR THESE TERMS EXCEED THE TOTAL AMOUNT ACTUALLY

PAID BY YOU TO **CREDITOR NAME** IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH CLAIM(S); AND

- C. IF YOU HAVE ANY DISPUTE WITH ANY THIRD PARTIES RELATING TO YOUR USE OF THE **CREDITOR NAME** WEBSITE, SERVICES OR CONTENT, OR YOU ARE DAMAGED AS A RESULT OF ANY THIRD PARTY IN CONNECTION THEREWITH, (i) YOU HEREBY RELEASE **CREDITOR NAME** AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUPPLIERS FROM, AND (ii) YOU COVENANT NOT TO SUE, OR INSTITUTE ANY LEGAL OR REGULATORY PROCEEDINGS AGAINST, OR ASSERT ANY CLAIM OR DEMAND AGAINST, **CREDITOR NAME** OR ANY OF ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR SUPPLIERS FOR ANY CLAIMS, ACTIONS, DEMANDS OR DAMAGES (WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL), OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHETHER FORESEEABLE OR NOT, DISCLOSED OR UNDISCLOSED, RELATING TO ANY SUCH DISPUTE BETWEEN YOU AND ANY THIRD PARTIES.

THESE LIMITATIONS OF LIABILITY APPLY TO ALL LIABILITY AND CLAIMS, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, WARRANTY OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF ANY ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITY. THESE LIMITATIONS OF LIABILITY ARE A FUNDAMENTAL BASIS OF THE BARGAIN REFLECTED IN THESE TERMS, AND BOTH PARTIES UNDERSTAND AND AGREE **CREDITOR NAME** WOULD NOT PROVIDE THE SERVICES TO YOU WITHOUT THESE LIMITATIONS OF LIABILITY.

12. Confidentiality

The parties presumably may disclose Confidential Information in connection with the **Creditor Name** Services and the parties' relationship under these Terms. Accordingly, the Receiving Party will take commercially reasonable steps to avoid unauthorized disclosure or dissemination of the Disclosing Party's Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. All Confidential Information will remain the exclusive property of the Disclosing Party.

The Receiving Party will disclose the Disclosing Party's Confidential Information only to its employees and contractors who (i) have a legitimate business need to know such Confidential Information for purposes of performing under these Terms (and only while they have that need), and (ii) are bound by confidentiality agreements with the Receiving Party at least as protective of the Disclosing Party's Confidential Information as this section of the Terms (their respective "Personnel"). The Receiving Party will ensure its Personnel comply with this section of the Terms, will promptly notify the Disclosing Party of any breach, and will be fully responsible for any breach by the Receiving Party's Personnel.

The above obligations under this Section 12 will apply for three (3) years from the date the relevant Confidential Information is first disclosed to the Receiving Party. Additionally, the parties each acknowledge and agree that the receipt of Confidential Information in connection with their relationship under these Terms will not create any obligation in any way limiting or restricting the assignment of employees or contractors. Furthermore, nothing contained in these Terms will be construed as preventing any employees or contractors of either party from using any “residuals” of the Confidential Information (i.e., information in non-tangible form that is retained in the unaided memories of employees or contractors who had access to the Confidential Information).

Notwithstanding the foregoing, if any court or other governmental entity with competent jurisdiction requires the Receiving Party to disclose any of the Disclosing Party’s Confidential Information, the Receiving Party may comply with its legal obligations after giving the Disclosing Party prompt, reasonably detailed written notice regarding such required disclosure (including a copy of the relevant order or other legal process) to allow the Disclosing Party to seek a protective order or other appropriate remedy. The Receiving Party will disclose only such information as it reasonably deems is legally required, and will cooperate reasonably with the Disclosing Party to obtain confidential treatment for any of the Disclosing Party’s Confidential Information that is so disclosed. Similarly, the Receiving Party may disclose the Disclosing Party’s Confidential Information on a "need-to-know" basis to its legal counsel, accountants, banks and other financing sources and advisors under commercially reasonable confidentiality agreements.

Upon termination or expiration of these Terms, or at the request of the Disclosing Party, the Receiving Party will promptly return all tangible material embodying the Disclosing Party’s Confidential Information, and will destroy (or, in the case of electronic embodiments, permanently erase) all other tangible material containing or reflecting such Confidential Information (in any form, including, without limitation, all summaries, copies and excerpts) in its possession or under its control, whether prepared by the Disclosing Party, the Receiving Party, or their respective advisors or otherwise, and will not retain any copies, extracts or other reproductions in whole or in part of such materials.

For the avoidance of doubt, the parties acknowledge and agree that the Receiving Party may develop products, services, concepts, systems or techniques that are similar to or compete with the products, services, concepts, systems or techniques contemplated by or embodied in the Disclosing Party's Confidential Information, provided that the Receiving Party (a) can document that such development occurred independently without any use of the Disclosing Party’s Confidential Information, (b) does not violate any of its obligations under these Terms, and (c) does not reverse engineer any of the Disclosing Party's Confidential Information.

13. Export Control and Local Laws

This site provides services, and uses software and technology, that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies, as well as the export control regulations of other countries. As a user of this site, you must not use the Website or the Services in, or permit the Website, any Services, any Content, or any underlying information, software or technology, to be transferred, exported, re-exported or otherwise

provided to, any countries regarding which the United States, Switzerland or the European Union maintains an embargo (collectively, "Embargoed Countries"). You also must not transfer, export, re-export or otherwise provide the Website, any Services, any Content, or any underlying information, software or technology, to (a) any nationals or residents of any Embargoed Countries, or (b) any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice, so you should check those lists frequently to ensure you comply.

You represent and warrant that you are not a Designated National and are not located in, under the control of, or a national or resident of any Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws, and you assume sole responsibility for obtaining any licenses required to export or re-export.

This Website also may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. **Creditor Name** makes no representation that the Website, Service or Content is appropriate or available for use in other locations. If you use the Website, Service or Content from outside the United States of America, Switzerland and the European Union, you are solely responsible for complying with all applicable laws, including, without limitation, export and import regulations of other countries. Any diversion or export of the Website, or any Services or Content contrary to the laws of United States, Switzerland or European Union (including European Union Member States) is strictly prohibited. Finally, none of the Website, Services or Content, nor any information acquired through the use of the Website, Services or Content, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or an appropriate European body for such purposes.

14. U.S. Government Contract Provisions

These Terms govern your license to use the Website, Services and Content. No government procurement regulation or contract clauses or provisions will be considered a part of any transaction between the parties under these Terms unless its inclusion is required by statute, or mutually agreed upon in writing by the parties in connection with a specific transaction. The technical data and computer software covered by this license are "Commercial Items," as that term is defined by the FAR 2.101 (48 C.F.R. 2.101), and are "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. The Website, Services and Content are provided to end users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other end users under the terms and conditions in these Terms. Use for or on behalf of the U.S. Government is permitted only if the party using the Website, Services or Content is properly authorized by an appropriate U.S. Government official. This paragraph of the Terms is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses government rights in computer software or documentation covered by these Terms. All copyright licenses granted to the U.S. Government are coextensive with the technical data and computer software licenses granted in these Terms. The U.S. Government will only

have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.

15. Notices

Creditor Name may provide notices to you relating to the Website and the Services by posting a general notice on the Website, or by sending email to the email address you provided in your account information on the Website, or by written communication sent by first class mail or pre-paid post to the mailing address you provided in your account information on the Website. Such notice will be deemed given forty-eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending (if sent by email). You may give notice to **Creditor Name** (such notice will be deemed given when received by **Creditor Name**) at any time by any of the following: letter sent by confirmed facsimile to the following fax number: (415) 354-3356; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to the attention of **Creditor Name**'s Chief Financial Officer at the following address: **Creditor Name** International Inc., 25 Division Street, Suite 205, San Francisco, CA 94103.

16. Assignment

These Terms may not be assigned or otherwise transferred by you without the prior written approval of **Creditor Name**. Any purported assignment in violation of this section will be void. **Creditor Name** may, however, assign or transfer its rights and obligations under these Terms, without your consent, to (i) a parent or subsidiary of **Creditor Name**, (ii) an acquirer of **Creditor Name** assets, or (iii) **Creditor Name**'s successor by merger. These Terms will be binding upon, and inure to the benefit of, the parties' respective successors and permitted assigns.

17. General Legal Terms

- These Terms are and will be governed exclusively by California law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and of the Uniform Computer Information Transactions Act (UCITA) will not apply to the parties' relationship or these Terms in any manner whatsoever.
- Any disputes, actions, claims or causes of action arising out of or in connection with these Terms, the Website, the Services or the Content will be subject to the exclusive jurisdiction of the state and federal courts located in San Francisco, California.
- In the event of any litigation arising out of or relating to the Website, any Services, any Content or these Terms, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and expenses (including, without limitation, expert witness fees and costs on appeal).

- No text or information set forth on any purchase order, preprinted form or document (other than an Order Form approved in writing by **Creditor Name**, if applicable) will add to or vary any terms or conditions of these Terms.
- No joint venture, partnership, employment, franchise or agency relationship exists between **Creditor Name** and you as a result of these Terms or use of any Services or Content.
- If any provisions of these Terms are held by a court of competent jurisdiction to be invalid or unenforceable, then such provisions will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- The failure of **Creditor Name** to enforce any right or provision in these Terms will not constitute a waiver of such right or provision, unless acknowledged and agreed to by **Creditor Name** in writing.
- Any ambiguity in these Terms will not be construed against **Creditor Name** due to **Creditor Name**'s role in drafting them. You specifically acknowledge that you have had a reasonable opportunity to consult your own attorney regarding these Terms, and to seek to negotiate them with **Creditor Name**.
- These Terms, together with any mutually agreed Order Form and related terms referenced in these Terms, comprise the entire agreement between **Creditor Name** and you, and supersedes all prior or contemporaneous negotiations, representations, discussions, communications or agreements, whether written or oral, between the parties regarding the subject matter addressed in these Terms.
- You are not permitted to modify any aspect of these Terms without **Creditor Name**'s express written consent.

18. Definitions

As used in these Terms, and in any Order Forms now or hereafter associated with these Terms:

- "Agreement" means these Terms of Service, any Order Forms (whether written or submitted via the Online Order Center), and any materials available on the Website that are specifically incorporated by reference herein, all as they may be updated by **Creditor Name** from time-to-time in its sole discretion;
- "API" means **Creditor Name**'s proprietary application programming interface for its Services;
- "Authorized Distributors" means the wireless carriers, wireless message aggregators, telephone companies and other third-party distributors that **Creditor Name** has contracted with or uses in connection with providing the Services;
- "Confidential Information" means information and tangible materials disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in connection with the parties' relationship under these Terms that is marked "Confidential" (or a similar marking) with respect to tangible materials, or, if disclosed orally, is identified as confidential at the time of disclosure or in a subsequent written communication received within five (5)

business days after disclosure. The **Creditor Name** Technology also constitutes Confidential Information of **Creditor Name**. For purposes of these Terms, "Confidential Information" will not, however, include information or materials the Receiving Party can prove through verifiable, objective evidence:

- a. became part of the public domain without breach of these Terms;
 - b. was known to the Receiving Party prior to its receipt from the Disclosing Party;
 - c. was rightfully received from a third party that did not acquire or disclose such information or materials by a wrongful or tortious act or in breach of any confidentiality obligation to the Disclosing Party; or
 - d. was developed independently by or for the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.
- "Content" means the text, audio and visual elements, URL links, documents, software, products, services or other information contained in, linked to, or attached to messages sent out by you through the **Creditor Name** Website or Services, or on your behalf by **Creditor Name**;
 - "Customer Data" means any data, information, materials or multimedia content relating to you that you provide or submit to the **Creditor Name** Services in the course of using the Services;
 - "Effective Date" means the earliest of (a) the date you accept these Terms by selecting the "I Accept" option presented on the screen where these Terms are displayed, (b) the date specified on an Order Form, and (c) the date you begin using the Website or Services;
 - "End-User Data" means any information that is collected by the Website or Services from individual consumers interacting with a **Creditor Name** marketing or CRM campaign (e.g., mobile telephone number, wireless carrier, email address);
 - "Initial Term" means the term of the parties' Agreement, beginning on the contract start date and ending on the contract end date, specified on the applicable Order Form;
 - "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;
 - "License Administrator(s)" means those Users designated by you who are authorized to add, delete or modify your Service Order using the Online Order Center, or by executing written Order Forms, and to create User accounts and otherwise administer your use of the Website and Services;
 - "License Term(s)" means the period(s) during which you are licensed to use the Website and Services under the Order Form(s);
 - "Online Order Center" means **Creditor Name**'s online application that allows you to, among other things, sign-up for the Services or add additional **Creditor Name** products/services in the future;

- "Order Form(s)" means the form evidencing your initial subscription for the Services, and any subsequent order forms submitted online or in written form, specifying, among other things, the type of services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties. Each such Order Form is incorporated by reference into, and becomes a part of, these Terms; provided, however, that in the event of any conflict between these Terms and the terms of any such Order Form, the terms of the Order Form will prevail and govern;
- "Purchased Services" means **Creditor Name** Services you purchase under an Order Form, as distinguished from those provided under a free trial;
- "Service(s)" means the specific edition of **Creditor Name**'s online mobile marketing and customer relationship management (CRM) platform, and other services to which you are granted access under these Terms, including, without limitation, the **Creditor Name** Technology, the Content, the **Creditor Name** APIs, and any other ancillary online or offline products and services provided to you by **Creditor Name** under these Terms. The applicable Service(s) are specified during the ordering process, are developed, operated, and maintained by **Creditor Name**, and are accessible via the Website, the **Creditor Name** APIs, widgets or another designated web site or IP address;
- "Third-Party Applications" means online, Web-based applications and offline software products which are provided by third parties that interoperate with the Services via the **Creditor Name** APIs;
- "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Services and have been supplied **Creditor Name** user identifications (including API credentials) and passwords by you (or by **Creditor Name** at your request);
- "**Creditor Name**" means **Creditor Name** International Inc., a Delaware corporation, having its principal place of business at 25 Division Street, Suite 205, San Francisco, CA 94103; and
- "**Creditor Name** Technology" means **Creditor Name**'s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, APIs, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by **Creditor Name** in providing the Services.

Questions or Additional Information:

If you have any questions regarding these Terms or wish to obtain additional information, please send an email to **Creditor Name's email address**.



Creditor Name

SERVICE AGREEMENT

1. Introduction and Acceptance. This Services Agreement (the “**Agreement**”) is a legal agreement between **Customer Name** (either an individual or an entity) (the “**Customer**”) and **Creditor name** (the “**Provider**”) regarding the Service (further defined below). Customer and Provider are each referred herein by name or individually, as a “**Party**” and collectively, as the “**Parties**”.

2. Definitions. As used in this Agreement:

2.1 “Customer Data”. Means any electronic data, information, or material provided or submitted by Customer to Provider for use in connection with the Service.

2.2 “Service” means the Provider’s online provision of the “**Creditor Name**” services, as may be modified by Provider from time to time.

2.3 “Users” means Customer’s employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Provider at Customer’s request)

3. Access to the Service

3.1 Provider Responsibilities. Subject to the terms and conditions of this Agreement, Provider shall: (i) use commercially reasonable efforts to prevent the unauthorized access to the Customer Data; (ii) not use, edit, or disclose Customer Data except as necessary to fulfill its obligations under this Agreement; and (iii) use commercially reasonable efforts to make access to and use of the Service generally available 24/7 (24 hours a day, 7 days a week), except for: (a) planned down time, which shall be any period outside of normal business hours for which Provider gives **two (2)** hours or more notice that the Service will be unavailable; or (b) down time caused by circumstances beyond Provider’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures or delays involving hardware or software not within Provider’s possession or reasonable control, virus network intrusions or denial of service attacks.

3.2 Customer Responsibilities. Customer is responsible for all activities that occur under Customer’s User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Provider promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal, and foreign laws in using the Service and resulting data provided in connection with the Service. Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not use the Service in a manner that violates Provider’s then – current usage and anti – SPAM policy, located at: **Creditor’s Website**. Customer shall not attempt to gain unauthorized access to the computer

systems or networks related to the Service or harass or interfere with another user's use and enjoyment of the Service, Customer shall not use the service as a means to either reverse engineer or otherwise gather information that could be used to complete or otherwise infringe against the interest of the Provider.

3.3 License Grants. Subject to the terms and conditions of this Agreement, Provider grants Customer a non – exclusive, non – transferable, non – sublicenseable right to access and use the Service for Customer's internal business purposes and solely by the Users. Customer grants to Provider a non – exclusive, non – sublicenseable license to use, copy, store, modify, and display any the Customer Data and any other electronic data, information, or material provided or submitted by Customer to Provider solely so that Provider may fulfill the services provided to Customer, including accessing Customer's User accounts and Customer Data, to service or technical problems. CUSTOMER MAY NOT RENT, LEASE, SUBLICENSE, SELL, ASSIGN, LOAN, OR OTHERWISE TRANSFER OR SHARE ANY OF ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT. Customer may not download, reverse engineer, decompile, or disassemble the Provider's software associated with the Service, except to the extent the foregoing restriction is expressly prohibited by applicable law. Customer may not use any trademarks of the Service, documentation, or Provider names used in this Agreement.

3.4 Ownership of Service. Except for the limited right to use and access the Service provided herein, Provider retains all right, title, and interest in and to the Service and related software, including all intellectual property rights therein. The rights granted hereunder do not constitute a license, transfer or sale of Provider's ownership rights in or to the Service and related software. The Service and related software are protected by applicable intellectual property law, including United States copyright laws and international treaties.

3.5 Ownership of Customer Data. As between Provider and Customer, any Customer Data remains the sole property of Customer. Customer data shall be considered confidential, subject to the terms of this Agreement. Notwithstanding any other provision in this Agreement, Provider may provide certain User registration and statistical information such as usage or User traffic patterns in aggregate form to third parties, *provided* that such information does not identify Customer.

4. Fees & Payment.

4.1 Fees. Customer shall pay fees as set forth in Exhibit A attached, which are Provider's then – published fees for the Service in advance of the provision of such Service. Fees are non – refundable. Provider may change the fees effective upon thirty (30) days prior notice. All fees are to be paid in United States dollars.

4.2 Invoicing & Payment. Provider shall invoice Customer for fees for the Service in advance. Charges due shall be payable upon receipt of the invoice. All payments made under this Agreement shall be in United States dollars. Any payment not received from Customer by the due date may accrue, at Provider's discretion, late charges at the rate of one and half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by

law, whichever is lower, from the date such payment was due until the date paid.

4.3 Suspension of Service. If an invoice issued pursuant to Section 4.2 above is thirty (30) days or more overdue, in addition to any of its other rights or remedies, Provider reserves the right to suspend the Service provided to Customer, without liability to the Customer, until the outstanding balance is paid in full. Notwithstanding any such suspension, Provider shall have the right to continue to collect and maintain Customer Data.

4.4 Confidentiality. As used herein, “**Confidential Information**” means all information of a party (“**Disclosing Party**”), which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party (“**Receiving Party**”), whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually. Provider’s software for the Service shall be deemed Confidential Information regardless written designation. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without the Receiving Party’s breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party’s breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party’s breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission. Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party’s cost) if the Disclosing Party wishes to contest the disclosure.

5. Warranty & Disclaimers. Each Party represents and warrants that it has the legal power to enter into this Agreement. Provider represents and warrants that it will provide the Service hereunder in a professional and workman – like manner. EXCEPT AS SET FORTH ABOVE, PROVIDER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY AND FITNESS FOR CUSTOMER’S PURPOSE WITH RESPECT TO THE SERVICE. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICE OR AGAINST INFRINGEMENT. THERE IS NO WARRANTY THAT THE SERVICE, THE INFORMATION THEREIN, OR PROVIDER’S EFFORTS WILL FULFILL ANY OF CUSTOMER’S PARTICULAR PURPOSES OR NEEDS.

6. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR

PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA OR OTHER SUCH PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS ARE INDEPENDENT OF THE EXCLUSIVE REMEDY PROVIDED IN SECTION 5 ABOVE AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF SUCH EXCLUSIVE REMEDY. IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO LICENSE THE SOFTWARE. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY AND DAMAGES SHALL NOT APPLY TO CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY.

7. Mutual Indemnification.

7.1 Indemnification by Provider. Subject to this Agreement, Provider shall defend and settle any claims ("Claims") made or brought against Provider (i) by a third party alleging that the Customer Data infringes, violates or misappropriates the intellectual property rights of a third party (including the rights of publicity and privacy) or (ii) Customer's breach of Provider's User Policy or applicable law; provided, that Provider (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of a third party Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Provider of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance in connection with the defense of third party claims. Subject to the terms and conditions of this Agreement, Customer shall indemnify Provider for any final judgments or settlement approved by Customer in writing.

8. Term & Termination. This Agreement commences on the Effective Date and continues for one (1) year, and will then automatically renew on an annual basis unless terminated prior to the end of the first year. Provider may terminate this Agreement (i) effective upon ten (10) days prior notice if Customer fails to comply with any term of this Agreement or (ii) effective upon ninety (90) days prior notice to Customer in the event that Provider ceases to offer the Service and in the event of termination pursuant to this Section 8 (ii), Provider shall refund on a pro rata basis any prepaid month to month fees (but not set-up fees). Customer may terminate this Agreement effective upon ninety (90) days prior notice, with or without cause, subject to any set-up fees, initial term requirements, or other restrictions set forth in Provider's then-published fees. Upon any termination or expiration of this Agreement, Customer's outstanding payment obligations shall survive and Customer's access to the Service shall cease. Upon thirty (30) days prior notice to Customer, Provider shall destroy any Customer Data in its possession. Upon such notice, Customer may, at its option, request return of such Customer Data at Provider's then current price for such data transfer services; provided however, it is understood and agreed that Provider shall have no obligation to make such Customer Data accessible in connection with the Service.

9. General Provisions.

9.1 Relationship of the Parties. This Agreement does not create a partnership, franchise,

joint venture, agency, fiduciary, or employment relationship between the Parties.

9.2 No benefit to Others. The Representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

9.3 Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party. Notwithstanding the foregoing, Provider may assign this Agreement without consent of the other Party in connection with the merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this Section 9.3 shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.

9.4 Governing Law. This Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Customer agrees to the exclusive jurisdiction of and venue the courts of the state and federal courts located in EI Dorado and Sacramento County in the State of California in connection with any action arising under this Agreement.

9.5 Notices. Customer may provide any notices hereunder by sending an email to **Creditor's Email Address** with a concurrent copy sent by letter to the following address: Legal services, **Creditor Name, Creditor's Street Address, City, State, Zip Code**, Provider may send any and all notices to the email and physical address provided by Customer at the time of registration, and as may be updated by Customer during the term of this Agreement. Customer agrees that Provider and its agents may contact Customer at such locations for matters in connection with this Agreement.

9.6 Severability. This Agreement is the entire agreement between the Parties and supersedes any other communications with respect to the Service. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.

9.7 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

9.8 Questions. Should Customer have any questions concerning this Agreement, or if Customer desires to contact Provider for any reason, please contact **Creditor's Name, Creditor's Phone Number, Creditor's Email Address**.

CREDITOR NAME

By: _____

Name: _____

Title: _____

Date: _____

CUSTOMER

By: _____

Name: _____

Title: _____

Effective Date: _____



Service Terms and Conditions

These Service Terms and Conditions (these “**Terms**”) apply to and shall be incorporated by reference into each Service Schedule made by and between Creditor Name and the customer named in such Service Schedule (hereinafter, “**Customer**”). All references in these Terms to “Service Schedule” shall be deemed to include the Service Schedule, the **Creditor Name** Standard Terms of Use, and these Terms. All capitalized terms in these Terms shall have the meaning given in the Service Schedule unless otherwise indicated.

Creditor Name and Customer hereby agree as follows:

1. Services

1.1 Scope. Creditor Name will provide Customer access to its hosted product(s) and/or other services on a subscription basis as described in the applicable Service Schedule (each, as may be modified, upgraded, or enhanced from time to time, a “**Service**”, and collectively the “**Services**”). Customer may use the Services only as provided in the applicable Service Schedule. Customer is solely responsible for the content of any website, email messages, or other materials produced, provided to **Creditor Name**, and/or used by Customer in conjunction with the Services (“**Content**”).

1.2 Third-Party Services. Customer may elect, in its sole discretion, to obtain other services from one or more third parties for use in conjunction with the Services. Customer acknowledges and agrees that **Creditor Name** shall have no responsibility for such third-party services or their delivery.

1.3 Services. The Services may include various professional services, to which the following additional terms will apply: (i) **Creditor Name** shall use commercially reasonable efforts to complete the Services in accordance with the Service Schedule; (ii) Customer acknowledges that **Creditor Name**’s provision of such Services is dependent in part on Customer’s cooperation with **Creditor Name** as well as Customer’s provision of materials and data necessary for **Creditor Name** to complete the Services. Accordingly, dates or time periods relevant to **Creditor Name**’s performance shall be appropriately adjusted to account for any delays due to Customer’s (or Customer’s agent’s) act or omission; (iii) if the Service Schedule requires Customer’s acceptance of any deliverable (each a “**Deliverable**”) or Services, then the Deliverable or Services shall be deemed accepted within ten (10) business days after delivery unless Customer provides Creditor Name with a written notice of rejection within such ten (10) day period.

1.4 Training. Consultative Services involving **Creditor Name** personnel, such as configuration and one-on-one training, must be completed within sixty (60) days after the Effective Date of the applicable Service Schedule, whether delivered on-site or remotely. Unless otherwise agreed to in the applicable Service Schedule, all training sessions shall have a maximum of six (6) attendees. Any additional Services will be as set forth in a separate Service Schedule.

1.5 Use of Subcontractors. **Creditor Name** generally performs Services itself and/or through one or more of its affiliates, but may use one or more subcontractors at its sole discretion. **Creditor Name** will inform Customer of its election to use a subcontractor, and will remain primarily liable for the performance of the Services in accordance with the terms of the applicable Service Schedule.

2. Billing and Payment.

2.1 Quote. Any written cost estimate or proposed Service Schedule provided to Customer prior to execution of the Service Schedule (a “**Quote**”) reflects **Creditor Name**’ then-current understanding of project requirements based on information disclosed by Customer. If **Creditor Name** determines that time or materials in excess of those stated in the Service Schedule are required, such excess time or materials must be authorized by Customer in writing prior to **Creditor Name**’ performance or use. Otherwise, **Creditor Name** may re-allocate its resources between various items within the Service Schedule in order to meet budgetary restrictions within the Service Schedule.

2.2 Billing. Customer will be invoiced for the fees for the Services (the “**Fees**”) in accordance with the prices set forth in the applicable Service Schedule. Unless otherwise set forth in a Service Schedule, all One-time Fees shall be invoiced in full on or after the Effective Date and recurring Fees shall be invoiced commencing as of the earlier to occur of: (a) the Service Schedule Start Date or (b) the date that Customer actually starts to use the Services. Minimum Monthly Fees will be invoiced commencing on such Service Schedule Start Date, regardless of whether Customer uses the Services as of that date.

2.3 Payment. All invoices (or portion thereof) not subject to a good faith dispute are due upon receipt, and shall be paid via credit card or check as specified in the applicable Service Schedule. To the extent that Customer has a good faith dispute regarding any invoice, Customer shall within ninety (90) days after the invoice date provide **Creditor Name** with written notice of such dispute as well as reasonable supporting documentation (a “**Notice of Dispute**”). The parties shall thereafter promptly work together to resolve such dispute. If Customer does not provide a Notice of Dispute within said ninety (90) day period, then Customer’s right to dispute such invoice shall be deemed waived. **Creditor Name** reserves the right to accrue interest on undisputed amounts not received within thirty (30) days after the invoice date, at a rate the lesser of: (i) one and one-half percent (1.5%) per month, or (ii) the maximum rate permitted under applicable law, from the date due until paid in full. If **Creditor Name** has not received any payment (and/or Notice of Dispute) within said thirty (30) day period, then **Creditor Name** may also suspend Customer's access to the applicable Service(s) and/or hosted data upon no less than five (5) days prior, written notice to Customer until payment is made. Any suspension of Services pursuant to this Section 2.2 will not relieve Customer of its obligation to pay all amounts due.

2.4 Fees. The Fees in the applicable Service Schedule are fixed for the Initial Term (duration to be defined in the Service Schedule). The Fees for any Renewal Term (duration to be defined in the Service Schedule) may be subject to an inflationary adjustment defined at the time of renewal, not to exceed three percent (3%) of each line item, per year.

2.5 Taxes. The Fees set forth in each Service Schedule are exclusive of any applicable sales, use, excise and similar taxes. **Creditor Name** will bill, and Customer will pay, the amount of any such taxes assessed on the performance of any Services, excluding any tax related to the income of **Creditor Name**. If Customer is tax exempt, then Customer will provide **Creditor Name** with a copy of its tax exemption certificate on or before execution of the applicable Service Schedule. Customer agrees to reimburse **Creditor Name** for any tax, as well as any interest and penalties thereon, levied against **Creditor Name** for the provision of Services to Customer pursuant to a Service Schedule.

3. Proprietary Rights.

3.1 Customer Materials & Content. Customer shall retain all right, title and interest in and to any software, hardware, data, tools, techniques, or other materials that Customer provides to **Creditor Name** in connection with the Services (“**Customer Materials**”). Customer represents and warrants, and will require each of its Agency Clients (if any, as that term is defined in Section 3.4 below) to represent and warrant that: (i) it will not use the Services in any manner which violates any third party’s rights; and (ii) by transmitting or allowing the transmission of any Content via the Services (if applicable), it grants **Creditor Name** the royalty-free, irrevocable, nonexclusive worldwide license to transmit and display such Content in whole or in part via the Services for the duration of the Services.

3.2 Creditor Name Materials & Services. **Creditor Name** shall retain all right, title and interest in and to any software, hardware, data, tools, techniques, or other materials that it uses or develops in connection with its provision of the Services and Deliverables, subject to Customer’s rights to the Customer Materials and Customer’s Confidential Information (the “**Creditor Name Materials**”). The Services, and all of their elements, shall remain the property of **Creditor Name** (or its assignee), or where applicable, **Creditor Name**’s supplier. Customer shall have no right, title or interest therein except as specified above. All repairs, modifications, upgrades, and enhancements, including without limitation any Customer suggestions for new features or functionality of the Services, are the property of **Creditor Name**. The Services are provided subject to Customer’s compliance with **Creditor Name**’s Standard Terms of Use (as may be modified from time to time), which are set forth at **Creditor**’s **Website** and incorporated into each Service Schedule.

3.3 Limited License to Use Services. **Creditor Name** grants Customer the non-exclusive, non-transferable limited license to use Services on the terms and conditions set forth in the applicable Service Schedule only. Said license shall permit Customer to use the Services in machine readable and executable form with respect to the number instances and/or volume indicated in the applicable Service Schedule only. **Creditor Name** further grants to Customer a nonexclusive, nontransferable license to use any Deliverable for Customer’s own, internal business use only. To the extent any **Creditor Name** Materials are incorporated into a Deliverable, **Creditor Name** hereby grants to Customer a nonexclusive, nontransferable license to use such **Creditor Name** Materials with the Deliverable for Customer’s own, internal business use only. **Creditor Name** reserves all rights in and to the **Creditor Name** Materials that are not expressly granted to Customer pursuant to the applicable Service Schedule. The parties further agree that nothing in any Service Schedule

shall prevent **Creditor Name** from using the expertise, ideas, and know-how learned while performing the Services for any purpose, including providing similar services to third parties, provided that **Creditor Name** does not violate its obligation of confidentiality described in Section 10 below.

3.4 License Restrictions. Customer agrees not to do or suffer any third party to do the following, except as expressly permitted by the applicable Service Schedule: (i) copy all or any portion of the Services other than for the sole purpose of back-up; (ii) decompile, reverse engineer, or disassemble all or any portion of the Services; (iii) derive or attempt to derive the Services' source code by any means; (iv) transfer the Services to any system except as actually necessary for its intended authorized use and as instructed by **Creditor Name**; (v) sell, rent, lease, distribute or otherwise transfer the Services to any third party; or (vi) remove from Services, or alter, any of the trademarks, trade names, logos, patent or copyright notices or other proprietary rights notices or markings of the Services. Unless the applicable Service Schedule permits Customer to use the Services as an Agency, Customer shall use the Services solely for Customer's own use and not for resale, sublicense and/or distribution outside of Customer's internal business. If the applicable Service Schedule permits Customer to provide the Services as an Agency, then Customer may use the Services as provided herein for the benefit of Customer's clients (each, an "**Agency Client**"); provided that **Creditor Name** has approved Customer's use of the Services for the benefit of each such Agency Client. If **Creditor Name** has not approved Customer's use of the Services for the benefit of any Agency Client, then **Creditor Name** may immediately suspend Customer's use of the Services on behalf of such Agency Client. Where **Creditor Name** has approved of Customer's use of the Services on behalf of an Agency Client, Customer shall ensure that such provision of Services is subject to the rights of **Creditor Name** as provided in the applicable Service Schedule and Customer shall be fully responsible for any breach of the provisions of the Service Schedule that may be caused by such Agency Client. In no event will Customer's agreement with any of its Agency Clients either: (i) purport to create any obligation or liability on the party of **Creditor Name** to any such Agency Client or any third party; or (ii) increase or purport to increase **Creditor Name**'s obligations to Customer or an Agency Client in excess of those contained in the applicable Service Schedule. All of Customer's agreements with its Agency Clients relating to the Services shall expressly disclaim any representations and warranties by **Creditor Name** to such Agency Client and all liability of **Creditor Name** to such Agency Client. In such case, Customer shall remain primarily liable for the performance of Customer's and each Agency Client's obligations under the applicable Service Schedule.

3.5 Limited License to Data. As between **Creditor Name** and Customer, Customer shall own all right, title, and interest in and to any data that **Creditor Name** collects and stores on behalf of Customer in providing the Services (the "**Data**"). The Data shall be deemed Customer's Confidential Information (defined below). Customer grants **Creditor Name** a nonexclusive, nontransferable license to: (a) capture and maintain the Data in connection with **Creditor Name**'s provision of Services to Customer and enforcement of its rights as described in the applicable Service Schedule; and (b) compile aggregated statistics including the Data along with data of other **Creditor Name** customers for internal or marketing use (provided that no such use shall include any information that can identify Customer or any of

its end users or Agency Clients). Notwithstanding the foregoing, Customer acknowledges that **Creditor Name** may access Customer's hosted membership list(s) in order to unsubscribe a member who has sent to **Creditor Name** a request that it do so or a complaint to the effect that such member is unable or unwilling to unsubscribe themselves, or if the presence of such member's email address on the list violates the terms of the applicable Service Schedule.

3.6 Marks and Publicity. **Creditor Name** and Customer trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), shall be the sole and exclusive property of the respective owning party, which shall own all right, title and interest therein. Subject to the other party's prior approval (which approval shall not be unreasonably withheld or delayed), each party may further: (i) use the other party's name and/or logo within product literature, press release(s), social media, and other marketing materials; quote the other party's statements in one or more press releases; and/or (iii) make such other use of the other party's name and/or logo as may be agreed between the parties. Additionally, **Creditor Name** may include Customer's name and/or logo within its list of customers for general promotional purposes. Each party shall comply with the other party's trademark use guidelines as such are communicated to the using party in writing and each shall use the other party's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section 3.6.

4. Obligations.

4.1 Customer Obligations. Customer agrees to abide by all laws, rules, and regulations that are applicable to its use of the Services. Customer shall ensure that each Web site for which the Service is engaged contains or is linked to a privacy policy that governs its data collection and use practices. Customer has and will maintain all rights as shall be required to allow **Creditor Name** to provide the Services to Customer as set forth in the applicable Service Schedule, including without limitation from advertisers, and to permit **Creditor Name** to collect and store the Data pursuant to the applicable Service Schedule. Customer is responsible for the Customer Content. Where **Creditor Name** provides managed Services, Customer is responsible for cooperating with **Creditor Name** to promptly provide necessary approvals or other feedback to enable **Creditor Name** to perform such managed Services.

4.2 Creditor Name Obligations. **Creditor Name** shall use commercially reasonable efforts to make the Services secure. **Creditor Name** shall not make Customer's passwords available to anyone who is not an authorized agent or employee of **Creditor Name**.

5. **Warranty; Disclaimer.**

5.1 Limited Warranties

5.1.1 The Services in the nature of professional services shall be performed in a professional and workmanlike manner. If specifications are incorporated in any Service Schedule for the performance of professional services, **Creditor Name**

warrants that such Professional Services and any Deliverables provided will substantially conform to the specifications set forth in the applicable Service Schedule for a period of ninety (90) days following the provision of such Service or Deliverable.

5.1.2 To **Creditor Name**' knowledge as of the date any Deliverable is first delivered to Customer, the Deliverable does not infringe any third party's intellectual property right.

5.2 DISCLAIMER. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION 5, CUSTOMER'S USE OF THE SERVICES AND DELIVERABLES IS AT CUSTOMER'S SOLE RISK, ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. **CREDITOR NAME** SHALL USE COMMERCIALY REASONABLE EFFORTS TO MAINTAIN PERFORMANCE OF HOSTED SERVICES; HOWEVER, EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, **CREDITOR NAME** MAKES NO WARRANTY AND SPECIFICALLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES AND DELIVERABLES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. **CREDITOR NAME** DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES (OR ANY OF THEM) WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. **CREDITOR NAME** DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE HOSTED SITE AND/OR OTHER PORTIONS OF THE INTERNET.

5.3 Remedies.

5.3.1 If the Services do not conform to a warranty set forth in Section 5.1.1 above, then **Creditor Name**' sole obligations (and Customer's sole remedies) shall be to (i) re-perform the Services in conformance with the warranty without charge to Customer; or (ii) refund the Fees paid by Customer for the nonconforming Services. **Creditor Name** shall provide (i) or (ii) within sixty (60) days following Customer's written notice to **Creditor Name** that the Services do not conform to such warranty.

5.3.2 If any Deliverable does not conform to the warranty set forth in Section 5.1.1 above, then **Creditor Name**' sole obligations (and Customer's sole remedies) shall be to (i) modify the Deliverable to conform to the specifications without charge to the Customer; or (ii) refund the fees paid by Customer for the nonconforming Deliverable. **Creditor Name** shall provide (i) or (ii) within sixty (60) days following Customer's written notice to **Creditor Name** that the Deliverable does not conform to such warranty.

6. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST DATA (OR ITS USE), HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, ARISING OUT OF OR RELATING TO A SERVICE SCHEDULE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES. EXCEPT FOR: (A) EITHER PARTY'S OBLIGATION TO INDEMNIFY THE OTHER AS PROVIDED IN SECTION 7 BELOW, (B) CUSTOMER'S OBLIGATION TO PAY AMOUNTS DUE AND OWING UNDER A SERVICE SCHEDULE; AND/OR (C) A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; EACH PARTY'S LIABILITY SHALL BE LIMITED TO THE AMOUNT PAID (OR OWING) BY CUSTOMER UNDER THE APPLICABLE SERVICE SCHEDULE FOR SERVICES PROVIDED IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

7. Indemnification.

7.1 Creditor Name Indemnity. **Creditor Name** agrees to defend, indemnify, and hold Customer and its officers, directors, employees, and agents harmless from and against all damages, costs, liabilities, expenses (including without limitation reasonable attorney's fees) and settlement amounts incurred in connection with any suit, claim, or action by any third party (a "**Claim**"): (i) alleging that the technology used by **Creditor Name** to provide the Services (the "**Creditor Name Technology**") or any of the **Creditor Name Materials**, when used within the scope of the Service Schedule, infringes any patent enforceable in the United States, copyright, trademark, or service mark of a third party and/or (ii) arising from or relating to **Creditor Name's** gross negligence or willful misconduct. In addition to the foregoing, if the **Creditor Name Technology** or **Creditor Name Materials** are, or in the opinion of **Creditor Name** may become, the subject of any claim for infringement or if the **Creditor Name Technology** or **Creditor Name Materials** are adjudicatively determined to be infringing, then **Creditor Name** may, at its sole option and expense (A) modify the **Creditor Name Technology/Creditor Name Materials** so that it becomes non-infringing; (B) replace the **Creditor Name Technology/Creditor Name Materials** with non-infringing matter that is functionally equivalent or (C) obtain a license for Customer to continue to use the **Creditor Name Technology/Creditor Name Materials** provided hereunder. If **Creditor Name** determines that (A), (B), and/or (C) are not practicable, then either party may terminate the applicable Service Schedule and **Creditor Name** shall provide Customer with a refund of (as applicable) any prepaid Fees for Services that were to be provided following the effective date of termination, or Fees that Customer paid for the affected Deliverable. This Section 7.1 states **Creditor Name's** entire obligation and Customer's sole and exclusive remedies regarding the intellectual property rights of any third party.

7.2 Indemnification of Creditor Name. Customer agrees to defend, indemnify, and hold **Creditor Name** and its officers, directors, employees, and agents harmless from and against any and all damages, costs, liabilities, expenses (including, without limitation, reasonable attorneys' fees) and settlement amounts incurred in connection with any Claim arising from or relating to Customer's (i) breach of any of its obligations set forth in section 4.1 above and/or (ii) Customer's gross negligence or willful misconduct.

7.3 Procedures. Each indemnifying party's obligations as set forth in this Section 7 are subject to the other party: (i) giving the indemnifying party prompt written notice of any such Claim; (ii) giving the indemnifying party sole control over the defense and settlement of any such Claim; and (iii) providing full cooperation for the defense of any such Claim, at the indemnifying party's expense.

8. Term & Termination.

8.1 Term. Unless earlier terminated pursuant to Section 8.2 below, the term of each Service Schedule shall commence on the Effective Date (as defined in such Service Schedule) and continue for a period specified in such Service Schedule (this period is hereinafter referred to as the “*Minimum Term*”). Unless the applicable Service Schedule otherwise provides, a Service Schedule shall automatically renew for successive and consecutive 12 month periods (each a “*Renewal Term*”), unless either party provides written notice of nonrenewal no fewer than ninety (90) days prior to the expiration of the then-current Minimum Term or Renewal Term.

8.2 Termination.

8.2.1 Termination for Breach. Either party may terminate a Service Schedule for the other party’s breach of a material obligation thereunder by providing at least thirty (30) days’ prior written notice of the breach as provided in Section 9 below; provided that if the breaching party cures the breach within the thirty-day notice period, the Service Schedule shall not terminate. Notwithstanding the foregoing, if Customer’s use of the Services in violation of any term of a Service Schedule adversely impacts **Creditor Name**’s ability to provide services to other customers, **Creditor Name** may: (i) immediately suspend Customer’s use of the Services and provide prompt written notice of the suspension to Customer; and/or (ii) terminate the applicable Service Schedule upon written notice to Customer reasonably describing the violation; such termination to be effective if the violation is not cured within three (3) days of the date the notice is delivered to Customer. In the event of termination by **Creditor Name** pursuant to this Section 8.2.1, Customer shall pay to **Creditor Name** all amounts due and owing under applicable Service Schedule as of the termination date (including any fees relating to the unexpired portion of the Minimum Term or then-current Renewal Term).

8.2.2 Customer Notice of Termination. Any notice of Customer’s election to terminate a Service Schedule must be sent via email to **Creditor Name**’s customer service cancellation address.

8.3 Effect of Termination. . All terms of a Service Schedule that are expressly or by their nature impliedly intended to survive the expiration or earlier termination of such Service Schedule shall not be affected by such expiration or termination. Upon termination, each party shall immediately return to the other all Confidential Information in its possession, subject to any remaining rights in such property that may exist under applicable Service Schedule. Notwithstanding the foregoing, **Creditor Name** reserves the right to hold and prevent the copying and/or export of the Data until all undisputed amounts owing by Customer under the applicable Service Schedule are paid in full. If **Creditor Name** exercises its right to discontinue or disable Services as provided in a Service Schedule and, within six (6) months thereafter, Customer has not paid to **Creditor Name** all undisputed amounts then owing, **Creditor Name** shall then have the further right to delete such Data.

9. Notices. Except for Customer's notice of termination of any Service Schedule pursuant to Section 8.2 above (which shall be via email to **Creditor's email address**), notices to the parties shall be sent by: (i) personal delivery; (ii) certified mail, return receipt requested; (iii) recognized overnight courier with a printed confirmation of receipt; (iv) facsimile at the fax number noticed on the cover page of the applicable Service Schedule (or such other fax number as a party may designate by written notice delivered in accordance with this provision); or (v) email at the address indicated on the cover page of the applicable Service Schedule (or to such other address as a party may specify by written notice sent in accordance with this provision).

10. Confidential Information. "**Confidential Information**" shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential. Without limiting the generality of the foregoing, the terms and conditions of each Service Schedule shall be considered **Creditor Name** and Customer Confidential Information. Confidential Information shall not include any information which a party can demonstrate (i) was rightfully in its possession prior to the date of disclosure to it by the other party; (ii) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (iii) a party has developed independently without reference to any Confidential Information of the other party; or (iv) came into such party's possession from a third-party who had a bona fide right to make such information available. The party receiving Confidential Information will not at any time disclose to any person or use except as expressly permitted in the applicable Service Schedule, Confidential Information of the other party without the prior written consent of such other party. Each party shall limit disclosure of Confidential Information to its employees or agents who have a need to know related to the parties' business relationship. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the other party as required by court order or other compulsory legal process, provided that the receiving party first notify the other party of the compelled disclosure as soon as reasonably practicable in advance of the compelled disclosure. Upon termination of a Service Schedule, the recipient of Confidential Information shall promptly deliver to the other party or destroy any and all such information in its possession or under its control, and any copies made thereof which the recipient of said information may have made, except as the parties by prior express written permission have agreed to retain. Notwithstanding the foregoing, a recipient of Confidential Information may retain, subject to these Terms, a copy of the Confidential Information as required for compliance with its internal recordkeeping requirements and shall not be deemed to have violated its obligations with respect to returning or destroying Confidential Information to the extent such Confidential Information is located on electronic back-up tapes in accordance with such recipient's normal procedures for backing-up data and where such back-up tapes are not accessible to such recipient's employees or officers other than those employees and officers whose duties relate to information technology support for the recipient.

11. General.

11.1 Governing Law; Venue. Each Service Schedule is governed in all respects by the laws of **Creditor's State** without giving effect to its conflict of laws principles. The exclusive jurisdiction and venue for all disputes arising out of or relating to any Service

Schedule shall be the state and federal courts located in **Creditor's County, State**. The prevailing party in any such dispute shall be entitled to attorneys' fees and its litigation or related expenses in any suit or proceeding with respect to the subject matter of a Service Schedule or arising from or related to it, or to interpret or enforce the Service Schedule. In the event the Customer is outside of the United States, where the Agreement is in conflict with local law, the Agreement will be governed by local law.

11.2 Relationship Between the Parties. **Creditor Name's** relationship with Customer is that of an independent contractor, and nothing herein is intended, or should be construed, to create a partnership, agency, joint venture or employment relationship.

11.3 Notices. All notices permitted or required under a Service Schedule shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or US mail, and deemed received upon personal delivery, acknowledgment of receipt of facsimile transmission, when sent upon email transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the US mail. Notices shall be sent to the person who has signed the Service Schedule (at the address set forth therein) or to such other person or address as either party may specify in writing. Each party shall deem a document faxed to it as an original document.

11.4 Construction. If any provision of these Terms or any Service Schedule is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity shall not render the Service Schedule unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions. Provisions that should reasonably be considered to survive termination of a Service Schedule shall survive.

11.5 No Waiver. The failure of either party to require performance by the other party of any provision of a Service Schedule shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision of a Service Schedule be taken or held to be a waiver of the provision itself. Neither party shall be liable under a Service Schedule by reason of any failure or delay in the performance of its obligations under such Service Schedule (except for the payment of money) on account of any cause beyond the reasonable control of such party.

12. No Assignment. Neither party may assign, voluntarily, by operation of law or otherwise, any rights or obligations under a Service Schedule without the other party's prior written consent, which may not be unreasonably withheld; provided that transfer to any person or entity controlling, controlled by or controlled in conjunction with such party or to any person or entity that acquires substantially all of the shares, assets, or business of such party shall not be deemed an assignment for the purposes of this provision. Any attempted assignment without such consent will be void. Subject to the foregoing, each Service Schedule will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

12.1 Entire Agreement; Modification. Each Service Schedule completely and

exclusively states the agreement of the parties regarding its subject matter. Each Service Schedule supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. Neither these Terms nor any Service Schedule shall be modified except by a subsequently dated written amendment signed on behalf of each party by its duly authorized representatives, and any provision on a purchase order purporting to supplement or vary the provisions of a Service Schedule shall be void. Any handwritten modification to a Service Schedule shall be void unless the person signing said Service Schedule on behalf of **Creditor Name** initials such handwritten modification.



SaaS Terms and Conditions

Master Subscription Agreement
Creditor Name software

TERMS OF USE:

BY CLICKING THE “I ACCEPT” BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE “AGREEMENT”) GOVERNING YOUR USE OF **CREDITOR NAME**’S ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE “SERVICE”). 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 SERVICE.

Welcome

As part of the **Creditor Name** hosted Service, **Creditor Name** will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Creditor Name website incorporated by reference herein, including but not limited to **Creditor Name**’s privacy and security policies.

1. Definitions and Interpretation

The following are the standard terms and conditions under which **Creditor Name** (“the Company”) sells computer hardware, licenses computer software and supplies related services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptance Certificate” – means a document to be used in conjunction with the supply of Products to be signed by the Customer on delivery indicating their acceptance of that delivery, or in the case of a service, the act of using that service in a production environment;

“Agreement” – means any agreements entered into between the Company and a Customer to which these standard Terms and Conditions apply;

“Customer” - means the individual, business, or other organization with whom the Company contracts;

“Supplier” – means any supplier of Products or Services to the Company;

“Products” – means computer hardware, software and associated equipment that may be supplied by the Company; and

“Services” – means any service supplied by the Company.

1.2 Any reference to a day or days refers to business days – that is any day which is not a weekend or public or bank holiday.

1.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Privacy & Security; Disclosure

Creditor Name's privacy and security policies may be viewed at **Creditor's website address**. **Creditor Name** reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

3. License Grant & Restrictions

Creditor Name hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by **Creditor Name** and its licensors.

You may not access the Service if you are a direct competitor of **Creditor Name**, except with **Creditor Name's** prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

4. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify **Creditor Name** immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to **Creditor Name** immediately and use reasonable efforts to stop

immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another **Creditor Name** user or provide false identity information to gain access to or use the Service.

5. Account Information and Data

Creditor Name does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not **Creditor Name**, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and **Creditor Name** shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), **Creditor Name** will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. **Creditor Name** reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and **Creditor Name** shall have no obligation to maintain or forward any Customer Data.

6. Intellectual Property Ownership

Creditor Name alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the **Creditor Name** Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the **Creditor Name** Technology or the Intellectual Property Rights owned by **Creditor Name**. The **Creditor Name**, the **Creditor Name** logo, and the product names associated with the Service are trademarks of **Creditor Name** or third parties, and no right or license is granted to use them.

7. Charges and Payment of Fees

Charges are monthly. You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. An initial deposit charge will be equal to six times the current number of total User licenses requested times the User license fee currently in effect. Payments for the service must be made monthly in advance unless otherwise mutually agreed upon in an Order Form or through the Online Order Center. All payment obligations are non-cancellable and all amounts paid are non-refundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide **Creditor Name** with valid credit card or approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form or using the Online Order Center. Added licenses will be subject to the following: (i) added licenses will be coterminous with the pre-existing License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. **Creditor Name** reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may

be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

Initial setup and training fees are subject to separate negotiation and are paid upon delivery.

8. Billing and Renewal

Creditor Name charges and collects monthly in advance for use of the Service. **Creditor Name** will automatically issue an invoice for each month upon receipt of payment. **Creditor Name** will automatically renew and bill your credit card each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless **Creditor Name** has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. **Creditor Name's** fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

You agree to provide **Creditor Name** with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, **Creditor Name** reserves the right to terminate your access to the Service in addition to any other legal remedies.

If you believe your bill is incorrect, you must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

In addition to any other rights granted to **Creditor Name** herein, **Creditor Name** reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 3.0% above U.S. Prime Interest rate per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or **Creditor Name** initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that **Creditor Name** may charge such unpaid fees to your deposit, credit card or otherwise bill you for such unpaid fees.

Creditor Name reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that **Creditor Name** has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

10. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. The Initial Term shall be for two years or as otherwise mutually agreed upon in an Order Form, commencing on the date you agree to pay for the Service by completing the subscription form, or on the start date of the Order Form. Upon the

expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms of one year, at Creditor Name's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least 6 months prior to the date of the requested termination. In the event this Agreement is terminated (other than by reason of your breach), Creditor Name will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Creditor Name has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

11. Termination for Cause

Any breach of your payment obligations or unauthorized use of the **Creditor Name** Technology or Service will be deemed a material breach of this Agreement. **Creditor Name**, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that **Creditor Name** has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. **Creditor Name** represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online **Creditor Name** help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

13. Mutual Indemnification

You shall indemnify and hold **Creditor Name**, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that **Creditor Name** (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release **Creditor Name** of all liability and such settlement does not affect **Creditor Name**'s business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Creditor Name shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a

copyright, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by **Creditor Name** of its representations or warranties; or (iii) a claim arising from breach of this Agreement by **Creditor Name**; provided that you (a) promptly give written notice of the claim to **Creditor Name**; (b) give **Creditor Name** sole control of the defense and settlement of the claim (provided that **Creditor Name** may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to **Creditor Name** all available information and assistance; and (d) have not compromised or settled such claim. **Creditor Name** shall have no indemnification obligation, and you shall indemnify **Creditor Name** pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

14. Disclaimer of Warranties

CREDITOR NAME AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. **CREDITOR NAME** AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (E) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN “AS IS” BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY **CREDITOR NAME** AND ITS LICENSORS.

15. Internet Delays

CREDITOR NAME'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. **CREDITOR NAME** IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

16. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS

OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Arbitration

Subject to the agreement of the parties, if any dispute or difference shall arise between the Company and the Customer on any matter relating to or arising out of the Agreement, such a dispute shall be referred to the arbitration of a single Arbitrator to be agreed upon by the parties.

18. Proper Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of **Creditor's State**. Any dispute concerning it or its interpretation shall be adjudicated in that Jurisdiction.

19. Notice

Creditor Name may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in **Creditor Name**'s account information, or by written communication sent by first class mail or pre-paid post to your address on record in **Creditor Name**'s account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to **Creditor Name** (such notice shall be deemed given when received by **Creditor Name**) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to **Creditor Name, Street Address, City, State, Zip Code**.

20. Modification to Terms

Creditor Name reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

21. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of **Creditor Name** but may be assigned without your consent by **Creditor Name** to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of **Creditor Name** directly or indirectly owning or controlling 50% or more of you shall entitle **Creditor Name** to terminate this Agreement for cause immediately upon written notice.



Saas Terms and Conditions

Master Subscription Agreement

Creditor Name software

TERMS OF USE:

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Welcome

As part of the **Creditor Name** hosted Service, **Creditor Name** will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Creditor Name website incorporated by reference herein, including but not limited to **Creditor Name**’s privacy and security policies.

1. Definitions and Interpretation

The following are the standard terms and conditions under which **Creditor Name** (“the Company”) sells computer hardware, licenses computer software and supplies related services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptance Certificate” – means a document to be used in conjunction with the supply of Products to be signed by the Customer on delivery indicating their acceptance of that delivery, or in the case of a service, the act of using that service in a production environment;

“Agreement” – means any agreements entered into between the Company and a Customer to which these standard Terms and Conditions apply;

“Customer” - means the individual, business, or other organization with whom the Company contracts;

“Supplier” – means any supplier of Products or Services to the Company;

“Products” – means computer hardware, software and associated equipment that may be supplied by the Company; and

“Services” – means any service supplied by the Company.

1.2 Any reference to a day or days refers to business days – that is any day which is not a weekend or public or bank holiday.

1.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Privacy & Security; Disclosure

Creditor Name's privacy and security policies may be viewed at **Creditor's website address**. **Creditor Name** reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

3. License Grant & Restrictions

Creditor Name hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by **Creditor Name** and its licensors.

You may not access the Service if you are a direct competitor of **Creditor Name**, except with **Creditor Name**'s prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet “links” to the Service or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

4. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, national and foreign laws, treaties and regulations in connection with your use

of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify **Creditor Name** immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to **Creditor Name** immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another **Creditor Name** user or provide false identity information to gain access to or use the Service.

5. Account Information and Data

Creditor Name does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not **Creditor Name**, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and **Creditor Name** shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), **Creditor Name** will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. **Creditor Name** reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and **Creditor Name** shall have no obligation to maintain or forward any Customer Data.

6. Intellectual Property Ownership

Creditor Name alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the **Creditor Name** Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the **Creditor Name** Technology or the Intellectual Property Rights owned by **Creditor Name**. The **Creditor Name**, the **Creditor Name** logo, and the product names associated with the Service are trademarks of **Creditor Name** or third parties, and no right or license is granted to use them.

7. Charges and Payment of Fees

Charges are monthly. You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. An initial deposit charge will be equal to six times the current number of total User licenses requested times the User license fee currently in effect. Payments for the service must be made monthly in advance unless otherwise mutually agreed upon in an Order Form or through the Online Order Center. All payment obligations are non-cancellable and all amounts paid are non-refundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide **Creditor Name** with valid credit card or approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form or using the Online Order Center. Added licenses will be subject to the following: (i) added licenses will be coterminous with the pre-existing License Term (either Initial Term or

renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. **Creditor Name** reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

Initial setup and training fees are subject to separate negotiation and are paid upon delivery.

8. Billing and Renewal

Creditor Name charges and collects monthly in advance for use of the Service. **Creditor Name** will automatically issue an invoice for each month upon receipt of payment. **Creditor Name** will automatically renew and bill your credit card each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless **Creditor Name** has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. **Creditor Name's** fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

You agree to provide **Creditor Name** with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, **Creditor Name** reserves the right to terminate your access to the Service in addition to any other legal remedies.

If you believe your bill is incorrect, you must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

In addition to any other rights granted to **Creditor Name** herein, **Creditor Name** reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 3.0% above U.S. Prime Interest rate per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or **Creditor Name** initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that **Creditor Name** may charge such unpaid fees to your deposit, credit card or otherwise bill you for such unpaid fees.

Creditor Name reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that **Creditor Name** has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

10. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. The Initial Term shall be for two years or as otherwise mutually agreed upon in an Order Form, commencing on the date you agree to pay for the Service by completing the subscription form, or on the start date of the Order Form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms of one year, at Creditor Name's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least 6 months prior to the date of the requested termination. In the event this Agreement is terminated (other than by reason of your breach), Creditor Name will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Creditor Name has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

11. Termination for Cause

Any breach of your payment obligations or unauthorized use of the **Creditor Name** Technology or Service will be deemed a material breach of this Agreement. **Creditor Name**, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that **Creditor Name** has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. **Creditor Name** represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online **Creditor Name** help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

13. Mutual Indemnification

You shall indemnify and hold **Creditor Name**, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that **Creditor Name** (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release **Creditor Name** of all liability and such settlement does not affect **Creditor Name**'s business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Creditor Name shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by **Creditor Name** of its representations or warranties; or (iii) a claim arising from breach of this Agreement by **Creditor Name**; provided that you (a) promptly give written notice of the claim to **Creditor Name**; (b) give **Creditor Name** sole control of the defense and settlement of the claim (provided that **Creditor Name** may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to **Creditor Name** all available information and assistance; and (d) have not compromised or settled such claim. **Creditor Name** shall have no indemnification obligation, and you shall indemnify **Creditor Name** pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

14. Disclaimer of Warranties

CREDITOR NAME AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. **CREDITOR NAME** AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (E) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY **CREDITOR NAME** AND ITS LICENSORS.

15. Internet Delays

CREDITOR NAME'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. **CREDITOR NAME** IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

16. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12)

MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Arbitration

Subject to the agreement of the parties, if any dispute or difference shall arise between the Company and the Customer on any matter relating to or arising out of the Agreement, such a dispute shall be referred to the arbitration of a single Arbitrator to be agreed upon by the parties.

18. Proper Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of **Creditor's State**. Any dispute concerning it or its interpretation shall be adjudicated in that Jurisdiction.

19. Notice

Creditor Name may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in **Creditor Name's** account information, or by written communication sent by first class mail or pre-paid post to your address on record in **Creditor Name's** account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to **Creditor Name** (such notice shall be deemed given when received by **Creditor Name**) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to **Creditor Name, Street Address, City, State, Zip Code**.

20. Modification to Terms

Creditor Name reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

21. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of **Creditor Name** but may be assigned without your consent by **Creditor Name** to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of **Creditor Name** directly or indirectly owning or controlling 50%

or more of you shall entitle **Creditor Name** to terminate this Agreement for cause immediately upon written notice.

1. License Grant. During the Term hereof as defined in Agreement, Licensee is granted a restricted license to access and use the Database on the following terms: (a) access will be limited to the Permitted Users, which may be amended from time to time but not more frequently than once a month, (b) Licensee's rights are personal, non-transferable, non-sub licensable, non-exclusive; and (c) access and use of the Database may be terminated and this license revoked by Licensor upon any material breach by Licensee of this User Access & License Agreement (this "Agreement") or any Web Site Policies, as described in Section 7 herein. Licensor shall provide one or more passwords or other information necessary to permit access. The term "Database" shall mean the information collected and compiled by Licensor and the individual Functionality Modules licensed in the Agreement, and the interface as accessed via the Internet on the Licensor's web site at www.rainkingonline.com (the "Site"). The Database and all other services provided by **Creditor Name** are the "Services." Licensee acknowledges that Licensor has no control over the information or materials that Licensee sends. Licensee shall take appropriate precautions by instruction or agreement of Licensee's employees permitted access to the Database to ensure that they take no action inconsistent with Licensee's obligations under this Agreement. Licensee may not use or transmit any portion of the Database and/or downloaded information electronically or otherwise, unless such use or transmission specifically relates to the Licensee's business and which specifically complies with this Section 1. Licensee agrees to follow all country specific regulations with regards to data privacy when using the European data. At Licensor's written request, Licensee will furnish Licensor with a certification signed by an officer of Licensee verifying that the Database is being used pursuant to the terms of this Agreement. Finally, in addition to any other legal rights, whether in equity or at law, the Licensor may have against Licensee for its use of the Database in breach of this Section 1, the Licensor has the right to immediately terminate this Agreement pursuant to Section 4 and Licensee forfeits all its rights to any refund of fees paid to Licensor. Either party may terminate this Agreement immediately, without further obligation to the other party, in the event of (a) a material breach of this Agreement by the other party that is not remedied within twenty-one (21) days after the breaching party's receipt of written notice of such breach; or (b) the other party's making of an assignment for the benefit of its creditors, the filing by the other party or its creditors of a voluntary or involuntary petition under any bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or the appointment of a trustee or receiver for the other party or its property; provided, however, that Licensee's failure to make payment when due or Licensee's breach of its restrictions on the use of information obtained from the Database shall be grounds, at Licensor's discretion, for immediate termination by Licensor without further liability or suspension of Licensee's access to the Database until Licensee has cured its breach.

2. Ownership. Licensor, and its providers, are the sole owners of the content, layout, functions, features, code, appearance, patents, copyrights, derivative works thereof, trademarks, trade secrets and other proprietary rights that form a part of, or are otherwise related to, the Database

and the interface (collectively, the “**Creditor Name** Intellectual Property”). The Database, and the information contained therein, is a proprietary asset of the Licensor and includes trade secrets of Licensor. Licensee does not and will not have any ownership rights in the Database or any part thereof. Information from the Database that Licensee prints, saves or incorporates into other materials is solely licensed (not transferred) to Licensee. The Licensee shall not use the **Creditor Name** Intellectual Property, “**Creditor Name**” trademark or trade name in any manner without Licensor’s prior written consent.

3. Disclaimer and Warranties. Licensor provides a 95% contact accuracy guarantee. If licensee finds at any time during the term that specific data is not accurate to a 95% level, licensor will have 30 days to correct the identified data. If data is not corrected within 30 days, licensee will receive a pro-rata refund of all fees paid. Except as expressly stated in this agreement, there are no warranties, conditions, guaranties or representations regarding the content, whether express or implied, in law or in fact, oral or in writing. Not in limitation of the foregoing disclaimers, licensor hereby disclaims and states that , (a) licensor makes no warranty that the site or services, and access thereto, will be uninterrupted, secure or error free; (b) licensee’s use of the site is at licensee’s own risk, and licensee’s reliance on any information posted on the site is at licensee’s own risk; (c) licensor makes no warranty, express or implied, as to the adequacy, truth, completeness, accuracy or timeliness of the content; (d) licensor expressly disclaims all express, implied and statutory warranties, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement; (e) licensor further expressly disclaims all warranties arising from usage of trade and course of dealing; and (f) licensor does not warrant that the services will meet licensee’s requirements or that the services will operate in combination with other software or services. Licensor will use commercially reasonable efforts to ensure that the information in the database will be updated for accuracy by licensor at least semi-annually and that the database will be accessible to and usable by licensee at least 95% of the time each month.

4. Term and Termination. The term of this Agreement is specified in Exhibit A (“Term”). Upon the completion of the current term, whether the original or a renewed term, this Agreement shall automatically renew for a successive term equal to the length of the initial term, unless either party notifies the other in writing of its intent not to renew at least thirty (30) days prior to the end of the then current term. Upon the first day of any renewed term of this Agreement, the annualized rate stated in this contract along with any additional purchases made since last renewal, plus a 5% increase, will prevail. Either party may terminate this Agreement immediately, without further obligation to the other party, in the event of (a) a material breach of this Agreement by the other party that is not remedied within twenty-one (21) days after the breaching party’s receipt of written notice of such breach; or (b) the other party’s making of an assignment for the benefit of its creditors, the filing by the other party or its creditors of a voluntary or involuntary petition under any bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or the appointment of a trustee or receiver for the other party or its property; provided, however, that Licensee’s failure to make payment when due or Licensee’s breach of its restrictions on the use of information obtained from the Database shall be grounds, at Licensor’s discretion, for immediate termination by Licensor without further liability or suspension of Licensee’s access to the Database until Licensee has cured its breach.

Upon expiration or termination of this license, Licensee agrees that Licensee's access to the Database will be automatically terminated, all passwords and individual accounts will be removed, and all information that has been uploaded into Licensor's systems by Licensee may be destroyed. Excel download capability will be turned off 30 days prior to the end of the contractual term unless an agreement has been signed to extend the term. Upon termination, Licensee agrees to destroy any and all information, whether in hard copy or electronic form, it has obtained from the Database. The following provisions shall survive termination of this Agreement: Sections 2, 5, 6, (for causes of action arising before termination), 8 and 9, as well as all disclaimers, provisions regarding delinquency of payment, any provisions of the Additional Agreements intended to survive termination, and remedies for breaches of this Agreement arising prior to termination.

5. Limitation of Liability. If Licensee believes that Licensor has breached any provision of this Agreement and if Licensor cannot resolve Licensee's concerns within twenty-one (21) days of Licensor's receipt of written notice from Licensee of Licensor's breach, LICENSEE'S SOLE AND EXCLUSIVE REMEDY IS TERMINATION OF THIS AGREEMENT BY WRITTEN NOTICE TO LICENSOR, AND REFUND OF A PRORATED PORTION OF THE FEES LICENSEE HAS PAID. EXCEPT IN THE EVENT OF BREACH OF THE LICENSE GRANT PROVIDED BY LICENSOR AND EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, PARTNERS, SUCCESSORS AND PERMITTED ASSIGNS, SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO THE SITE OR SERVICES, OR THE INTERRUPTION OF THE SITE OR SERVICES, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR BUSINESS OR SALES INTERRUPTION, EVEN IF A PARTY, OR A REPRESENTATIVE THEREOF, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, LICENSOR'S MAXIMUM LIABILITY TO LICENSEE SHALL BE THE AMOUNTS PAID TO LICENSOR FROM LICENSEE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LICENSEE'S CAUSE OF ACTION.

6. Indemnification. Each party agrees to indemnify, defend and hold the other party, its officers, directors, employees, shareholders, agents, partners, successors and permitted assigns, harmless from and against any and all actual or threatened claims, liabilities, demands, causes of action, damages, losses and expenses, including, without limitation, reasonable attorneys' fees and costs of suit (collectively "Claims"), arising out of or in connection with (a) such party's (including its employees, agents and contractors) gross negligence or willful misconduct resulting in personal injury or property damage, or (b) such party's actual or alleged violation of any foreign or U.S. (federal, state or local) law, rule or regulation; provided, however, that such indemnification, defense and hold harmless provisions shall not apply to the extent of the gross negligence or intentional acts or omissions, violations of law, or material breaches of this Agreement by the party (or any of its officers, directors, employees or contractors) claiming indemnification. In addition, Licensee agrees to indemnify, defend and hold Licensor, its officers, directors,

employees and contractors harmless from and against any and all actual or threatened Claims, arising out of or in connection with (x) Licensee's sending of any information, messages or materials to any Database Contact (including, but not limited to, through e-mail, mail or fax), or (y) the use of any Database information or Services by any third party to whom Licensee has granted access to the Database (including access obtained through use of the user names and passwords assigned to Licensee and its personnel).

7. Additional Agreements. Licensee agrees to abide by and accept all policies and terms of use currently posted on Licensor's Site, including, without limitation, Licensor's (a) Privacy Policy and (b) Terms of Use (collectively, the "Site Policies", each a "Site Policy"), and to be bound by changes in such Site Policies as set forth below. The Site Policies may change from time to time and Licensor will post such changes on the Site. Licensee agrees that material failure to comply with any Site Policies after their effective date shall be a material breach of this Agreement, and may result in the immediate termination of Licensee's right to access the Database without a refund of any license fees for any period remaining under the Term of the Agreement, provided, however, Licensor shall provide Licensee written notice of such breach and Licensee shall have seven (7) days to cure such breach.

8. Governing Law and Legal Remedies. This Agreement is governed by the laws of the State of Maryland. The parties shall not bring any action or proceeding based on this Agreement more than one (1) year after the cause of action occurs. In the case that any legal action is brought under any provision of this Agreement, the prevailing party shall be entitled to recover all expenses incurred in connection with such legal action, including, without limitation, its reasonable attorneys' fees. Violation of this Agreement will cause irreparable injury to Licensor and for breach or anticipated breach of the license grant or the restrictions on the use of the Database, Licensor may seek specific performance and/or injunctive relief in any appropriate court. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be brought in the Circuit Court of Montgomery County, Maryland or the Federal District Court of Maryland and each party consents to the personal jurisdiction of such courts for controversies and claims arising out of or relating to this Agreement.

9. Miscellaneous. This Agreement and the exhibits hereto constitute the entire agreement between Licensee and Licensor and supersedes any term or representation in all other documents, except as specified in Section 7, herein. Licensor and Licensee both represent and warrant that each of them has all requisite power and authority to enter into and carry out the terms of this Agreement, that this Agreement has been duly authorized by all necessary actions. This Agreement may only be amended in a writing designated as such and signed by both parties, except as provided for in Section 7, herein. Any requirement in this Agreement for written notice shall occur by a party sending such notice to the other party by either overnight recognized carrier (such as FedEx, DHL, etc) or by certified first-class mail, return-receipt requested. If any provision of this Agreement is held unenforceable or invalid, the remaining provisions shall nevertheless be binding upon the respective parties hereto with the same effect as though the invalid or unenforceable provision was deleted. No delay by a party in the enforcement of, or failure to enforce, any provision or right hereunder shall operate as a waiver of such right. Nothing herein contained shall be construed to imply a joint venture, partnership or

principal-agent relationship between Licensor and Licensee, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing. Licensee shall not assign, in whole or in part, this Agreement without the written consent of the Licensor. The Licensor may assign this Agreement at anytime without the Licensee's consent. The following provisions shall survive termination of this Agreement: Sections 2, 7, 8, (for causes of action arising before termination), as well as all disclaimers, provisions regarding delinquency of payment, any provisions of the Additional Agreements intended to survive termination, and remedies for breaches of this Agreement arising prior to termination.



Agreement Details

Licensing & Ownership

Client's use of this Software confers no title or ownership to Client. **Creditor Name** is providing Client temporary, non-exclusive access to email marketing software and services, along with certain entitlements and privileges, that will endure as long as Client (a) continues to provide payment for service in a timely manner, and (b) continues to abide by the terms of this Agreement, Client agrees not to copy, modify, re-package, reverse-engineer, disassemble, modify or otherwise use the Software or its components in ways not explicitly allowed by this Agreement.

Permission Marketing

Creditor Name's permission policy is part of the "**Creditor Name** Software Agreement" that is agreed to and signed by all customers and is displayed for the public on **Creditor Name**'s website.

The Client agrees to include its physical address in all email communications, as required by the U.S. CAN-SPAM legislation, and to adhere to the full CAN-SPAM guidelines as well as any other applicable local, provincial/state, federal and international laws.

The Client agrees that all lists imported into Creditor Service are required to be 'list verified' and 'permission-passed' within Creditor Service before sending out any email communications or campaigns, charges apply for these services as outlined above in this agreement. This applies to all lists including customer, purchased, rented or otherwise obtained lists.

Creditor Service may not require 'list verified' and 'permission-passed' services on 'select' lists when Clickback prospector knows the origin or source of the list, this is at the discretion of Creditor Service management on a per client and list basis.

Therefore, Client agrees to use the software provided by **Creditor Name** to email people who meet at least one of the following criteria:

- 1) The recipient has opted into receive email from the sender, using a form that clearly indicates that by submitting his or her email address he or she will receive emails; or
- 2) The recipient has provided his or her email address to the sender, via business card, conference or similar, with the understanding that the sender will send email communications to the recipient emails; or
- 3) The recipient has a clear relationship with sender, as (a) a customer who has purchased a good or service within the past eighteen (18) months, obtaining the customer's email address. (b) a subscriber who pays a subscription fee to gain access to services, or (c) a member who pays dues to belong to their organization: or

- 4) The recipient could benefit from the senders relevant, professional and CAN-SPAM business-to-business email communications.

If any recipient, regardless of his or her prior opt-in status or relationship to Client, has indicated to Client its desires not to receive emails either during or prior to Client's use of this Software. Client may not use this Software to email that recipient.

Client agrees to not use the Software to break any local, provincial/state, Federal or international laws or regulations (including but not limited to those related to spamming, e-commerce, obscenity, defamation or privacy); or to encourage or facilitate any illegal activities; or to harass, threaten or embarrass any person or organization; or to promote MLM (multi-level marketing) or Ponzi schemes; or to distribute illegal, pornographic or potentially harmful or offensive information, photos, software or materials, or include links to Web pages containing any such items (**Creditor Name** reserves the right to use its own judgment in determining what is offensive).

Creditor Name reserves the right to suspend or terminate Client's account access and privileges, with written notice, in cases where a mailing sent by or on behalf of Client receives an unreasonable number of complaints from blacklists. Internet Service Providers or email watchdog groups (with **Creditor Name** having the right to determine what qualifies as unreasonable). Client will also be responsible for paying any fines incurred by **Creditor Name** as a direct result of one of its mailings, in cases where clear and direct evidence is presented to **Creditor Name** by the fining organization.

In an effort to maintain a high deliverability and protect its clients using the B2B communication server, **Creditor Name** reserves the right to delay submissions if they feel that the deliverability has been compromised due to complaints or blacklisting issues. **Creditor Name** will make every effort to either transfer the B2B communication server to another sending server, or work with the complaining parties/blacklists to resolve the issue. Once **Creditor Name** is confident that they have restored the B2B communication server to meet its standards for deliverability, the service will be returned to normal operations. Dependent on the blacklist, blacklist de-mailing listing fees may be applicable and are invoiced to the Client on the following months invoice.

Opt out Policy

Client agrees to use the opt-out link and process provided by this software, to ensure the every recipient who requests to be opted out is removed and instantly and permanently, in cases where recipients do not opt themselves out and instead request that Client opt them out. Client agrees to opt such recipients out within five (5) business days, or prior to the next mailing sent through Client's account, whichever comes first.

Account use and content

Client understands that it is responsible for everything that happens in Client's account, including the email addresses that are added, imported and stored, as well as the content published or linked to from Client's campaigns. Client agrees to take full responsibility for any and all content through Software, and to abide by all pertinent copyright laws.

Data storage and privacy

Creditor Name agrees to hold Client's Information, lists and data in strict confidence. **Creditor Name** will not rent, sell or in any way share Client's email addresses with any third party. The only time **Creditor Name** will ever share ANY information related to Client's use of the Software with an outside organization. Is if (a) the outside organization is processing Client's payment to **Creditor Name** for use of the Software and requires certain information necessary for the transaction, (b) the outside organization is the federal government or other organization empowered to require **Creditor Name** to divulge Client's personal or account information, (c) **Creditor Name** is highlighting examples of Client's email campaigns or success, with Client's prior approval to do so, or (d) **Creditor Name** is reporting on **Creditor Name**'s overall customer base and activity, in which case only general, aggregate (non-personally identifiable) information will be divulged.

Client will be provided with a username and password that grants it access to certain account data. **Creditor Name** stores an encrypted version of the password for added security, but Client understands and acknowledges that it is ultimately responsible for maintaining control of that username and password and ensuring its proper use by authorized personnel only.

Payment for services

Client agrees to pay **Creditor Name** in a timely manner for service rendered, due on receipt. Failure to pay on time may result in temporary or permanent suspension of Client's access to the Software and service. **Creditor Name** reserves the right to suspend services for overdue accounts after two (2) email statements/notices and/or on the 45th day, until the account has been paid up to date.

Right to inspect

For the purpose of providing Client service and support, and to ensure that the terms of this Agreement are being followed. **Creditor Name** reserves the right to inspect and monitor Client's account and data at any time, without notice, and to limit access to Client's account any time should **Creditor Name** have reason to believe that Client has already violated, or may at some point in the future violate, any terms set forth in this Agreement.

Termination

The Client may terminate this agreement within the first 60 days of signing this agreement, in writing to **Creditor Name**, if for whatever reason the software does not fulfill their expectations.

Client's use of the Software may be terminated by either party in writing previous to the last day of the 12th month. Client will be responsible for payment for any services rendered up through the termination date. If Client has paid in advance for a certain period of time for the Software and service, or any portion thereof, and terminates prior to the completion of that period, that payment is non-refundable.

Creditor Name may terminate this Agreement if: (a) payment for services rendered becomes 45 days overdue or a minimum of two (2) email statements/notices have been forwarded, or (b) **Creditor Name** determines that Client is in breach of the terms set forth in this Agreement.

Following termination, **Creditor Name** will work with Client to help retrieve Client-owned email addresses and other vital account data, within a reasonable period of time. **Creditor Name** makes no guarantees as to the availability of Client's data for more than 30 days following the date of termination by either party.

Modifications to this Agreement

Creditor Name may, from time to time, edit, append, or otherwise modify the terms of this Agreement. Client will be notified to any changes made. After such notification, Client's continued use of the Software indicates its acceptance of those changes and agreement to abide by them. If Client disagrees with any changes made to this Agreement, Client may terminate Software as set forth in the "termination" section above.

Warranties and disclaimers

This Software and related services are provided "as is" and **Creditor Name** expressly disclaims all warranties or conditions of any kind (express, implied or statutory), including without limitation the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose. **Creditor Name** and its technology partners and providers will not be liable for any lost profits or special, incidental or consequential damages arising out of or in connection with the Software or this Agreement.

Client agrees to indemnify and hold harmless **Creditor Name** and its officers, employees and business partners, from any claims arising from Client's use of the Software.

Headers

The headers in this Agreement are provided as visual aids only and are not to be considered legally binding in any way.

Miscellaneous

This Agreement says everything there is to be said about the use of the Software by Client and, therefore, it supersedes any other agreement about those topics. Client cannot transfer any of its rights or responsibilities under this Agreement. **Creditor Name** may transfer any of its rights and responsibilities under this Agreement. Both parties agree to sort out any dispute arising from this Agreement through arbitration in the country in which **Creditor Name** is located, in accordance with the regulations of the Canada is the Arbitration and Mediation Institute of Canada Inc. If any provision of this Agreement is held to be invalid, that provision will be enforced to the extent possible and all other provisions of this agreement will be given full effect. If **Creditor Name** fails to act to enforce any of the provisions of this Agreement, that inaction will not be a waiver of **Creditor Name**'s right to act and will not affect **Creditor Name**'s ability to act later.



SERVICES AGREEMENT

This **SERVICES AGREEMENT** (THIS “Agreement”) is entered into as of the date set forth above (the “Effective Date”) by and between **CREDITOR NAME**, a **Creditor’s State** corporation with offices located at **Creditor’s Street Address, City, State, Zip Code** and the entity named above (“Customer”).

AGREEMENT

1. AGREEMENT SCOPE. This Agreement is a master agreement that provides for the provision by **Creditor Name** to Customer of Services, ordered by Customer hereunder, pursuant to Order Forms submitted by Customer and accepted by **Creditor Name**. Accordingly, in addition to any initial Services to be provided pursuant to any initial Order Form(s), the parties may subsequently execute additional Order Forms under which additional Services may be provided by **CREDITOR NAME** to Customer.

2. ENTIRE AGREEMENT. This Agreement, together with any Exhibits and Order Forms, attached hereto, or which are later executed by the parties and expressly reference this Agreement (all of which are hereby incorporated herein by this reference), along with any valid amendments hereto, completely and exclusively state the entire agreement of the parties regarding the subject matter herein, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. For the avoidance of doubt, any terms or conditions on any Customer purchase order or similar document are expressly excluded from this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment signed on behalf of **CREDITOR NAME** and Customer by their duly authorized representatives.

CREDITOR NAME SERVICES TERMS AND CONDITIONS

These **CREDITOR NAME** Services Terms and Conditions, set forth the terms and conditions which, along with any additional terms included in an applicable Order Form, govern the Master Advertising Agency Services Agreement to which this Exhibit A is hereby incorporated and made a part thereof.

1. DEFINITIONS

The following capitalized terms shall have the meaning set forth below. Other defined terms shall have the meanings set forth where they are first underlined.

1.1 “Business Day” means any weekday other than a day designated as a holiday under the **CREDITOR NAME** holiday schedule, as revised annually and from time to time.

1.2 “Customer” means the entity named on the cover page to this agreement, and its affiliates. For purpose of this Agreement, “affiliates” means an entity that is controlled by or under common control with the entity named above. The entity named above agrees to be

responsible to **CREDITOR NAME** for any costs or damages resulting from an act or omission by an affiliate that if attributable to Customer would constitute a breach of this Agreement.

1.3 “DELIVERABLE” means any written reports, marketing strategy and implementation recommendations, ad text, images or other original work of authorship, content or materials delivered to Customer in connection with the performance of Services.

1.4 “ORDER FORM” means a **CREDITOR NAME** order form, pursuant to which Customer may order Services from CREDITOR NAME.

1.5 “Services” means the search engine marketing and related services to be provided by **CREDITOR NAME** to Customer, as described in one or more applicable Order Forms.

2. SERVICES

2.1 “Provision of Services”. In consideration of the payment by Customer to **CREDITOR NAME** of the applicable fees, **CREDITOR NAME** will provide to Customer the Services indicated on each applicable Order Form.

2.2 Subcontractors. **CREDITOR NAME** reserves the right to use subcontractors to perform Services on **CREDITOR NAME**'s behalf.

2.3 Additional Services. In the event that in the future Customer desires to obtain from **CREDITOR NAME** additional Services, the parties may execute one or more additional Order Forms, setting forth the additional Services to be provided by **CREDITOR NAME** to Customer, along with the applicable additional fees to be paid by Customer to **Creditor Name**.

2.4 Customer Obligations. Customer agrees to provide **CREDITOR NAME** with such cooperation, materials, information, access and support which **CREDITOR NAME** deems to be reasonably required to allow **CREDITOR NAME** to successfully provide the Services. Customer understands and agrees that **CREDITOR NAME**'s obligations hereunder are expressly conditioned upon Customer timely providing such cooperation, materials, information, access and support.

2.5 Customer Policies. While on premises owned, controlled or hired by Customer, all **CREDITOR NAME** personnel shall conduct themselves in accordance with the standard health, safety and security policies of Customer

3. OWNERSHIP OF DELIVERABLES

In the course of performing Services, **CREDITOR NAME** may, at the request of Customer, create Deliverables. Customer shall own all right title and interest in and to all Deliverables created by **CREDITOR NAME** at the request of Customer, including all intellectual property rights therein and thereto. For all other Deliverables, **CREDITOR NAME**

hereby grants to Customer a royalty-free, worldwide license, without the right to grant or authorize sublicenses, to use such Deliverables solely in connection with Customer's use of the associated Services. Nothing in this Agreement shall be deemed to prohibit **CREDITOR NAME** from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing Services.

4. FEES, PAYMENT AND TAXES

4.1 Fees and Invoices. Fees for Services shall be set forth in the applicable Order Form. **CREDITOR NAME** will invoice Customer monthly, in arrears. Unless specifically stated otherwise in an applicable Order Form, the Customer shall reimburse **CREDITOR NAME** for reasonable travel, accommodation, communications, equipment and out-of-pocket expenses incurred in conjunction with the Services ("Expenses"). Invoices for Expenses will be sent in the month following the month in which they were incurred.

4.2 Payment. Unless otherwise specified on an Order Form, all invoices will be paid in U.S dollars and are due within thirty (30) days of the date of the invoice, provided that invoices for media buys made by **CREDITOR NAME** on Customer's behalf are due within fifteen (15) days of the date of the invoice. Payments will be made without right of set-off or chargeback. All monetary amounts are specified and shall be paid in the lawful currency of the United States of America. Customer shall pay all amounts due under this Agreement to **CREDITOR NAME** at the address set forth herein or such other location as **CREDITOR NAME** designates in writing. Any amount not paid when due may be subject to interest charges at the rate of one and one half percent (1.5%) per month or, the maximum rate permitted by law, whichever is less, determined and compounded on a daily basis from the date due until the date paid. In addition, if Customer fails to pay when due any invoice for a media buy made by **CREDITOR NAME** on Customer's behalf, Customer agrees to pay a late payment penalty equal to five percent (5%) of the amount of any such invoice.

4.3 Taxes. All amounts payable by Customer to **CREDITOR NAME** under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue, the provision of Services, the execution or performance of this Agreement to otherwise, and including without limitation all sales, use, excise, import or export, value added, governmental permit fees, license fees, and customs; provided, however, that Customer shall have no liability for any net income, net worth or franchise taxes assessed on **Creditor Name** by the United States or any state thereof.

5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence on the Effective Date and shall, unless earlier terminated under Section 5.2 below, continue in force for a period of one (1) year. Thereafter, the term of this Agreement shall automatically renew for additional one (1) year periods unless either party gives written notice to the other of its Intension not to renew the Agreement at least thirty (30) days prior to the expiration of the then-current term. The initial term of this Agreement, plus any subsequent renewal term shall be the "Term" of this Agreement.

5.2 Termination. Either party may, upon written notice to the other party, terminate this Agreement for any reason or no reason, by giving the other party a thirty (30) days written notice at any time during the term of this agreement.

5.3 Survival. All payment obligations under Section 4, plus Sections 5.3, 6, 7, 8, 9 and 10 of this Exhibit A shall survive any termination or expiration of this Agreement.

6. CONFIDENTIALITY

6.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature (“Confidential Information”). Confidential Information includes all communications concerning CREDITOR NAME’s or Customer’s business and marketing strategies including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with CREDITOR NAME software, anything provided by CREDITOR NAME in connection with its warranty obligations under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made.

6.2 Non-use and Non-disclosure. The parties shall at all times, both during the term of this Agreement and thereafter keep in trust and confidence all Confidential Information of the other party and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties without the other party’s prior written consent.

6.3 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain except where such entry is the result of a party’s breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party’s possession without restriction; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without use of the Confidential Information.

6.4 Terms of this Agreement. Except as required by law or governmental regulation, neither party shall disclose, advertize, or publish the terms and conditions of this Agreement without the prior written consent of the other party, except that either party may disclose the terms of this Agreement to potential acquirers, accountants, attorneys and parent organizations

pursuant to the terms of a no-disclosure or confidentiality agreement, or to potential investors.

6.5 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party may comply with an order from a Court or other governmental body of competent jurisdiction and disclose the other party's Confidential Information in compliance with that order only if such party: (i) gives the other party prior notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party notice of such disclosure promptly after complying with that order and (ii) fully cooperate with the other party, at the other party's cost and expense, in seeking a protective order, confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is reasonably necessary to comply with an applicable order.

7. WARRANTY AND REMEDIES

7.1 Services, Warranty and Remedy. **CREDITOR NAME** warrants that during the Term it will perform the Services in a workmanlike manner consistent with generally accepted industry standards. In the event of a breach of the foregoing warranty, **CREDITOR NAME**'s sole obligation, and Customer's exclusive remedy shall be for **CREDITOR NAME** to re-perform the applicable Services.

7.2 Warranty disclaimer and Limitations. EXCEPT AS SET FORTH IN SECTION 7.1, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND **CREDITOR NAME** MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE DELIVERABLES, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **CREDITOR NAME** SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE DELIVERABLES AND SERVICES PROVIDED BY **CREDITOR NAME** HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING.

8. INDEMNIFICATION

Each party ("Indemnitor") shall defend, or at its option settle, any claim, action, demand, suit or proceeding (each, a "Claim") made or brought against the other party ("Indemnitee") by a third party alleging that any content provided by the Indemnitor to the Indemnitee, when used in accordance with this Agreement, infringes any third party copyright or trademark, and Indemnitor shall pay any settlement or indemnify Indemnitee against any damages finally awarded against Indemnitor by a court of competent jurisdiction as a result of any such Claim; provided that Indemnitee (a) promptly ceases use of the applicable content and gives Indemnitor written notice of the Claim; (b) gives Indemnitor sole control of the defense and settlement of the Claim; and (c) provides to Indemnitor all reasonable assistance, at Indemnitor's expense. THIS SECTION 8 SETS FORTH THE PARTIES' SOLE AND ENTIRE LIABILITY AND

EXCLUSIVE REMEDIES FOR ANY INFRINGEMENT OR MISAPPROPRIATION CLAIMS OF ANY KIND.

9. LIMITATION OF LIABILITY

9.1 Disclaimer of certain Damages. IN NO EVENT SHALL CUSTOMER OR **CREDITOR NAME** BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Damages Cap. IN NO EVENT SHALL CREDITOR NAME'S AGGREGATE, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS CUSTOMER WAS REQUIRED TO PAY **CREDITOR NAME** UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

9.3 Basis of Bargain. CUSTOMER AGREES THAT THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE A MATERIAL BASIS OF THE BARGAIN SET FORTH HEREIN AND A REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES, AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

10. Miscellaneous

10.1 Assignment. Customer may not assign this Agreement, in whole or in part, without the prior written consent of **CREDITOR NAME**. Any assignment in violation of this Section 10.1 shall be void ab initio and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

10.2 Customer Identification. Customer consents to **CREDITOR NAME**'s identification of Customer as a user of the Services, as applicable, on its website, through a press release issued by **CREDITOR NAME** and in other promotion materials. Customer also agrees to cooperate with **CREDITOR NAME** in writing a case study exposing how the Services are being used and the benefits the Customer is deriving from this use.

10.3 Fees. In any judicial proceeding between Customer and **CREDITOR NAME** arising out of or relating to this Agreement, the prevailing party shall be entitled to recover

all reasonable expenses incurred as a result of the proceeding, including reasonable attorney's fees.

10.4 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement, other than monetary obligations, as a result of any cause or condition beyond such party's reasonable control.

10.5 Governing Law. This Agreement will be governed by the laws of the **Creditor's State**, without regard to its conflict of laws principles. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All suits hereunder will be brought solely in Federal Court for the **Creditor's District, State**, or if that court lacks subject matter jurisdiction, in any **Creditor's State** Court located in **Creditor's County**. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non convenience or any similar claim or defense. A breach by either party of Section 6 would cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief. If any provision(s) hereof is held unenforceable, this Master Agreement will continue without said provision and be interpreted to reflect the original intent of the parties.

10.6 Language. This agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding to the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.7 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or facsimile, if acknowledged received by return facsimile or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified below the signatures on this Agreement. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 10.7.

10.8 Non-solicitation. During the Agreement and for a period of twelve (12) months following its expiry or earlier, lawful termination, Customer shall not solicit nor approach in any way any of **Creditor Name's** employees or contract staff ("Restricted Persons") with a view to: (i) offering such Restricted Persons, employment, or (ii) soliciting services from them on their own account; or (iii) encouraging them to provide their services to a third party rather than **Creditor Name**; or (iv) offering to them the opportunity to perform services colourably similar to the Services. If Customer breaches its obligations set forth in this Section 10.8, Customer agrees to pay to **CREDITOR NAME** an amount equal to one third (1/3) of the applicable Restricted Person's annual compensation (whether actual, or annualized) from **CREDITOR NAME** immediately prior to the date of such breach by Customer.

10.9 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.



Acceptance Agreement

Creditor Name

In pursuant of the mutual objectives of **Creditor Name**, the final deliverables defined in this proposal will be completed as described for a total cost of **\$XXXXX.XX**.

1. By signing this agreement, **Creditor Name** agrees to proceed, in good faith, to produce, through the methodology described herein.
2. **Creditor Name** will execute a Mutual Nondisclosure Agreement to protect all confidential information. Confidential information and knowledge will remain within the assigned campaign management team to avoid any possible conflict of interest. **Creditor Name** represents that it will act in good faith at all times to avoid any potential conflict of interest on all of its projects.
3. Other materials and concepts developed by **Creditor Name** or its agents in the course of this process, except as they may relate to proprietary information of **Creditor Name** remain the property of **Creditor Name**.
4. Except to the extent otherwise required by mandatory provision of applicable law, this Agreement shall be governed by and construed in accordance with the laws of the **Creditor's State**. Where the laws of the United States preempt such laws, the laws of the United States shall govern.
5. In any action between the parties concerning the interpretation or enforcement of any of the terms or provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to court costs, its actual costs, expenses, and attorney's fees incurred in the action, as well as such actual costs, expenses and attorney's fees are incurred in the execution of any judgment arising from such action.
6. Nonperformance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions or other "Acts of God" where failure to perform is beyond the control and not caused by the negligence of the non – performing party gives prompt notice of such conditions to the other party and makes all reasonable efforts to perform.
7. Overdue payments (45 days from invoice) will accrue interest at an annual rate of eighteen percent (18%), or maximum rate permitted by law, whichever is less.
8. Any third party vendor costs will be invoiced separately with net 10 day payment terms. **Creditor Name** will be apprised of all third party vendors before they're retained.
9. **Creditor Name** agrees to pay **Creditor's Monthly Fee** for the first two months of services. **Creditor Name** will invoice **Creditor's Monthly Fee** for 4 months thereafter. All

invoices for monthly billing will have net 30 – day payment terms.

10. This is a 6 – month agreement. Future marketing efforts will be revisited after 6-months.

11. **Authorized Representatives**

The undersigned officers acknowledge reading the entire contents of this proposal and are authorized to execute and confirm this Acceptance Agreement:

Customer	Creditor Name
_____ Signature	_____ Signature
_____ Printed Name	_____ Printed Name
_____ Title	_____ Title
_____ Date	_____ Date
_____ Address	
_____ City, State and Zip Code	
_____ Telephone	

Contact & Next Steps

Please sign the Statement of work and either fax back the signed agreement to **Creditor’s Fax Number** or scan/email a copy to **Creditor’s Email Address**.

If you have any questions, please contact:

Creditor Name	Creditor’s Email
Creditor’s Street Address	Creditor’s Phone Number
Creditor’s City, State, Zip Code	Creditor’s Fax Number

For more information about **Creditor Name**, please visit:

Creditor’s Website



Terms & Conditions

1. Payment

All payments are due upon receipt of the invoice. Late payments will be charged a 1.5% compounded monthly late fee. Should a payment be late, **Creditor Name** reserves the right to freeze all work until accounts are settled. The Client hereby indicates that they understand that any such freeze will delay any project schedule or milestone delivery dates outlined in this agreement.

Payments will be made via ACH Payment, the Intuit payment Network (ACH), Paypal (including credit cards via Paypal) or other payment methods **Creditor Name** may take available in the future.

2. Ownership

Creditor Name will provide a Finished Product(s) to the Client in the form of source, rendered and asset files become the exclusive property of the Client upon acceptance of delivery and payment in full of all amount owed by the Client, however these files are partially based on a non-exclusive code base created and maintained by **Creditor Name** and in some cases existing code was used to help create the deliverables. Such code and other underlying technologies do NOT become the property of the Client, only the Finished Product(s). In addition, the Finished Product(s) may depend on code, object (COMs), and other third party utilities that are the property of their respective owners. No rights to these dependencies is expressed or implied. Additional licensing may be required with third party assets.

3. Point of Contact & Training

Creditor Name will require one point of contact during the Contract for clarifying requirements for design, key features, usability and maintenance issues. **Creditor Name** requires this person be available to answer questions arising from the project within 1 business day on workdays (subject to reasonable exceptions), and to have authority to make design and related decisions on the system, and Client agrees that failure to maintain this response time may negatively impact the project schedule at no fault of **Creditor Name**

4. Project Management & Communication

Creditor Name may manage this Contract using a request tracking system or ticket system or other proprietary project tracking software including wikis, issue tracking, Subversion integration, announcements and timelines. The Client's Point of Contact, stockholders will all have appropriate access to the project and all associated assets. This system will serve as a primary mode of communication, documentation, and reporting. Any approval marked within the system by the Point of Contact will be considered official written approval.

5. Independent Contractors

Creditor Name retains the rights to subcontract any portion of the Contract.

6. Nonsolicitation

Creditor Name agrees that for the duration of this agreement and for a period of one year after the termination of this agreement, **Creditor Name** will not solicit or attempt to solicit any customer, employee, contractor or subcontractor of the Client. Client agrees that for the duration of this agreement and for a period of one year after the termination of this agreement, the Client will not solicit or attempt to solicit any customer, employee, contractor or subcontractor **Creditor Name**

7. Nondisclosure

Creditor Name and the Client agree that in order to allow for the completion of the tasks outlined in this Proposal, the Client and **Creditor Name** may exchange Confidential Information owned by either party, their contractors, subcontractors or vendors. Confidential Information may include, but is not limited to, trade secrets, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, diagrams, data, computer programs, business activities and operations, financial data, reports, studies, business plans, executive summaries and other technical and business information of and about **Creditor Name**, or of and about the Client, or of and about third party which **Creditor Name** or the Client have received subject to a confidentiality or non-disclosure agreement.

Creditor Name and the Client will not disclose the Confidential Information to any third party without the prior written approval of the party owning the Confidential Information. **Creditor Name** and the Client will not transfer, export or otherwise relocate any Confidential Information without the prior written approval of the party owning the Confidential Information.

Both **Creditor Name** and the Client will use reasonable care to protect the Confidential Information, and in no event use less than the same degree of care to protect the Confidential Information as they would employ with respect to their own information of like importance which they do not desire to have published or disseminated.

8. Response Time

Creditor Name performs work as an independent contractor of the Client. Due to the nature of this arrangement, **Creditor Name** is not set up to support on call services. Within the duration of this Contract **Creditor Name** will make every effort to reply to inquiries within 48 hours except where the Client has been previously notified of a period of limited availability. **Creditor Name** will respond in good faith but cannot guarantee any specific action within a given time frame.

9. Dependencies

In the event that any aspect of this Contract is dependent on a separate third party or the Client's in house team, the quality and punctuality of the Finished Product(s) may be subject to said party's ability to meet the required timelines and/or level of quality. **Creditor Name** is not responsible for any delay or defect caused by separate third party or the Client's in house teams.

10. Hosting

Except under explicit, separate arrangement and agreement, **Creditor Name** does not provide Hosting services beyond temporary internal development environments. The Client is responsible for choosing, paying for, and maintaining any required Hosting solutions and associated services. As a courtesy, **Creditor Name** may offer suggestions; however, **Creditor Name** is NOT responsible for down time, poor performance, or loss of data caused by any third – party Hosting Provider. Additionally, **Creditor Name** is not responsible for any bug, defect or change caused by changes on the Host after the acceptance of the Finished Product(s), including but not limited to updates to operating system, compile systems, code libraries and languages, or any changes resulting from security violations.

11. Backups

Creditor Name maintains internal backups of active project code and design files. This backup system is not intended as a solution for the Client, rather as a code archive through the duration of this Contract. While the **Creditor Name** backup system is fully redundant, it is not guaranteed and does not support any content produced by the Client. The Client is solely responsible for the Backup and Restoration of the Finished Product(s) and any associated data.

12. Security

Although **Creditor Name** makes every effort to provide secure Finished Product(s), due to the nature of rapidly advancing technologies, **Creditor Name** can in no way guaranty that the Finished Product(s) will not be subject security breaches. **Creditor Name** recommends the use of strong passwords and the observance of standard security practices. In order to minimize the chances of security violations, systems should be updated often. The Client is solely responsible for tracking software updates. Any update during the life of or after the expiration of the Contract can be negotiated as an addendum to this Contract or as an additional Contract.

13. Limited Liability

The Client alone shall be responsible for: (a) the accuracy and adequacy of information and data furnished for processing; (b) any use made by the Client of the output of the Software or any reliance thereon; and (c) obtaining the required licenses and respect copyright for any and all third part assets including but not limited to fonts, media, and software. The Client shall also be responsible for the continued operation and maintenance of the computer equipment and third party software used with the Finished Product(s), and shall comply with all operational,

environmental and maintenance recommendations and requirements of the applicable licensor, vendors and manufacturers.

The Client agrees that any liability of **Creditor Name** relating to this agreement and the services performed shall be limited to the amount of fees actually received by **Creditor Name**, from the Client under this agreement regarding the services in question, In no event shall **Creditor Name** be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property; or any lost sales, profits or data, even if the Client is told that any such damages may occur.

14. Warranty

Creditor Name will provide patches and bug fixes for any bugs or issues included in the scope of this contract reported within the grace period of no more than 30 days following the date of project completion as defined by the date the client signs off on the deliverables. All bug fixes outside of the project scope or after the grace period are the responsibility of the client.

Hourly projects are NOT subject to warranty. Design and the placement, editing and arrangement of editorial content are NOT subject to warranty. Should further support be necessary, a support contract may be negotiated.

15. Credit

Creditor Name retains the right to use the Client within its roster of clients. A link to the Client website/application website will be placed on the **Creditor Name** web site as part of its business portfolio.

16. Review, Expiration or Cancellation

This Contract is valid for the calendar year of in which it was signed, upon which point it expires. Upon expiration, both parties may review and amend the Contract and decide whether or not to renew. This Contract may be terminated by either party with a full 30 day written notice. All payments due on or before the termination date will be due in full immediately and all work completed at the time of the termination of the Contract will be submitted upon the termination of Contract.

17. Acceptance

Any change to this contract shall be subject to mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties have so agreed as of the date written below

Acceptance: **The Client**

The Client: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Acceptance: **Creditor Name, a Creditor's State Corporation**

Signature: _____

Print Name: _____

Title: _____

Date: _____

1. Introduction

These terms and conditions (the “**Service Terms**”), and the Custom Research Form (as defined below) together (the “**Service Agreement**”) governs the Service granted by **Creditor Name**, a company incorporated in **Creditor’s State** whose office is located at **Creditor’s Street Address, State, Zip Code** to the Client for use of the Service (as defined below).

2. Copyright

Creditor Name owns or licenses all Content and no rights whatsoever to the Content are assigned to the Client under the Service Agreement. Under no circumstances will the Client have any claim to copyright or ownership of any in Content.

The Client may not further reproduce printed Content, or distribute printed Content, or use the Content, outside the Entity without prior consent by **Creditor Name**.

Any proceeds from unauthorized reproduction or distribution (whether cash proceeds, or a cash amount equivalent to the value to the Client of any non – financial reward) shall be held by the Client on trust for **Creditor Name** absolutely.

3. Confidentiality

“**Confidential Information**” means all non – public information in any form, furnished or made available in connection with this Agreement by or on behalf of one party (“**Disclosing Party**”) to the other (“**Receiving Party**”) which is marked confidential, restricted, or would be understood by a reasonable person in the Receiving Party’s position to be confidential.

3.1 Save as expressly permitted under clause 3.2, each party will keep confidential the terms of the Service Agreement as well as any other Confidential Information disclosed to it by the other party.

3.2 The provisions of clause 3.1 shall not apply to any information which:

- 3.2.1 is or becomes public knowledge other than by breach of this clause 3;
- 3.2.2 is in the possession of the Receiving Party without restriction in relation to disclosure before the date of receipt from the Disclosing Party;
- 3.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 3.2.4 is independently developed without access to the Confidential Information; or
- 3.2.5 is required to be disclosed by operation of law, government regulations, or order of a Court or competent jurisdiction, providing the Receiving Party first gives written notice of such required disclosure to the other party.

3.3 The obligations with respect to confidentiality pursuant to this clause 3 shall service

termination of the Service Agreement and continue for as long as such information remains confidential.

4. **Limitation of Liability and Disclaimer**

4.1 The Client acknowledges that because of the number of sources from which **Creditor Name** obtains Content:

4.1.1 **Creditor Name** does not give any warranties in respect of the Content which is provided on an “as is” basis without guaranty of accuracy or completeness;

4.1.2 The warranties or conditions of satisfactory quality, merchantability and fitness for a particular purpose are excluded to the fullest extent permitted by law.

4.2 Nothing in this clause 5 shall limit **Creditor Name**'s liability for death or personal injury resulting from **Creditor Name**'s negligence or for fraud. **Creditor Name**'s aggregate liability in respect of any loss or damage suffered by the Client in respect of any year of the Term and arising out of or in connection with this Service Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the Charges paid by the Client in respect of such year. **Creditor Name** shall not be liable in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

4.2.1 any loss arising from or in connection with loss of revenues, profits, data, contracts or business or failure to realize anticipated savings;

4.2.2 any loss of goodwill or reputation, or any indirect or consequential losses.

4.2.3 any damages arising from failure to use the Content in accordance with the Service agreement; or

4.2.4 third party claims of any kind suffered or incurred by the Client arising out of or in connection with any other matter under this Service Agreement.

5. **General**

5.1 The Service agreement shall be governed by, and construed in accordance with, the laws of **Creditor's State** and the courts **Creditor's State** shall have exclusive jurisdiction to settle any dispute which may arise out of, under, or in connection with the Service Agreement.

5.2 The License Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter and supersedes any previous agreement in relation to such subject matter. Each of the parties agrees that in entering into the Service Agreement, it has not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance of any person other than as expressly set out in the Service Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing. Nothing in this clause shall limit or exclude any liability for fraud.

5.3 In the event of any dispute between the Client and **Creditor Name** concerning the Service Agreement, the parties will use all reasonable endeavors to act reasonably and settle the matter as appropriate.

5.4 No right, power or remedy conferred upon or reserved for **Creditor Name** is exclusive of any other right, power or remedy available to **Creditor Name** provided either under the Service Agreement or as a matter of law and each such right, power or remedy shall be cumulative.

5.5 The Client may not assign, sub – license or otherwise transfer any of its rights or obligations under the Service Agreement without the prior written agreement of **Creditor Name** which shall not be unreasonably withheld or delayed.

5.6 If any provision of the Service Agreement is found to be invalid the invalidity of that provision shall not affect the validity of the remaining provisions of it, which shall remain valid and enforceable.

5.7 The Client gives **Creditor Name** permission to use its brand or logo in **Creditor Name** marketing material including publication on the **Creditor's Website**.

5.8 The Client agrees to deliver a testimonial upon satisfactory completion of the project.

5.9 No person who is not a party to the Service Agreement, shall have any rights under or in connection with it by virtue of the Contracts (rights of third parties) Act 1999 and the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Service Agreement shall not be subject to the consent of any third party.



Creditor Name Software as a Service (SaaS) Agreement

BY ACCESSING OR USING THE SERVICES YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON, COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

Creditor Name (as defined below) and Customer (as identified in the Grant Letter) agree to the following Creditor Name SaaS Subscription Agreement (“Subscription Agreement”), the applicable Supplemental Terms and Conditions included with the pertinent **Creditor Name Service** (“Supplemental Terms”) and the terms as specified in the Grant Letter.

1. **DEFINITIONS.** For purposes of the Agreement, the following definitions apply:
 - a. “Agreement” means this Subscription Agreement, the applicable Supplemental Terms, the Grant Letter, Services Order Form and any materials available on the **Creditor Name** website that are specifically incorporated by reference.
 - b. “Annual Customers” means Customers who have a valid annual or multi-year contract for Services.
 - c. “Channel Partner” means the **Creditor Name** partner identified in the Grant Letter through which the Customer purchased the Services.
 - d. “Customer Data” means any data provided by Customer to **Creditor Name** under this Agreement. Customer Data includes Data as defined in paragraph 12.
 - e. “Documentation” means explanatory materials created by **Creditor Name** in printed, electronic or online form that accompany the Services or Software.
 - f. “Email” means any SMTP message sent or received via the Services.
 - g. “Grant Letter” means a confirmation notice issued electronically by **Creditor Name** to the Customer, confirming the Licensed Product purchased and access details. Grant Letter includes services order forms or other purchasing documentation entered into between Customer and **Creditor Name** or Channel Partner for the Services or Licensed Product.
 - h. “Junk Email” means unsolicited commercial Email.
 - i. “Licensed Product” means all **Creditor Name** Services, Software, Updates or Documentation to which Customer has rightful access through a valid Grant Letter.
 - j. “Malware” means applications, executable code, or malicious content that **Creditor Name** deems to be harmful.
 - k. “**Creditor Name**” means (a) **Creditor Name**, a **Creditor’s State** corporation, with offices located at **Creditor’s Street Address, City, State, Zip Code**, USA if the SaaS is purchased in the United States, Mexico, Central America, South America, or the Caribbean. “Monthly Customer” means Customers who have a valid monthly contract for Services with no annual or multi-year commitment.
 - l. “Node” means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, e-mail servers, Internet gateway devices, storage area

network servers (SANS), terminal servers and portable workstations connected or connecting to the server(s) or network. Node also means the number of Users or seats with access to the Services.

- m. "Open Proxy" means an HTTP server that allows third-party relay or proxy of web traffic.
- n. "Open Relay" means an SMTP Email server that allows third-party relay of Email messages.
- o. "Services" means "Software as a Service" or "SaaS", which consists of activities including email and web security, system administration, system management and system monitoring that **Creditor Name** performs using software installed on **Creditor Name** systems along with any optional add-on services, and as ordered by Customer in one or more Grant Letters.
- p. "Software" means programs, applications or object code obtained from **Creditor Name** and installed in the Customer's environment, including Updates and Upgrades and for the purposes of facilitating the delivery or functionality of the Services, such as plug-ins (as such terms are defined in the **Creditor Name** Technical Support and Maintenance Terms).
- q. "Subsidiary" refers to any entity controlled by Customer through greater than fifty percent (50%) ownership of the voting securities.
- r. "Support" means technical support provided as described in the then-current **Creditor Name** Technical Support and Maintenance Terms, which are posted on Creditor Name's website at **Creditor's Link to Terms page on website**.
- s. "Term" means the time period during which you have the right to receive the Services specified in the Grant Letter.
- t. "Updates" are related to content of the Product and include without limitation all DATs ("DATs" or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Products which are made generally available to **Creditor Name**'s customer base as a part of purchased Support and which are not separately priced or marketed by **Creditor Name**.
- u. "Upgrade" means any and all improvements in the Products which are made generally available to Creditor Name's customer base as a part of purchased Support and which are not separately priced or marketed by Creditor Name.
- v. "User" for **Creditor Name** web and email products is defined as any individual specifically identified as capable of sending HTTP requests to the Internet to be processed by a **Creditor Name** product, regardless of whether the individual is actively using the product at any given time. In cases where multiple unique users use the same workstation to access the Internet, such as educational institutions and libraries, that workstation represents a single 'user'. For all other products, including SaaS Endpoint, "User" means a unique individual within a company or other legally recognized entity ("Entity") where (1) Entity has acquired a valid license(s) to use the Software and/or Services, and (2) Entity has authorized the individual to use the Software and/or Services.

2. RIGHT OF USE AND RESTRICTIONS.

- a. Right to Access and Use Services. Subject to the terms of this Agreement, **Creditor Name** grants Customer a royalty-free, nonexclusive, nontransferable, worldwide limited

term right to use the Services described in the Grant Letter, for up to the number of Users or Nodes identified on the Grant Letter, solely for Customer's internal business use during the Term. Unless otherwise specified by **Creditor Name**, no Software will be delivered to the Customer as part of the Services.

- b. Right to Install and use Software. Subject to the terms of this Agreement, **Creditor Name** grants Customer a royalty-free, nonexclusive, nontransferable, worldwide limited term license to install Software on equipment owned or operated by or on behalf of Customer, as needed to deliver the Licensed Products, Services or functionality described in the relevant Grant Letter. Copies of the Software may be made as required for disaster recovery purposes. The Software must be de-installed and destroyed at the end of the Term. If Customer enters into a contract in which a third party manages Customer's information technology resources ("Managing Party"), Customer may transfer all its rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Services for Customer's internal operations; (b) the Managing Party agrees to comply with this Agreement, and (c) Customer provides **Creditor Name** with written notice that a Managing Party will be using the Software on Customer's behalf.
- c. Updates and Upgrades. Customer must be current in the payment of Support services fees for the Software, or have an active subscription to the Services, as applicable, to receive Updates or Upgrades.
- d. User Licenses. User licenses cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Software or Services.
- e. Subsidiary Liability. Customer's Subsidiaries may use the Services but Company remains directly and fully liable for each subsidiary's compliance with and breach of this Agreement.
- f. Restrictions. Customer may not access the Software or Services if Customer is a direct competitor of **Creditor Name**, or for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without **Creditor Name's** express written permission. Customer will not: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Software or Services available to any third party; (ii) use systems as an Open Proxy or Open Relay; (iii) modify, decompile, reverse engineer, or copy the Software or Services, or any of its components; (iv) use the Software or Services to conduct fraudulent activities; (v) attempt to gain unauthorized access to the Software or Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to **Creditor Name**, its provision of the Software or Services, or others; (vi) average over 100MB of email traffic per second per user in a 24 hour period on **Creditor Name** infrastructure providing the Services, unless Customer has agreed to bandwidth overage charge rates as set forth in a Grant Letter; (vii) impersonate or misrepresent an affiliation with a person or entity; (viii) use the Software or Services to initiate or propagate Malware; (ix) use the Software or Services for any purpose that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement; (each of (i) to (ix), a "Prohibited Use"). All rights not expressly granted to Customer are reserved by **Creditor Name** and its licensors.
- g. Right to Use Customer Data. Customer hereby grants **Creditor Name** a limited, non-exclusive, royalty-free, license to access and use the Customer Data solely as necessary

for **Creditor Name** to (i) provide the Software, Services and technical support to Customer during the Term; and (ii) for the aggregation purposes set forth in Section 12 below.

3. **BETA RELEASES.** **Creditor Name** reserves the right to materially change or discontinue Software or Services designated in Beta stage at any time and without notice to Customer. Access or use of Software or Services identified as not generally available for commercial use, such as “Beta” or “Pre-Release” (“Beta Product”), is restricted to Customer's internal performance evaluation of the Beta Product. Customer's access to the Beta Product may be interrupted during maintenance periods. **Creditor Name** is not obligated to finally release any version of the Beta Product. Customer will report to **Creditor Name** unusual, unplanned, or out of the ordinary events observed in the Beta Product. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE BETA PRODUCTS MAY CONTAIN BUGS, ERRORS AND DEFECTS AND ARE NOT EXPECTED TO FUNCTION WITHOUT INTERRUPTION.

4. **EVALUATION.** If Customer has signed up for an evaluation of the Software or Services, then the provisions of this paragraph shall apply and shall supersede any other conflicting term of this Agreement. Customer’s use of the evaluation is limited to thirty (30) days unless otherwise agreed to in writing by **Creditor Name**. Customer acknowledges that the evaluation may contain errors or other problems that could cause system or other failures and data loss. Consequently, evaluation Software and Services are provided to Customer solely on an "AS-IS" basis, and **Creditor Name** disclaims any warranty or liability obligations to Customer of any kind. Customer is not eligible for any Support for evaluation Software or Services. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, **CREDITOR NAME'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY (50) DOLLARS (OR THE THEN CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.**

5. **CUSTOMER OBLIGATIONS**

- a. Customer is responsible for all activity occurring under Customer’s Software, Services and Support accounts. Customer will provide **Creditor Name** with all information and assistance required to supply the Software or Services or enable Customer’s use of the same. Customer will immediately notify **Creditor Name** of any: (i) unauthorized account use or other suspected security breach; (ii) unauthorized use, copying or distribution of Software, accompanying documentation or Customer Data; and (iii) unusual performance of the Software or Service observed by Customer.
- b. Customer must obtain all necessary rights and permissions from Users. Customer represents and warrants that: (i) Customer has the legal rights and applicable consents to provide Customer Data to **Creditor Name**, (ii) Customer complies with all applicable laws for processing and transferring Customer Data to **Creditor Name** and (iii) Customer retains adequate back-ups of Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Services rely on Customer Data as supplied by Customer, and **Creditor Name** is not liable for the content of Customer Data. **Creditor Name** does not assume any duty or obligation to correct or modify Customer Data.

- c. Customer will provide Creditor Name contact information for Customer's system administrator, who is authorized to provide the information required to configure and manage the Services ("System Administrator"). **Creditor Name** will provide Customer with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
- d. Customer agrees to provide current and complete account Users' information as necessary for Creditor Name to manage Customer's account. Customer agrees to accept **Creditor Name** emails relevant to Customer's receipt of the Services at the e-mail address specified by its System Administrator.
- e. Customer agrees that **Creditor Name** may rely on all information provided to **Creditor Name** by the Customer from the designated e-mail addresses. **Creditor Name** may provide all notices, statements, and other communications arising under this Agreement (other than legal notices) to Customer through either e-mail, posting on the Services or other electronic transmission.

6. **TERM AND RENEWAL** The Initial Term of this Agreement is specified in the Grant Letter (the "Initial Term"). This Agreement will automatically renew for successive terms of equal length as the Initial Term (each a "Renewal Term") unless either Customer or Channel Partner provides **Creditor Name** notice of non-renewal at least five (5) days prior to the end of the then current Term. Any User subscriptions added during a Term will co-terminate with the preexisting Term.

7. **FEES; INVOICE; AUDIT.** Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case payment obligations shall flow exclusively between Channel Partner and Customer, Customer will pay **Creditor Name** the fees set forth in the Grant Letter within thirty (30) days of the invoice date. Late payments are subject to interest of 1.5% per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If Customer believes an invoice is incorrect, Customer must contact **Creditor Name** in writing within thirty (30) days of the date of invoice to be eligible to receive an adjustment or credit. The fees for a Renewal Term will be equal to the fee in effect during the Initial Term unless **Creditor Name** has given Customer at least thirty (30) days prior written notice of a fee increase. Fees are exclusive of all taxes and Customer is responsible for payment of all such taxes, excluding only U.S. taxes based solely on **Creditor Name's** income.

Creditor Name has the right, at its expense, to audit Customer's compliance with the terms of this Agreement. If any audit reveals that Customer owes fees to **Creditor Name**, Customer will promptly remit such underpaid amounts, including any interest owed for overdue payments. Customer consents to **Creditor Name's** disclosure of such audit results, as needed. If technically available, customer will provide a system generated report verifying customer's License Product deployment, such request to occur no more than two (2) times per year.

8. **SUSPENSION OF SERVICE.** **Creditor Name** may suspend the Services: (a) if **Creditor Name** deems it necessary to prevent or terminate any Prohibited Use; or (b) upon notice to Customer if: (i) Customer commits a material breach of this Agreement; or (ii) if **Creditor Name** receives notice that Customer is in material breach of the Agreement. Suspension of Services shall be without prejudice to any rights or liabilities accruing prior to or

during the suspension, including Customer's obligation to pay fees.

Creditor Name may temporarily suspend the Services for maintenance purposes. **Creditor Name** will use commercially reasonable efforts to minimize any such disruption of Services. Upon suspension for any reason, **Creditor Name** will provide Customer with written notice specifying the reason for the suspension.

9. **TERMINATION.** **Creditor Name** may terminate this Agreement for cause immediately upon notice to Customer if: (a) Customer commits a material breach of this Agreement and fails to cure such breach within five (5) business days after Customer's receipt of the written notice specifying the breach; (b) Customer becomes insolvent; or (c) Customer makes an unauthorized assignment of this Agreement. Upon termination of this Agreement, Customer agrees that **Creditor Name** has no obligation to retain Customer Data, which may be irretrievably deleted. Customer is solely responsible for retrieving Customer Data in its account.

10. **TECHNICAL SUPPORT SERVICE.** The then-current **Creditor Name** Technical Support and Maintenance Terms apply to the Software and Services. The **Creditor Name** Technical Support and Maintenance Terms are incorporated by reference and can be found at: **Creditor's Technical Support and Maintenance Terms website address**. After the support or Services subscription period expires, Customer has no further rights to receive any Updates or Upgrades.

11. **CONFIDENTIALITY.** "Confidential Information" means any business materials, data, or information of a party to this Agreement that is disclosed to the other, except for information that is: (a) publicly available or later becomes publicly available other than through breach of this Agreement; (b) previously known to or independently developed by the Receiving Party; or (c) subsequently obtained by the Receiving Party through a third party without obligations of confidentiality. Customer acknowledges that **Creditor Name's** pricing, services access codes and Intellectual Property are **Creditor Name's** Confidential Information. The party receiving Confidential Information ("Receiving Party") will exercise the same degree of care and protection for the Confidential Information of the party that has disclosed Confidential Information ("Disclosing Party") that it exercises with its own Confidential Information but no less than a reasonable degree of care. The Receiving Party may not directly or indirectly disclose, copy, distribute, republish, sell, license or otherwise allow any third party access to such Confidential Information. The Parties agree to maintain the confidentiality as described herein for seven (7) years after the termination of this Agreement. Notwithstanding the above, either party may disclose Confidential Information: (1) to its employees, contractors or agents who have a need to know and are subject to substantially similar obligations of confidentiality; and (2) if required by law (including a court order or subpoena), provided, the Receiving Party, where lawfully permitted, promptly notifies the Disclosing Party in time to review and challenge the potential disclosure.

12. **PRIVACY.** **Creditor Name** reserves the right to use and store aggregated and anonymized Customer traffic to maintain or improve the Services. Some such information may be shared with third parties as a part of a larger set of statistics (for example, statistics that

indicate amount of traffic, success rates, and size of **Creditor Name's** customers). Customer agrees that such data is not Confidential Information. **Creditor Name** may also use a limited sampling of Customer Data to support internal research for improved spam detection. Customer may opt out of such research through the console. The Software, Services or Support may employ applications and tools to collect personally identifiable, sensitive or other information about Customers and users of the Software and Services (including, Customer and users' name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers (including, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, operating system, versions, BIOS data, scanners, database size, system telemetry, device ID, IP address, location, content, **Creditor Name** components, processes, Updates, Upgrades, usage patterns and services information, information about third party products installed, extracts of logs created by **Creditor Name**,) (collectively, "**Data**"). **Creditor Name** may use cookies to store user session information, access codes and application settings to ease site navigation processes.

The collection of this Data may be necessary to provide Customers with the relevant Support or Service as ordered (including, detecting and reporting threats and vulnerabilities on Customer's computer network), improve overall security for Customers and users of the Services. Customer may be required to uninstall the Software or disable Support or its Service to stop further Data collection that supports these functions.

By entering into this Agreement, or using the Support, Software or Services, Customer agrees to the **Creditor Name** Privacy Policy on the **Creditor Name** web site (**Creditor website address**) and to the collection, processing, copying, backup, storage, transfer and use of Data by **Creditor Name** and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions, potentially outside of the Customer or User's own, as part of the Support, Software or Service delivery. Customer is solely responsible for securing any privacy-related rights and permissions from its Users as may be required by local law. **Creditor Name** will treat personally identifiable information in accordance with the **Creditor Name** privacy policy on the **Creditor Name** web site (**Creditor website address**).

13. **INTELLECTUAL PROPERTY.** The Software and Services (including any associated, documentation, hardware, websites, passwords, components and tools) ("**Creditor Name** Property") are the sole and exclusive property of **Creditor Name** or its licensors, who retain sole ownership of all right, title and interest in **Creditor Name** Property, as well as any derivative works thereof. These ownership rights include copyrights, patent rights, trademark and service mark rights, trade secret rights, moral rights, and all other intellectual property and proprietary rights ("Intellectual Property"). Customer agrees, on behalf of itself and its Users, that it will take no action inconsistent with **Creditor Name's** Intellectual Property rights. Customer agrees that **Creditor Name** has the unrestricted right to use feedback or recommendations provided by Customer in **Creditor Name's** sole discretion, without notice to, payment to or consent from Customer and that such feedback is not subject to the Confidential Information provisions of this Agreement. Customer agrees not to disclose such feedback to any third party without the express written consent of **Creditor Name**.

Customer retains all right, title and interest in and to Customer Data.

14. **LIMITED WARRANTY, REMEDIES AND DISCLAIMER.**

- a. **LIMITED WARRANTY.** **Creditor Name** warrants that the Services will substantially conform with the Documentation and be provided in a manner consistent with generally accepted industry standards.
- b. **LIMITATION OF REMEDY.** The sole and exclusive remedy for any claim for breach of warranty under this Agreement is for **Creditor Name** to modify the Services to conform with the Documentation. If **Creditor Name** is unable to do so, **Creditor Name** may, in its own discretion: (1) allow Monthly Customers to terminate the Agreement; or (2) for Annual Customers, provide Service Credits that extend the term of the Customer's Service Agreement by thirty (30) days upon renewal of the annual Agreement.
- c. **DISCLAIMER.** WITH THE EXCEPTION OF THE LIMITED WARRANTY, ANY USE BY CUSTOMER AND USERS OF THE SOFTWARE AND SERVICES IS AT CUSTOMER'S OWN RISK. THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. **CREDITOR NAME** AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, NON-INFRINGEMENT, TITLE, AND OWNERSHIP. CREDITOR NAME AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICES OR SOFTWARE: (1) ARE ERROR-FREE; (2) WILL PERFORM UNINTERRUPTED; (3) WILL MEET CUSTOMER'S REQUIREMENTS.
- d. The Services and Software may include programs or code that are licensed under an Open Source Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.
- e. Without limiting the foregoing, Customer acknowledges that Malware is regularly created and distributed and that the Software and Services are intended to detect only specific known Malware and some unknown Malware behavior patterns. Creditor Name does not warrant that the Software or Services will detect all Malware. In addition, false Malware detections might occur. The Software and Services may not be able to scan web traffic, email or attachments, under the direct control of the website owner or the email sender (such as encrypted components).

15. **THIRD PARTIES.** THE SOFTWARE AND SERVICES MAY CONTAIN INDEPENDENT THIRD PARTY PRODUCTS AND RELY UPON THEM TO PERFORM CERTAIN FUNCTIONALITY, INCLUDING MALWARE DEFINITIONS OR URL FILTERS AND ALGORITHMS. CREDITOR NAME MAKES NO WARRANTY AS TO THE ACCURACY OF ANY SUCH THIRD PARTY INFORMATION.

16. **INTERNET DELAYS.** SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAY AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. **CREDITOR NAME** IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS.

17. **SECURITY.** No data transmission over the Internet can be guaranteed to be secure. **Creditor Name** is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside **Creditor Name's** control. Customer is responsible for maintaining the security of its networks, servers, applications and access codes.

18. **PARTNER ACCESS.** Customer acknowledges and agrees that if the Services are purchased through a Creditor Name Partner, the Partner may have access to: (1) Customer Data, including email and web traffic; and (2) system administration of Customer's account, including the ability to configure email, web and archiving policies.

19. **LIMITATIONS OF LIABILITY.** EXCEPT FOR INDEMNIFICATION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CREDITOR NAME'S AND ITS LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, IS LIMITED: (1) FOR MONTHLY CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWO MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY; AND (2) FOR ANNUAL CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION IS THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. IN NO EVENT WILL **CREDITOR NAME** OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING DAMAGES ARISING FROM LOSS OR DELAYED USE OF EMAIL, WEB TRAFFIC OR DATA; LOST PROFITS, SAVINGS OR REVENUE; DAMAGE TO EQUIPMENT; FALSE POSITIVES OR FALSE NEGATIVES; LOSS OF OR DAMAGE TO RECORDS OR DATA; RE-PROCUREMENT COSTS; AND THIRD PARTY CLAIMS AGAINST CUSTOMER) HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, EVEN IF CREDITOR NAME HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT WILL LIMIT **CREDITOR NAME'S** LIABILITY FOR DEATH AND PERSONAL INJURY.

20. **INDEMNIFICATION.** Customer agrees to indemnify, defend, and hold **Creditor Name** harmless from all claims, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any: (i) Customer breach of this Agreement; (ii) Customer Data passing to or from Customer through the Services or **Creditor Name's** network; (iii) taxes arising from the Software and Services whether now in effect or imposed in the future (excluding taxes based on **Creditor Name's** income); (iv) failure by Customer to obtain all necessary consents related to Customer Data; (v) claims by third parties arising from Customer's use of the Software or Services (excluding claims that the Software or Services, as provided by **Creditor Name**, infringe third party intellectual property rights); and (vi) any reasonable costs and attorneys' fees required for **Creditor Name** to respond to a subpoena, court order or other official government inquiry regarding Customer Data or Customer's use of the Software or Services.

Creditor Name shall defend and hold Customer harmless from any claim by a third party that the Software or Services infringe any patent, copyright or trade secret of that third party. The foregoing obligation of Creditor Name does not apply with respect to Software, Services or portions or components thereof: (i) not supplied by **Creditor Name**; (ii) used in a manner not expressly authorized by this Agreement or the accompanying Documentation (iii) made in accordance with Customer's specifications; (iv) modified by anyone other than **Creditor Name**, if the alleged infringement relates to such modification; (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination; or (vi) where Customer continues the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.

In the event the Software or Services are held by a court of competent jurisdiction to constitute an infringement or use of the Software or Services is enjoined, **Creditor Name** shall, at its sole option, do one of the following: (i) procure the right to continued use; (ii) modify the Software or Services so that their use becomes non-infringing; (iii) replace the Software or Services with substantially similar products in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to **Creditor Name** shall refund the pro-rata unused portion of the Software or Services.

The Parties may request indemnification under this provision, provided they: (a) promptly give written notice of the claim to the indemnifying party; (b) give sole control of the defense and settlement to the indemnifying party (provided any settlement relieves the indemnified party of all liability in the matter); (c) provide all available information and reasonable assistance; and (d) have not previously compromised or settled such claim.

THIS SECTION STATES CREDITOR NAME'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS.

21. **WAIVER.** Any waiver of rights under this Agreement must be in writing. Failure to exercise or enforce any right under this Agreement will not be deemed a waiver of that Party's right nor bar the exercise or enforcement of it at any time thereafter.

22. **JURISDICTION/GOVERNING LAW; COSTS; LIMITATION PERIOD.** This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in **Creditor's State**, if you purchased the Software or Services in the United States, Mexico, Central America, South America, or the Caribbean; The United States District Court for the **Creditor's District, State** law applies shall have non-exclusive jurisdiction over all disputes relating to this Agreement.

23. **NOTICE AND ACCURACY OF INFORMATION.** All legal notices to **Creditor Name** under this Agreement must be addressed to "Attention: Legal Department" **Creditor's Street Address, City, State, Zip Code**. Notices shall be deemed effective upon receipt.

24. **MODIFICATION TO TERMS.** **Creditor Name** reserves the right to modify the terms and conditions of this Agreement at any time, effective upon the posting of an updated version at **Creditor's website address**. Customer is responsible for regularly reviewing this Agreement. Continued use of the Software or Services after any such change shall constitute Customer's consent to the changes.

25. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. **Creditor Name** retains the right to assign this Agreement in its sole discretion. Customer may not assign this Agreement without the prior written permission of **Creditor Name**.

26. **SURVIVAL.** Rights and obligations in paragraphs 1, 6, 11-15, 18-22 and 29 survive the termination or expiration of this Agreement.

27. **EXPORT.** Customer acknowledges that the Services and Software provided by Creditor Name are subject to U.S. and when applicable non US export regulations. Customer shall comply with applicable export and import laws and regulations for the jurisdiction in which the Services will be imported, exported and/or provided. Customer shall not export the Services or Software to any individual, entity or country prohibited by applicable law or regulation. Customer is responsible, at Customer's own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Services and/or Software provided by Creditor Name. Customer agrees to notify Creditor Name if any customer data is or has been specifically designed, developed, configured, adapted, or modified for a military application listed on the United States Munitions List or USML, which would subject the service to the International Traffic in Arms Regulations (ITAR), Title 22 Code of Federal Regulations (CFR) Parts 120-130. For additional information regarding exporting and importing **Creditor Name** Software, see **Creditor website address**. **Creditor Name** reserves the right to update this website from time to time at its sole discretion.

28. **NOTICE TO U.S. GOVERNMENT END USERS:** The Software or Services are deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Services by the United States Government shall be governed solely by the terms of this Agreement.

29. **FORCE MAJEURE.** Creditor Name is not liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by forces of nature or any other cause beyond its reasonable control.

30. **ENTIRE AGREEMENT AND SEVERABILITY.** This Agreement represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement supersedes and controls over any conflicting terms contained in any Customer purchase order. If any provision of this Agreement is declared invalid or unenforceable by a court or administrative agency of competent jurisdiction, the remaining provisions hereof shall

remain in full force and effect and this Agreement shall be construed and performed as if it did not contain the invalid or unenforceable provision.

31. **RELATIONSHIP.** The parties to this Agreement are independent contractors. Neither party will be deemed to be or hold itself out as a partner, joint venturer or agent of the other party. This is a non-exclusive arrangement.

32. **SUPPLEMENTAL TERMS.** In the event of a conflict between the Supplemental Terms and the Subscription Agreement, the Supplemental Terms shall control, but solely as to the relevant Service.

33. **THIRD PARTIES.** No term of this Agreement shall be enforceable by a person who is not a party to the Agreement.

SUPPLEMENTAL TERMS AND CONDITIONS

A. Creditor Name SaaS Email Protection Supplemental Terms

The following terms and conditions (“Supplemental Terms”) apply to all Customers using the **Creditor Name SaaS Email Protection Service** (for purposes of these Supplemental Terms, the “Service”), and are incorporated into the Agreement:

1. **DEFINITIONS.** Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.

- a. "Bulk Email" means a group of more than one hundred (100) Emails with substantially similar content.

2. **ADDITIONAL CUSTOMER OBLIGATIONS.** Customer's Email systems must be directly and permanently connected to the Internet with a fixed IP address. Customer agrees not to: (i) transmit through the Services any Junk Email, Malware or Bulk Email; (ii) transmit obscene or pornographic material; (iii) send email that makes use of or contains invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing; (iv) send email with attachments over 100MB (each of which shall be included in the definition of "Prohibited Use").

3. **REFUSING CUSTOMER CONNECTIONS.** **Creditor Name SaaS Email Protection** will reject connections from senders who are unable to accept at least 90% of the bounce-return messages (mailer-daemon failure/error messages) destined for their systems. Complaints and/or blacklists from sources deemed reasonable by Creditor Name will be used as a basis for refusing connections from any mail server.

B. Creditor Name Email Archiving Service Supplemental Terms

The following terms and conditions (“Supplemental Terms”) relate to the **Creditor Name SaaS Email Archiving Service** (for purposes of these Supplemental Terms, the “Service”) and are incorporated into the Subscription Agreement:

1. **DEFINITIONS.** Defined terms used in these Supplemental Terms have the meanings set forth in the Standard Terms or the meanings given below.

- a. "Archived Data" means any electronically stored information provided to **Creditor Name** by Customer to be stored in the Service, including Journaled Data and Historical Data that have been stored on Creditor Name systems.
 - b. "Journaled Data" means email messages created after the start date of the Service that are automatically generated by Customer's email server(s) journal function to a journal mailbox for archiving.
 - c. "Historical Data" means: Email created prior to the start date of the Service; or Email created by non-licensed users of the Service, regardless of date created.
2. UNLIMITED STORAGE. An unlimited amount of Journaled Data may be stored using the Service, subject to the following limitations and restrictions:
- a. Historical Data may not be archived as Journaled Data but may be stored subject to separate hosting fees and storage limits (see 6. Historical Data Import below).
 - b. Customer cannot insert Historical Data into a journal mailbox for archiving to avoid paying Historical Data hosting fees or for any other reasons.
 - c. Customer cannot insert Email that were not generated by Customer's server journaling function into the journal mailbox for archiving.
 - d. If the amount of data storage space used by Customer exceeds 150% of the average amount of storage space used by customers of the Service, Customer may be charged additional data hosting fees on a monthly basis for the excess storage space used.
 - e. Archived email message(s) may not exceed 50MB in size.
3. RETENTION PERIOD CHANGES. During the Term, the per-user monthly rate for the Service may change in the event the retention period is extended beyond the period stated in the Grant Letter ("Adjusted Rate"). The Adjusted Rate will apply retroactively to the date Services commenced. Customer agrees to pay any back fees owed under the Adjusted Rate within sixty (60) days of invoice. A change in retention period will apply to all current and future archived email messages.
4. CUSTOMER ADMINISTRATOR ROLE PRIVILEGE. Customer may designate Users as "Customer Administrators" who may have access to all archived Email messages, report data, and Service configuration.
5. SELECTIVE PURGE. Customer understands that any User of the Services permitted to use the Selective Purge feature of the Service can permanently and irreversibly remove archived email messages. CUSTOMER ACCEPTS ALL RESPONSIBILITY FOR, AND RELEASES **CREDITOR NAME** FROM ANY LIABILITY FOR, ANY SUCH USE OF THE SELECTIVE PURGE FEATURE AND REMOVAL OF ARCHIVED EMAILS.
6. HISTORICAL DATA IMPORT. If the amount of Historical Data to be imported by **Creditor Name** exceeds the amount specified in the Services Order Form or other purchasing documentation, **Creditor Name** is not required to import the Historical Data until the purchasing documentation is reissued to reflect the accurate amount. Customer is responsible for maintaining a duplicate copy of all Historical Data until Customer verifies the completion of the import. If Customer uses the **Creditor Name** Managed Import Service for importing Historical Data, Customer agrees to provide all Historical Data to **Creditor Name** in PST or EML format.

Corrupt, password protected, unreadable PST or EML files, and unreadable or incompatible email messages will not be imported. **Creditor Name** is not responsible for the storage or maintenance of data that is not properly imported. All price quotes and charges may be based on aggregate pre-import file sizes.

7. DATA ACCESSIBILITY. Customer may access Archived Data as follows:
 - a. Customer may, during the Term and at its own cost, download Archived Data via the Service control console (“Control Console”) website; or
 - b. Upon written request and payment of **Creditor Name's** then-current professional service rates plus the cost of media shipping and handling, **Creditor Name** will download all or part of the Archived Data to portable media. Requests for the export of Archived Data must be received by **Creditor Name** at least thirty (30) days prior to the expiration of the Term.
8. CUSTOMER AND ARCHIVED DATA RESIDENCY. Customer acknowledges that **Creditor Name** cannot control the Internet routes used to transmit Customer Data to the Service. **Creditor Name** may store Customer Data and Archived Data in any of its data centers, including those outside the Customer’s country. Customer acknowledges that configuration data, metadata, reporting data, and any data exposed or routed to Customer via the Control Console web portal will route through data centers in the United States of America.
9. EXPIRATION. An Email’s expiration date is determined by adding the retention length selected by Customer in the Agreement to the Email’s archive date. Upon expiration, the Service will automatically and permanently remove expired Email from the archive within thirty (30) days of expiration subject to the following exceptions:
 - a. Historical Data does not expire.
 - b. Emails placed on a legal hold by Customer do not expire until Customer removes the legal hold.
 - c. Email purged by Customer prior to scheduled expiration.
10. TERMINATION. Upon expiration, termination or cancellation of the Agreement for any reason, Creditor Name has no obligation to retain any Archived Data, including Email on legal hold, and may permanently delete all Archived Data from the archive. **CUSTOMER RELEASES CREDITOR NAME FROM ANY LIABILITY FOR DELETING CUSTOMER DATA UPON EXPIRATION, TERMINATION OR CANCELLATION OF THE AGREEMENT.**
11. ANTI-SPAM AND ANTI-VIRUS REQUIREMENT. Customer agrees to use an effective anti-spam/anti-virus solution at its own cost in order to minimize occurrences where unsolicited or harmful Email is archived.
12. CUSTOMER OBLIGATIONS. Customer agrees to obtain the necessary consent of its employees and/or any third party to archive Email messages to or from them. It is Customer's responsibility to select the retention period required to meet any legal or compliance obligations.

13. ELECTRONIC STORAGE SERVICE FOR CUSTOMERS SUBJECT TO U.S. SECURITIES AND EXCHANGE COMMISSION ("SEC") REGULATIONS ON ARCHIVING OF ELECTRONIC MAIL MESSAGES. Customer must disclose to **Creditor Name** in advance if Customer intends to designate **Creditor Name** as its electronic storage service provider for compliance with SEC regulations. A separate agreement is required for **Creditor Name** to accept this designation.

14. DATA OWNERSHIP AND ACCESS. Customer agrees that **Creditor Name** may access Archived Data in response to any technical problems and to ensure proper working of the Services.



SaaS Terms & Conditions

By using the **Creditor Name.com** web site (“Service”), or any services of **Creditor Name**, you are agreeing to be bound by the following terms and conditions (“Terms of Service”).

Creditor Name reserves the right to update and change the Terms of Service from time to time without notice. Any new features that augment or enhance the current Service, including the release of new tools and resources, shall be subject to the Terms of Service. Continued use of the Service after any such changes shall constitute your consent to such changes.

Violation of any of the terms below will result in the termination of your Account. While **Creditor Name** prohibits such conduct and Content on the Service, you understand and agree that **Creditor Name** cannot be responsible for the Content posted on the Service and you nonetheless may be exposed to such materials. You agree to use the Service at your own risk.

1. Account Terms

- You must be 13 years or older to use this Service.
- You must be a human. Accounts registered by “bots” or other automated methods are not permitted.
- You must provide your legal full name, a valid email address, and any other information requested in order to complete the signup process.
- Your login may only be used by one person – a single login shared by multiple people is not permitted. You may create separate logins for as many people as your plan allows.
- You are responsible for maintaining the security of your account and password. **Creditor Name** cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.
- You are responsible for all Content posted and activity that occurs under your account (even when Content is posted by others who have accounts under your account).
- If you are using a free account you are not permitted to block ads.
- One person or legal entity may not maintain more than one free account.
- You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

2. API Terms

Customers may access their **Creditor Name** account data via an API (Application Program Interface). Any use of the API, including use of the API through a third-party product that accesses **Creditor Name**, is bound by the terms of this agreement plus the following specific terms:

- You expressly understand and agree that **Creditor Name** shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if **Creditor Name** has been advised of the possibility of such damages), resulting from your use of the API or third-party products that access data via the API.

- Abuse or excessively frequent requests to **Creditor Name** via the API may result in the temporary or permanent suspension of your account's access to the API. **Creditor Name**, in its sole discretion, will determine abuse or excessive usage of the API. **Creditor Name** will make a reasonable attempt via email to warn the account owner prior to suspension.
- **Creditor Name** reserves the right at any time to modify or discontinue, temporarily or permanently, your access to the API (or any part thereof) with or without notice.

3. **Payment, Refunds, Upgrading and Downgrading Terms**

- A valid credit card or Paypal account is required for paying accounts. Free accounts are not required to provide a Paypal account or credit card number.
- An upgrade from a free plan to a paying plan will end your free trial. You will be billed for your first month immediately upon upgrading.
- The Service is billed in advance on a monthly basis and is non-refundable. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an open account. In order to treat everyone equally, no exceptions will be made.
- All fees are inclusive of VAT (Europe) but exclusive of any other taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.
- For any upgrade or downgrade in plan level, your credit card or Paypal account that you provided will automatically be charged the new rate on your next billing cycle.
- Downgrading your Service may cause the loss of Content, features, or capacity of your Account. **Creditor Name** does not accept any liability for such loss.

4. **Cancellation and Termination**

- You are solely responsible for properly cancelling your account. An email or phone request to cancel your account is not considered cancellation. You can cancel your account at any time by clicking on the Account link in the global navigation bar at the top of the screen. The Account screen provides a simple no questions asked cancellation link.
- All of your Content will be immediately deleted from the Service upon cancellation. This information cannot be recovered once your account is cancelled.
- If you cancel the Service before the end of your current paid up month, your cancellation will take effect immediately and you will not be charged again.
- **Creditor Name**, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any other **Creditor Name** service, for any reason at any time. Such termination of the Service will result in the deactivation or deletion of your Account or your access to your Account, and the forfeiture and relinquishment of all Content in your Account. **Creditor Name** reserves the right to refuse service to anyone for any reason at any time.

5. **Modifications to the Service and Prices**

- **Creditor Name** reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice.

- Prices of all Services, including but not limited to monthly subscription plan fees to the Service, are subject to change upon 30 days notice from us. Such notice may be provided at any time by posting the changes to the **Creditor Name** website or the Service itself.
- **Creditor Name** shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

6. Copyright and Content Ownership

- All content posted on the Service is must comply with USA copyright law.
- We claim no intellectual property rights over the material you provide to the Service. Your profile and materials uploaded remain yours. However, where applicable, by setting your content to be shared publicly, you agree to allow others to view and share your Content.
- **Creditor Name** does not pre-screen Content, but **Creditor Name** and its designee have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the Service.
- The look and feel of the Service is the property of **Creditor Name**. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from **Creditor Name**.

7. General Conditions

- Your use of the Service is at your sole risk. The service is provided on an “as is” and “as available” basis.
- Technical support is only provided to paying account holders and is only available via email.
- You understand that **Creditor Name** uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service.
- You must not modify, adapt or hack the Service or modify another website so as to falsely imply that it is associated with the Service, **Creditor Name**, or any other **Creditor Name** service.
- You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service without the express written permission by **Creditor Name**.
- We may, but have no obligation to, remove Content and Accounts containing Content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party’s intellectual property or these Terms of Service.
- Verbal, physical, written or other abuse (including threats of abuse or retribution) of any **Creditor Name** customer, employee, member, or officer will result in immediate account termination.
- You understand that the technical processing and transmission of the Service, including your Content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.
- You must not upload, post, host, or transmit unsolicited email, SMSs, or “spam” messages.

- You must not transmit any worms or viruses or any code of a destructive nature.
- If your bandwidth usage significantly exceeds the average bandwidth usage (as determined solely by **Creditor Name**) of other **Creditor Name** customers, we reserve the right to immediately disable your account or throttle your file hosting until you can reduce your bandwidth consumption.
- **Creditor Name** does not warrant that (i) the service will meet your specific requirements, (ii) the service will be uninterrupted, timely, secure, or error-free, (iii) the results that may be obtained from the use of the service will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your expectations, and (v) any errors in the Service will be corrected.
- You expressly understand and agree that **Creditor Name** shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if **Creditor Name** has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the service; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the service; (iii) unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the service; (v) or any other matter relating to the service.
- The failure of **Creditor Name** to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. The Terms of Service constitutes the entire agreement between you and **Creditor Name** and govern your use of the Service, superseding any prior agreements between you and **Creditor Name** (including, but not limited to, any prior versions of the Terms of Service).
- Questions about the Terms of Service should be sent to **Creditor's email address**.



SAAS TERMS OF SERVICE

By using the **Creditor Name** service located at **Creditor Name's website** and providing your data to **Creditor Name**, you, individually and on behalf of your employer (collectively, “**you**” or “**Customer**”) agree to be bound by these Terms of Service (this “**Agreement**”). The Services are defined as your access to the Website and the information you receive from **Creditor Name** through the Website (the “**Services**”).

This Agreement sets out the legally binding terms for your use of the Services and may be modified by **Creditor Name** from time to time in its sole discretion. Any modifications shall be effective upon posting by **Creditor Name** on the Website.

1. Eligibility.

The Services are solely for access and use by Authorized Users (as defined below). By using the Services, you represent and warrant that you (a) have the right, authority, and capacity to enter into this Agreement and (b) will abide by all of the terms and conditions of this Agreement. If you have agreed to become a paying customer for the Services, then your eligibility to use the Services shall be contingent on your continued compliance with the terms of the applicable purchase agreement and this Agreement. If you have not agreed to become a paying customer for the Services, your use of the Website is still subject to this Agreement.

2. Password.

Creditor Name shall authorize individual employees of Customer as designated by Customer from time to time (each an “**Authorized User**”), who will have access to the Services. You will also be asked to choose a username and a password for each Authorized User. **Creditor Name** may change any username and password for any Authorized User at any time, with notice to Customer following any such change. Each Authorized User must use his or her own username and password and shall not disclose them to anyone else. Customer shall immediately notify **Creditor Name** of any unauthorized disclosure. Customer is responsible for (a) each Authorized User's compliance with this Agreement and (b) any employee of Customer, any person to whom Customer has given access to the Services and any person who gains access to Customer's Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

3. Term.

This Agreement will remain in full force and effect while **Creditor Name** offers the Services and/or you are a Customer using the Services. Either party may terminate this Agreement for any

reason, at any time. After this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, and any other Section that by its nature survives termination.

4. Availability of and Access to Services.

Creditor Name will attempt to provide continuous availability and access to Services. In the event that we are unable to provide access for reasons beyond our control, we will communicate the reasons for the outage and expected duration of the outage clearly and explicitly to the Customer. These outages could be due to third parties that the Service depends on, such as, but not limited to Amazon AWS or other third party service providers. Also while we will make commercially reasonable attempts to backup all Customer data, in the event of recovery from disaster, the Customer may have to reconfigure the Service to get it back to the state it was in before the outage. Mingle is hosted by a third party hosting service provider. Such third party provider has implemented commercially reasonable technical and organizational measures designed to secure your data from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures to access your data for improper purposes. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, confidential information and property.

5. Proprietary Rights in Content of **Creditor Name**.

The Services contain the copyrighted material, trademarks, patents, trade secrets, and other proprietary information (“**Intellectual Property**”) of **Creditor Name** and its suppliers and licensors. **Creditor Name** and its suppliers and licensors own and retain all proprietary rights in the Services, including all Tools. “**Tools**” include functionality provided through the Services that supports Project Management, Release Planning, Requirements Management, Tracking & Reporting, Project Collaboration and Program & Cross Project Management and any similar functionality and any improvements, modifications, or derivative works to any of the foregoing. Except for Intellectual Property which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or otherwise use any such Intellectual Property and the provision of such Intellectual Property to you through the Services does not transfer to you or any third party any rights, title or interest in or to such Intellectual Property, including, without limitation, any intellectual property rights in any Content and material included therein. You may not: distribute, sub-license, translate, reverse-engineer, decompile, or disassemble the Services or Intellectual Property or the source code thereof, or attempt to derive the source code thereof in any other way, save and only to the

extent any foregoing restriction is prohibited by applicable law; modify the Services or Intellectual Property or merge all, or any part, of the Services or Intellectual Property or the source code thereof into another program; or remove, modify or alter any **Creditor Name**' Intellectual Property from any part of the Services or Intellectual Property or the source code thereof. **Creditor Name** grants you a perpetual, unlimited, worldwide, fully-paid, royalty-free license to copy, use and make derivative works of the Output of the Services, and to make any other use of or perform any other act upon the Output that an owner would be entitled to do. "**Output**" means all information available, reported, downloaded or otherwise compiled from, the Services, including without limitation data, images, and reports generated by or for the Customer.

6. Customer Information Provided to **Creditor Name**.

Customer will retain all Intellectual Property rights in Customer Intellectual Property that may be provided by Customer to **Creditor Name** ("Customer Property") under this Agreement. **Creditor Name** will not publicly disclose any Customer-specific information but may disclose aggregated and de-identified customer information related to the Services for promotional purposes, such as project summary and high-level outcomes of the Services. You understand and agree that **Creditor Name** may copy, use and modify any information that you provide to **Creditor Name**, including all suggestions supplied by you that relate to the Services (collectively, "Content") for the sole purposes of providing the Services to you, to improve the quality of **Creditor Name** products and services or to develop new ones. Furthermore, you hereby agree that **Creditor Name** shall have an unlimited, royalty-free, worldwide and perpetual license to use, copy, distribute, practice and make derivatives works of, under any intellectual property rights you may have, including but not limited to copyrights, trademarks, trade secrets and patents, all suggestions supplied by you to **Creditor Name**. By providing Content to **Creditor Name**, you represent and warrant that you have the right to provide such Content to **Creditor Name** and such Content does not infringe, misappropriate, violate or contravene any third party rights (including, without limitation, any rights in Intellectual Property).

7. Use of Services.

You must use the Services in a manner consistent with any and all applicable laws and regulations. **Creditor Name** and its suppliers use reasonable efforts to protect the confidentiality of Content you provide. **Creditor Name** cannot guarantee that unauthorized third parties will never be able to defeat those measures to access content for improper purposes. Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Customer's privacy, confidential information and property. Customer also acknowledges that

Customer is under no obligation to provide Customer's confidential information in order to use the Service.

8. Disclaimer.

To the extent permitted under applicable laws, the Services are provided "As-is" and as available, with no warranty of any kind, and **Creditor Name**, on behalf of itself and its licensors and suppliers, expressly disclaims any warranty and conditions of any kind, whether express or implied, including, but not limited to, the warranties or conditions of merchantability, fitness for a particular purpose, title, accuracy, or non-infringement and **Creditor Name** and its suppliers and licensors do not guarantee and do not promise any specific results from the use of the Services. The Services are intended as a data monitoring and collaboration tool and Customer's use of, and reliance upon, same are Customer's sole responsibility, with Customer assuming all associated risks.

9. Limitation of Liability.

Creditor Name shall have no liability to Customer under this Agreement, it being acknowledged and agreed that **Creditor Name**' provision of the Services is provided solely for the convenience of Customer. If the foregoing limitation of liability is found to be unenforceable, **Creditor Name**' liability to Customer for any cause of action arising from its use of the Services or under this Agreement, and regardless of the form of the action, will at all times be limited to the greater of (1) any amount paid by Customer to **Creditor Name** for the Services during the twelve (12) months preceding such cause of action; and (2) Fifty U.S. Dollars (US\$50). Except for breach of the restrictions in Section 5 and in relation to the indemnity in Section 13, Customer's liability to **Creditor Name** for breach of this Agreement shall not exceed the amount paid or agreed to be paid by Customer to **Creditor Name** for the Services during the twelve (12) months preceding such cause of action. Notwithstanding anything to the contrary contained herein, this Agreement shall not limit or exclude either party's liability for gross negligence or intentional misconduct of a party or its agents or employees, or for death or personal injury. The parties agree that the limitations on and exclusions of liability in this Agreement were freely negotiated and are an integral part of the bargain, in that the Services would not have been available for the same price and under the same terms and conditions had such limitations on and exclusions of liability not been included in this Agreement.

10. U.S. Export Controls.

Any software provided by **Creditor Name** through the Services (the “**Software**”) and the Services themselves are subject to United States export controls. Neither the Services nor any Software downloaded from the Services may be exported or re-exported (i) into the territory of (or to a national or resident of) Cuba, North Korea, Iran, Syria, Sudan, or any other Country to which the U.S. has embargoed goods or services; or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Deny Orders. By accessing the Services or downloading or using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

11. Dispute Resolution.

This Agreement shall be governed by the laws of the State of Delaware without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. You and **Creditor Name** agree to submit to the exclusive personal jurisdiction of, and agree that venue is proper in, the state and federal courts located in Delaware in such legal action or proceeding. Notwithstanding the foregoing, **Creditor Name** may seek injunctive or other equitable relief to protect its Intellectual Property rights in any court of competent jurisdiction.

12. Electronic communications.

The communications between you and **Creditor Name** use electronic means, whether you visit the Website or send us emails, or whether **Creditor Name** posts notices on the Services or communicates with you via email. For contractual purposes, you (a) consent to receive communications from **Creditor Name** in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that **Creditor Name** provides to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect your non-waiveable rights.

13. Indemnity.

You agree to indemnify and hold **Creditor Name**, its subsidiaries, affiliates, officers, agents, licensors, and other partners and employees, harmless from, any loss, liability, claim, or demand, including reasonable attorney’s fees, made by any third party due to or arising out of your use of the Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. **Creditor Name** will defend or settle, at its expense, any action brought against Customer based upon the claim that

the Services, when used in accordance with the Agreement, directly infringe an issued U.S. patent or registered copyright; provided, however, that: (i) Customer notifies **Creditor Name** promptly in writing of any such claim; (ii) Customer does not enter into any settlement related to any claim without **Creditor Name**' prior written consent; (iii) **Creditor Name** has sole control of any claim and all related settlement negotiations; and (iv) as requested, Customer provides **Creditor Name** with all information and assistance necessary to settle or defend the claim. If the Services become, or may, in the opinion of **Creditor Name**, become the subject of a claim of infringement of any third party intellectual property right, **Creditor Name** may, at its option, and as Customer's exclusive remedy: (i) procure the right for Customer to use the Services; (ii) replace or modify the Services to make them non-infringing; or (iii) refund any fees paid in advance by Licensee for the Services.

14. Other.

This Agreement contains the entire agreement between you and **Creditor Name** regarding the use of the Services and supersedes and replaces all prior or contemporaneous understandings, representations, communications, or agreements, written or oral, including any additional or contrary terms contained in any Customer purchase order or other procurement document; and any such additional or contrary terms contained in such Customer purchase order or other procurement document shall be void as they may pertain to the use of the Services. This Agreement may be updated or amended by **Creditor Name** at any time, with or without notice to Customer. Customer may not assign all or any part of its rights or obligations hereunder without the consent of **Creditor Name**. Notwithstanding any other provisions herein, no party will be deemed as a third-party beneficiary to this Agreement. If any provision of this Agreement is found to be invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives to the greatest extent possible under any applicable law and the remaining provisions will continue in full force and effect. The failure of **Creditor Name** to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. Nonperformance by either party shall be excused to the extent that performance is rendered impossible by strike, acts of God, natural disaster, Internet outages, computer viruses, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party. The section titles in this Agreement are for convenience only and have no legal or contractual effect. You are responsible for all taxes, other than taxes levied on **Creditor Name**' income. Services fees do not include any applicable taxes. If **Creditor Name** is required to pay any sales, use, goods & services, value added, or other taxes in relation to your purchase, those taxes will be billed to and paid by you.

15. Copyright/Trademark Information.

All Intellectual Property owned by **Creditor Name** shall remain the exclusive property of **Creditor Name**. Customer agrees that **Creditor Name** will retain sole ownership of all Intellectual Property even if enhancements suggested or requested by Customer become incorporated into the Services. You are not permitted to use **Creditor Name**' Intellectual Property without our prior written consent or as expressly provided in this Agreement.

16. Publicity.

You grant **Creditor Name** the right to identify you as a user in Services promotional material. At any point in time you can submit a written request via email to **Creditor's email address** to have **Creditor Name** remove your name, within thirty days of your request, from promotional material.

17. Privacy.

The **Creditor Name** Online Privacy Policy (**Creditor's website address**) (the "**Privacy Policy**"), as amended from time to time, is hereby incorporated by reference into this Agreement. You may be requested to submit personal data in connection with your use of the Service. The ways in which **Creditor Name** collects and uses personal data, and your rights to request access to and correction of your personal data, are regulated by the Privacy Policy in accordance with applicable law. You consent to the transfer of your personal data to any department or office located anywhere in the world where **Creditor Name**' global organization does business from time to time.



The following terms and conditions ("Agreement") shall govern the sale of products and services ("Products") by **Creditor Name** and all its affiliates and subsidiaries, and shall apply to all quotations and offers made and purchase orders accepted by **Creditor Name**. **Creditor Name's** acceptance of Buyer's order is conditioned upon Buyer's acceptance of this Agreement. By purchasing Products, Buyer agrees to be bound by and accepts this Agreement. All other terms and conditions, including preprinted terms and conditions contained on any order form or correspondence originated by Buyer (such as purchase orders or confirmations) are null and void and without effect notwithstanding acceptance of the order by **Creditor Name**. In the event that any part of the purchase and sale of Products utilizes electronic data interchange, internal or third party portal, or any other electronic means, this Agreement will continue to apply to the purchase and sale of Products. **Creditor Name's** failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

- 1. Orders.** All orders for Products are subject to acceptance by **Creditor Name**. Orders shall be initiated by Buyer through the issuance of purchase orders in hard copy or electronic form, including electronic data interchange. Only the transaction specific terms of an order shall apply. Each order shall specify the Products being ordered, quantities, prices, part numbers, descriptions, requested delivery dates and such other information as may be necessary for **Creditor Name** to fulfill the order. Once accepted, an order cannot be cancelled, modified or rescheduled for shipment.
- 2. Prices.** Prices shall be **Creditor Name's** published prices for Products or as otherwise quoted by **Creditor Name** to Buyer. Unless otherwise specified prices quoted are good for thirty (30) days. Quantity discounts are quoted for Product type ordered for immediate delivery at one time. **Creditor Name** may increase prices if its costs increase or due to other circumstances beyond **Creditor Name's** reasonable control.
- 3. Taxes.** All prices are quoted exclusive of any federal, state, sales, use, excise, value added or similar taxes imposed by any governmental authority regardless of how denominated. Such taxes and any international shipping charges, broker's fees, consular fees and customs duties shall be the responsibility of Buyer. Buyer shall pay all such taxes (other than taxes based on the net income of **Creditor Name**) or charges or provide **Creditor Name** with a tax or levy exemption certificate acceptable to the taxing or levying authority. In the event **Creditor Name** is required to pay any taxes or other charges for which Buyer is responsible hereunder, Buyer shall promptly pay the same to **Creditor Name** upon receipt of **Creditor Name's** invoice therefore.
- 4. Payment Terms.** Payments shall be due thirty (30) days from the date of invoice without offset or deduction. Without limiting other remedies, Buyer shall pay a late payment charge of PA% per month, but not in excess of the lawful maximum, on any past due balance. **Creditor Name** reserves the right to cancel or suspend delivery of all or part of an order if Buyer is delinquent in any payments owing to **Creditor Name**. Buyer shall remain liable for any partial deliveries already made as well as for payment of any orders that are non-cancelable or nonreturnable. Buyer agrees to provide such financial information as **Creditor Name** may require for the extension of credit terms. **Creditor Name** shall retain a purchase money security interest in any products delivered pursuant to an order until it has received payment

in full. Buyer agrees to execute any financing statements or similar documents as may be reasonably required for **Creditor Name** to perfect such security interest.

5. Delivery. Title and risk of loss shall pass to Buyer upon delivery to the common carrier, which shall be selected by **Creditor Name** unless otherwise specified by Buyer. Buyer shall be responsible for all transportation and related shipping costs, which shall be separately stated on **Creditor Name's** invoice. Shipping dates are approximate. **Creditor Name** shall use reasonable efforts to meet Buyer's requested delivery dates but in no event shall **Creditor Name** be liable for any loss, damage, costs, expenses or penalties for any failure to meet such delivery dates, nor shall any delay in the delivery of one or more installments give Buyer the right to cancel all or part of an order. **Creditor Name** reserves the right to make deliveries in installments. Any claim regarding shortages must be made within ten (10) days of arrival of the shipment at Buyer's facility.

6. Return of Product. Products will only be accepted for return pursuant to a Return Material Authorization ("RMA") issued by **Creditor Name**. RMAs will not be granted for damage, shortage or other discrepancies created by Buyer, the carrier or freight provider, or any other third party. Returned Products must be in their original shipping cartons complete with all packing materials and shall be returned to **Creditor Name's** designated return location freight prepaid. At **Creditor Name's** discretion, **Creditor Name** will return all Products not eligible for return to Buyer, freight collect, or hold Product for Buyer's account at Buyer's expense.

7. Warranty. **Creditor Name** will transfer to Buyer any Product warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. No indemnities are given by **Creditor Name** against claims of intellectual property infringement. **Creditor Name** warrants that, upon delivery, Products purchased by Buyer hereunder will conform to the applicable manufacturer's specifications. Value-added work performed by **Creditor Name** on Products will conform to the applicable statement of work for a period of one year from delivery of the Product. The foregoing warranty shall not apply with respect to any Product or Product component that has been subjected to abuse, misuse, accident, alteration or neglect. Except for these limited warranties, which are made solely to Buyer, **CREDITOR NAME MAKES NO WARRANTIES TO BUYER OR ANY THIRD PARTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR NON-INFRINGEMENT.** **Creditor Name's** warranty obligations with respect to Products are limited, at **Creditor Name's** option, to repair or replace the Products, or to refund the purchase price paid by Buyer for the affected Products.

8. Reselling By Buyer. If Buyer is reselling the Product, Buyer represents that it has acquired all authorizations and regulatory approvals that are applicable to the Product or that the manufacturer of the Product may have independently established as being necessary to be an authorized reseller of the Product. Buyer shall be solely responsible for providing support to its resellers or customers. Buyer agrees to indemnify and hold **Creditor Name** harmless from any claim asserted by a third party, regardless of the theory under which such claim is asserted, based on **Creditor Name's** compliance with Buyer's specifications, instructions or statement of work,

or a breach of any warranty or representation made by Buyer with respect to the Products beyond those provided by **Creditor Name** or its suppliers.

9. Intellectual Property Indemnity. Buyer shall indemnify and hold **Creditor Name** harmless from any claim asserted by a third party, and pay all costs, settlements and judgments associated therewith, including reasonable attorney's fees and fines, that the Products, when produced or delivered in conformity to the Product specifications, infringe a patent, copyright, trademark, trade secret or other intellectual property rights of a third party. As a condition of Buyer's obligations, **Creditor Name** will give Buyer full authority to defend and settle such claim, and will provide all reasonable assistance requested by Buyer.

10. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER HEREUNDER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, PROCUREMENT COSTS, OR BUSINESS INTERRUPTION COSTS, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), STATUTE, WHETHER OR NOT FORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS AGREEMENT.

11. CREDITOR NAME'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDY AGAINST CREDITOR NAME FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE SHALL BE: (1) FOR FAILURE TO DELIVER OR FOR DELAYS IN DELIVERY OF PRODUCT, **CREDITOR NAME** SHALL HAVE NO LIABILITY UNLESS THE DELIVERY IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO BUYER OR TO CONDITIONS BEYOND BELL MICRO'S REASONABLE CONTROL IN WHICH CASE BUYER SHALL HAVE THE RIGHT, AS ITS SOLE REMEDY, TO TERMINATE THE ORDER; (2) FOR BODILY INJURY OR DEATH TO ANY PERSON PROXIMATELY CAUSED BY **CREDITOR NAME**, BUYER'S RIGHT TO PROVEN DIRECT DAMAGES; AND (3) FOR CLAIMS OTHER THAN SET FORTH HEREIN, **CREDITOR NAME'S** LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES THAT ARE PROVEN, IN AN AMOUNT NOT TO EXCEED TEN PERCENT (10%) OF THE AGGREGATE CONSIDERATION PAID BY BUYER TO **CREDITOR NAME** FOR THE PRODUCTS GIVING RISE TO THE CLAIM. MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. "CLAIM" AS USED HEREIN MEANS ONE OR MORE CLAIMS, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ARISING OUT OF ANY ACT OR OMISSION BY **CREDITOR NAME** OR ITS SUPPLIERS OR CONTRACTORS OCCURRING IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY SHALL APPLY WHETHER OR NOT SUCH CLAIM IS FORESEEABLE, EVEN IF **CREDITOR NAME** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS

AGREEMENT.

12. High Risk Use. ALL PRODUCTS SOLD BY **CREDITOR NAME** HEREUNDER ARE MANUFACTURED SOLELY FOR STANDARD COMMERCIAL APPLICATIONS AND ARE NOT INTENDED FOR USE IN ANY CRITICAL SAFETY OR LIFE-SUPPORT SYSTEM, MEDICAL DEVICE, NUCLEAR FACILITY, MILITARY DEVICE, SATELLITE, AVIATION EQUIPMENT OR WHERE A FAILURE MAY REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE, OR CATASTROPHIC PROPERTY DAMAGE ("HIGH-RISK APPLICATIONS"). **CREDITOR NAME** DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH USE OF THE PRODUCT FOR ANY HIGH-RISK APPLICATION. BUYER WARRANTS THAT IT WILL NOT USE, OR KNOWINGLY PERMIT ANY OF ITS DIRECT OR INDIRECT CUSTOMERS TO USE ANY PRODUCT IN ANY HIGH-RISK APPLICATIONS. BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD **CREDITOR NAME** HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT **CREDITOR NAME** INCURS IN CONNECTION WITH A BREACH OF THIS WARRANTY.

13. Licensed Material. If any software or other licensed materials ("Licensed Materials") are delivered to Buyer as part of an order, then the possession, use and further distribution of such Licensed Materials by Buyer are subject to the terms of the license agreements accompanying such Licensed Materials. Unless **Creditor Name** and Buyer have executed a separate license agreement covering the Licensed Materials, **Creditor Name** is not the licensor of Licensed Materials and Buyer's license rights to the Licensed Materials are between Buyer and **Creditor Name's** suppliers or their licensors. Nothing herein shall be construed as granting Buyer any rights to Licensed Materials inconsistent with the terms of any such license agreements.

14. Product Information. Product information, including information relating to a Product's specifications, export/import control classifications, uses or conformance with legal or other requirements is obtained from **Creditor Name** from its suppliers or other sources. Such information is provided by **Creditor Name** on an "AS IS" basis. **Creditor Name** makes no representations to the accuracy or completeness of the Product information, and DISCLAIMS ALL PRODUCT INFORMATION, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. **Creditor Name** recommends Buyer validate any Product information before using or acting on such information. All Product information is subject to change without notice. **Creditor Name** is not responsible for typographical or other errors or omissions in Product information.

15. Export Control. Buyer shall not export or re-export any Product or technical data except in full compliance with the export control laws and regulations of the United States government, its departments and agencies, or import or re-export any Product or technical data except in full compliance of the laws of the jurisdiction into which, or from which, such Product or technical data is being imported or re-exported.

16. Force Majeure. Except for the payment of monies due and owing, neither party shall be liable for any failure to perform hereunder where such failure is due to causes beyond its

reasonable control, including, but not limited to, natural disasters and other acts of God, military or civil strife, labor disputes or unrest, declared acts of terrorism, acts of governments or an interruption in the means of transportation or material shortages. In the case of material shortages, **Creditor Name** reserves the right to allocate the delivery of affected materials on a *pro rata* basis. The time for performance shall be extended by the period of the force majeure.

17. No License. Except as may be required for each party to carry out its responsibilities hereunder, nothing in this Agreement shall be deemed to constitute a license, by implication or estoppel, to either party's present or future patents, trade secrets, trademarks, copyrights or other intellectual property rights.

18. Compliance with Laws. Each party agrees to comply with all laws and regulations applicable to its performance under this Agreement and in the conduct of its business operations and to be responsible for obtaining any approvals or licenses necessary to maintain such compliance.

19. General Provisions

- a) Relationship of the Parties. The relationship of the parties hereto is that of independent contractors. Neither party, nor its agents or employees, shall be deemed to be the agent, employee, joint venture partner, partner or fiduciary of the other party. Neither party shall have the right to bind the other party, transact any business on behalf of or in the name of the other party, or incur any liability for or on behalf of the other party.
- b) Assignment. Buyer shall not assign this Agreement or any order placed hereunder, by operation of law or otherwise, without **Creditor Name's** prior written consent. Subject to the foregoing, this Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any assignment attempted in violation of this provision shall be void and of no legal effect.
- c) Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the state of California as if made and performed entirely within **Creditor's State**, without reference to its conflicts of law provisions, and specifically excludes the United Nations Convention for the International Sale of Goods. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction and venue of **Creditor's State** courts of **Creditor's County, State** or if in federal court, the United States District Court for the **Creditor's District, State**, and the parties consent to the personal and exclusive jurisdiction of these courts.
- d) Waiver. No failure or delay on the part of either party in the exercise of any right or privilege hereunder shall operate as a waiver thereof or of the exercise of any other right or privilege hereunder, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege.
- e) Severability. If any term, condition or provision of this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree

to such amendments that will preserve, *as far as possible*, the intentions expressed in this Agreement. Such invalid term, condition or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

- f) Entire Agreement. This Agreement constitutes and contains the complete agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior correspondence, agreements, representations, statements, negotiations and undertakings between the parties relating to the subject matter hereof. Amendments to this Agreement must be in writing and signed by duly authorized representatives of both parties.
- g) Survival. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive any termination, cancellation or expiration of this Agreement.



CREDITOR NAME STANDARD TERMS AND CONDITIONS

1. **CONTRACT.** The acceptance of any goods purchased from **Creditor Name** or any of its affiliates by Purchase constitutes agreement to the terms and conditions set forth herein. This contract constitutes the sole agreement between the parties relating to the subject matter hereof, except for specific terms and conditions published by **Creditor Name** and agreements, amendments or waivers agreed to in writing by the party against whom they are to be enforced. Any contrary or inconsistent terms appearing on purchase orders, acknowledgments or other documents of Purchaser shall not be binding on **Creditor Name**.
2. **MERCHANDISE.** "**Merchandise**" includes all or any portion of the goods described in any of Purchaser's purchase orders to **Creditor Name** and all packaging, instructions and other materials normally included with such merchandise.
3. **BILLING AND PAYMENT.** All amounts owing from Purchaser to **Creditor Name** with respect to the Merchandise shall be paid by Purchaser on or before the dates such amounts are due as set forth in this Invoice. Unless a set-off deduction is specifically provided for by **Creditor Name** in a valid credit memo, Purchaser may not charge back to **Creditor Name** or make any set-offs or deductions, including but not limited to set-offs or deductions for violations of customer shipping or routing guidelines, anticipated returns deductions or set-offs or deductions for cooperative advertising allowance programs and/or other promotional programs. **Creditor Name** shall process any credit to Purchaser's account in accordance with **Creditor Name's** standard practices and procedures.
4. **PURCHASE ORDER.** Orders for Merchandise are subject to acceptance and availability.
5. **RISK OF LOSS.** Risk of loss passes to Purchaser upon shipment of the Merchandise by **Creditor Name** unless otherwise indicated in the governing freight terms.
6. **PRICES AND TERMS.** Publisher's list prices, discounts, promotional programs and other terms shown are subject to change without notice. Resellers are free to charge any prices they choose for the Merchandise.
7. **REJECTION.** Purchaser may, immediately on receipt of the Merchandise, reject and return to **Creditor Name**, at Purchaser's risk and expense, any Merchandise that is defective, or that violates any law, regulation, or court or administrative order, or infringes any patent, trademark, copyright or other right. Purchaser assumes, and shall bear and pay, all risks and expenses of returning any such Merchandise.
8. **CUSTOMER RETURNS.** Except for goods sold on a non-returnable basis, Purchaser may return, at Purchaser's risk and expense, Merchandise in accordance with **Creditor Name's** standard practices and procedures and pursuant to any and all terms and conditions set forth on the other side of this Invoice. Purchaser assumes, and shall bear and pay, all risks and expenses of returning any such Merchandise.
9. **RECALLS.** In the event the Merchandise is the subject of a recall by **Creditor Name**, **Creditor Name** shall be responsible only for (a) at **Creditor Name's** election, supplying Purchaser

with another edition of the recalled Merchandise in a quantity equal to the quantity recalled or reimbursing Purchaser for the costs paid by Purchaser to **Creditor Name** for such Merchandise, and (b) reimbursing Purchaser for all out-of-pocket expenses actually incurred and well-documented by Purchaser in connection with returning the Merchandise to **Creditor Name**, or, at **Creditor Name's** election, destroying it in the field, provided that Purchaser provides **Creditor Name** with certification as to such destruction.

10. **TAXES.** Where appropriate, Purchaser shall provide **Creditor Name** with a duly executed resale certificate indicating that such purchase is for resale and listing Purchaser's sales tax registration number for each state into which **Creditor Name's** product will be delivered. **Creditor Name** shall have no liability for any tax required to be billed, collected and/or remitted by Purchaser as a result of sales of product made by Purchaser, and Purchaser shall defend, indemnify and hold harmless **Creditor Name** against all losses, penalties, interest and expense (including reasonable attorneys' fees) arising out of any claims relating to such liability for taxes.

11. **CHANGES AND CANCELLATION.** **Creditor Name** may make changes in quantities, case packs, drawings, specifications, delivery schedules, method of shipment and packaging, and may cancel or terminate work on this order for its own convenience, in whole or in part, by written or electronic notice at any time. IN NO EVENT SHALL **CREDITOR NAME** BE LIABLE TO PURCHASER FOR ANY SPECIAL OR CONSEQUENTIAL LOSSES ARISING OUT OF **CREDITOR NAME'S** FAILURE OR ALLEGED FAILURE TO FILL ORDERS BY PURCHASER IN WHOLE OR IN PART.

12. **FORCE MAJEURE.** Neither party shall be deemed in default of its obligations to the other party to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, shortage of materials and supplies, or any other cause beyond the reasonable control of such party; provided, that the party interfered with gives the other party written notice thereof within 10 working days of *any* such event or occurrence.

13. **COMPLIANCE WITH LAWS AND REGULATIONS.** **Creditor Name** and Purchaser each shall comply with all laws and regulations applicable to the sale and purchase of the Merchandise, respectively, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference.

14. **HOLD HARMLESS.** Purchaser shall indemnify and hold **Creditor Name** harmless from and against any and all loss, damage, cost, charge or expense, including reasonable attorneys' fees, which **Creditor Name** may suffer or sustain on account of injury to, or death of, any persons, or damage to or loss of property arising out of the performance of this contract by Purchaser, its employees, agents or representatives, and/or arising out of the distribution, resale and promotion of the Merchandise by Purchaser.

15. **EQUAL OPPORTUNITY CLAUSE.** Pursuant to Presidential Executive Order 11246, as amended by Presidential Executive Order 11375, the Vietnam Era Veterans' Readjustment Act of 1974 and the Rehabilitation Act of 1973 as amended, **Creditor Name** does not and Purchaser shall not engage in any discriminatory practices based on race, color, religion, national origin, or physical or mental handicap. To the degree they are applicable, the following provisions are incorporated herein by reference and are binding upon **Creditor Name** and Purchaser as if set forth

fully at length herein: 41 CFR 60-1.4; 41 CFR 60-250.4 and 41 CFR 60-741.4.

16. **OTHER REMEDIES.** The exercise of any remedy herein shall be without prejudice to any other right or remedy available to either party.
17. **COOPERATIVE ADVERTISING PROGRAM AND OTHER PROMOTIONAL PROGRAMS.** Purchaser shall comply with the applicable **Creditor Name** cooperative advertising policy, if any, and other promotional or incentive programs that may from time to time be offered in connection with Purchaser's resale of the Merchandise.
18. **COLLECTION FEES AND ACCELERATION.** Purchaser shall be responsible for all attorneys' fees incurred by **Creditor Name** in collecting its receivables hereunder and for interest on all amounts past due at the rate of 10% per annum, but not to exceed the maximum rate allowable under law. **Creditor name** retains the option to accelerate the entire indebtedness of Purchaser's account if Purchaser is late in making a payment to **Creditor Name**.
19. **SOLVENCY.** By ordering and accepting delivery of Merchandise, Purchaser represents to **Creditor Name** that Purchaser is solvent and will make payment in full and when due for such Merchandise in accordance with this Invoice. In the event that Purchaser orders and/or accepts delivery of any Merchandise while insolvent, Purchaser shall immediately return all such Merchandise to **Creditor Name**, and any and all Merchandise en route to Purchaser at such time shall be returned immediately upon Purchaser's receipt thereof. Events which shall be deemed to establish Purchaser's insolvency include but are not limited to the filing of a bankruptcy petition by or against Purchaser and/or Purchaser's admission of its inability to pay its debts when due.
20. **CLAIMS.** All claims relating to the shipment and/or applicable Invoice and/or Merchandise must be made in writing within 45 days of the date of the Invoice. Any request for proof of delivery must be made within 30 days of the date of the Invoice.
21. **DISCLAIMER OF WARRANTIES & INDEMNITIES.** THE MERCHANDISE IS PROVIDED ON AN "AS IS" BASIS. **CREDITOR NAME** SHALL HAVE NEITHER LIABILITY NOR RESPONSIBILITY TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LOSS OR DAMAGE ARISING FROM THE MERCHANDISE.
22. **SEVERABILITY.** In the event that any provision of this contract or the application of any such provision to either **Creditor Name** or Purchaser shall be held by a court of competent jurisdiction to be contrary to any state or federal law, or otherwise unenforceable, the remaining provisions of this contract shall remain in full force and effect as though such unenforceable provision had not existed.
23. **JURISDICTION; VENUE; CHOICE OF LAW.** THE STATE COURTS OF **CREDITOR'S STATE** SITTING IN **CREDITOR'S COUNTY** AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR THE **CREDITOR'S DISTRICT, STATE**, SHALL HAVE THE SOLE AND EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR CONCERNING THIS CONTRACT. THIS

CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL
BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE



Terms & Conditions

1. **DEFINITIONS “BUYER”** shall mean the person or entity described on the face hereof as the BUYER. “Goods” shall mean the products described on the face hereof as being sold to BUYER.
2. **ACCEPTANCE.** Notwithstanding anything in BUYER’s form of Purchase Order or other order form to the contrary, BUYER’s acceptance of the Goods shall constitute an affirmation by BUYER that the terms and conditions set forth herein govern the purchase and sale of the Goods and that the terms in BUYER’s order forms that are in addition to, in conflict with or are different from the terms and conditions herein shall have no effect on this transaction. The contract formed in accordance with the foregoing shall be referred to as the “Order”.
3. **PURCHASE PRICE.** The BUYER agrees to pay the total purchase price as specified on the front of this document. In addition, the BUYER agrees to pay any sales or other taxes levied on or measured by such purchase price, or arising from the use of the Goods and any parts or maintenance supplied, including without any limitation, any additional sales, use, gross receipts, privilege, excise, and personal property taxes unless specified in writing on this document.
4. **PAYMENT TERMS.** The total amount of this invoice shall be payable in full by Buyer within thirty (30) days after the date of this invoice, unless otherwise specified in writing in this document. All amounts past due are subject to a late charge of one and one-half percent (1 1/2%) per month or eighteen percent (18%) per annum.
5. **DELIVERY.** Delivery shall take place at **CREDITOR NAME** unless otherwise specified in writing on this document.
6. **INSPECTION.** The BUYER shall inspect the Goods at delivery and shall notify **CREDITOR NAME** of any defects or discrepancies within one (1) day of receipt of Goods.
7. **TITLE AND RISK OF LOSS.** Title and risk of loss or damage to the Goods shall pass to the BUYER.
8. **LIMITED WARRANTY.** Generally, **CREDITOR NAME** offers no warranty other than one year and can be limited to less, depending on product and manufacturer policy with **CREDITOR NAME**, as stated on **CREDITOR NAME** complete warranty. To obtain copy, visit **CREDITOR NAME’s website**, see policy, or contact **CREDITOR NAME** for a copy. In most cases should manufacturer have warranty change during the first year, **CREDITOR NAME** will abide by their change when it affects or limits the first year warranty.

Some Goods offered may come with a limited warranty and may be shorter than one year. In the event any Good has a manufacturer’s warranty beyond one year or as limited by **CREDITOR NAME**, it is the BUYER’s responsibility to deal directly with the manufacturer for any repairs or replacements that occur beyond the one year warranty, or the limited warranty. During **CREDITOR NAME** warranty period, **CREDITOR NAME** will repair or replace all Goods

which prove to be defective during the specified **CREDITOR NAME** warranty period. However, customer must first obtain a RETURN AUTHORIZATION (RMA) number prior to returning, and **CREDITOR NAME** will not warrant any Goods which have been subjected to improper freight handling / shipping, abuse, neglect, or unauthorized repair or installation. The warranty also will not cover Goods installed with non-**CREDITOR NAME** components and or parts with broken warranty seals, missing serial number or having assembly trace damage. Physical damage or customer induced damage voids any **CREDITOR NAME** warranty. This warranty policy does not extend beyond the original BUYER. **CREDITOR NAME** reserves the right to request the total cost of any replacement of Goods or the Goods itself, if later the Goods returned for warranty service are found to be physically damaged by the BUYER.

9. **DISCLAIMER OF WARRANTY CREDITOR NAME.** makes no express or implied warranties, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose. Buyer's sole and exclusive remedy for **CREDITOR NAME**'s liability of any kind (including, without limitation, negligence and the breach of any and all warranties) shall be limited to the replacement of defective goods at no charge to BUYER. In no event shall **CREDITOR NAME**'s liability include any special, incidental, consequential or exemplary losses or damages, even if **CREDITOR NAME** shall have been advised of the possibility of such potential loss or damage.

10. **ALTERATION, MODIFICATIONS AND ATTACHMENTS.** Any alterations, modifications, additions, improvements, installation, or attachments on the Goods not authorized in writing by **CREDITOR NAME** shall solely be at the BUYER's own expense and risk. If operation of the Goods is affected in any way by such unauthorized alterations, modifications, additions, improvements, attachments or installation, the warranty shall be deemed waived by the BUYER, and **CREDITOR NAME** shall have no further obligation to the BUYER.

11. **RETURN OF GOODS / REPLACEMENT / DEFECTIVE ON ARRIVAL (DOA) CREDITOR NAME** will not accept any returned Goods or DOA Goods during the warranty period unless BUYER follows **CREDITOR NAME** Return Merchandise Authorization procedure and policy. All shipments returned to **CREDITOR NAME** must be prepaid by BUYER and as outlined by **CREDITOR NAME**. All shipments returned to the BUYER will be by UPS Ground, unless will call pickup. For any express delivery the BUYER is responsible for the difference in freight charges and charge will be Cash on Delivery (C.O.D.)

12. **FORCE MAJEURE CREDITOR NAME** shall not be held responsible for any failure of performance to make timely delivery of all or any part of the Goods in the event such failure was due, in whole or in part, to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire or other damage to or destruction of, in whole or in part, the Goods or the manufacturing facility for the Goods, the lack of or inability to obtain raw materials, labor, fuel, electrical power, water or supplies, or any other cause, act of God, contingency or circumstances within the United States not subject to the control of **CREDITOR NAME**, which cause or hinders the manufacture or delivery of Goods.

13. **CANCELLATION.** An order may not be canceled, in whole or in part, by BUYER without **CREDITOR NAME**'s prior written consent and only upon terms and conditions that

will indemnify, hold harmless and compensate **CREDITOR NAME** against loss including, but not limited to, the loss of profits as a result of such cancellation.

14. **SECURITY AGREEMENT.** Until BUYER performs all of its obligations hereunder (including, without limitation, payments in full of the purchase price). **CREDITOR NAME** shall retain a purchase money security interest in the Goods (including all accessions and replacements thereto and the proceeds thereof) to secure the performance by BUYER of all such obligations. BUYER hereby appoints **CREDITOR NAME** as its attorney-in-fact to prepare, sign and file (or record) in BUYER's name any financing statement or other document necessary to protect **CREDITOR NAME**'s security interest. BUYER shall, upon request by **CREDITOR NAME**, promptly execute any financing statement or other document and take any other action deemed desirable by **CREDITOR NAME** in order to protect **CREDITOR NAME**'s security interest.

15. **ATTORNEY'S FEES.** If any suit or action to enforce or to interpret any of the terms, conditions, or covenants herein, or to recover damages as a result of a breach of any provision of this Order, the prevailing party shall be entitled to recover from the party not prevailing the costs and expenses, including reasonable attorneys' fees incurred by the prevailing party in prosecuting or defending such action and any appeals taken there from.

16. **ASSIGNMENT.** No right, duty or interest in this Order may be assigned or delegated by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

17. **GOVERING LAW / VENUE.** This invoice and the rights and obligations of BUYER and **CREDITOR NAME** shall be governed by and construed in accordance with the laws of **CREDITOR NAME**'s state, excluding its choice of law provisions. All disputes arising under or related to this invoice which are not settled by agreement of the parties shall be litigated in the State or Federal Courts in **CREDITOR NAME**'s county, state.

18. **SEVERABILITY.** If at any time any one or more of the provisions of this invoice becomes or is held by a court to be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions of this invoice shall not in any way be affected or impaired thereby.

19. **ENTIRE AGREEMENT.** This invoice sets forth the entire agreement between BUYER and **CREDITOR NAME** and exclusively determines the rights and obligations of BUYER and **CREDITOR NAME**, notwithstanding any prior course of dealing, custom or usage of trade or course of performance or any additional or different terms proposed by BUYER at any time.

TERMS AND CONDITIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE



TERMS AND CONDITIONS

1. All new Buyer accounts will be shipped C.O.D. cash or cashier's check until credit is approved.
2. Price: Shortly before or after delivery, an invoice is mailed to Buyer, which invoice sets forth the price of the goods sold hereby, as agreed upon between Buyer and Seller.
3. CLAIMS FOR SHORTAGE OR DAMAGE: All claims for shortage, price discrepancy charged on invoice and/or damage claim must be made to seller in writing by return receipt requested mail within five days of discovery, but no later than fifteen (15) days from date of delivery.
4. PAYMENTS: Payment is to be made to Seller at its business offices address shown on the front hereof. In the event Buyer fails to make any payments when due to Seller, then any and all of Buyer's account with Seller there shall become immediately due and payable.
5. GENERAL TERMS: Payment of this invoice is due upon presentation and shall be delinquent after the terms set forth on the invoice and in no case later than after thirty (30) days. The following terms shall apply to all transactions in conjunction with the terms and conditions of this invoice and/or credit application:
 - a) Deferred Price Differential – A 5% deferred differential is charged monthly on all outstanding obligations remaining outstanding and unpaid after 90 days from date of invoice.
 - b) Interest on Delinquency – All past due obligations shall bear interest at the rate of 1.5% per month but in no event more than the maximum amount allowed by law, in which event the interest rate shall be the maximum allowed by law.
 - c) Jurisdiction – The judicial system of Seller's address shall be designated as having exclusive jurisdiction of any dispute between Buyer and Seller.
 - d) Attorney's fee's – Buyer agrees to pay all costs and reasonable attorney fees incurred in collection of all past due invoices and accounts. Buyer agrees to pay such tax in addition to the amount of each invoice.
6. LIMITATION OF LIABILITY, REPRESENTATION AND WARRANTIES. Seller shall not, under any circumstances, be liable for special or consequential damages such as, but not limited to, damage or loss of other property or equipment, loss of profits or revenue, loss of capital, loss of purchased or replaced goods, or claims of customers for service interruptions. Remedies of the Buyer set forth herein are exclusive. The liability of Seller with respect to any contract or anything done in connection therewith, such as the performance or breach thereof, or from the manufacture, sale, delivery, resale, installation or use of any goods covered by or furnished by SELLER, whether arising out of contract, negligence, strict tort or under any other warranty or otherwise, shall not exceed the price of the goods upon which the liability is based. There have been no express representations or warranties made by Seller with respect to the goods listed on the front thereof.

7. WAIVER: A waiver of any terms or conditions of the credit application and/or this invoice shall not be deemed a general waiver for any other transaction.
8. DELAYS: Seller shall not be responsible for any damages to Buyer as a result of any delay in delivery. Any and all delivery dates given by seller are estimated only. Buyer is cautioned to make allowances for delays and is warned that seller shall not be liable to Buyer for delays to delivery.
9. SEVERABILITY. If any provision or clause of these terms and the conditions or the application thereof to any person or circumstance is held invalid or unconscionable, such invalidity or unconscionability shall not affect other provisions or applications of the terms and conditions which can be given without the invalid or unconscionable provision or application and, to this end, the provision of this document are declared to be severable.
10. ENTIRE AGREEMENT. This agreement is to be interpreted together with any “Credit Application Agreement” previously entered by Seller and Buyer. They may not be modified or terminated, except by a document in writing signed by the parties hereto at a date subsequent hereof.
11. GUARANTY. In the event Buyer is a corporation whose stock is not publicly traded, Buyer agrees to provide seller a PERSONAL GUARANTY executed by Buyer and spouse of Buyer.
12. NOTICE. Buyer warrants that Buyer will give written notice of any material changes of fact on the “Credit Agreement Application” to seller within 30 days of any material change.

I/We, do declare that I/We have read and agree to the terms of this “Credit Agreement Application” and do hereby certify that the information provided in this credit application consisting of three pages and any addendum “A” is true and correct. I/We agree to provide you written notice of any change of data information within 30 days of any such change. I/We acknowledge that the information herein given is for the purpose of obtaining credit terms from Seller and that Seller has relied upon this information and any supplement information extending credit. I/We further represent that Buyer is solvent and able to pay its obligations as incurred and sign this agreement at _____.