

## GLOBAL END USER AGREEMENT

This GLOBAL END USER AGREEMENT ("Terms") (collectively with the Order(s) (defined below), "Agreement") is between the customer placing the Order(s) (the "Customer") and the applicable Contracting Party (defined in Section 1.7) to the Agreement ("Provider") (each a "Party" and collectively the "Parties").

### ARTICLE 1 DEFINITIONS

In the Agreement:

**Section 1.1**     **"Affiliate"** means any Person controlling, controlled by, or under common control with a Party. The term "**control**" as used in the preceding sentence means, with respect to a company, the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares of the controlled company, and with respect to any Person other than a company, the possession, directly or indirectly, of the power to direct or cause the direction of such Person's management or policies.

**Section 1.2**     **"Account Management Application"** means Provider's portal where Customer can manage the various aspects of its relationship with Provider. This portal is currently accessible at <https://success.111systems.com/home>.

**Section 1.3**     **"AWS Marketplace Portal"** means AWS Portal where Customer manages the relationship with AWS and from which they transact/purchase Provider's Services.

**Section 1.4**     **"Business Hours"** means 9:00 AM to 5:00 PM local time (a) of the receiving Party in regard to receipt of notices and (b) in the location of Provider's data center relating to the Order each weekday other than holidays.

**Section 1.5**     **"Claim"** means any claim, action, proceeding, or suit.

**Section 1.6**     **"Cloud Console"** means the cloud-based management portal in which the Customer accesses and administers the Services.

**Section 1.7**     **"Contracting Party"** means 11:11 Systems, Inc. or its Affiliate, whichever is identified in the Order as the entity providing the Services.

**Section 1.8**     **"Customer Content"** means all software, data (including Personal Information), text, images, audio, video, photographs, non-Provider or Third-Party applications, and other content and material in any format, provided by Customer or any of Customer's users that is Processed by the Services.

**Section 1.9**     **"Data Protection Agreement"** means Provider's forms of Business Associate Agreement, Information Security Work Order, Data Protection Act Order, Data Processing Agreement, or similar written agreement between Provider and Customer governing the storage, processing, and use of Personal Information.

**Section 1.10**     **"Data Protection Laws"** means the data privacy or data protection laws and regulations (in each case as amended from time to time) applicable to Provider as a service provider.

**Section 1.11**     **"Discloser"** means a Party that supplies or has supplied Confidential Information (defined in Section 12.1) to another Party.

**Section 1.12 "Equipment"** means any physical computer, network or communications devices, hardware, and embedded proprietary software provided by Provider to Customer, as set out in an Order.

**Section 1.13 "Order"** means Customer's purchase or subscription to Provider's Services offered in Provider's AWS Marketplace listing.

**Section 1.14 "Order Effective Date"** means the earlier of (a) the date on which Provider first provisions or commences performance of the Services set forth in an Order, whichever is earlier, or (b) if the Services are unable to be provisioned or commenced due to the delay of Customer, the Order Effective Date will be thirty (30) days following the date the Order was executed by Customer.

**Section 1.15 "Person"** means an individual, partnership, joint venture, company, limited liability company, incorporated or unincorporated organization, or other entity of any kind.

**Section 1.16 "Personal Information"** has the same meaning as the term "personal data," "personally identifiable information (PII)," or the equivalent term under any applicable Data Protection Law.

**Section 1.17 "Processed"** means, with respect to data, the use, collection, processing, storage, alteration, transfer, or dissemination of such data.

**Section 1.18 "Professional Services"** means any consulting, training, implementation, or technical services provided by Provider to Customer, as set out in an Order.

**Section 1.19 "Recipient"** means a Party that receives Confidential Information from the Discloser.

**Section 1.20 "Services"** means the Services specified in the Order, including any Professional Services (as applicable).

**Section 1.21 "Third Party" or "Third Parties"** means any Person other than a Party or an Affiliate of a Party.

**Section 1.22 "Third-Party Content"** means any software, data, text, images, audio, video, photographs, and other content and material, in any format, that are obtained or derived from a Third Party that Customer may access through, within, or in conjunction with Customer's use of, the Services.

## ARTICLE 2 ORDER

**Section 2.1 Conflict between Order and Terms.** If a conflict exists between the Order and these Terms, then these Terms control to the extent of the conflict unless the Order specifically references the part of these Terms that it supersedes.

## ARTICLE 3 SERVICES

**Section 3.1 Services.** Subject to Customer's continuing compliance with its obligations set forth in the Agreement, and while the Order under these Terms remains in effect, Provider will provide Customer with (a) access to the Services and (b) access to the Cloud Console to manage Customer's use of the Services. The Agreement is not a lease or sale of any property or a transaction for the sale of goods or property in which Customer acquires any property interest.

**Section 3.2 Service-Specific Provisions.** The then-current applicable terms set forth at <https://1111systems.com/legal/service-schedule/> (each as may be updated from time to time at Provider's sole discretion) (individually and collectively "**Schedule(s)**") are hereby incorporated into each Order.

**Section 3.3 Acceptable Use Policy.** Customer will at all times comply with Provider's then-current Acceptable Use Policy accessible at <https://1111systems.com/legal/acceptable-use-policy> (as amended in Provider's sole discretion and notified to Customer from time to time) (individually and collectively "**AUP(s)**"). Customer will promptly investigate any complaints (including Third Party complaints) and take all necessary actions to remedy any actual violations of any AUP. Customer will, upon Provider's request, promptly identify a representative for the purposes of receiving such communications from any complainants.

**Section 3.4 Service Level Agreements.** The terms set forth in the applicable then-current Service Level Agreements (or "**SLA(s)**") accessible at <https://1111systems.com/legal/sla> (which may be updated from time to time at Provider's sole discretion) are hereby deemed to be incorporated into the Order pursuant to the terms of such SLA. The applicable SLA sets forth Customer's sole and exclusive remedy and Provider's sole and exclusive obligations for any downtime or unavailability of the applicable Service.

**Section 3.5 Updates to Schedules, AUP(s), and SLA(s).** Provider will provide notice to Customer whenever the terms of an applicable Schedule, AUP, or SLA are updated, and such updated Schedule, AUP, or SLA will become binding on Customer and Provider on the thirtieth (30<sup>th</sup>) day following the date on which such notice is provided to Customer or such later time as specified by Provider.

**Section 3.6 Updates to Terms.** Provider may modify these Terms by providing notice to Customer, and such modified Terms will become effective thereafter upon the commencement of the next Renewal Term or such later time as specified by Provider.

## **Section 3.7 Professional Services.**

**3.7.1 License to Deliverables.** Without limiting or modifying any license or other access and use permissions granted to Customer for other Services, Provider grants Customer a non-exclusive, non-sublicensable, and non-transferable license to use the materials developed and provided to Customer by Provider in performing the Professional Services ("**Deliverables**") solely in connection with use of the Services for Customer's direct beneficial business purposes during the Order Term. Provider retains all rights, title, and interest (including intellectual property rights) in and to the Deliverables. If Customer participates in the creation or modification of any Services or Deliverables, Customer hereby irrevocably assigns to Provider all rights, title, and interest (including intellectual property rights) in the Services or Deliverables.

**3.7.2 Warranty.** Provider warrants the Professional Services will be performed in a professional and workmanlike manner. Customer must notify Provider in writing of any breach of this warranty within thirty (30) days of performance of such Professional Services. To the extent permitted by law, Customer's sole and exclusive remedy for breach of this warranty and Provider's sole liability under or in connection with this warranty will be re-performance of the relevant Professional Services.

**3.7.3 Employment Taxes.** Provider is responsible for all taxes and any employment obligations arising from its employment of personnel and Third-Party providers to perform the Professional Services.

## **Section 3.8 Supply of Equipment.**

3.8.1 To provide certain Services, certain Equipment may be installed at Customer's premises as set forth in the applicable Order. Customer acknowledges and agrees that all such Equipment is the personal property of Provider and its licensors and not Customer's property or a part of Customer's premises. Customer will take all reasonable action to protect the Equipment from theft, damage, or destruction.

3.8.2 Customer will not place, nor allow any lien or other encumbrance to be placed on, such Equipment. Customer hereby authorizes Provider to file any and all appropriate documentation, with no prior requirement to obtain Customer's signature, to acknowledge and secure Provider's ownership of the Equipment.

3.8.3 Customer will not remove nor relocate the Equipment. Provider, or its authorized Third Parties, may during normal business hours and upon reasonable notice, enter upon Customer's premises and remove the Equipment.

## **Section 3.9 Installation Requirements.**

3.9.1 Customer will obtain and maintain throughout the term of the Agreement, such permits and consents (including without limitation landlord and landowner consents) as are necessary to timely permit, and will timely permit, the applicable Provider and its personnel to install, deliver, operate, and maintain the Services and any Equipment, as applicable, at Customer's facilities. Customer will permit the applicable Provider reasonable access to the Customer facilities at any time as needed to install, configure, upgrade, maintain, or remove the Equipment and other Service components collocated at Customer's facilities, subject to the terms of the Order and applicable Schedule. Customer will make and maintain throughout the term of the Agreement all reasonable site preparations necessary to permit the installation, maintenance, and operation of the Services and any Equipment, including providing the applicable Provider with space and clean power as is reasonably necessary for the installation and operation of such Equipment at the Customer installation locations identified in an Order. Customer will not charge Provider, and will ensure that Provider does not incur, any fees or expenses in connection with Customer's provision of space, power or access as described in these Terms, an Order or Schedule, or otherwise in connection with Customer's performance of its obligations pursuant to this Section 3.9.1

3.9.2 If a Provider is unable to install the Services or Equipment in accordance with the schedule agreed upon between Customer and the applicable Provider as a result of (a) Customer's failure to deliver any required materials, support, or information to such Provider; or (b) a Provider not being able to obtain access to the installation location, or to other equipment or software at the installation location, as necessary for installation of the Service or Equipment, the Provider will not be liable for any delayed installation and Customer will pay such Provider the standard installation fee identified on the applicable Order for any installation trip made by such Provider and any additional installation fee for each subsequent trip necessitated to perform the Service and Equipment installation. Customer will perform interconnection of the Services and the Equipment with Customer's equipment, unless otherwise set forth in the applicable Order or agreed in writing between the Parties.

## Section 3.10 Migration to New Services

Where Customer is subscribed to an older version of a Service, Provider reserves the right but not the obligation to migrate Customer to a newer version of the Service. Provider will use commercially reasonable efforts to ensure the new version (a) has at least the same functionality and features and quality of performance of the version being replaced and (b) has at least the same availability and continuity of service as set forth in the SLAs for the version being replaced. Provider may exercise this right by giving written notice to Customer of its plan to migrate Customer to the newer version of the Service within six (6) months from the date of Provider's notice (or such later date that the Parties may mutually agree to in writing). For any migration, Provider and Customer will work collaboratively and in good faith to: (a) facilitate a smooth migration to any new version and (b) limit disruption to Customer's normal business activities during such migration. Without limited Section 4.1, any new versions will be made available without any increase to the then-current Fees for such Services. Provider shall be responsible for all data migration, training and support performed by Provider in connection with such migration.

## ARTICLE 4 COMPENSATION AND INVOICING

**Section 4.1 Fees; Invoicing.** Unless otherwise provided in an Order, (a) commencing on the Order Effective Date, Customer will be invoiced on a monthly basis for the pricing terms specified in the Order, or if such items are not specified in an Order, the amounts set forth in Provider's then-current price list (collectively, "**Fees**"); (b) invoices for the Services will be issued in advance, except charges that are dependent on the usage of a Service will be invoiced in arrears; (c) following the Initial Order Term, the Fees for the Services will automatically change to be the pricing set forth in Provider's then-current price list (as such may change from time to time). In addition, on each anniversary of the Order Effective Date, the monthly recurring Fees chargeable under the Order may be increased by up to five percent (5%). Notwithstanding any language to the contrary in this Agreement or any Order, Provider may promptly increase the Fees (by providing written notice thereof) to reflect any increase in Provider's out-of-pocket costs for providing the Services.

**Section 4.2 Payment.** Unless otherwise provided in an Order, Customer will pay all applicable Fees within thirty (30) days of the date of each issued invoice in the local currency of the jurisdiction in which Provider is located. Payment obligations are non-cancelable, and Fees paid to Provider are non-refundable unless otherwise provided in the Agreement. Customer will pay any relevant setup fees concurrently with the submission of the Order.

**Section 4.3 Late Payment Interest.** Any amount due under the Agreement that remains unpaid after its due date will bear interest from the date that such payment became delinquent until the date such amount is paid in full at the lower of one and one-half percent (1.5%) (compounded daily) or the maximum rate permitted by law, calculated from the date such amount was due until the date that payment is received. Customer will pay Provider such interest and all costs and expenses of collection (including attorneys' fees) incurred by Provider for collecting any such past due amounts and Provider's costs of disconnecting and reconnecting Customer's Services. Provider may suspend access to the Services as set forth in Section 5.7, and the Fees will continue to accrue during any such suspension.

**Section 4.4 Good Faith Disputes.** If Customer, in good faith, disputes any invoice, in whole or in part, Customer will notify Provider of the dispute, including sufficient detail of the nature

of the claim, the amount, the relevant invoices, and information allowing Provider to identify the affected Services, within the time required for payment of the relevant invoice. Payment of the disputed amount may be withheld until settlement of the dispute, but Customer will continue to pay all undisputed Fees in accordance with Section 4.2. Customer waives the right to dispute any charges not disputed within the time required for payment of the disputed invoice. Upon resolution of a dispute, Customer will promptly pay Provider such amounts as are due and payable. If a dispute is resolved against Customer, Customer will additionally pay Provider the other fees specified in Section 4.3.

**Section 4.5 Taxes and Fees.** All charges for Service are exclusive of Taxes (as defined below). Customer is responsible for all Taxes and Third Party fees that arise in any jurisdiction, including, without limitation, value-added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale, or use of the Service by Customer (collectively "**Taxes**"). If Customer is entitled to an exemption from any Taxes for a particular Service, Customer may present Provider with a valid exemption certificate (in a form reasonably acceptable to Provider), and Provider will give effect to any such exemption certificate from and after Provider's receipt of such exemption certificate.

**Section 4.6 Billing Credits.** If Provider does not meet its obligations under any applicable SLA during a particular calendar month during the Order Term, Provider will, at Customer's written request, provide the applicable service credit ("**Credit**") set out in such SLA.

**Section 4.7 Audit.** Provider may monitor, either physically or electronically (including remotely), Customer's use of the Services for purposes of verifying Customer's compliance with the Agreement and maintaining and improving Provider's provision of Services, including without limitation for purposes of troubleshooting, maintenance, data management, information security, capacity planning, and service improvement. At Provider's request, Customer will promptly provide Provider with written descriptions and other information as Provider may request concerning Customer's use of any Services. Customer will, upon reasonable prior written notice from Provider (provided that in any event notice of five (5) days or longer will be considered reasonable), permit Provider to have access to the location where the Services are provided for the purpose of ascertaining the use made of the Services. Any on-site auditing or access by Provider pursuant to this Section 4.7 is subject to Customer's reasonable and standard security procedures provided in writing to Provider; provided, however, that such procedures will not frustrate the purpose of (or the ability to conduct) the audit. Provider will not conduct more than one (1) on-site audit in a calendar year unless Provider suspects, in its good faith judgment, that Customer has breached the Agreement, in which event Provider may conduct additional on-site audits. Upon Provider's request, Customer will make appropriate management employee(s) reasonably available to assist with the auditing and/or monitoring permitted herein. In addition, from time to time, upon Provider's request, Customer will promptly demonstrate to Provider's reasonable satisfaction that Customer is in full compliance with the Agreement. If Customer is in breach of the Agreement or is using the Services in a manner not permitted by the Agreement, (a) Customer will be liable to pay any applicable additional charges, such charges or Fees to be calculated from the day of the actual installation of the initial Services, and (b) without limiting any other remedy available to Provider, Provider will have the right to terminate the Agreement, the Order or any portion of the Services provided hereunder.

## ARTICLE 5 TERM, TERMINATION, SUSPENSION, AND SURVIVAL

**Section 5.1 Term.** These Terms become effective upon Customer's subscription or purchase of Provider's Services through the Marketplace listing or the delivery to Provider of an Order executed by Customer and accepted by Provider (the "**Effective Date**") and, unless terminated earlier as provided in the Agreement, automatically terminates or expires upon the termination or expiration of the Order.

**Section 5.2 Term of Order.** The Order commences on the Order Effective Date and continues for the initial period specified in such Order (such Order's "**Initial Order Term**"). Unless otherwise specified in an Order, the Order automatically renews for successive one-year terms (each, a "**Renewal Order Term**") (the Initial Order Term and any Renewal Order Term, collectively the "**Order Term**"), unless (a) either Party provides the other with written notice of non-renewal at least sixty (60) days prior to any such renewal, in which event the Order will terminate on the final date of the Initial Order Term or the Renewal Order Term, as applicable, or (b) such Order or the Agreement is otherwise terminated in accordance with the Agreement or the relevant Schedule.

**Section 5.3 Termination for Convenience.** Provider may terminate the Agreement by delivering written notice ("**Termination Notice**") to the other Parties specifying the date on which the Agreement will terminate, which date must be at least thirty (30) days after the date on which such notice is delivered to the other Parties.

**Section 5.4 Termination for Cause.** Any Party may terminate the Agreement if the other Party materially breaches the Agreement or Order, and such breach is not cured within thirty (30) days after the non-breaching Party has provided the breaching Party written notice thereof. Provider may immediately terminate the Agreement if Customer fails to pay any Fees when due to Provider and Customer does not cure such non-payment within ten (10) business days after Provider has provided Customer with notice of such failure to pay.

**Section 5.5 Additional Rights to Terminate.** The Order may be terminated under the Agreement:

- 5.5.1 as set forth in Section 5.8;
- 5.5.2 by Provider by notice to Customer if Provider's rights to use the data center specified in such Order for the purposes contemplated by the Order terminate or expire for any reason;
- 5.5.3 by Provider immediately if a Customer or its Affiliates or any of their agents, invitees, or employees enter Provider's data center with any firearms, illegal drugs, alcohol, or are engaging in any criminal activity, eavesdropping, or foreign intelligence activities;
- 5.5.4 by Customer as set forth in Section 6.4; or
- 5.5.5 under such other terms and conditions as may be set out in such Order.

### **Section 5.6 Consequences of Termination.**

5.6.1 If Provider terminates the Agreement pursuant to Section 5.4, or Section 5.5.3, Customer will pay to Provider concurrently with such termination a termination fee equal to the aggregate Total Monthly Recurring Charges (as defined in the Order) that would have been payable through the end of the then-current Initial Order Term or Renewal Order Term, as applicable, if such Order had not been terminated (collectively, the "**Early Termination Fee**"). Customer

acknowledges that Provider's actual damages resulting from such termination are difficult to ascertain. The Early Termination Fee is intended to be a reasonable estimate of such damages and constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement.

5.6.2 If Customer terminates the Agreement in accordance with Section 5.4, Provider will promptly refund Customer any prepaid and unused Fees.

5.6.3 Upon the termination or expiration the Agreement for any reason: (a) Provider will promptly destroy any and all Customer Content stored on Cloud Resources (as defined in any applicable Order), in accordance with the NIST 800-88 data destruction standards; (b) Customer is responsible for migrating any Customer Content residing on such Cloud Resources prior to the termination of such Order at Customer's expense; (c) Customer is responsible for migrating and permanently deleting any Customer Content residing on any Equipment prior to returning the Equipment to the applicable Provider as set forth in the applicable Schedule at Customer's expense unless otherwise agreed between the Customer and the applicable Provider in a separate Order for data migration services; (d) Customer will immediately uninstall and discontinue all use of any software subject to a software license that is provided to Customer pursuant to such Order; and (e) Customer will pay Provider: (i) all Fees for Services rendered prior to termination, (ii) other reasonable and necessary amounts directly associated with the termination of the Services, including but not limited to Provider's out-of-pocket costs associated with the cancellation or termination of any contracts with Third Parties, and (iii) any other amounts required to be paid pursuant to such Order in connection with termination of such Order.

5.6.4 Upon termination or expiration of the Agreement other than the termination of the Agreement by Provider for cause, Customer may request and prepay (at Provider's then-current rates) for a period of time approved by Provider during which such time Provider will not destroy Customer Content ("**Prepaid Period**"). In such an event, Customer may also request that Provider assists with the migration with Customer Content from the Cloud Resources (as defined in any applicable Order) and/or any Equipment either prior to the termination or expiration of the Agreement or during the Prepaid Period. If Provider agrees to provide such assistance, Customer will prepay for any such assistance (which will be provided at Provider's then-current rates).

**Section 5.7 Suspension of Services for Non-Payment.** Provider may temporarily suspend providing Services upon five (5) days prior notice to Customer if Customer fails to pay any Fees when due (unless such amount is actively subject to the dispute process under Section 4.4 of these Terms), provided that, upon paying the amounts then due and payable under the Agreement, including any such amounts applicable to the suspension period, Provider will promptly resume providing Services under such Order.

**Section 5.8 Enjoinment.** If the Services are enjoined or are likely to be enjoined, then Provider may, at its sole option and expense, either: (a) obtain the right for Customer to continue using Services; (b) replace or modify Services so that they are non-infringing and substantially equivalent in function to the enjoined the Services; or (c) if options (a) and (b) above cannot be accomplished despite Provider's commercially reasonable efforts, then Provider may terminate Customer's rights with respect to the relevant Services and refund to Customer the unearned portion of any prepaid Fees for such Services.

**Section 5.9 Survival.** The following provisions of these Terms will survive the expiration or termination of the Agreement: Section 3.8.3 (to remove any Equipment Customer does not return upon expiration or termination), Section 4.1 (with respect to any amount accruing prior

to or as a result of expiration or termination), Section 4.2, Section 4.3, Section 4.4, Section 4.5, Section 5.6, Section 5.9, Section 6.3, Section 6.4, ARTICLE 7, Section 8.2, Section 8.3, ARTICLE 9, ARTICLE 11, ARTICLE 12, and ARTICLE 13.

## ARTICLE 6 WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

**Section 6.1 Binding Authority.** Each Party represents that it has validly entered into the Agreement and that it has the power and authority to do so. Each Party represents that the individual placing the Order(s) on behalf of that Party has full right and authority to execute the Order(s) on behalf of that Party and to bind such Party to the Agreement.

**Section 6.2 Services Warranty.** Provider warrants that during the applicable Order Term, it will perform the Services using commercially reasonable care and skill in all material respects to perform the Services. If the Services were not performed as warranted, Customer must promptly provide Provider with written notice that describes the deficiency in the Services. **The warranty in this Section 6.2 does not apply to any Services that are Professional Services; the warranty in Section 3.7.2 applies to Professional Services.**

**Section 6.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 6 AND SECTION 3.7.2, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE OF TRADE. NO PROVIDER WARRANTS THAT THE SERVICES WILL BE PERFORMED, OR THAT EQUIPMENT WILL PERFORM, ERROR-FREE OR UNINTERRUPTED, THAT PROVIDER WILL CORRECT ALL SERVICE OR EQUIPMENT ERRORS, OR THAT THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF THE SERVICES OR EQUIPMENT THAT ARISE FROM CUSTOMER CONTENT OR THIRD-PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES OR ANY CUSTOMER-PROVIDED HARDWARE, DEVICES OR ITEMS.

**Section 6.4 Exclusive Remedies.** FOR ANY BREACH OF THE SERVICES **WARRANTY IN Section 6.2 , CUSTOMER'S EXCLUSIVE REMEDY AND PROVIDER'S ENTIRE LIABILITY WILL BE THE CORRECTION OF THE DEFICIENT SERVICES, OR DEFICIENT EQUIPMENT (AS APPLICABLE), THAT CAUSED THE BREACH OF WARRANTY, OR, IF PROVIDER CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY TERMINATE THE DEFICIENT SERVICES, AND PROVIDER WILL REFUND ANY OF THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.**

## ARTICLE 7 LIMITATIONS ON LIABILITY

**Section 7.1 Limitation of Liability.** EXCEPT AS SET FORTH IN Section 7.2, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF A PARTY HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT,

TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY OR OTHERWISE: (A) NEITHER PARTY WILL BE LIABLE FOR DAMAGES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY CUSTOMER OR OTHERS (INCLUDING ANY LOST PROFITS, LOST REVENUE OR LOSS OF GOODWILL, OR COSTS OR DAMAGES ARISING FROM THE LOSS OF INFORMATION, DATA OR SOFTWARE OR THE COSTS OF RELOADING, REPLACING, OR RECREATING ANY OF ANY LOST OR DAMAGED INFORMATION, DATA, OR SOFTWARE); AND (B) IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID FOR THE SERVICES AND EQUIPMENT (AS APPLICABLE) UNDER THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.

**Section 7.2 Exceptions.** THE LIMITATIONS SET FORTH IN SECTION 7.1 DO NOT APPLY TO: (A) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 8; OR (B) DAMAGES ARISING OUT OF EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR THE UNAUTHORIZED USE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR CUSTOMER'S FAILURE TO PAY ANY AMOUNTS DUE UNDER THE AGREEMENT.

**Section 7.3 Independent Allocations of Risk.** EACH PROVISION OF THE AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES, OR LIMITATION OF REMEDY IS TO ALLOCATE THE RISKS OF THE AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE AGREED-UPON COMPENSATION AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THE AGREEMENT HAVE FAILED IN THEIR ESSENTIAL PURPOSE.

## ARTICLE 8 INDEMNIFICATION

**Section 8.1 Provider Indemnification.** Provider will defend Customer and its directors, officers, and employees against any Third Party Claim and will pay for the resulting costs and damages finally awarded against Customer to such Third Party by a court of competent jurisdiction or agreed to in settlement by Provider (such agreement not to be unreasonably withheld, conditioned, or delayed), to the extent arising from the actual or alleged infringement of such Third Party's intellectual property rights by the Services. Provider will have no indemnification obligations arising from this Section 8.1, to the extent such Claim arises from: (a) the use or combination of the Services with any Third-Party Content, or any hardware, software, products, processes, data, or other materials not provided by Provider, including Customer's own systems and data; (b) modification or alteration of the Services by anyone other than Provider; or, (c) Customer's misuse of the Services or use of the Services in excess of the rights granted in the Agreement.

**Section 8.2 Customer Indemnification.** Customer will defend Provider and its Affiliates and their directors, officers, and employees against any Third Party Claim and will pay for the resulting costs and damages finally awarded against Provider to such Third Party by a court of competent jurisdiction or agreed to in settlement by Customer (such agreement not to be unreasonably withheld, conditioned or delayed), arising from any allegation that: (a) Customer Content or any hardware, software, products, processes, data, or other materials provided by Customer to Provider infringes, misappropriates, or violates the rights of a Third Party; (b) Customer's use of the Services in violation of law; or (c) Customer's breach of the Agreement.

**Section 8.3 Indemnity Obligations.** The indemnifying Party's (the "**Indemnitor**") obligations under this ARTICLE 8 are conditioned upon the Person(s) seeking indemnification under this ARTICLE 8 (the "**Indemnitee(s)**"): (a) promptly notifying the Indemnitor in writing of the Claim (so as to avoid prejudicing the Indemnitor); (b) granting the Indemnitor sole control of the defense and settlement of the Claim provided that any such settlement does not bind any Indemnitee to pay any monetary amounts or admit to any wrongdoing; and, (c) providing the Indemnitor, at the Indemnitor's expense, with all assistance, information and authority reasonably required for the defense and settlement of the Claim.

## ARTICLE 9 THIRD-PARTY CONTENT; OWNERSHIP

**Section 9.1 Third-Party Content.** The Services may enable Customer to link to, transmit Customer Content to, or otherwise access or use Third-Party Content. Some of the Services may provide a license to Customer for software to be used under the terms of a separate license from a Third-Party software vendor. Customer will comply with all such license agreements as well as the Microsoft Licensing Policy stated at <https://microsoft.com/licensing/spur>, as applicable.

**CUSTOMER EXPRESSLY ACKNOWLEDGES THAT ITS RIGHTS TO USE SUCH THIRD-PARTY CONTENT ARE LIMITED TO THE RIGHTS PROVIDED BY THE THIRD PARTY LICENSOR AND THAT ANY AND ALL CLAIMS THAT CUSTOMER MAY HAVE CONCERNING OR RELATING TO SUCH THIRD-PARTY CONTENT PROVIDED TO CUSTOMER BY PROVIDER, INCLUDING THE PERFORMANCE OR THE FUNCTIONALITY OF SUCH THIRD-PARTY CONTENT AND ANY SERVICES RELATED THERETO, WILL BE BROUGHT EXCLUSIVELY AGAINST THE THIRD PARTY LICENSOR OF SUCH THIRD-PARTY CONTENT AND NOT AGAINST PROVIDER. PROVIDER DOES NOT MAKE (AND HEREBY DISCLAIMS) ANY WARRANTIES CONCERNING ANY THIRD-PARTY CONTENT, INCLUDING THE PERFORMANCE OR FUNCTIONALITY OF ANY SOFTWARE (OR ANY SERVICES RELATED THERETO) DISTRIBUTED BY PROVIDER, AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE OF TRADE.**

**Section 9.2 Ownership.** Provider retains ownership of the Services, including all intellectual property rights therein, and nothing in the Agreement transfers any ownership of any intellectual property or other rights in the Services to Customer.

## ARTICLE 10 FORCE MAJEURE

**Section 10.1 Definition of Force Majeure Event.** "**Force Majeure Event**" means any cause beyond such Party's or its suppliers' reasonable control, regardless of whether such cause is foreseeable, including any: (a) act of God; (b) flood, fire, explosion, earthquake, natural disaster; (c) act of terrorism, war, revolution, invasion, riot or other civil or military disturbances, acts of public enemies; (d) act, regulation, order, or law of any government, civil or military authority or any injunction of any nature; (e) embargo, blockade, tariff or other trade restriction in effect on or after the Effective Date; (f) national or regional emergency; (g) epidemic, pandemic or other contagion, including COVID-19; (h) strike, lockout, labor dispute, stoppage or slowdown or other industrial disturbance; (i) casualty or accident; (j) denial of service attacks and other malicious conduct; or (k) inability to procure, or any interruption, loss, malfunction or shortage of any supplies, services,

products, equipment, transportation, utilities, communications or computer software, hardware, or services.

**Section 10.2 Excusable Force Majeure Events.** A Party will be excused from complying with the Agreement (other than any payment obligation) if, to the extent, and for as long as such Party's compliance is delayed or prevented by a Force Majeure Event. No Party will be liable, nor will any credit allowance or other remedy be extended, for any failure of performance or equipment due to a Force Majeure Event.

**Section 10.3 Notice of Force Majeure Events.** If a Party is rendered unable, wholly or in part, by a Force Majeure Event to perform its obligations under the Agreement, that Party will give prompt written notice detailing such Force Majeure Event to the other Parties.

## ARTICLE 11 NOTICES

**Section 11.1 Methods.** All notices, requests, demands, and other communications specifically required or authorized by the Agreement must be written and sent to the email address of [legal@111systems.com](mailto:legal@111systems.com), as concerns Provider, or either the physical or email address provided by Customer on an Order or otherwise made of record by Customer. A Party may change its contact information by sending a notice to the other Parties complying with these notice requirements. Customer will send a copy of any notice sent to Provider to **1235 North Loop West, Suite 800, Houston, TX 77008, USA**.

**Section 11.2 Presumed Delivery.** A personally delivered notice will be conclusively presumed to have been delivered on the date reflected on a written receipt acknowledging delivery that is signed by a representative of the receiving Party. A mailed notice or notice sent by an international courier will be conclusively presumed to have been delivered on the date reflected on the returned receipt that is signed by a representative of the receiving Party. An electronic mail notice will be deemed delivered upon the electronic transmittal being sent unless the sender receives an electronic response within three (3) hours of sending the transmittal that delivery of the transmittal failed. All notices received outside of Business Hours will be conclusively presumed to have been delivered on the next business day.

## ARTICLE 12 CONFIDENTIALITY AND PERSONAL INFORMATION

**Section 12.1 General Confidentiality Obligations.** The Parties may not disclose nonpublic information ("**Confidential Information**"). Confidential Information will be limited to the terms and pricing under the Agreement, Customer Content while residing in the Services, and all information clearly identified as confidential at the time of disclosure.

**Section 12.2 Exceptions.** A Discloser's Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of the Recipient; (b) was in the Recipient's lawful possession prior to the disclosure and had not been obtained by the Recipient either directly or indirectly from the Discloser; (c) is lawfully disclosed to the Recipient by a Third Party without restriction on the disclosure; or (d) is independently developed by the Recipient.

**Section 12.3 Level of Protection.** Each Recipient will (a) use the same degree of care to protect the Discloser's Confidential Information that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care); and (b) not use any

Confidential Information for any purpose outside the scope of the Agreement, in each case, for a period of five (5) years from the date of the Discloser's disclosure of the Confidential Information to the Recipient; however, Provider will protect the confidentiality of Customer Content residing in the Services for as long as such information resides in the Services. The Recipient may disclose Confidential Information only to those employees, agents, or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under the Agreement, and Recipient may disclose the Discloser's Confidential Information as required by governmental, administrative, or judicial process or as required by law. In addition, Provider will protect the confidentiality of Customer Content residing in the Services in accordance with any Data Protection Agreement between the Parties.

## ARTICLE 13 LEGAL ADMINISTRATION

**Section 13.1 Legal Compliance Generally.** Each Party will comply in all material respects with all laws, ordinances, statutes, codes, rules, and regulations that apply to its exercise of rights and obligations under the Agreement.

**Section 13.2 Governing Law and Dispute Resolution.** Any dispute arising out of or in connection with the Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with such rules. The arbitrator's award will be final and binding and may be entered in any court of competent jurisdiction. Each Party will bear its own costs of the arbitration, provided, however, that the Parties will equally share the costs of the arbitrator. No award or procedural order made in the arbitration will be published. The table below sets forth the venue and substantive law applicable to the Agreement and any such arbitration between Customer and Provider. The United Nations Convention for the International Sale of Goods does not apply to the Agreement.

<b>Provider</b>	<b>Governing Law</b>	<b>Location of Arbitration</b>
11:11 Systems, Inc.	The laws of Delaware, United States	New York, New York, United States
11:11 Systems Canada ULC	The laws of Ontario, Canada	Toronto, Ontario, Canada
11:11 Systems UK Limited	The laws of England and Wales	London, England, United Kingdom
11:11 Systems Nederland B.V.	The laws of England and Wales	London, England, United Kingdom
11:11 Systems Singapore Pte. Ltd.	The laws of Texas, United States	New York, New York, United States
11:11 Systems Australia Pty Ltd	The laws of New South Wales, Australia	Sydney, New South Wales, Australia

**Section 13.3 Several Liability.** Provider is not liable under the Agreement for the obligations of any of its Affiliates. Customer has no right of set-off against any payments due, whether on account of any claims or alleged claims against Provider or its Affiliates or otherwise.

**Section 13.4 Entire Agreement.** The Agreement sets forth the entire agreement and understanding of the Parties relating to the Services and the subject matter of the Terms and the

Order. All prior negotiations, representations, understandings, and partial agreements concerning the subject matter of the Agreement are superseded by the Agreement. For clarity, if Customer has other orders in effect with Provider or its Affiliates, such other orders constitute separate and distinct contracts with Provider or its Affiliates, as applicable, and are not part of the Agreement.

**Section 13.5 Amendments.** No amendment, modification, waiver, or release of the provisions of the Agreement is binding on any Party unless a writing of like import exists that (a) specifically identifies the amended, modified, waived, or released obligation, (b) describes the nature of the amendment, modification, waiver, or release, and (c) is signed by each Party that is a party to the Order.

**Section 13.6 Assignment.** Neither Party may assign the Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed; except that Provider may assign the Agreement to one or more of its Affiliates, or to a purchaser of all or substantially all of Provider's assets, without the prior consent of Customer. Any attempt to assign the Agreement without the other Party's required consent will be null and void. Notwithstanding the foregoing, Provider may delegate performance of any of its duties, obligations and responsibilities hereunder to any of its Affiliates or to any Third-Party provider selected by Provider; provided, however, that Provider will not be relieved of any of its duties, obligations, or responsibilities hereunder by use of such Affiliates or Third-Party providers.

**Section 13.7 Independent Contractors.** The Parties are independent contractors, and nothing contained in the Agreement gives either Party the power to act as an agent of the other or to direct or control the day-to-day activities of the other.

**Section 13.8 Remedies Not Exclusive.** In addition to the remedies set out in the Agreement, Customer and Provider will have all other remedies available at law or in equity except for remedies specifically excluded by the Agreement.

**Section 13.9 Limitations on Time to Sue.** Unless otherwise required by law, any action or proceeding by Customer to enforce an obligation, duty, or right arising under the Agreement must be commenced within one (1) year after the cause of action accrues.

## **Section 13.10      Miscellaneous.**

13.10.1 Rules of Construction. In the Agreement: (a) the headings are for convenience only and will not affect the meaning or interpretation of the Agreement; (b) the words "herein," "hereunder," "hereby," and similar words refer to the Agreement as a whole (and not to the particular sentence, paragraph, or Section where they appear); (c) terms used in the plural include the singular, and vice versa unless the context clearly requires otherwise; (d) "or" is used in the sense of "and/or"; (e) "any" is used in the sense of "any or all"; and (f) the words "include," "includes," or "including" are to be construed as if they are immediately followed by the words "without limitation." If an ambiguity or question of intent or interpretation arises, then the Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the terms hereof or thereof.

13.10.2 Severability of Provisions. Each provision contained in the Agreement constitutes a separate and distinct provision severable from all other provisions. If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law while preserving to the maximum extent possible the intent of the original provision. Any

provision (or part thereof) that cannot be so amended will be severed from the Agreement, and all the remaining provisions of the Agreement will remain unimpaired.

13.10.3 Publicity. Customer hereby grants to Provider permission to publicly identify Customer as one of Provider's customers. Customer may revoke this permission at any time by giving Provider notice of such revocation.

13.10.4 Non-solicitation of Key Employees. During the term of the Agreement and for a period of one (1) year immediately following its termination or expiration, each Party agrees not to solicit for employment a key employee of the other Party while such employee is employed by the other Party or within six (6) months following termination of employment with the other Party without the prior written approval of the other Party. The term "key employee" means any employee engaged in providing Services under the Agreement. This Section will not be construed to prevent the hiring of an employee who responds to a general advertisement of employment opportunities.

13.10.5 Electronic Signature. The execution of the Order may be evidenced by way of a facsimile, portable document format (.pdf), transmission or electronic production or reproduction, photostatic or otherwise, and such portable document format (.pdf), or electronic production or reproduction signature is deemed to constitute the original signature of such Party or person.

13.10.6 Rights of Third Parties. Nothing expressed or implied in the Agreement is intended or will be construed to confer upon or give any Person, other than the Parties, any right or remedies under or by reason of the Agreement.