



SOFTWARE-AS-A-SERVICE AGREEMENT

The attached documents describe the relationship between **BillingPlatform Corporation** ("**Company**") and the customer identified in the order form or invoice ("**Customer**") (each of Company and Customer, a "**Party**"), and consist of: the invoice or order form with Company, the document entitled "Terms and Conditions" (the "**SaaS Terms**") and any schedules attached thereto, which describe and set forth the general legal terms governing the relationship (collectively, the "**Agreement**").

This Agreement will become effective when this cover page is executed by authorized representatives of both Parties (the "**Effective Date**").



SOFTWARE-AS-A-SERVICE AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS.

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "Affiliates" means each legal entity (other than non-operating holding companies) that is controlled by, or is under common control with Company or Customer, as the case may be, on or after the Effective Date and for so long as such entity remains controlled by, or is under common control with Company or Customer, as applicable, (where "controls," in its various forms herein, means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

1.2 "Application Documentation" shall mean text and/or graphical documentation, whether in electronic format, that describe the features, functions and operation of the Application Service, including but not limited to, user manuals, user guides, technical manuals, Release notes, and online help files regarding use of the Application Service or Company software provided as part of the Application Service, and any other materials prepared in connection with any Company software or Application Service modification, correction, or enhancement, and shall include any updated versions of thereof as may be provided by Company from time to time either (1) in the course of providing the Application Service; (2) as part of an online tutorials or help files provided with the Application Service; or (3) in the course of providing web seminars in which Customer or Authorized End Users enroll.

1.3 "Application IP" shall mean the Application Service, Releases, Versions, the Application Documentation, Company Confidential Information, and all intellectual property or proprietary information provided to Customer (or any applicable Authorized End Users) in connection with the foregoing.

1.4 "Application Service" shall mean the software and infrastructure in a hosted environment provided and maintained by Company to which Customer is granted access under this Agreement via a designated URL including all functionality and customization described in the Knowledge Base (<https://docs.billingplatform.com/home/en-us/>).

1.5 "Authorized End User" shall mean any individual employees, agents, representatives or contractors authorized to use the Application Service by Customer and supplied with a user identification and password by Customer or on Customer's behalf.

1.6 "Confidential Information" shall mean all written or oral information and material provided by the disclosing Party ("**Discloser**") to the other Party receiving such information or material ("**Recipient**") that: (i) relates to either Party or a third party that has been identified as confidential; or (ii) that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the foregoing, for purposes of this Agreement, the Application Documentation will be deemed Confidential Information of Company. Customer Content will be deemed Confidential Information of Customer.

1.7 "Customer Content" means all data, files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates or owns and installs, uploads to, or transfers in or through the Application Service or otherwise provides to Company in the course of using the Application Service.

1.8 "Customer Portal" means an web-based portal provided and hosted by Company for Customer's end users or Authorized End Users which may be utilized by the Customer for administration of such end user customer's account, invoices, contact and payment Information.

1.9 "Electronic Communications" shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature electronically transmitted in whole or in part to or from the Application Service.

1.10 "Release" shall mean either a HotFix or a Monthly Release (as defined on Schedule B).

1.11 "Term" means any Initial Term and/or Renewal Term as defined in Section 9 of this Agreement.

1.12 "Version" shall mean any modification or derivative variation of the Application Service or Application IP that provides performance improvements, architectural changes, new features or additional functionality, and which Company may make commercially available.

2. ACCESS AND USE. In consideration of the Fees paid by Customer under this Agreement, Company agrees to provide Customer access to the Application Service and Customer Portal. Specific components of the Application Service provided to Customer under the Agreement are set forth in the Schedules annexed hereto.

2.1 Company License Grant. Subject to the terms and conditions of this Agreement, Company hereby grants Customer a non-exclusive, non-transferable, worldwide right, and agrees to permit

Authorized End Users, to (a) access and use the features and functions of the Application Service in accordance with the terms and conditions of the Agreement, (b) display, distribute and print Customer Content, and (c) use the Application IP solely in connection with the Application Service, solely in connection with the Customer's internal business operations, but shall in no case include commercial time-sharing, rental, outsourcing, service bureau or similar use. Subject to the terms and conditions of this Agreement, Company hereby grants Customer and its end user customers a non-exclusive, non-transferable, worldwide right to access the Customer Portal in accordance with the administrative and access protocols determined by the Customer and solely in connection with the Application Service. For purpose of this license grant, "Customer" shall include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer's direction and for whom Customer is fully responsible hereunder. Company shall retain the right to use the foregoing intellectual property for any purpose in the Company's sole discretion, including the right to make changes, modifications, and/or enhancements to the Application IP from time to time unless such changes, modifications, and/or enhancements materially lessen the Application Service, as judged by the Company in its sole discretion.

2.2 Provision of Access. As promptly as possible after executing this Agreement, Company shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Service (the "**Access Protocols**"). Company will also provide Customer the link to the Application Documentation to be used by Customer in accessing and using the Application Service. Customer acknowledges and agrees that, as between Customer and Company, Customer shall be responsible for all acts and omissions of each Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer.

2.3 Usage Restrictions. The rights granted to Customer in the Agreement are subject to Customer's authorization and payment of all Fees for Authorized End Users to access any Application Service, as well as the following restrictions: Customer shall not, and shall not permit any Authorized End User to: (i) license, sell, rent, lease, transfer, assign or otherwise make available the Application Service, Customer Portal or the Application Documentation available to any third party; (ii) modify, copy, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Application IP; (iii) take any action or subject the Application Service to any testing or interference that may disrupt, delay or otherwise interfere with the performance of the Application Service without the prior written consent of the Company, including but not limited to unauthorized penetration or benchmark testing; (iv) make any unauthorized use, resale or commercial exploitation of any part of the Application IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vi) use the Application IP or Customer Portal to send spam or unsolicited messages in violation of any laws, or send, upload, use or store any material containing viruses, worms, Trojan horses or any other malicious or harmful computer code, file, script, agent or program with the Application IP or Customer Portal, or upload or transmit any information, data or material to or from the Application Service or Customer Portal that infringes any third party rights, is threatening, libelous, or violates any third party privacy rights; or (vii) interfere with the Application Service or gain unauthorized access to the Application IP. Customer shall ensure that its use and its Authorized End User's use of the Application IP complies with all applicable laws, statutes, regulations or rules and shall not use or compile any of the Application IP for the purpose of any illegal activity.

2.4 Retained Rights; Ownership. Customer acknowledges and agrees that Company or its third party manufacturers, authors, developers, vendors, and service providers (collectively, "**Third Party Vendors**") owns and shall retain all right, title and interest in and to (i) all intellectual property rights in the Application IP and the Customer Portal and (ii) any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Authorized End Users relating to the Application IP, including all

rights to any derivatives or improvements thereof, and Customer further acknowledges and agrees that it neither owns nor acquires any rights in and to the foregoing other than those expressly granted by this Agreement.

2.5 Security and Access. Customer acknowledges and agrees that Company shall have the right and authority to take all reasonable steps appropriate and/or necessary to protect the security and integrity of the Applicable IP, and Customer Portal as judged in Company's reasonable discretion which may include temporary suspension of the Application IP if (i) anyone that has violated or attempts to violate the provisions of Section 2.3, or (ii) there is a potential threat to or attack on the Application IP. In such instances, Company will promptly notify Customer of such suspension and the steps taken by Company in connection with such suspension and if the cause is due to a third party threat, the Company will make reasonable efforts to resolve the same and restore the Application Services as promptly as possible. Company may also suspend or temporarily revoke Customer's access or use of the Application IP or Customer Portal for any account for which any payment is due but remains unpaid after thirty (30) day's prior written notice of such delinquency. Customer agrees that Company shall not be liable to Customer, or to any third party, for any suspension of the Application Service or Customer Portal resulting from Customer's non-payment of the fees as described in this Section.

2.6 Customer License Grant. Subject to the terms and conditions of this Agreement, Customer grants to Company and its Third Party Vendors the non-exclusive, nontransferable, worldwide right to copy, store, transmit, display, view, or otherwise use, in connection with Company's provision of the Application IP hereunder, (a) Customer Content, including but not limited to data that Customer makes available for use of the Application Services and Customer Portal, and (b) any trademarks, service marks or logos that Customer provides Company for the purpose of including them in Customer's user interface of the Application Service and Customer Portal ("**Customer Trademarks**").

2.7 Aggregated Statistics. Notwithstanding anything else in this Agreement or otherwise, Customer acknowledges and agrees that Company may monitor Customer's use of the Application IP or Customer Portal, including any data and information related to such use, and the Customer Content in an aggregated and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Application Services ("**Aggregated Statistics**"). As between Company and Customer, all right, title and interest in the Aggregated Statistics, belong to and are retained solely by Company. Customer acknowledges that Company will be compiling Aggregated Statistics based on Customer Content input into the Application Services and Customer agrees that Company may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in a manner permitted by applicable law or regulation, including, without limitation for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Customer or its Confidential Information.

2.8 PCI Responsibilities. Each Party represents that it will comply with its responsibility in relation to the preservation of Payment Card Industry Data Security Standards ("PCI-DSS"), in accordance with the use and performance of the Application IP, and agrees to maintain all PCI-DSS requirements in connection with such use. Both Parties agree to cooperate fully to the extent necessary to fulfill joint obligations, and neither Party shall be held liable to the extent the other Party refuses or delays cooperation on a joint obligation as is necessary or reasonably required in connection with PCI DSS. Each Party shall implement and maintain commercially reasonable security measures to protect all cardholder data in their possession or control and not take any action in connection with using the Application IP that places either Party in non-compliance with the PCI DSS. In order to enable Company to meet its obligations under PCI DSS requirements, Customer shall cooperate with Company at all times as necessary for the provision of Application Service. Customer shall (i) allow Company remote and on site access as reasonably required to perform the Application Service under this

Agreement; (ii) not use IDS (Intrusion detection system) to monitor traffic to or from the Application Service; (iii) allow Company and/or its approved agents, upon reasonable written notice and no more than once in a twelve (12) month period, to have the right to conduct a PCI DSS or Security audit and access all hardware, people, processes or technology related to the provision of the Application Service under this Agreement, as reasonably required to verify compliance with PCI DSS requirements or applicable legal rules or regulations; and (iv) provide fixed IP address(es) for communication between Company's hosted platform and on-site hardware, if any, and promptly notify Company upon any scheduled amendments to the IP addresses.

3. CUSTOMER OBLIGATIONS.

3.1 Authorized End User Access to Services. Subject to the terms and conditions herein, Customer may permit any Authorized End User to access and use the Application Service and to display the Application Service. Customer will manage the information available for viewing or editing on the Customer Portal and Customer shall be responsible for managing and administering access to the Customer Portal.

3.2 Provision of Support to Authorized End Users. Customer will provide all maintenance and technical support services as may be required by its Authorized End Users, with respect to the provision of access to and use of the Application Service and nothing in this Agreement will be construed to grant Customer or its Authorized End Users any right whatsoever to receive maintenance or technical support services from Company.

3.3 Assistance to Company. Customer shall, at its own expense, provide assistance to Company, including but not limited to by means of access to and use of Customer facilities and Customer equipment, as well as by means of assistance from Customer personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Company to perform its obligations hereunder.

3.4 Data. To the extent that Customer and any Authorized End User, through or in connection with use of the Application IP, collect, use, send, store or disclose data from any other party, Customer and/or each Authorized End User represents that it has all requisite rights to storing, accessing, using, displaying or sending such data, information or materials in connection with or through the Application IP or Customer Portal in accordance with all applicable laws and regulations, including data privacy regulations. Company will implement and maintain reasonable technical and organizational safeguards for the security of the Application Service pursuant to applicable data protection and privacy laws.

3.5 Customer Content. Company acknowledges that as between Company and Customer, Customer owns or otherwise has rights to all Customer Content that it provides or otherwise permits access to Company through the Application Service. Except as expressly set forth in the Schedules as being the responsibility of Company, Customer is solely responsible and liable for all Customer Content. Customer represents and warrants that it has all necessary rights, permission and authorization to transmit or otherwise permit access to any such Customer Content to Company, including any data or information contained therein and that, to the extent Customer shares or otherwise permits Company or the Application Service to make use of any credentials to obtain such Customer Content, that such sharing of credentials shall not violate the rights of, or any contractual obligations with, any third party.

3.6 Customer Data Obligations. Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Application IP and Customer Portal, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer warrants that to the extent required by any privacy law or regulation applicable to the provision of the Application Service to Customer or its Authorized End Users, Customer shall provide all proper notices under such privacy laws or regulations and obtain from its personnel, customer, or other required third parties all rights and permissions legally required in order to grant the authorizations in this Section and to use the Application Service as contemplated herein. Customer will ensure that any use of the Application Service by any Authorized

End Users is in accordance with the terms of this Agreement. Customer agrees to notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Content. Customer certifies that neither Customer nor any Authorized End Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to strictly comply with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Application IP or Customer Portal may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes.

3.7 Backup; Data Retention. The Application Service allows Customer to export Customer Content at its discretion. Company has implemented and maintains industry standard business continuity and disaster recovery plans to help ensure the availability of Customer Content. Company will not be obligated to retain any Customer Content for more than thirty (30) days after the termination or expiration of this Agreement unless the Parties otherwise agree. In the event any credit card information subject to PCI DSS is required to be exported at the direction of Customer to any third party, Customer shall ensure such party complies with the applicable PCI DSS standards and are qualified recipients for the information to be exported by Company at Customer's direction. In connection with any such export or transfer of Customer Content or such credit card information, Company shall first have all outstanding amounts owed to it under this Agreement paid in full and the Parties shall enter into a separate agreement regarding such transfer to ensure compliance with security standards and protect Company in connection with such export. In the event Customer requests the services of Company pursuant to this section more than one time during the Term, Customer shall be responsible to pay Company reasonable fees for such transfer and export assistance.

4. FEES AND EXPENSES; PAYMENTS.

4.1 Fees. In consideration for the rights granted to Customer and the performance of Company's obligations under this Agreement, Customer shall pay to Company, without offset or deduction, certain fees, in such amounts as may be determined by Company (the "**Fees**"). Unless otherwise provided in a Schedule, all such fees shall be due and payable upon receipt after an invoice is issued by Company with respect thereto and are nonrefundable and non-cancelable.

4.2 Customer Operating Expenses. Customer shall bear all expenses incurred in performance of its obligations hereunder, including, without limitation, through use of the Application IP, and/or through provision of support to Authorized End Users with respect to such use of the Application Service.

4.3 Taxes. Customer shall be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Company's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Customer will make all required payments to Company free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Company will be Customer's sole responsibility, and Customer will, upon Company's request, provide Company with official receipts issued by the appropriate taxing authorities, or such other evidence as Company may reasonably request, to establish that such taxes have been paid.

4.4

5. CONFIDENTIAL INFORMATION.

5.1 Obligation. Recipient shall treat as confidential and shall not disclose to any third party, or use any Confidential Information received from Discloser except (i) as expressly permitted under this Agreement, (ii) to those representatives, affiliates, contractors or consultants having a need to know such Confidential Information to provide services to or receive services under this Agreement, or (iii) to such individuals are bound by non-disclosure or confidentiality

obligations no less restrictive than the nondisclosure obligations set forth in this Agreement. Each Party shall use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care.

5.2 Exceptions. The confidentiality restrictions of Section 5.1 shall not apply to information that: (a) was independently developed without any use or reference to the Confidential Information of the Discloser by employees or contractors of the Recipient; (b) is or becomes part of the public domain through no fault of the Recipient; (c) is rightfully in the possession of the Recipient free of any confidentiality restrictions at the time of disclosure; or (d) was or is received by the Recipient on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality.

5.3 Compelled Disclosures. If the Recipient or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, prior to the disclosure, the Recipient shall: (a) promptly notify the Discloser in writing of such requirement so that the Discloser can seek a protective order or other remedy or waive its rights under this Section; and (b) provide reasonable assistance to the Discloser in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Discloser waives compliance or, after providing the notice and assistance required under this Section 5.3, the Recipient remains required by law to disclose any Confidential Information, the Recipient shall disclose only that portion of the Confidential Information that the Recipient is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Mutual Representations and Warranties. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

6.2 Company Representations and Warranties. Company warrants to Customer during the Term of this Agreement that the Application Service will conform with the material functionality described in the Application Documentation and that such functionality will be maintained in all material respects in subsequent Releases to the Application Service. Customer's sole and exclusive remedy for Company's breach of this warranty shall be that Company shall use commercially reasonable efforts to correct such errors or modify the Application Service to achieve the material functionality described in the Application Documentation within a reasonable period. However, Company shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem.

6.3

7. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

7.1 Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 6, COMPANY DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE APPLICATION SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE APPLICATION SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE APPLICATION SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE APPLICATION SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE APPLICATION SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY COMPANY OR THE OPERATION OF THE APPLICATION SERVICES WILL BE SECURE OR THAT

COMPANY AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER CONTENT OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER CONTENT WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 6 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY COMPANY. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EXCEPT AS STATED IN SECTION 6 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE APPLICATION SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE AND CUSTOMER ASSUMES ALL RESPONSIBILITY FOR ANY ACTIONS OR OMISSIONS OF CUSTOMER'S AGENTS, AUTHORIZED END USERS, AND AUTHORIZED VENDORS OF CUSTOMER TO WHOM CUSTOMER GRANTS USE OR ACCESS TO THE APPLICATION IP

7.2 Exclusions of Remedies; Limitation of Liability. EXCEPT FOR SUMS OWED TO COMPANY UNDER THIS AGREEMENT, APPLICABLE ORDER FORMS OR STATEMENTS OF WORK, IN NO EVENT WILL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS, VENDORS, OR SUPPLIERS BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

EXCEPT FOR SUMS OWED TO COMPANY UNDER THIS AGREEMENT, APPLICABLE ORDER FORMS OR STATEMENTS OF WORK, AND EXCEPT FOR CUSTOMER'S OBLIGATIONS UNDER SECTIONS 2.3 (USE RESTRICTIONS), 3 (CUSTOMER OBLIGATIONS) AND SECTION 8 (INDEMNIFICATION), NEITHER PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY ORDER FORM OR STATEMENT OF WORK, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO OR DUE TO THE COMPANY BY CUSTOMER UNDER SECTION 4.1 DURING THE SIX (6)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.3 Essential Basis of the Agreement. Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

8. INDEMNIFICATION.

8.1 Indemnification of Customer. Company agrees to indemnify, defend and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Application Service, Customer Portal and/or the Application Documentation infringes such third party's U.S. patents issued as of

the Effective Date or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of the United States, a member of the European Union, Canada or Australia, provided that Customer promptly notifies Company in writing of the claim, cooperates with Company, and allows Company sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Customer agrees to permit Company, at Company's sole discretion, to enable it to continue to use the Application Service or the Application Documentation, as applicable, or to modify or replace any such infringing material to make it non-infringing. If Company determines that none of these alternatives is reasonably available, Customer shall, upon written request from Company, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. This Section 8.1 shall not apply to the extent that the alleged infringement arises from (i) modification of any of the Application IP or Customer Portal by Customer, (ii) combination, operation or use of any of the Application IP or Customer Portal with other software, hardware or technology not provided by Company, (iii) Customer's use of the Application Service or Customer Portal in a manner not authorized herein or for which it was not designed, (iv) any Customer Content or any infringement or misappropriation of any third party rights by such content, (v) Customer's failure to use an updated non-infringing version of the applicable intellectual property to the extent Customer was notified that the update cured an infringement, (vi) changes to the Application Service or Customer Portal made by Company at the direction of the Customer, or (vi) third party products provided by Customer that are not expressly authorized in writing by Company (any of the foregoing circumstances under clauses, a "**Customer Indemnity Responsibility**"). THIS SECTION STATES COMPANY'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

8.2 Customer's Indemnity Obligations. Customer agrees to hold, harmless, indemnify, and, at Company's option, defend Company from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from (i) Customer's or any Authorized End User's negligence or willful misconduct; (ii) Customer's or any Authorized End User's use of the Application IP or Customer Portal in a manner not authorized or contemplated by this Agreement, or any breach of the obligations set forth in Section 2.3, Section 3, or Section 5; or (iii) a Customer Indemnity Responsibility, provided that Customer will not settle any third-party claim against Company unless such settlement completely and forever releases Company from all liability with respect to such claim or unless Company consents to such settlement, and further provided that Company will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

8.3 Procedures. The Party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party.

9. TERM AND TERMINATION.

9.1 Term. The term of this Agreement will commence on the Effective Date and will continue for the period agreed to with the Company (the "**Initial Term**"), unless earlier terminated in accordance with this Section 9, and will automatically renew for successive one (1)-year terms, unless either Party provides written notice of its desire not to renew at least ninety (90) days prior to the

expiration of the then-current term (the initial term, together with any renewal terms, collectively, the "**Term**").

9.2 Termination for Breach. Either Party may, at its option, terminate this Agreement upon thirty (30) days' advance written notice to the other Party in the event of a breach of any material obligation under this Agreement. Such termination notice shall specifically identify the breach or breaches on which such notice of termination is based. The alleged breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.

9.3 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (i) that the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party files a petition in bankruptcy, bankruptcy reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (iii) the other Party discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

9.4 Effect of Termination. Upon any termination of this Agreement, Customer will (i) immediately discontinue all use of the Application Service, the Application Documentation, and any Company Confidential Information and both Parties will delete any of the other Party's Confidential Information from computer storage or any other media including, but not limited to, online and off-line libraries; (ii) return to the other Party or, at the other Party's option, destroy, all copies of the Application Documentation and any Confidential Information then in the other Party's possession; and (iii) promptly pay to Company all amounts due through the date of termination. Customer shall be entitled to access and retain all Customer data and Customer Content for a period of five (5) business days after the effective date of termination.

9.5 Survival. The provisions of Sections 2.3, 2.4, 3.7, 3.8, 3.9, 5, 7, 8, 9.4, 9.5 and 10 will survive the termination of this Agreement.

10. MISCELLANEOUS.

10.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

10.2 Independent Contractors. In making and performing this Agreement, Customer and Company act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

10.3 Notices. Except as set forth herein, all notices required by or relating to this Agreement shall be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, or (d) by email whose receipt is acknowledged by an officer of the receiving Party. All notices shall be sent to the Addresses on the cover page of this Agreement. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

10.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

10.5 Assignment; Delegation. Customer may not assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of Company, which shall not be unreasonably withheld or delayed, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect. Notwithstanding the foregoing, Customer may assign this

Agreement, without consent, in connection with a merger, sale, transfer or other disposition of all or substantially all of its stock or assets; provided Customer provides Company with notice of such transfer within fifteen (15) days of such transaction effective date. Company may freely assign any of its rights or delegate any of its duties under this Agreement.

10.6 No Third-Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

10.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

10.8 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

10.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, riot, fires, floods, epidemics, or failure of public utilities, communications lines, power failures, public transportation systems, or government laws or regulations imposed after the fact, such failure or delay will not be deemed to constitute a material breach of this Agreement, and the affected Party's performance will be excused for the resulting period of delay or inability to perform and such obligations will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such

failure or delay, provided that if such Party is prevented or delayed from performing for more than sixty (60) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

10.10 Publicity and Advertising

Except as otherwise required by applicable law, rules or regulations, Company shall obtain Customer's written consent prior to any publication, presentation, public announcement, press release or other disclosure to a third party concerning the relationship between the Parties, the existence or terms and conditions of this Agreement, or referencing Customer or using its trade names, trademarks, logos, or services marks, which consent may be withheld in Customer's sole discretion. Notwithstanding the foregoing,

10.11 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the state of Colorado, without regard to conflicts of law principles thereof or to the united nations convention on the international sale of goods. For purposes of all claims brought under this agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the state of Colorado.

10.12 U.S. Government End-Users. Each of the Application Documentation and the software components that constitute the Application Service is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Application Service and the Application Documentation with only those rights set forth therein.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

10.14 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

[End of SaaS Terms]