

Master Subscription Agreement

LAST MODIFIED: MAY, 2023

THOROPASS, INC.

MASTER SUBSCRIPTION AGREEMENT

THIS AGREEMENT GOVERNS YOUR USE OF THE THOROPASS, INC. HOSTED SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT AND WILL BE REFERRED TO AS “YOU” OR “CUSTOMER” IN THIS AGREEMENT. “PARTY” OR “PARTIES” SHALL MEAN, INDIVIDUALLY, CUSTOMER OR THOROPASS AS THE CONTEXT REQUIRES AND, COLLECTIVELY, CUSTOMER AND THOROPASS.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” AND “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE HOSTED SERVICES.

You may not access the Hosted Services if You are a competitor of Thoropass, except with Thoropass’s prior written consent. In addition, You may not access the Hosted Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This agreement was last updated on 2021-10-17 (the “Agreement”). It is effective between You and Thoropass, Inc., a Delaware corporation with offices at 228 Park Ave S, PMB 41082, New York, NY 10003 (“Thoropass”) as of the date You accepted this Agreement (the “Effective Date”).

The Parties agree as follows:

1. DEFINITIONS.

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Customer Data” means any data, information or other materials submitted by Customer or Users to the Hosted Service.

“Customer Personal Data” means Customer Data that is also Personal Data, as defined in the Data Protection Addendum.

“Customer Trademarks” means any trademarks that Customer provides Thoropass for the purpose of referring to Customer within the user interface for the Hosted Service.

“Dispute Period” means fifteen (15) days from receipt of invoice.

“Documentation” means Thoropass’s then-current online help, guides, and manuals published by Thoropass and made generally available by Thoropass for the Hosted Services. Documentation shall include any updated Documentation that Thoropass provides.

“Effective Date” means the date Customer executes this Agreement. The “effective date” of an Order Form shall be the date Customer executes such Order Form.

“Fees” means the fees Customer is required to pay Thoropass (i) for use of the Hosted Services during a Subscription Term or (ii) to receive Professional Services, as such fees are reflected on an Order Form or SOW.

“Hosted Services” means the generally available online, Web-based applications and services on <https://thoropass.com> that are ordered by Customer under an Order Form, including updates thereto from time to time provided under and subject to (i) the Terms of Service found at <https://thoropass.com/terms-and-conditions/> and (ii) the Privacy policy found at <https://thoropass.com/privacy-policy/> (collectively, “Terms”, which may be updated from time to time).

“Malicious Code ” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“Order Form” means the ordering documents for Customer purchases from Thoropass that are executed hereunder by Customer and Thoropass from time to time. All Order Forms shall be deemed incorporated herein.

“Professional Services” means training, consulting, onboarding, implementation services (not including support), assessments, or other advisory services provided to the Customer by Thoropass pursuant to a mutually executed SOW or Order Form.

“Provider” means a third-party service provider (e.g. law firm, accounting firm, security services consulting firm, etc.), that Customer authorizes to use the Hosted Services for the benefit of Customer. Providers shall be deemed Users for purposes of this Agreement.

“Preferred Provider” means an established Thoropass partner who provides specific services to the Customer pursuant to a mutually executed SOW or Order Form with Thoropass.

“Subscription Term” means the period of time that Customer may use and access the Hosted Service beginning on the Effective Date and as set forth in the applicable Order Form. The Hosted Service may automatically deactivate and become non-operational at the end of the Subscription Term, and Customer shall not be entitled to access the Hosted Services unless the Subscription Term is renewed (each a “Renewal Subscription Term”).

“SOW” means a mutually executed statement of work detailing the Professional Services that Thoropass will perform for Customer, and any related Fees.

“Users ” means individuals who are authorized by Customer to use the Hosted Services on Customer’s behalf or for Customer’s benefit. Users may include but are not limited to employees, consultants, contractors and agents of Customer, or third parties with which Customer transacts business. Users may not include employees, consultants, contractors, representatives or agents of a Thoropass competitor.

2. HOSTED SERVICES.

2.1. Thoropass shall make the Hosted Services available to Customer and its Users pursuant to this Agreement and the applicable Order Form during each Subscription Term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Thoropass regarding future functionality or features. Customer shall be responsible for Users’ compliance with this Agreement.

2.2. Unless otherwise specified in the applicable Order Form, Hosted Services are purchased as subscriptions with a Subscription Term of twelve (12) months. Customer understands and agrees that: (a) only the specified, software and services in the Order Form shall be provisioned by Thoropass and made accessible to the Customer; (b) that each User constitutes one individual and access credentials for each User may not be shared; and (c) the Hosted Services are limited and governed by the Terms of Use, Privacy Policy, and any other agreed upon restrictions described on the applicable Order Form. During any Subscription Term, Thoropass retains the right to (i) assess the number of Users and Usage Metrics and (ii) to estimate the size of your company using your employee headcount prior to activating a renewal Subscription Term.

2.3. Customer shall not: (i) except as permitted by this Agreement, directly or indirectly: sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Hosted Services available to any third party other than Users; (ii) modify, make derivative works of, disassemble, reverse compile, reverse engineer, or subvert the intrinsic security, integrity, or performance of any part of the Hosted Services for any purpose (iii) access or use the Hosted Services in order to build a similar or competitive product or service; (iv) copy any features, functions or graphics of the Hosted Services for any purpose other than what is expressly authorized under this Agreement; (v) interfere with or disrupt the integrity or performance of the Hosted Services. Except as expressly stated herein, no part of the Hosted Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means. Customer shall make reasonable efforts to prevent unauthorized third parties from accessing the Hosted Services, and notify Thoropass promptly of any such unauthorized access or use.

2.4. Customer shall be solely responsible for: (a) the accuracy, quality, integrity, reliability, and legality of Customer Data, the means by which it acquires and uses such Customer Data (including, without limitation, copyright, privacy and data protection), and has obtained all rights in the Customer Data necessary to permit Thoropass's compliance with its obligations under this Agreement; (b) complying with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Hosted Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data from locations other than the location from which Thoropass controls and operates the Hosted Services; and (c) any acquisition, implementation, support, or maintenance of third-party products or services purchased by Customer that may interoperate with the Hosted Services.

2.5. Customer may create, post, upload, link to, display, communicate or transmit User-Generated Content while or through using the Hosted Services. Customer: (a) is solely responsible for the content of, and for any harm resulting from, any User-Generated Content, regardless of the form of such User-Generated Content; (b) will only submit User-Generated Content for which it has sufficient rights to post; and (c) will comply fully with any third-party licenses relating to User-Generated Content. Thoropass is not responsible for any public display or misuse of User-Generated Content by Customer or Users. Further, Thoropass does not pre-screen User-Generated Content, but it has the right (though not the obligation) to refuse or remove any User-Generated Content that, in its sole discretion, violates any Thoropass terms and policies.

2.6. Customer acknowledges and agrees that Customer Data may be transferred outside of the United States if Customer's Users access the Customer Data while outside of the United States. Any international transfers of Customer Personal Data are subject to the terms of the Data Protection Addendum.

3. PROFESSIONAL SERVICES.

Upon Customer's request for Professional Services, Thoropass will provide an SOW detailing such Professional Services. Each SOW is binding on both Parties upon execution by the Parties and any Professional Services will be governed by the terms of the applicable SOW and this Agreement. In the event of any conflict between the terms of this Agreement and any SOW, the terms of this Agreement will control. Thoropass will perform the Professional Services described in each SOW according to the timeframes set forth in such SOW. Thoropass will control the manner and means by which the Professional Services are performed and reserves the right to determine which personnel are assigned to perform the Professional Services. Thoropass may use Preferred Providers and other third parties to perform the Professional Services, provided, however, that Thoropass remains responsible for such third parties' acts and omissions. Customer acknowledges and agrees that Thoropass retains all right, title, and interest in and to anything used or developed in connection with performing the Professional Services, including but not limited to software programs, tools,

specifications, ideas, concepts, inventions, processes, techniques, and know-how. To the extent Thoropass delivers anything to Customer during the course of performing the Professional Services, Thoropass grants Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to use those deliverables during the Subscription Term.

4. THIRD-PARTY PROVIDERS.

Customer may authorize Provider(s) to use the Hosted Services. A Provider's use of the Hosted Services and provision of services to Customer related thereto including but not limited to any terms, conditions, warranties or representations associated with such services and any exchange of data between Customer and such Provider is solely between Customer and the applicable Provider. Thoropass shall have no liability or obligation for, and does not endorse or accept any responsibility for any Provider, the contents or use of third-party websites or any transactions completed with any Providers or any third parties. Customer is responsible for all acts and omissions of any Provider or any third-party User.

5. OWNERSHIP.

5.1. As between the Parties, Thoropass shall own and retain all right, title and interest in and to the Hosted Services, Professional Services, and Thoropass Confidential Information (defined below), including all intellectual property rights. The look and feel of the Hosted Services is copyright ©Thoropass, Inc., All rights reserved. No rights are granted to Customer hereunder other than as expressly set forth herein.

5.2. As between the Parties, Customer shall own all right, title and interest in and to any Customer Data and User-Generated Content. Customer grants to Thoropass the free, non-exclusive, worldwide right to use, host, store, reproduce, modify, adapt, transmit, communicate, distribute, and create derivative works (including but not limited to those resulting from translations, adaptations or other changes Thoropass makes so that Customer's content works better with the Hosted Services) of the Customer Data and User-Generated Content without attribution for the purposes of operating, providing, supporting, improving, or developing the Hosted Services. Subject to the confidentiality obligations of this Agreement, Customer agrees that Thoropass may use Customer Data and User-Generated Content to compile, use and disclose anonymous, aggregated statistics, provided that no such information will directly identify and cannot reasonably be used to identify Customer or Customer's Users. Customer shall be solely responsible for ensuring that Customer has obtained all necessary third-party consents and made all required disclosures in connection with the foregoing grant.

5.3. Customer retains all moral rights to Customer Data and User-Generated Content, including the rights of integrity and attribution; however, Customer waives these rights and agrees not to assert them against Thoropass, solely to enable it to reasonably exercise the rights granted to it under this Agreement.

5.4. Thoropass shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Hosted Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Hosted Services.

6. BILLING AND PAYMENT.

6.1. General. Customer agrees to pay in advance for Fees in full, without deduction or setoff of any kind, in U.S. Dollars, unless otherwise specified in an Order Form or SOW. All Fees under this Agreement are nonrefundable except as otherwise set forth herein. Thoropass's Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, even if such amounts are not listed by Thoropass. If an

applicable tax authority requires Thoropass to pay any taxes that should have been payable by Customer, Thoropass will advise Customer in writing, and Customer will promptly reimburse Thoropass for the amounts paid. Except as otherwise provided in an Order Form or SOW, payment for invoices is due within thirty (30) days of Customer's receipt of the applicable invoice. If payment is not received by the due date, Thoropass reserves the right to, in addition to taking any other action at law or equity, to (i) charge interest on past due amounts at one and a half percent (1.5%) or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery (including reasonable attorneys' fees), (ii) suspend Customer's access to the Hosted Services until overdue amounts are paid in full, including any interest assessed on the overdue amounts, and (iii) terminate the applicable Order Form or SOW.

6.2. Initial Subscription Term. Except as otherwise provided in the applicable Order Form or SOW, the Fees during the initial Subscription Term shall be (i) fixed during the initial Subscription Term and (ii) charged or invoiced upon execution of such Order Form or SOW.

6.3. Renewal Subscription Term. Except as otherwise provided in the applicable Order Form, Fees for any renewal Subscription Term shall be: (i) subject to up to a seven percent (7%) increase above the applicable pricing in the prior Subscription Term, unless Thoropass provides notice of different pricing at least thirty (30) days prior to the applicable renewal Subscription Term; and (ii) charged automatically at the start of each renewal Subscription Term, or if applicable, invoiced approximately thirty (30) days prior to the start of each subsequent Subscription Term. Except as expressly provided in the applicable Order Form or SOW, renewal of promotional or one-time priced Subscription Terms will be at Thoropass's applicable list price in effect at the time of the applicable renewal Subscription Term. Additionally, to the extent the assessment provided for in Section 2.2 demonstrates additional Fees are payable by Customer, Thoropass shall invoice or charge the Customer for such additional prorated Fees at the end of such quarter.

7. SUPPORT.

During the Subscription Term, Thoropass shall provide assistance to Customer by telephone, e-mail or online chat as set forth in the applicable Order Form. Thoropass reserves the right, from time to time, to make modifications to support services (or particular components thereof), provided that such modifications do not materially reduce the support services in effect as of the Effective Date of this Agreement. Thoropass agrees to use commercially reasonable efforts to notify Customer of any material modifications to the support services by posting a notice on the Hosted Services. Thoropass shall use reasonable commercial efforts to correct at no additional charge any reproducible errors reported by Customer. Thoropass shall review all requests for improvements and new functionality, but Thoropass shall have no obligation to provide any modifications to the Hosted Service.

8. LIMITED REPRESENTATIONS & WARRANTIES.

8.1. Authority. Each Party represents and warrants that: (a) it has the power and authority to enter into this Agreement; (b) this Agreement and each Order Form and SOW is entered into by an employee or agent of such Party with all necessary authority to bind such Party to the terms and Conditions of this Agreement; (c) its execution of this Agreement does not violate any other agreement by which it is bound; and (d) it is a legal entity in good standing in the jurisdiction of its formation.

8.2. Non-Competition. Customer represents and warrants that: (a) it is not a competitor of Thoropass or a Thoropass Affiliate with respect to any of the Hosted Services, and (b) shall not become Thoropass's or a Thoropass Affiliate's competitor with respect to any of the Hosted Services, except with Thoropass's prior written consent. In addition, Customer represents and warrants that it will not access the Hosted Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

8.3. Product Warranty. Thoropass warrants that (i) it will provide the Hosted Service in a manner

consistent with generally accepted industry standards, (ii) the Hosted Service will perform substantially as described in the applicable Documentation when used in the hardware, software and browser operating environment described therein and supported by Thoropass, (iii) the functionality of the Hosted Service will not be materially decreased during a Subscription Term; and (iv) the configuration of the Hosted Services will conform in all material respects to this Agreement and/or the applicable Order Form. In the event of breach of (i)-(iv) above, Customer's sole and exclusive remedies are those described in the Section 12.3 titled "Termination Rights." Notwithstanding the foregoing, Thoropass is not obligated to correct errors caused by: (a) unauthorized modification to the Hosted Services, (b) Customer modifications, (c) using the Hosted Services other than as described in the Documentation, (d) non-Thoropass software, or (e) combining the Hosted Services with any other hardware or software not authorized by Thoropass in writing.

8.4. Professional Services Warranty. Thoropass warrants that any Professional Services performed under an SOW to this Agreement will be performed in a professional and workmanlike manner by appropriately qualified personnel. Thoropass's only obligation, and Customer's only remedy, for a breach of this warranty will be, at Thoropass's option and expense, to either: (i) promptly re-perform any Professional Services that fail to meet this warranty or (ii) terminate the SOW and refund any unused prepaid Fees.

9. DISCLAIMER OF WARRANTIES.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USE OF TRADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE HOSTED SERVICES ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. THOROPASS SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT CUSTOMER'S PROPOSED USE OF THE HOSTED SERVICES AND/OR PROFESSIONAL SERVICES COMPLIES WITH APPLICABLE LAWS AND REGULATIONS IN CUSTOMER'S JURISDICTION(S). CUSTOMER ACKNOWLEDGES AND AGREES THOROPASS IS NOT ENGAGED IN PROVIDING LEGAL, ACCOUNTING, TAX, OR FINANCIAL SERVICES OR ADVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, PROVIDED BY THOROPASS WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

10. LIMITATION OF LIABILITY.

10.1. LIMIT ON DIRECT DAMAGES. EXCEPT FOR A BREACH BY CUSTOMER OF OBLIGATIONS IN SECTION 2, THE AGGREGATE, CUMULATIVE LIABILITY OF EACH PARTY (INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE FEES PAID OR PAYABLE BY CUSTOMER TO THOROPASS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM (PROVIDED THAT, IF NO FEES ARE PAID OR PAYABLE, SUCH AMOUNTS WILL BE LIMITED TO FIVE THOUSAND DOLLARS (U.S. \$5,000.00)). THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6.

10.2. NO INDIRECT DAMAGES. EXCEPT FOR A BREACH BY CUSTOMER OF OBLIGATIONS IN SECTION 2, IN NO EVENT SHALL EITHER PARTY OR THIRD-PARTY PROVIDERS OF THOROPASS (INCLUDING THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO

THE USE OR INABILITY TO USE THE HOSTED SERVICE, REGARDLESS OF CAUSE, WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE OR OTHER TORTIOUS ACTION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR THE THIRD-PARTY PROVIDER HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10.3. ALLOCATION OF RISK. The provisions of this Agreement fairly allocate the risks between Thoropass, on the one hand, and Customer, on the other. Customer acknowledges and agrees that the pricing of Hosted Services reflects this allocation of risk and the limitation of liability specified herein, and that Thoropass would not enter into this Agreement without such allocation and limitation.

11. INDEMNITIES.

11.1. Thoropass Indemnification Exclusions. Thoropass shall not have any indemnification obligation for any Claim pursuant to this Agreement to the extent a Claim is based upon (i) modifications to the Hosted Service by anyone other than Thoropass or its agents (provided that Thoropass shall not be liable if Thoropass or its agents made the modifications using requirements documents, written specifications or other written materials submitted by Customer or its agents or representatives); (ii) the modification of the Hosted Services or the use, combination, or operation of the Hosted Service with equipment, devices, software, systems, or data, other than expressly authorized by this Agreement; (iii) use of the Hosted Services in violation of this Agreement; (iv) Customer's continued use of any version of the Hosted Service other than the then-current, unaltered version, if infringement would have been avoided by use of a current, unaltered version thereof that has been made available to Customer; (v) where Customer continues to use the Hosted Services after being notified of allegedly infringing activity or being informed of modifications that would have avoided the alleged infringement; (vi) third party software or services, Customer software, Customer Data, or User-Generated Content.

11.2. Indemnification by Customer. Customer shall defend, indemnify and hold Thoropass harmless against any Claims made or brought against Thoropass by anyone other than a Thoropass Related Party against Thoropass and its Related Parties where the third party expressly asserts (i) misappropriation, misuse or breach of applicable law related to Customer Data; (ii) that the Customer Data or Thoropass's transmission or hosting thereof infringes or violates the rights of such third party; (iii) that Customer's breach of Section 2 of this Agreement violates the rights of such third party; (iv) that Customer failed to comply with applicable laws, rules or regulations in its performance of this Agreement; or (v) Claims based on any third party equipment, devices, software, systems, or data Customer combined, operated or used with the Hosted Services.

11.3. Indemnification Procedure. Promptly after a party seeking indemnification obtains knowledge of the existence or commencement of a Claim, the party to be indemnified will notify the other party of the Claim in writing; provided however, that the indemnifying party's indemnity obligations will be waived only if and to the extent that its ability to conduct the defense are materially prejudiced by a failure to give notice. The indemnifying party will assume the sole control of defense and settlement of the claim at the indemnifying party's expense; provided, however, the indemnified party: (i) may join in the defense and settlement of the Claim and employ counsel at its own expense; and (ii) will reasonably cooperate with the indemnifying party in the defense and settlement of the Claim. The indemnifying party may not settle any Claim without the indemnified party's written consent unless the settlement: (x) includes a release of all covered Claims pending against the indemnified party; (y) contains no admission of liability or wrongdoing by the indemnified party; and (z) imposes no obligations upon the indemnified party other than an obligation to stop using any infringing items. If both the indemnified party and the indemnifying party are named parties in any action relating to the Claim and the counsel chosen by the indemnifying party cannot represent both the indemnified party and indemnifying party due to any present or potential conflict in representing the interests of both of them, then the indemnifying party will retain separate counsel for the indemnified party.

11.4. ENTIRE LIABILITY. THIS SECTION 11 STATES THE ENTIRE LIABILITY OF THE INDEMNIFYING PARTY AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM BY A THIRD PARTY DESCRIBED IN THIS SECTION.

12. TERM AND TERMINATION.

12.1. Term of Agreement. Unless otherwise provided in an Order Form, this Agreement shall commence on the Effective Date listed above and shall continue until expiration or termination of this Agreement or Order Forms executed hereunder.

12.2. Subscription Term. Except as specified otherwise in an Order Form, a standard Subscription Term is for a one (1) year Subscription Term commencing on the Effective Date. Customer's subscription to the Hosted Service will automatically renew for additional one (1) year periods unless either party notifies the other of its intent not to renew in writing at least fifteen (15) days prior to the expiration of the then-current Subscription Term. In the event that any Subscription Term expires before Customer makes a payment for a renewal Subscription Term, Thoropass reserves the right to charge: (a) a proportionate fee for the elapsed time period during which the Subscription Term was expired and (b) a reactivation fee to process the renewal.

12.3. Termination Rights. Either Party may terminate this Agreement (including all related Order Forms) (i) upon breach of this Agreement if such breach has not been cured within 30 days of written notice from the non-breaching Party specifying the breach in detail and, if Thoropass is the non-breaching Party, Thoropass may terminate Customer's password, account, access to and/or use of the Hosted Service; (ii) immediately upon written notice if the other Party seeks protection of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days; (iii) if either Party undergoes a change of Control in favor of a competitor of the other Party; (iv) if either Party ceases operation without a successor; or (v) as otherwise provided herein. Thoropass may immediately terminate this Agreement (x) if Customer breaches any of the terms of this Agreement, including those relating to Thoropass's intellectual property (including Customer's non-compliance with the license grant or any license restrictions). If this Agreement is terminated by Customer in accordance with subsection (i) of this Section 12.3, Thoropass will refund Customer any prepaid fees covering the remainder of the then-current Subscription Term of all Order Forms after the effective date of termination. In no event will termination relieve Customer of its obligation to pay any fees payable to Thoropass for the period prior to the effective date of termination.

12.4. Effect of Termination. Upon termination of this Agreement: (i) the Subscription Term for the Hosted Services or Professional Services shall immediately end; (ii) Customer will no longer have the right to use the Hosted Services or the Professional Services, and any licenses or access granted to Customer relating to same shall automatically cease to exist as of the date of termination; (iii) if any Fees were owed prior to termination, other than for termination by Customer for Thoropass's uncured breach, Customer must pay those Fees immediately. Within thirty (30) days of termination of this Agreement, upon Customer's request, provided Customer is not in breach of the Agreement including but not limited to payment obligations, Thoropass will make available to Customer a file of the Customer Data then in its possession. Customer agrees and acknowledges that, thirty (30) days following the effective termination date of this Agreement or if Customer's account is thirty (30) days or more past due, Thoropass will have no obligation to maintain or produce Customer Data under this Agreement, and may, in Thoropass's sole discretion, delete or destroy all copies of Customer Data in the Hosted Services or otherwise in Thoropass's possession or control, unless legally prohibited.

12.5. Survival. The following provisions shall survive any termination of this Agreement: Sections 1, 2.2, 2.3, 2.4, 2.5, 3, 5, 6, 10, 11, 12.4, 13, and 14, provided that Sections 10 and 11 shall only survive to the extent applicable to a Claim.

13. CONFIDENTIAL INFORMATION.

13.1. Each Party may have access to information that is confidential to the other Party. As used herein, "Confidential Information" means all confidential and proprietary information of a Party ("Disclosing Party") disclosed to the other Party ("Receiving Party"), whether orally or in writing, that is clearly identified as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential, including but not limited to the terms and conditions of this Agreement (including pricing and other terms reflected in an Order Form hereunder), the Customer Data, User-Generated Content, the Hosted Service, business and marketing plans, technology and technical information, product designs, trade secrets and business processes. A Party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other Party; (ii) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the Disclosing Party; (iii) is lawfully disclosed to the other Party by a third party without restriction on disclosure; (iv) is independently developed by the other Party without use of or reference to the other Party's Confidential Information.

13.2. The Parties agree to use all reasonable care to prevent disclosure of the other Party's Confidential Information to any third party, except for disclosures permitted by this Agreement. Notwithstanding the foregoing, Customer acknowledges and agrees that Thoropass may disclose Customer's Confidential Information to its employees, consultants, Providers and other third-party providers solely to the extent necessary to provide the Hosted Service under this Agreement, provided that Thoropass has a Data Protection Agreement in place with such third-party provider that protects such Confidential Information against disclosure in a manner no less protective than this Agreement.

13.3. If Receiving Party receives a request to disclose any Confidential Information of Disclosing Party pursuant to a subpoena, order, civil or criminal investigative demand, agency administrative demand, law, rule, regulation, or a judicial or similar process issued by a court of competent jurisdiction, the Receiving Party's regulators or any other administrative body (each such request, a "Disclosure Request"), the Receiving Party is permitted to disclose such Confidential Information only if legal compelled and only to the extent necessary to comply with the Disclosure Request. If legally permitted, Receiving Party shall provide Disclosing Party with prompt notice of such Disclosure Request prior to responding and shall provide reasonable assistance, at Disclosing Party's expense, if Disclosing Party wishes to seek protection or confidential treatment of the Confidential Information relevant to the Disclosure Request. If the Receiving Party receives a Disclosure Request as part of a proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the Disclosure Request or is requesting the Disclosure Request, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost and fees incurred in compiling and providing secure access to the Confidential Information relevant to the Disclosure Request.

13.4. If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of this Section 13, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies may be inadequate.

13.5. Following termination of this Agreement, Thoropass will return to Customer or destroy (at the Customer's election, and subject to applicable law, regulation, and the terms of the Data Protection Addendum) all Customer Data. With respect to all other Confidential Information, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information for five (5) years.

13.6. This Section 13 constitutes the entire understanding of the Parties and supersedes all prior or contemporaneous agreements, representations or negotiations, whether oral or written, with respect to Confidential Information, except for (i) the rights granted with respect to Customer Data and User-

Generated Content by this Agreement, and (2) the confidentiality of Customer Personal Data subject to the terms of the Data Protection Addendum (DPA), and in the event of a conflict between this Section 13 and the DPA with respect to Customer Personal Data, the terms of the DPA shall prevail.

14. GENERAL PROVISIONS.

14.1. If Customer is a federal government entity, Thoropass provides the Hosted Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Technical data and computer software rights related to the Hosted Service include only those rights customarily provided to the public as set forth in this Agreement. The license rights hereunder are provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included as part of this Agreement.

14.2. Each Party will comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Hosted Services.

14.3. Either Party may identify the other as a user or customer, as applicable, and may use the other's name and logo in Customer or vendor lists, press releases, blog posts, advertisements, and on their respective websites. Customer further grants Thoropass a non-exclusive license to use Customer Trademarks for the purpose of referring to Customer within the user interface for the Hosted Service.

14.4. Any action related to this Agreement will be governed exclusively by the internal laws of the state of New York, without regard for its conflicts of laws rules, and all disputes hereunder shall be subject to the exclusive jurisdiction of the state or federal courts located in New York, NY. The Parties hereby irrevocably consent to the jurisdiction of such courts. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act.

14.5. This Agreement and the Terms, together with any applicable Exhibits, Order Forms, and SOWs represent the Parties' entire understanding relating to the use of the Hosted Services and supersedes any prior or contemporaneous, conflicting or additional, communications. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of the Parties hereto. Notwithstanding any language to the contrary therein, any purchase order, Order Form, SOW, or any other document that contains terms that are different from or in addition to the terms of this Agreement shall be void and of no effect to the extent of such different or additional terms.

14.6. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

14.7. No joint venture, partnership, employment, or agency relationship exists between Thoropass and Customer as a result of this Agreement or use of the Hosted Services.

14.8. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, (i) either Party may assign this Agreement in its entirety (including all Order Forms hereunder) to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other Party; and (ii) Thoropass may assign its rights and obligations to an Affiliate, partner or Vendor (defined below). Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

14.9. Customer agrees that during the term of the Agreement and for twelve (12) months thereafter, Customer will not, directly or indirectly, hire, attempt to hire, or solicit for employment or other engagement with Customer or any of its subsidiaries or affiliates, any employee or contractor of Thoropass; provided, however, that this Section 14.9 shall not prevent Customer from soliciting or hiring any person who has been terminated by Thoropass or laid-off.

14.10. In the ordinary course of its business, Thoropass uses third-party service providers (collectively, "Vendors") to support the provision of the Hosted Services or support generally (i.e., not specifically for Customer). In addition, Thoropass may provide the Hosted Services or support through one or more Affiliates. Thoropass reserves the right to engage and substitute Vendors and Affiliates as it deems appropriate to provide the Hosted Services and support hereunder, but shall remain responsible for the acts or omissions of such Vendors or Affiliates undertaken in connection with this Agreement.

14.11. Neither Party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) during any period in which such performance is delayed or rendered impracticable or impossible due to circumstances beyond such Party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such Party's employees), internet or other Hosted Service disruptions involving hardware, software or power systems not within such Party's possession or reasonable control, and denial of Hosted Service attacks.

14.12 Thoropass may give notice by means of a Customer Notification on the Hosted Service, electronic mail to Customer's e-mail address on record in Thoropass's account information, or by written communication sent by first class mail or pre-paid post to Customer's address on the Hosted Service. Customer may give notice to Thoropass at any time by letter sent by e-mail to support@thoropass.com or by letter delivered first class mail to Thoropass at 228 Park Ave S, PMB 41082, New York, NY 10003. All notices shall be deemed to have been given five days after mailing (if sent by first class mail) or twenty-four (24) hours after sending by e-mail.

14.13. The failure of either Party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. Any rights not expressly granted herein are reserved.

14.14. Thoropass reserves the right to alter the terms of this Agreement at any time. Customer agrees to review the latest version of the Agreement on Thoropass's website periodically to remain aware of any modifications to the Agreement about which Customer is not alerted by Thoropass. The Agreement available on the website will be dated so as to make clear what version is currently in force. Any use of the Hosted Services after alteration of the Agreement will constitute acceptance by Customer of such changes. Customer's sole remedy should Customer not agree with the altered Agreement shall be to cease Customer's use of the Hosted Services and to comply with Customer's termination obligations outlined in Section 12 of this Agreement.

14.15 Thoropass prohibits Customers from using Thoropass's software or services in violation of the Export Administration Regulations (EAR) or Office of Foreign Assets Control (OFAC) Sanctions. Thoropass reserves the right to refuse to do business with any Customer if Thoropass believes such a person presents a money laundering risk. In particular, Thoropass may refuse to conduct business with any person it has reason to believe is not engaged in a legitimate business (including persons whose funds are directly or indirectly proceeds of crime). Thoropass will also refuse to do business

with any person it knows to be engaged in conduct that is a red flag for trade-based money laundering (TBML) and Thoropass will refuse requests to facilitate such conduct.