

End User License Terms

THIS END USER LICENSE TERMS (THE "**TERMS**") ARE A LEGAL AGREEMENT BETWEEN YOU ("CUSTOMER") AND RHINO HEALTHTECH, INC. ("SUPPLIER"). BY CLICKING THE "I ACCEPT" BUTTON, EXECUTING AN ORDER FORM THAT INCLUDES THESE TERMS BY REFERENCE OR USING THE SUPPLIER SERVICES, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND ACCEPTS THESE TERMS. IF YOU ARE AGREEING TO THESE TERMS AS AN INDIVIDUAL, "CUSTOMER" REFERS TO YOU INDIVIDUALLY. IF YOU ARE AGREEING TO THESE TERMS AS A REPRESENTATIVE OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY. IF CUSTOMER DOES NOT AGREE WITH ALL OF THESE TERMS, DO NOT ACCESS OR OTHERWISE USE THE SUPPLIER SERVICE. IF YOU ARE USING THE SUPPLIER SERVICE PURSUANT TO A NEGOTIATED AGREEMENT THAT HAS BEEN SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SUPPLIER, TO THE EXTENT THERE IS A CONFLICT BETWEEN THESE TERMS AND THAT SIGNED AGREEMENT, THAT SIGNED AGREEMENT SHALL CONTROL. SUPPLIER MAY MAKE CHANGES TO THE SUPPLIER SERVICES AT ANY TIME. IN ADDITION, SUPPLIER MAY MAKE CHANGES TO THESE TERMS AT ANY TIME AND WILL UPDATE SUCH TERMS ONLINE AND BY EMAILING CUSTOMER AT THE EMAIL ADDRESS THAT HAS BEEN PROVIDED. CUSTOMER'S CONTINUED USE OF THE SUPPLIER SERVICES AFTER SUCH CHANGES HAVE BEEN POSTED WILL SIGNIFY CUSTOMER'S ASSENT TO AND ACCEPTANCE OF THE REVISED TERMS.

1. DEFINITIONS.

1.1 "**Activation Date**" means the date on which the Supplier Service is scheduled to be made available to Customer.

1.2 "**Authorized Purposes**" means internal testing and evaluation only.

1.3 "**Customer Data**" means all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of Customer and received and analyzed by the Supplier Service.

1.4 "**Customer System**" means Customer's internal website(s), servers and other equipment and software used in the conduct of Customer's business.

1.5 "**Documentation**" means the printed, paper, electronic or online user instructions and help files made available by Supplier for use with the Supplier Service, as may be updated from time to time by Supplier.

1.6 "**Intellectual Property Rights**" means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.

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

1.8 "**Open Source Software**" means all software that is available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that approved by the Open Source Initiative (www.opensource.org).

1.9 "**Order Form**" means the document issued by Customer to Supplier to procure a beta or evaluation license under these Terms.

1.10 “**Subscription Term**” means 60 days from the Activation Date unless a longer period has been agreed by Supplier in writing.

1.11 “**Supplier Service**” means the services provided by Supplier to Customer pursuant to these Terms, and for all purposes of these Terms, such services exclude any Open Source Software that may be used to provide the Supplier Service and all Third Party Offerings.

1.1 “**Third Party Offerings**” means certain software or services delivered or performed by third parties that are required for the operation of the Supplier Service, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Supplier Service.

2. **ORDERS; LICENSES; AND RESTRICTIONS.**

2.1 **Access and Use License.** Subject to Customer’s compliance with the terms and conditions contained in these Terms, Supplier hereby grants to Customer, during the relevant Subscription Term, a limited, non-exclusive, non-transferable (a) right to access and use the Supplier Service in accordance with the Documentation, and (b) license to download any software offered by Customer and required for access and use of the Supplier Service (the “**Downloadable Software**”), in each case solely for Customer’s Authorized Purposes and not for the benefit of any other person or entity. Customer’s use of the Supplier Service may be subject to certain limitations, such as, for example, limits on storage capacity for Customer Data. Any such limitations will be specified in the Documentation. All references to Supplier Services shall include Downloadable Software.

2.2 **Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Supplier Service; (b) modify, translate, or create derivative works based on any element of the Supplier Service or any related Documentation; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Supplier Service; (d) use the Supplier Service for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Customer; (e) remove any proprietary notices from the Documentation; (f) publish or disclose to third parties any evaluation of the Supplier Service without Supplier’s prior written consent; (g) use the Supplier Service for any purpose other than its intended purpose; (h) interfere with or disrupt the integrity or performance of the Supplier Service; (i) introduce any Open Source Software into the Supplier Service; or (j) attempt to gain unauthorized access to the Supplier Service or their related systems or networks.

2.3 **Reservation of Rights.** Except as expressly granted in these Terms, there are no other licenses granted to Customer, express, implied or by way of estoppel. All rights not granted in these Terms are reserved by Supplier.

3. **THIRD PARTY OFFERINGS.**

3.1 **Use of Third Party Offerings.** Supplier or third parties may from time to time make Third Party Offerings available to Customer. Any acquisition by Customer of any such Third Party Offerings, and any exchange of data between Customer and any provider of a Third Party Offering, is solely between Customer and the applicable provider of the Third Party Offering. Supplier does not warrant or support any Third Party Offering, whether or not they are designated by Supplier as “certified” or otherwise. If Customer installs or enables any Third Party Offering for use with Supplier Services, Customer acknowledges that Supplier may allow providers of that Third Party Offering to access Customer Data as required for the interoperation and support of such Third Party Offering with the Supplier Services. Supplier shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by the providers of Third Party Offerings.

3.2 **Third Party Data.** The Supplier Service may provide or make available data from or on behalf of third parties (“**Third Party Data**”). Prior to making use of otherwise exploiting such Third Party Data, Customer shall acquire the right and license to use such Third Party Data from the applicable third party who has provided such Third Party Data or on whose behalf such Third Party Data has been made available. Customer shall, at its cost

and expense, fully defend, indemnify, and hold harmless Supplier from and against any and all third party claims, suits, proceedings or actions of any kind whatsoever arising out of, related to, resulting from, or, connected with Customer's use of such Third Party Data.

3.3 Integration with Third Party Offerings. The Supplier Services may contain features designed to interoperate with Third Party Offerings (e.g., Google, Facebook or Twitter applications). To use such features, Customer may be required to obtain access to such Third Party Offering from their providers. If the provider of any Third Party Offering ceases to make the Third Party Offering available for interoperation with the corresponding Supplier Service features on reasonable terms, Supplier may cease providing such features without entitling Customer to any refund, credit, or other compensation.

3.4 Supplier Access Codes. To the extent that Supplier requires that Customer grant Supplier authorizations, passwords or other user credentials to a Third Party Offering ("**Supplier Access Codes**") to retrieve Customer Data or to enable interoperability with the Supplier Service, Customer shall promptly provide such Supplier Access Codes. Supplier shall not share, reassign, divulge or disclose any Supplier Access Codes except to Supplier employees or contractors specifically engaged in the performance of the Services. Supplier Access Codes shall constitute Customer's Confidential Information under these Terms.

3.5 Third Party Hosting. Supplier may use the services of one or more third parties to deliver any part of the Supplier Services. Supplier will pass-through any warranties to the extent that Supplier receives any from its then current third-party service provider that it can provide to Customer. Customer agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Customer from time to time.

4. PASSWORDS; SECURITY.

4.1 Passwords. Supplier will issue to Customer user logins and passwords to access and use the Supplier Service. Customer shall be responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the Customer to which it was issued. Customer is solely responsible for any and all access and use of the Supplier Services that occurs using logins and passwords Supplier issues to Customer. Customer shall not share passwords. Customer agrees to immediately notify Supplier of any unauthorized use of any account or login and password issued to Customer, or any other breach of security known to Customer. Supplier shall have no liability for any loss or damage arising from Customer's failure to comply with the terms set forth in this Section.

4.2 No Circumvention of Security. Customer may not circumvent or otherwise interfere with any user authentication or security of the Supplier Service. Customer will immediately notify Supplier of any breach, or attempted breach, of security known to Customer.

4.3 Security. Supplier will use commercially reasonable efforts to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data in a manner consistent with what Supplier supplies generally to its other customers. Notwithstanding the foregoing, Customer acknowledges that, notwithstanding any security precautions deployed by Supplier, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Supplier Services and Customer Data. Supplier cannot and does not guaranty the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet or otherwise or that any such security precautions will be adequate or sufficient. Supplier shall not (a) modify Customer Data, (b) disclose Customer Data except as compelled by law or as expressly permitted in writing by Customer, or (c) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.

5. CUSTOMER OBLIGATIONS.

5.1 Customer System. Customer is responsible for (a) obtaining, deploying and maintaining the Customer System, and all computer hardware, software, modems, routers and other communications equipment necessary for Customer to access and use the Supplier Services via the Internet; (b) contracting with third party ISP, telecommunications and other service providers to access and use the Supplier Services via the Internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Supplier shall not be responsible for supplying any hardware, software or other equipment to Customer under these Terms.

5.2 Acceptable Use Policy. Customer shall be solely responsible for its actions while using the Supplier Service. Customer acknowledges and agrees: (a) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the Supplier Service, including without limitation the provision and storage of Customer Data; (b) not to send or store data on or to the Supplier Service which violates the rights of any individual or entity established in any jurisdiction; (c) not to upload in any way any information or content that contain Malicious Code or data that may damage the operation of the Supplier Services or another's computer or mobile device; (d) not to upload in any way any data regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity, including any information comprised of either "Protected Health Information" (PHI) subject to and defined by the Health Insurance Portability and Accountability Act, or an individual's first name and last name, or first initial and last name, in combination with any one or more of the following data elements that relate to such individual: Social Security number, driver's license number or state-issued identification card number, financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account or any other "Personally Identifiable Information" (PII) as such term may be defined by applicable law; (e) not to use the Supplier Service for illegal, fraudulent, unethical or inappropriate purposes; (f) not to interfere or disrupt networks connected to the Supplier Service or interfere with other ability to access or use the Supplier Service; (g) not to distribute, promote or transmit through the Supplier Service any unlawful, harmful, obscene, pornographic or otherwise objectionable material of any kind or nature; (h) not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (i) not to interfere with another customer's use and enjoyment of the Supplier Service or another person or entity's use and enjoyment of similar services; (j) not to use the Supplier Service in any manner that impairs the Supplier Service, including without limitation the servers and networks on which the Supplier Service is provided; (k) to comply with all regulations, policies and procedures of networks connected to the Supplier Service and Supplier's service providers; and (l) to use the Supplier Services only in accordance with the Documentation. Customer acknowledges and agrees that Supplier neither endorses the contents of any Customer communications, Customer Data, or Other Information (as defined in Section 9.2 (Customer Data) below) nor assumes any responsibility for any offensive material contained therein, any infringement of third party Intellectual Property Rights arising therefrom or any crime facilitated thereby. Supplier may remove any violating content posted or stored using the Supplier Service or transmitted through the Supplier Service, without notice to Customer. Notwithstanding the foregoing, Supplier does not guarantee, and does not and is not obligated to verify, authenticate, monitor or edit the Customer Data, Other Information, or any other information or data input into or stored in the Supplier Service for completeness, integrity, quality, accuracy or otherwise. Customer shall be responsible and liable for the completeness, integrity, quality and accuracy of Customer Data and Other Information input into the Supplier Services. Supplier reserves the right to amend, alter, or modify Customer's conduct requirements as set forth in these Terms at any time. Supplier may deliver notice of such updated requirements to Customer via e-mail or through the Supplier Services. Customer's continued access to and use of the Supplier Services following issuance of such updated Customer requirements shall constitute Customer's acceptance thereof. Supplier may upon written notice to Customer amend this Section 5.2.

5.3 Accuracy of Customer's Contact Information; Email Notices. Customer agrees to provide accurate, current and complete information as necessary for Supplier to communicate with Customer from time to time regarding the Services, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform Supplier of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from Supplier at the e-mail addresses specified by Customer for login purposes. In addition, Customer agrees that Supplier may rely and act on all information and instructions provided to Supplier by Customer from the above-specified e-mail address.

5.4 **Temporary Suspension.** Supplier may temporarily suspend Customer's access to the Supplier Services in the event that Customer is engaged in, or Supplier in good faith suspects Customer is engaged in, any unauthorized conduct (including, but not limited to any violation of these Terms). Supplier will attempt to contact Customer prior to or contemporaneously with such suspension; provided, however, that Supplier's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. Customer agrees that Supplier shall not be liable to Customer or any other third party if Supplier exercises its suspension rights as permitted by this Section. Upon determining that Customer has ceased the unauthorized conduct leading to the temporary suspension to Supplier's reasonable satisfaction, Supplier shall reinstate Customer's access and use of the Supplier Services. Notwithstanding anything in this Section to the contrary, Supplier's suspension of Supplier Services is in addition to any other remedies that Supplier may have under these Terms or otherwise, including but not limited to termination of these Terms for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Supplier may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

6. **AVAILABILITY; SUPPORT SERVICES.**

6.1 **Availability and Support Services.** No service level agreement is offered or made in connection with these Terms. Supplier has no obligation to support or maintain the Supplier Services during the Subscription Term in any way, correct any errors or deficiencies in the Supplier Services or provide updates, new builds or error corrections, or provide services to the Customer. NOTWITHSTANDING THE FOREGOING, SUPPLIER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST DATA OR FOR ANY SUPPLIER SERVICES DOWNTIME. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SUPPLIER SERVICE IS NOT A CRITICAL CARE SYSTEM OR A PERMANENT DATA STORAGE SOLUTION.

7. **DISCLAIMER.**

7.1 **Disclaimer.** THE SUPPLIER SERVICES ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SUPPLIER SERVICE AND ANY SERVICES THAT SUPPLIER MAY HAPPEN TO PROVIDE DURING THE SUBSCRIPTION TERM IS AT ITS OWN RISK. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ANY SOFTWARE PROVIDED THROUGH THE SUPPLIER SERVICES IS LICENSED AND NOT SOLD.

NO AGENT OF SUPPLIER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SUPPLIER AS SET FORTH HEREIN.

8. **CONFIDENTIALITY.**

8.1 **Confidential Information.** "Confidential Information" means any and all non-public technical and non-technical information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to these Terms, that is marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; (c) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving

Party in the course of Disclosing Party's business; and (d) the terms of these Terms. Confidential Information of Supplier shall include the Supplier Service, the documentation, the pricing, and the terms and conditions of these Terms. Confidential Information also includes all summaries and abstracts of Confidential Information.

8.2 **Non-Disclosure.** Each party acknowledges that in the course of the performance of these Terms, it may obtain the Confidential Information of the other party. The Receiving Party shall, at all times, both during the Term and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under these Terms. Each party agrees to secure and protect the other party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees, affiliates or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, affiliates and agents who need access to such Confidential Information in order to effect the intent of these Terms and who are subject to confidentiality obligations at least as stringent as the obligations set forth in these Terms.

8.3 **Exceptions to Confidential Information.** The obligations set forth in Section 8.2 (Non-Disclosure) shall not apply to the extent that Confidential Information includes information which: (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) was developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of these Terms or any obligation of confidentiality by the Receiving Party. Nothing in these Terms shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

8.4 **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

9. **PROPRIETARY RIGHTS.**

9.1 **Supplier Services.** As between Supplier and Customer, all right, title and interest in the Supplier Services and any other Supplier materials furnished or made available hereunder, and all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Customer regarding the Supplier Services, including all copyright rights, patent rights and other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Supplier or Supplier's licensors and providers, as applicable. Customer shall periodically provide Supplier with written feedback regarding Customer's use of the Supplier Services, the functionality of the Supplier Services, any bugs, errors or deficiencies that Customer encounters regarding the operation and functionality of the Supplier Services and any suggestions that Customer may have regarding improvement of such operation and functionality ("**Feedback**"). Additionally, Customer shall promptly respond to any questions that Supplier may have regarding such Feedback or to any other questions Supplier may have regarding Customer's use of the Supplier Services. Customer hereby does and will irrevocably assign to Supplier all Feedback and all Intellectual Property Rights in the Feedback.

9.2 **Customer Data.** As between Supplier and Customer, all right, title and interest in (a) the Customer Data, (b) other information input into the Supplier Service by Customer (collectively, "**Other**

Information”) and (c) all Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Customer. Customer hereby grants to Supplier a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Supplier to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Other Information as a part of the Aggregated Statistics (as defined in Section 11.3 below). To the extent that receipt of the Customer Data requires Supplier to utilize any account information from a third-party service provider, Customer shall be responsible for obtaining and providing relevant account information and passwords, and Supplier hereby agrees to access and use the Customer Data solely for Customer’s benefit and as set forth in these Terms. As between Supplier and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer represents, warrants and covenants that (i) the Customer Data will not include any PII or PHI (nor will the Customer upload any PII or PHI to the Supplier Service or otherwise provide PII or PHI to the Supplier); and (ii) it has all rights and has received all needed consents to upload the Customer Data to the Supplier Service and to grant the licenses to such Customer Data granted herein (the “**Customer Data Warranty**”). Customer shall, at its cost and expense, fully defend (except as otherwise provided below), indemnify, and hold harmless Supplier, its successors and assigns, and each of its (and its successors’ and assigns’) affiliates and each of Supplier’s and its (and its successors’ and assigns’) affiliates’ respective officers, directors, employees, agents and other customers (collectively, the “**Indemnified Parties**”) from and against any and all (x) third party claims, suits, proceedings or actions of any kind whatsoever brought against an Indemnified Party (each a “**Claim**”) arising out of, related to, resulting from, or, connected with any breach of this Customer Data Warranty and (y) damages, settlement amounts, losses, liabilities, costs and expenses (includes reasonable attorneys’ fees, expert witness fees), penalties, fines incurred or suffered by any Indemnified Party arising out of, related to or connected with a Claim, including without limitation, the damages and settlement amounts paid to the third party bringing the Claim. Unless otherwise specified in a separate written agreement signed by Supplier, Supplier may delete Customer Data stored on the Supplier Service at any time.

9.3 **Aggregated Statistics.** Notwithstanding anything else in these Terms or otherwise, Supplier may monitor Customer’s use of the Services and use data and information related to such use, Customer Data, and Other Information in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Supplier Services (“**Aggregated Statistics**”). As between Supplier and Customer, all right, title and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by Supplier. Customer acknowledges that Supplier will be compiling Aggregated Statistics based on Customer Data, Other Information, and information input by other customers into the Supplier Service and Customer agrees that Supplier may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Customer or its Confidential Information.

9.4 **Supplier Developments.** All inventions, works of authorship and developments conceived, created, written, or generated by or on behalf of Supplier, whether solely or jointly, including without limitation all Deliverables (“**Supplier Developments**”) and all Intellectual Property Rights therein, shall be the sole and exclusive property of Supplier. Customer agrees that, except for Customer Confidential Information, to the extent that the ownership of any contribution by Customer or its employees to the creation of the Supplier Developments is not, by operation of law or otherwise, vested in Supplier, Customer hereby assigns and agrees to assign to Supplier all right, title and interest in and to such Supplier Developments, including without limitation all the Intellectual Property Rights therein, without the necessity of any further consideration.

9.5 **Further Assurances.** To the extent any of the rights, title and interest in and to Feedback or Supplier Developments or Intellectual Property Rights therein cannot be assigned by Customer to Supplier, Customer hereby grants to Supplier an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title and interest. If the foregoing assignment and license are not enforceable, Customer agrees to waive and never assert against Supplier those non-assignable and non-licensable rights, title and interest. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as Supplier may reasonably request, to perfect ownership of the Feedback. If Customer is unable or unwilling to execute any such

document or take any such action, Supplier may execute such document and take such action on Customer's behalf as Customer's agent and attorney-in-fact. The foregoing appointment is deemed a power coupled with an interest and is irrevocable.

10. **LIMITATION OF LIABILITY.**

10.1 **No Consequential Damages.** NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, EVEN IF SUPPLIER OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SUPPLIER SERVICE, SUPPORT SERVICES OR THE RESULTS THEREOF. SUPPLIER WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

10.2 **Limits on Liability.** NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE AMOUNTS PAID BY CUSTOMER TO SUPPLIER UNDER THESE TERMS DURING THE PERIOD OF SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

10.3 **Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 10 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

11. **TERM AND TERMINATION.**

11.1 **Term.** The term of these Terms commence on the Effective Date and continues until the expiration or termination of the Subscription Term(s), unless earlier terminated as provided in these Terms.

11.2 **Termination for Convenience.** At any time, either party shall have the right to terminate any Subscription Term for convenience immediately on written notice to the other party; provided, however, that under no circumstances shall Customer be entitled to any refund of any Fees for such terminated Subscription Term.

11.3 **Effects of Termination.** Upon expiration or termination of these Terms, Customer's use of and access to the Supplier Service shall cease and Supplier may delete any Customer Data stored via the Supplier Service. In addition, within ten (10) days of the effective date of termination each Receiving Party shall: (a) return to the Disclosing Party, or at the Disclosing Party's option, the Receiving Party shall destroy, all items of Confidential Information (other than the Customer Data) then in the Receiving Party's possession or control, including any copies, extracts or portions thereof, and (b) upon request shall certify in writing to Disclosing Party that it has complied with the foregoing.

11.4 **Survival.** This Section and Sections 1, 2.1, 2.3, 7, 9, 10, 11.3, and 12 shall survive any termination or expiration of these Terms.

12. **MISCELLANEOUS.**

12.1 **Notices.** All notices which any party to these Terms may be required or may wish to give may be given by addressing them to the other party at the addresses set forth below (or at such other addresses as may be designated by written notices given in the manner designated herein) by (a) personal delivery, (b) sending such notices by commercial overnight courier with written verification of actual receipt, (c) by email, effective (A) when the sender receives an automated message from the recipient confirming delivery or (B) one hour after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message

that the email has not been delivered, whichever happens first, but if the delivery or receipt is on a day which is not a business day or is after 5:00 pm (addressee's time) it is deemed to be received at 9:00 am on the following business day, or (d) sending them by registered or certified mail. If so mailed or otherwise delivered, such notices shall be deemed and presumed to have been given on the earlier of the date of actual receipt or three (3) days after mailing or authorized form of delivery. All communications and notices to be made or given pursuant to these Terms shall be in the English language.

12.2 Governing Law. These Terms and the rights and obligations of the parties to and under this agreement shall be governed by and construed under the laws of the United States and the State of Massachusetts as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms. The parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. Any dispute arising out of or in connection with these Terms, including but not limited to any question regarding its existence, interpretation, validity, performance, or termination, or any dispute between the parties arising from the parties' relationship created by these Terms, shall be referred to and finally resolved by arbitration administered by the American Arbitration Association under its rules. The number of arbitrators shall be one (1). The parties shall endeavor to agree upon the sole arbitrator and jointly nominate the arbitrator. If the parties cannot agree upon the sole arbitrator within a time prescribed by AAA, the parties shall request the AAA to propose five (5) arbitrators and each party shall rank the proposed arbitrators. The AAA shall appoint an arbitrator from the list of five (5), based upon the parties' rankings. The seat, or legal place of arbitration shall be Massachusetts, United States. Notwithstanding the foregoing, Supplier has the right to pursue equitable relief in the state and federal courts located in Massachusetts, and Customer agrees to the exclusive jurisdiction and venue of such courts.

12.3 General. Customer shall not assign its rights hereunder, or delegate the performance of any of its duties or obligations hereunder, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of Supplier. Any purported assignment in violation of the preceding sentence is null and void. Subject to the foregoing, these Terms shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. Except as otherwise specified in these Terms, these Terms may be amended or supplemented only by a writing that refers explicitly to these Terms and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. If any of these Terms is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Terms will remain in full force. The parties are independent contractors and nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. These Terms, including all applicable Order Forms, constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. Except for your payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under these Terms when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder.