Software as a Service Agreement

TERMS AND CONDITIONS

This Software as a Service Agreement Terms and Conditions ("Terms and Conditions") sets forth the terms and conditions of the Agreement executed by Service Point Pro, LLC, a New Mexico limited liability company, with offices located at 5000 Edith Blvd. NE, Albuquerque, NM 87107 ("**Provider**") and each "Client" as that term is defined in the Software as a Service Agreement executed by the Client (the "Agreement").

If there are any conflicts or differences in the language or terms of the Agreement or these Terms and Conditions, these Terms and Conditions shall govern and control the relationship of Client and Provider.

1.   Definitions.

"**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise/ownership of more than 49% of the voting securities of a Person.

"**Agreement**" has the meaning set forth in the preamble. Further, any reference to Agreement herein is intended to encompass the terms set forth in the Agreement as well as these Terms and Conditions, which are incorporated into the Agreement.

"**Authorized Users**" means Client's employees, consultants, contractors, and agents (a) who are authorized by Client to access and use the Services under the rights granted to Client pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

"**Availability Requirement**" has the meaning set forth in Section 5.2.

"**Available**" has the meaning set forth in Section 5.2.

"**Backup Policy**" has the meaning set forth in Section 6.

"**Confidential Information**" has the meaning set forth in Section 9.1.

"**Client**" has the meaning set forth in the preamble.

"**Client Data**" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Client or an Authorized User by or through the Services [or that incorporates or is derived from the Processing of such information, data, or content by or through the Services]. For the avoidance of doubt, Client Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Client or any Authorized User.

"**Client Failure**" has the meaning set forth in Section 4.2.

"**Client Indemnitee**" has the meaning set forth in Section 12.1.

"**Client Systems**" means the Client's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services.

"**Disclosing Party**" has the meaning set forth in Section 9.1.

"**Documentation**" means any manuals, instructions, or other documents or materials that the Provider provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

"**Effective Date**" has the meaning set forth in the preamble.

"**Exceptions**" has the meaning set forth in Section 5.2.

"**Fees**" has the meaning set forth in Section 8.1.

"**Force Majeure Event**" has the meaning set forth in Section 15.8(a).

"**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Client or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

"**Indemnitee**" has the meaning set forth in Section 12.3.

"**Indemnitor**" has the meaning set forth in Section 12.3.

"**Initial Term**" has the meaning set forth in Section 14.1.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Losses**" means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"**Process**" means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information, or other content[, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy]. "**Processing**" and "**Processed**" have correlative meanings.

"**Provider**" has the meaning set forth in the preamble.

"**Provider Disabling Device**" means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Client's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

"**Provider Indemnitee**" has the meaning set forth in Section 12.2.

"**Provider Materials**" means the Services, Specifications, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and

inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider's monitoring of Client's access to or use of the Services, but do not include Client Data.

"**Provider Personnel**" means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

"**Provider Systems**" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

"**Receiving Party**" has the meaning set forth in Section 9.1.

"**Reimbursable Expenses**" has the meaning set forth in Section 8.7.

"**Renewal Term**" has the meaning set forth in Section 14.2.

"**Representatives**" means, with respect to a party, that party's employees, officers, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

"**Resultant Data**" means data and information related to Client's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

"**Scheduled Downtime**" or **"Downtime"** has the meaning set forth in Section 5.

"**Service Allocation**" has the meaning set forth in Section 3.2.

"**Service Credit**" has the meaning set forth in Section 5.3.

"**Service Level Failure**" has the meaning set forth in Section 5.2.

"**Service Period**" has the meaning set forth in Section 5.2.

"**Services**" means the software-as-a-service offering described in **Exhibit A** of the Agreement.

"**Specifications**" means the specifications for the Services set forth in **Exhibit A** of the Agreement**.**

"**Subcontractor**" has the meaning set forth in Section 2.7.

"**Support Exhibit**" has the meaning set forth in Section 5.4.

"**Support Services**" has the meaning set forth in Section 5.4

"**Term**" has the meaning set forth in Section 14.1/Section 14.2.

"**Territory**" means "The Continental United States"

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Provider.

2.   Services.

2.1   Access and Use. Subject to and conditioned on Client's and its Authorized Users' compliance with the terms and conditions of this Agreement, Provider hereby grants Client a non-exclusive, non-transferable (except in compliance with Section 15.6) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Client's internal use. Provider shall provide to Client the Access Credentials within 30 days following the Effective Date. The total number of Authorized Users will not exceed the number set forth in **Exhibit B** of the Agreement, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.2   Documentation License. Provider hereby grants to Client a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.6) license to use the Documentation during the Term solely for Client's internal business purposes in connection with its use of the Services.

2.3   Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a)   Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b)   Client has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Client Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

Notwithstanding anything to the contrary in the Agreement or Terms and Conditions, all Services, including all Processing of Client Data by or on behalf of Provider shall be provided solely from within, and on computers, systems, networks, and other infrastructure located in the United States of America.

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2.4   Reservation of Rights. Nothing in the Agreement or Terms and Conditions grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Provider Materials, and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

2.5   Service Management. Each party shall, throughout the Term, maintain within its organization an Account Manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity

2.6   Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its clients; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

2.7   Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

2.8   Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its sole discretion, that: (i) Client or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under the Agreement and Terms and Conditions or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) the Agreement expires or is terminated. This Section 2.8 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under the Agreement.

3.   Use Restrictions; Service Usage and Data Storage.

3.1   Use Restrictions. Client shall abide by all local, state, national, and international laws and regulations applicable to Client's use of the Services or Provider

Materials. Client shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by the Agreement and Terms and Conditions, and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as the Agreement and Terms and Conditions expressly permit:

(a)   copy, modify, or create derivative works or improvements of the Services or Provider Materials;

(b)   rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(c)   reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;

(d)   bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(e)   input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code, including without limitation, content that contain viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, or data that may damage the operation of the Services or another's computer or mobile device;

(f)   damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Provider Systems, or Provider's provision of services to any third party, in whole or in part;

(g)   remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;

(h)   access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider client), or that violates any applicable Law;

(i)   access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage;

(j)   invade anyone's privacy by attempting to harvest, collect, store, or publish private or personally identifiable information, such as passwords, account information, credit card numbers, addresses, or other contact information without their knowledge and consent

(k)   use the Services for illegal, fraudulent, unethical or inappropriate purposes;

(l)   not to interfere with or disrupt networks connected to the Services or interfere with others ability to access or use the Services;

(m)   access or use the Services or Provider Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or

(n)   otherwise access or use the Services or Provider Materials beyond the terms of this Agreement or for purposes other than as outlined herein.

3.2   Service Usage and Data Storage. Provider will use commercially reasonable efforts to notify Client in writing if Client has reached two (2) Terabytes of its then current Service Allocation and Client may increase its Service Allocation and corresponding Fee obligations in accordance with **Exhibit A** of the Agreement. Client acknowledges that exceeding its then-current Service Allocation may result in service degradation for Client and other Provider clients and agrees that:

(a)   Provider has no obligation to permit Client to exceed its then-current Service Allocation; and

(b)   Client is not entitled to any Service Level Credits for periods during which Client exceeds its then-current Service Allocation, regardless of whether the Services fail to meet the Availability Requirement during such period.]

4.   Client Obligations.

4.1   Client Systems and Cooperation. Client shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Client Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to Client's premises and Client Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with the Agreement.

4.2   Effect of Client Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Client Failure**").

4.3   Corrective Action and Notice. If Client becomes aware of any actual or threatened activity prohibited by Section 3.1, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

4.4   Non-Solicitation. During the Term and for two years after, Client shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior 12 months employed or engaged by Provider or any Subcontractor In the event of a violation of this Section 4.4, Provider will be entitled to liquidated damages equal to the compensation paid by Provider to the applicable employee or contractor during the prior 12 months.

5.   Service Levels and Credits.

5.1   Scheduled Downtime. Provider may schedule maintenance related down time during non-business hours without providing notice to Client; provided that Provider will provide advance notice to Client if Provider is reasonably able to anticipate such scheduled maintenance and such scheduled maintenance will result in down time of more than one hour. Provider may schedule down time at any time of the day with minimal notice according to circumstances if Provider reasonably determines that such action is necessary to protect the security or performance of the system and shall minimize the duration of such down time to the greatest extent possible.

5.2   Service Levels. Subject to the Terms and Conditions, Provider will use commercially reasonable efforts to make the Services Available at least ninety-nine percent (99%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1. "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Client and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Client or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) [act or omission by Client or any Authorized User/access to or use of the Services by Client or any Authorized User, or using Client's or an Authorized User's Access Credentials, that does not strictly comply with the Agreement and the Specifications; (b) Client Failure; (c) Client's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider

pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 2.8.

5.3   Service Level Failures and Remedies. In the event of a Service Level Failure, Provider shall issue a credit to Client in the amount of fifty percent (50%) of the monthly Fees for the Services due for the Service Period the Service Level Failure occurred (each a "**Service Credit**"), subject to the following:

(a)   Provider has no obligation to issue any Service Credit unless: (i) Client reports the Service Failure to Provider immediately on becoming aware of it; and (ii) requests such Service Credit in writing within 60 days of the Service Level Failure; and

(b)   in no event will a Service Level Credit for any Service Period exceed 100 percent (100%)of the total Fees that would be payable for that Service Period if no Service Level Failure had occurred.

Any Service Credit payable to Client under the Agreement and Terms and Conditions will be issued to Client in the 60 days following the Service Period in which the Service Level Failure occurred. This Section 5.3 sets forth Provider's sole obligation and liability and Client's sole remedy for any Service Level Failure.

5.4   Service Support. The Services include Provider's standard client support services ("**Support Services**") at the support levels Client purchases in accordance with the Provider service support schedule. Provider may amend the Support Exhibit from time to time in its sole discretion.

6.   Data Backup. The Services do not replace the need for Client to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CLIENT DATA.

7.   Security.

7.1   Data Breach Procedures. Provider maintains a data breach plan in accordance with the criteria set forth and shall implement the procedures required under such data breach plan on the occurrence of a data breach.

7.2   Client Control and Responsibility. Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services ("**Client Systems**"); (d) the security and use of Client's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Client Systems or its or its Authorized Users' Access Credentials, with or

without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

7.3   Access and Security. Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Client Data, including the uploading or other provision of Client Data for Processing by the Services.

8.   Fees and Payment.

8.1   Fees. Client shall pay Provider the fees set forth in **Exhibit A** of the Agreement ("**Fees**") in accordance with this Section 8.

8.2   Taxes. All Fees and other amounts payable by Client under the Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Provider's income.

8.3   Payment. Client shall authorize Provider and Client's bank to make an "autopay" debit to the Client's bank account for the amounts set forth in **Exhibit A** of the Agreement on the first day of each month.

8.4   Late Payment. If Client fails to make any payment when due then, in addition to all other remedies that may be available:

    (a)   Provider may charge interest on the past due amount at the rate of 5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

    (b)   Client shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and

    (c)   if such failure continues for 21 days following written notice thereof, Provider may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other Person by reason of such suspension.

8.5   No Deductions or Setoffs. All amounts payable to Provider under the Agreement shall be paid by Client to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

8.6   Fee Increases. Provider may increase Fees no more than once annually for any contract year by providing posted notice to Client at least 60 calendar days prior to the commencement of that contract year.

8.7   Reimbursable Expenses. Client shall reimburse Provider for out-of-pocket expenses incurred by Provider in connection with performing the Services ("**Reimbursable Expenses**").

8.8   Audits.

        (a)   Audit Procedure. Provider or its nominee (including its accountants and auditors) may in Provider's sole discretion and with reasonable notice, inspect and audit Client's use of the Services under the Agreement at any time during the Term. Client shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of Provider with respect to such audit. Provider shall only examine information directly related to Client's use of the Software.

        (b)   Cost and Results of Audit. If the audit determines that Client's use of the Services exceeded the usage permitted by the Agreement and these Terms and Conditions, Client shall pay to Provider all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 8.4. If the audit determines that such excess use equals or exceeds the Client's permitted level of use, Client shall also pay to Provider all reasonable costs incurred by Provider in conducting the audit. Client shall make all payments required under this Section 8.8 within 30 days of the date of written notification of the audit results.

9. Confidentiality.

9.1   Confidential Information. In connection with the Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). **Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, clients, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligation, in each case whether or not marked, designated, or otherwise identified as "confidential".

9.2   Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

        (a)   not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

        (b)   except as may be permitted by and subject to its compliance with Section 9.3, not disclose or permit access to Confidential Information other than to its

Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement and these Terms and Conditions; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.2; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;

(c)   safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care;

(d)   promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps with Disclosing Party to prevent further unauthorized use or disclosure; and

(e)   ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

(f)   Notwithstanding any other provisions of the Agreement and these Terms and Conditions, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.3   Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.2; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.39.3, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, 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.

10.   Intellectual Property Rights.

10.1   Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title,

and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Client has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

10.2   Client Data. As between Client and Provider, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 10.3.

10.3   Consent to Use Client Data. Client hereby irrevocably grants all such rights and permissions in or relating to Client Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce the Agreement and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder.

11.   Representations and Warranties.

11.1   Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a)   it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b)   it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under the Agreement;

(c)   the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d)   when executed and delivered by both parties, the Agreement along with these Terms and Conditions will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2   Additional Provider Representations, Warranties, and Covenants. Provider represents, warrants, and covenants to Client that Provider will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

11.3   Additional Client Representations, Warranties, and Covenants. Client represents, warrants, and covenants to Provider that Client owns or otherwise has and will

have the necessary rights and consents in and relating to the Client Data so that, as received by Provider and Processed in accordance with the Agreement and Terms and Conditions, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.4   DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND SECTION 11.2, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS." PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

USE OF THE SOFTWARE IS AT THE RISK OF THE USERS. CLIENT AGREES THAT THE PROVIDER ASSUMES NO RESPONSIBILITY OR RISK OF LOSS RESULTING FROM THE USE OF THE SOFTWARE AND THE INPUT OR UPLOADING OF ANY INFORMATION INTO THE SOFTWARE. FURTHER, PROVIDER WILL NOT BE LIABLE FOR DAMAGES (INCLUDING CONSEQUENTIAL OR SPECIAL DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SOFTWARE, AND ANY CLAIMS WITH RESPECT THERETO ARE HEREBY WAIVED, WHETHER BASED ON CONTRACTUAL, TORT OR OTHER GROUNDS, EVEN IF PROVIDER HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.

PROVIDER IS NOT RESPONSIBLE IN ANY WAY, EITHER DIRECTLY OR INDIRECTLY, FOR ANY COMMUNICATIONS DIFFICULTIES WHICH COULD LEAD TO THE INTERRUPTION OF ACCESS TO THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, OUTAGES OR DEGRADATION OR FAILURE OF TELECOMMUNICATION SERVICES, AND OTHER CIRCUMSTANCES BEYOND PROVIDER'S CONTROL.

12.   Indemnification.

12.1   Provider Indemnification. Provider shall indemnify, defend, and hold harmless Client, its permitted successors, and permitted assigns (each, a "**Client Indemnitee**") from and against any and all Losses incurred by Client Indemnitee resulting from any Action by a

third party (other than an Affiliate of Client) that Client's use of the Services (excluding Client Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's US patents, copyrights, or trade secrets in the Territory. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

(a)   Third-Party Materials or Client Data;

(b)   access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Client's use in the Documentation, unless otherwise expressly permitted by Provider in writing;

(c)   modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification;

(d)   failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of Provider; or

(e)   act, omission, or other matter described in Section 12.2(a), Section 12.2(b), Section 12.2(c), or Section 12.2(d), whether or not the same results in any Action against or Losses by any Provider Indemnitee.

12.2   Client Indemnification. Client shall indemnify, defend, and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

(a)   Client Data, including any Processing of Client Data by or on behalf of Provider in accordance with this Agreement;

(b)   any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by Provider;

(c)   allegation of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants, or obligations under the Agreement; or

(d)   negligent or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with the Agreement.

12.3   Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2, as the case may be. The party seeking indemnification (the **"Indemnitee"**) shall cooperate with the other party (the **"Indemnitor"**) at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

12.4   Mitigation. If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(a)   obtain the right for Client to continue to use the Services and Provider Materials materially as contemplated by this Agreement;

(b)   modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under the Agreement; or

(c)   by written notice to Client, terminate the Agreement with respect to all or part of the Services and Provider Materials, and require Client to immediately cease any use of the Services and Provider Materials.

12.5   Sole Remedy. THIS SECTION 12 SETS FORTH CLIENT'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THE AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13.   Limitations of Liability.

13.1   EXCLUSION OF DAMAGES.IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2   CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THE AGREEMENT.

14.   Term and Termination.

14.1   Initial Term. The initial term of the Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until 12 months from such date (the "**Initial Term**").

14.2   Renewal Term. The Agreement will automatically renew for up to one (1) year additional successive one (1) year terms unless earlier terminated pursuant to the Agreement's express provisions or either party gives the other party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

14.3   Termination. In addition to any other express termination right set forth elsewhere in the Agreement:

(a)   Provider may terminate the Agreement, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than 21 days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1, Section 7 or Section 9;

(b)   either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach:

(i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c)   either party may terminate the Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4   Effect of Termination or Expiration. Upon any expiration or termination of the Agreement, except as expressly otherwise provided in the Agreement:

(a)   all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b)   Provider shall immediately cease all use of any Client Data or Client's Confidential Information and (i) promptly return to Client, or at Client's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client Data or Client's Confidential Information; and (ii) permanently erase all Client Data and Client's Confidential Information from all systems Provider directly or indirectly controls, provided that, for clarity, Provider's obligations under this Section 14.4(b) do not apply to any Resultant Data;

(c)   Client shall immediately cease all use of any Services or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or Provider's Confidential Information; (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Client directly or indirectly controls; and (iii) certify to Provider in a signed written instrument that it has complied with the requirements of this Section 14.4(c);

(d)   Provider may disable all Client and Authorized User access to the Provider Materials;

(e)   if Client terminates the Agreement pursuant to Section 14.3(b), Client will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will refund to Client Fees paid in advance for Services that Provider has not performed as of the effective date of termination;

(f)   if Provider terminates the Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the Agreement

remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefor.

14.5   Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: Section 3.1, Section 9, Section 11.4, Section 12, Section 13, Section 14.4, this Section 14.5, and Section 15.

15.   Miscellaneous.

15.1   Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to the Agreement.

15.2   Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3   Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as set forth in the Agreement (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4).

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.4   Interpretation. For purposes of the Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time

to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend the Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of the Agreement to the same extent as if they were set forth verbatim herein.

15.5 <u>Headings</u>. The headings in the Agreement and Terms and Conditions are for reference only and do not affect the interpretation of the Agreement or the Terms and Conditions.

15.6 <u>Entire Agreement</u>. The Agreement along with these Terms and Conditions constitute the sole and entire agreement of the parties with respect to the subject matter of the Agreement and Terms and Conditions, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

15.7 <u>Assignment</u>. Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under the Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Client (regardless of whether Client is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under the Agreement for which Provider's prior written consent is required. No assignment, delegation, or transfer will relieve Client of any of its obligations or performance under the Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

15.8 <u>Force Majeure</u>.

(a) <u>No Breach or Default</u>. In no event will Provider be liable or responsible to Client, or be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control (a "**Force Majeure Event**"), including (i) acts of God; (ii) flood, fire, earthquake, pandemic, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of the Agreement. Either party may terminate the Agreement if a Force Majeure Event continues substantially uninterrupted for a period of 30 days or more.

(b) <u>Affected Party Obligations</u>. In the event of any failure or delay caused by a Force Majeure Event, Provider shall give prompt written notice to Client stating the period of time the occurrence is expected to continue and use Commercially

reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.9 No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.

15.10 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of the Agreement or Terms and Conditions is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement or Terms and Conditions will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.11 Severability. If, for any reason, any provision of the Agreement or Terms and Conditions is held invalid, either in whole or part, such invalidity shall not affect any other provisions of the Agreement or Terms and Conditions, and each such other provision shall continue in full force and effect, but all only to the extent that the invalid provision can be severed from the Agreement or Terms and Conditions without altering the general intent or general effect of the Agreement or Terms and Conditions.

15.12 Governing Law; Submission to Jurisdiction. The Agreement and the Terms and Conditions are governed by and construed in accordance with the internal laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New Mexico. Any legal suit, action, or proceeding arising out of or related to the Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of New Mexico in each case located in the County of Bernalillo and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

15.13 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement or the transactions contemplated hereby.

15.14 Equitable Relief. Client acknowledges and agrees that a breach or threatened breach by Client of any of its obligations under Section 9, Section 3.1, Section 4.3, or Section 7.2, would cause Provider irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, Provider will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any

requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.15   Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to the Agreement, the prevailing party is entitled to recover its attorneys' fees and court costs from the non-prevailing party.

15.16   Counterparts. The Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of the Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

15.17   Google Maps. Google Maps presented to you through the Services are powered by Google. Your use of Google Maps is subject to the Google Maps Terms of Service, available online at https://www.google.com/intl/en-US_US/help/terms_maps.html, and https://www.google.com/intl/ALL/policies/privacy/index.html, and by using the Services, you are agreeing to be bound by such terms.

15.18   Notice Regarding Apple. This Section only applies to the extent you are using our mobile application on an iOS device. You acknowledge that this Agreement is between you and Provider only, not with Apple Inc. ("Apple"), and Apple is not responsible for the Services or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Services. If the Services fail to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including: (a) product liability claims; (b) any claim that the Services fail to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Services and/or your possession and use of the Services infringe a third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Services. Apple and Apple's subsidiaries are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary of this Agreement. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.