

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to all SaaS Subscription services previously, currently and subsequently purchased by End User from VAR, as those terms are defined herein.

1. Definitions.

- (a) **"Affiliate"** means any entity directly or indirectly controlling, controlled by or under common control by another entity. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
 - (b) **"Documentation"** shall mean any technical manuals, user documentation and other written materials relating to the operation and functionality of the SaaS Subscription that Licensor may provide to End User.
 - (c) **"End User"** means the entity purchasing the SaaS Subscription from VAR.
 - (d) **"End User Data"** means any data, information or material provided to Licensor or uploaded to the SaaS Subscription by or on behalf of End User in the course of End User using the SaaS Subscription, which may or may not include personal data, as applicable.
 - (e) **"End User Equipment"** means End User's computer hardware, software and network infrastructure used to access the SaaS Subscription.
 - (f) **"End User Error Incident"** means any SaaS Subscription unavailability related to End User's applications, End User Data, End User's Equipment, or the acts or omissions of any User of the SaaS Subscription.
 - (g) **"End User Materials"** means any data, information or materials, provided by End User, that are used in connection with the SaaS Subscription, including but not limited to technical information and functional specifications, user data, logos, photographs, compilations of facts, artwork, animations, video or audio files, or source materials for any of the foregoing. End User Materials shall include End User Data.
 - (h) **"Intellectual Property Rights"** means copyrights, trademarks, service marks, trade names, patents, trade secrets, database rights, design rights and other related proprietary or statutory rights that have been or subsequently exist pursuant to all applicable statutes, laws, regulations, treaties or common law in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded.
 - (i) **"Internet Disruptions"** means an action or inactions of an internet service provider that produces situations in which End User's connections to the internet may be impaired or disrupted, which may affect End User's access to the SaaS Subscription SaaS Subscription.
 - (j) **"Licensor"** means the party providing the SaaS Subscription to End User.
 - (k) **"Licensor Related Parties"** means, collectively, Licensor, its Affiliates, and their respective members, shareholders, partners, owners, officers, directors, employees, licensors, agents and representatives.
 - (l) **"Login"** means the username and password assigned by End User for each User.
 - (m) **"Malicious Code"** means any computer viruses, worms, Trojan horse programs or any other software that is intended to damage or alter a computer system or data.
 - (n) **"Order Form"** means the standard order form used by VAR pursuant to which End User purchases the SaaS Subscription.
 - (o) **"SaaS Subscription"** means the hosted, on-demand or web-based services offered by Licensor purchased by End User through VAR.
 - (p) **"Subscription Term"** means the term during which End User receives SaaS Subscription.
 - (q) **"Technology"** means all of Licensor's proprietary technology (including software modules, database or content within the database, hardware, products, Services, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to End User by Licensor in providing the SaaS Subscription.
 - (r) **"User"** means any individual accessing or using the SaaS Subscription.
 - (s) **"VAR"** means the Licensor partner or reseller from whom End User has purchased the SaaS Subscription.
- ### 2. SaaS Subscription Service.
- (a) Licensor will provide End User with use of the SaaS Subscription, which may include a browser interface and encrypted Login (when required) and transmission of, access to and storage of End User Data. Licensor may, at its sole discretion, enhance the SaaS Subscription from time to time, at no cost or expense to End User. Licensor or VAR shall configure the SaaS Subscription and any Service Deliverables used in conjunction with the SaaS Subscription, as applicable. Licensor will begin such configuration following a Statement of Work or Order Form executed by the Parties. Except as stated herein, End User may not customize the SaaS Subscription without Licensor's prior written consent. Licensor shall provide installation of any maintenance releases at its sole discretion, as part of the SaaS Subscription, at no extra charge to End User.
 - (b) Each User may be required to have a Login with unique user identification. Licensor reserves the right to require End

User to alter any password if Licensor believes it is no longer secure. End User shall not permit more than one User to use each Login to access the SaaS Subscription or otherwise share Login accounts, User identifications or passwords. End User is liable for all access to the SaaS Subscription and activities conducted by individuals accessing the SaaS Subscription using the Logins, including such individual's compliance with the terms herein.

- (c) Licensor will maintain the SaaS Subscription at a reputable third party Internet service provider and hosting facility, where it is subject to commercially reasonable security precautions to prevent unauthorized access to the SaaS Subscription. End User Data and the maintenance of End User Data and such procedures shall comply with industry standards for the type of information maintained. However, End User acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the SaaS Subscription, and Licensor will not be responsible for such acts.
 - (d) End User agrees to notify VAR and Licensor promptly if End User suspects any unauthorized use of End User's account or access to any password.
3. **Restrictions.** End User shall use the SaaS Subscription solely for End User's internal business purposes, in compliance with applicable law, and shall not: (i) make the SaaS Subscription or Software available to any unauthorized third party; (ii) send or store infringing, unlawful, defamatory or libelous material; (iii) send or store any Malicious Code; (iv) access the SaaS Subscription by any means other than the Login or otherwise attempt to gain unauthorized access to, or disrupt the integrity or performance of, the SaaS Subscription or the data contained therein; (v) modify, copy or create derivative works based on the SaaS Subscription; (vi) reverse engineer the SaaS Subscription or Software; (vii) access the SaaS Subscription or Software for the purpose of building, selling, marketing or otherwise, a competitive product or service or copying the Software or SaaS Subscription' features or user interface; or (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the SaaS Subscription or Software and on and in any Documentation. End User shall not make any attempt to overwhelm the server resources of the SaaS Subscription or otherwise induce a denial-of-service attack on the SaaS Subscription through some combination of search requests. If End User engages in activity that is not a legitimate use of the SaaS Subscription, such as security penetration tests, stress tests, spamming activity, or other activity for which the SaaS Subscription is not intended, such use will be considered a material breach of the Agreement and Licensor may shut down End User's access to the SaaS Subscription until such activity ceases, with such interruption not being counted against the above Service Availability.

4. **End User Responsibilities.**

- (a) End User agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with End User's use of the SaaS Subscription, including those related to data privacy, international communications and the transmission of technical or personal data. End User shall: (i) notify Licensor immediately of any unauthorized use of any Login or any other known or suspected breach of security; (ii) report to Licensor

immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by End User to be infringing or unlawful; and (iii) not impersonate another Licensor customer or provide false identity information to gain access to or use the SaaS Subscription.

- (b) End User shall be responsible for any costs in connection with establishment and maintenance of Internet connectivity to the SaaS Subscription, including, without limitation, telephone communications, internet service provider costs, computer hardware, fees charged by third parties, insurance, internet access software, or any other costs incurred by End User in accessing the SaaS Subscription.

5. **Service Availability.** Licensor shall make reasonable efforts to provide production environment service availability of 99.9% measured on a quarterly basis ("**Service Availability**") not including (i) End User Error Incidents, (ii) Force Majeure and (iii) Internet Disruptions. In order to enable Licensor to troubleshoot problems as necessary, Licensor uses an administrator account on each End User environment and may utilize manual testing to confirm such failure. An interruption in the SaaS Subscription shall not be considered a breach of Licensor's obligations hereunder if: (i) Licensor promptly takes all reasonable steps to restore the SaaS Subscription; or (ii) the interruption in SaaS Subscription results from a End User Error Incident, a Force Majeure, regularly scheduled or emergency maintenance, or due to an Internet Disruption.

6. **End User Data.**

- (a) Licensor does not own any End User Data. End User, not Licensor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all End User Data, and Licensor shall not be responsible or liable for: (i) damages resulting from Licensor's reliance on such End User Data and/or (ii) the deletion, correction, destruction, damage, or loss of any End User Data that result from End User's actions. Licensor is not responsible for restoring lost End User Data or damage to End User's data that results from End User's actions. End User hereby grants to Licensor a non-exclusive, fully-paid and royalty-free license to reproduce, distribute, perform, display and otherwise use the End User Data solely to provide the SaaS Subscription to End User. End User represents and warrants that: (i) End User owns or otherwise has the right to grant the license set forth in this Section 5(a) for the End User Data, and (ii) the End User Data does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity. Licensor has the right (but not the obligation) to review any End User Data and delete any End User Data that in the sole judgment of Licensor violates the Agreement, is prohibited content, is illegal, violates the rights, harms, or threatens the safety of any User or any other person, or creates liability for Licensor, its suppliers, or any user. Licensor reserves the right (but has no obligation) to investigate and take action in its sole discretion against End User if End User violates this provision or any other provision of the Agreement, including without limitation, removing End User Data from the SaaS Subscription, terminating the

Agreement, reporting End User to law enforcement authorities, and taking legal action against End User.

- (b) Licensor will maintain the End User Data on server(s) at Licensor's designated site and provide backups to End User's Data in accordance with Licensor's then-current data backup policies. Licensor will use commercially reasonable efforts to perform restorations to the SaaS Subscription in the event of a service failure. Licensor reserves the right to withhold End User Data without notice for any breach, including, without limitation, End User's non-payment.

7. Intellectual Property Ownership. All right, title and interest, including all Intellectual Property Rights, in and to the Software, SaaS Subscription, Technology, Documentation and training materials Licensor provides are owned by Licensor or its suppliers, as applicable, and are protected by intellectual property laws, including copyright, patent, trademark, and/or trade secret laws. End User hereby assigns to Licensor any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by End User relating to the Software, SaaS Subscription, Documentation or Technology. Licensor may use such submissions as it deems appropriate in its sole discretion. Licensor hereby grants End User a limited, non-sub-licensable license to reproduce and display the End User Data (excluding any Software code) solely for End User's personal use in connection with using the SaaS Subscription. This Agreement is not a sale and does not convey to End User any rights of ownership in or related to the Software, SaaS Subscription, Documentation, Technology or the Intellectual Property Rights owned by Licensor and its suppliers. The Licensor name, the Licensor logo, and the product names associated with the SaaS Subscription are trademarks of Licensor or its suppliers, and no right or license is granted to use them. End User will not accrue any residual rights to the Software, Technology, Documentation or SaaS Subscription, including any rights to the Intellectual Property Rights in connection therewith. End User will not remove, deface or obscure any of Licensor's or its suppliers' copyright or trademark notices and/or legends or other proprietary notices on, incorporated therein, or associated with the SaaS Subscription. Any rights not expressly granted herein are reserved to Licensor and its licensors, as applicable.

8. Charges and Fees.

- (a) End User agrees to provide VAR with complete and accurate billing and contact information. This information includes End User's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact.
- (b) At any time, End User may add Users components (modules, cells and sites) and databases ("**Additional License Types**") provided Licensor and VAR have executed a written amendment. Additional License Types will be subject to the following: (i) added committed Additional License Types will be coterminous with the preexisting Subscription Term (either Initial Subscription Term or renewal term); and (ii) Additional License Types added in the middle of a billing month will be charged in full for that billing month. Any such Additional License Types will be charged an additional fee. End User will only have access if VAR has paid for any increase in Additional License Types at the time of execution of the amendment setting forth the Additional License Types. End User may only reduce the number of Users or other license types set forth in the Order Form, plus any Additional License Types purchased via an amendment

between Licensor and VAR, as applicable, at the end of each Subscription Term via an executed amendment between Licensor and VAR.

- (c) In addition to any other rights granted to Licensor herein, Licensor reserves the right to suspend or terminate this Agreement and End User's access to the SaaS Subscription if VAR's account becomes delinquent (falls into arrears).

9. Term and Termination.

- (a) This Agreement shall commence upon the date of acceptance of these General Terms and Conditions by End User.
- (b) If either Party fails to materially comply with any of the terms and conditions hereof and such Party fails to correct such non-compliance within thirty (30) days following written notice thereof from the other party, then such non-breaching Party may terminate this Agreement upon written notice thereof to the other Party. Failure to make timely payments is a material breach of this Agreement. In the event of such termination by Licensor under this Section 9, Licensor will retain all amounts paid by VAR or End User under the Agreement and End User shall pay for all amounts due and owing for the SaaS Subscription, including committed SaaS Subscription Fee for each Subscription Term, or any other fee or charge stipulated in an Order Form executed by VAR and End User and associated with End User's use of the SaaS Subscription.
- (c) Subject to applicable law, either Party may terminate this Agreement immediately with notice to the other Party (the "**Other Party**") if: (i) a receiver is appointed for the Other Party or the Other Party's property; (ii) the Other Party makes an assignment for the benefit of the Other Party's creditors; (iii) any proceedings are commenced by, for or against the Other Party under any bankruptcy, insolvency or debtor's relief law; or (iv) the Other Party commences steps to liquidate, dissolve or wind-up its business (each, a "**Bankruptcy Event**").
- (d) Upon termination of this Agreement ("**Termination**"), all licenses granted herein shall **automatically cease and End User shall discontinue all use of the SaaS Subscription. Any obligation of either Party which accrued prior to termination, including without limitation, any payment due and owing, and Sections 1** (Definitions), **7** (Intellectual Property Ownership), **8** (Charges and Fees), **9** (Term and Termination), **11** (Limitation of Liability), **12** (Indemnification), **13** (Confidential Information), and **14** (Miscellaneous) shall survive the Termination. Any obligation of End User's which accrued prior to termination, including without limitation any payment due and fees owed but not yet paid, shall survive the termination of this Agreement.
- (e) Upon Termination, End User may request Licensor to deliver, destroy, or render inaccessible and/or make available to End User, all End User Data within thirty (30) days of termination and Licensor will make available to End User an electronic copy of the End User Data. Subject to applicable law, Licensor will not provide End User Data unless all amounts due and owing for the Service, including committed Subscription Service Fee for each Subscription Term, Professional Services Fee, or any other fee or charge associated with End User's use of the Service and previously agreed to by End User have been paid by End User or VAR.

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After such 30-day period, Licensor shall have no obligation to maintain or provide any End User Data and may thereafter, unless legally prohibited, delete all End User Data in its systems or otherwise in its possession or under its control.

10. Representations and Warranties.

- (a) Representations and Warranties. Each Party represents and warrants that it has the legal power and authority to enter into this Agreement. End User represents and warrants that End User has neither falsely identified itself nor provided any false information to Licensor and that End User's billing information is correct.
- (b) Limited Warranty. Licensor warrants that the SaaS Subscription will, in all material respects, conform to and perform in accordance with Licensor's respective published documentation. Customer must report any breach of the foregoing warranty to Licensor pursuant to Section 14(d). Customer's exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in the SaaS Subscription so that it conforms to this warranty. Customer's use of the SaaS Subscription in breach of the Agreement shall immediately void the Software Warranty.
- (c) Warranty Disclaimer. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, THE LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 5(b) CONSTITUTES THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY LICENSOR WITH RESPECT TO THE LICENSOR PRODUCTS AND SERVICES. LICENSOR HEREBY EXPRESSLY DISCLAIMS FOR ITSELF AND ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND REPRESENTATIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT.

11. Limitation of Liability.

- (a) SUBJECT TO SECTION 7(d) BELOW, IN NO EVENT SHALL LICENSOR OR LICENSOR RELATED PARTIES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR, OR COSTS INCURRED AS A RESULT OF, LOSS OF TIME, LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, LOSS OF GOOD WILL, BUSINESS INTERRUPTION, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) SUBJECT TO SECTION 11(d) BELOW, IN NO EVENT SHALL LICENSOR'S OR LICENSOR RELATED PARTIES' AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE PAYMENTS MADE BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM.
- (c) WITH THE EXCEPTION OF PAYMENT OBLIGATIONS TO UNDISPUTED INVOICES, IN NO EVENT SHALL CUSTOMER'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE PAYMENTS MADE BY CUSTOMER DURING

THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LIABILITY ARISING FROM CUSTOMER'S MISUSE OF THE LICENSOR PRODUCTS AND SERVICES.

- (d) NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY IN RELATION TO ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED PURSUANT TO APPLICABLE LAW.

12. Indemnification.

- (a) Indemnification by Licensor. Provided that End User complies with the procedures set forth in Section 12(c) and subject to Section 12(d), Licensor will, at its expense and under its control (including selection of counsel), defend and/or settle any claim, suit or proceeding brought by a third party against End User, its Affiliates, or their respective officers, directors, employees and agents against any all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation incurred by Licensor) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by (i) the negligent or willful acts or omissions of Licensor, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors at all tiers (together with Licensor, the Licensor Parties); or (ii) failure to comply with any applicable law, rule, or regulation (each, a "Claim"). In addition, Licensor will pay any final judgment awarded against End User for such Claim or any settlement amount agreed to by Licensor and, subject to Section 12(d), any authorized and documented expenses incurred by End User.
- (b) Indemnification by End User. Provided that Licensor complies with the procedures set forth in Section 12(c), End User shall, at End User's expense, defend and/or settle any claim, suit or proceeding brought by a third party against Licensor its Affiliates, and their respective members, partners, owners, officers, directors, employees, licensors, agents and representatives and arising out of or related to: (i) the End User Data or End User Equipment; and (ii) End User's unauthorized use of the SaaS Subscription. In addition, End User will pay any judgment awarded against Licensor or any settlement amount agreed to by End User and any authorized expenses incurred by Licensor.
- (c) Procedure. If a Party (the "Indemnitee") receives any notice of a claim or other allegation with respect to which the other Party (the "Indemnitor") has an obligation of indemnity hereunder, then the Indemnitee will, in order to qualify for Indemnification under this Section 12(c), to the extent feasible, within twenty (20) days of receipt of such notice, provide the Indemnitor written notice, pursuant to Section 14(f) of such claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the claim provided, however, the Indemnitee's failure to provide such notice shall not relieve the Indemnitor from its obligations hereunder in the absence of any material prejudice to the Indemnitor. The Indemnitee will not make any payment or incur any costs or expenses with respect to such claim, except as requested by the Indemnitor or as necessary to comply with this procedure. The Indemnitee will not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim. The

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Indemnitor shall immediately assume the full control of the defense or settlement of such claim or allegation, including the selection and employment of counsel, and shall pay all authorized and documented costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim. The Indemnitor shall have no liability for costs or expenses incurred by the Indemnitee, except to the extent authorized by the Indemnitor or pursuant to this procedure.

- (d) **Exclusions.** Licensor will have no obligation under Section 12(a) with respect to any Claim arising out of or based upon: (i) End User's use of the Service that is not in accordance with the terms of this Agreement; (ii) End User Data or End User Equipment used with the Service; (iii) continued use of the Service after being provided notice to cease use of the Service.
- (e) **Enjoinment.** If End User's use of the Service is, in Licensor's determination, likely to be enjoined, Licensor may, at its option and expense without limiting its indemnity obligations hereunder, procure the right for End User to continue to use the Service or modify the Service in a manner that has materially equivalent functionality so as to avoid such enjoinder. If the foregoing options are not available on commercially reasonable terms and conditions, Licensor may require the termination of use of the Service.
- (f) **Exclusive Remedies.** The indemnity and other remedies set forth in this Section 12 shall be the exclusive remedies of the parties with respect to any claim for which a party has an obligation of indemnity pursuant to this Section 12.

13. Confidential Information.

- (a) **"Confidential Information"** means: (i) a Party's proprietary technology or computer software in all versions and forms of expression and the Service, whether or not the same has been patented or the copyright thereto registered, is the subject of a pending patent or registration application, or forms the basis for a patentable invention (collectively the **"Proprietary Technology"**); (ii) manuals, notes, documentation, technical information, drawings, diagrams, specifications, formulas or know-how related to any of the Proprietary Technology; (iii) information regarding current or proposed products, Services, customers, contracts, this Agreement, business methods, financial data or marketing data, financial results and projections, company and market strategy, product and competitive sales analysis and plans, product or marketing plans, pricing plans or structures, personnel and recruiting matters, and future releases; and (iv) offers or proposals which are provided by a Discloser (as defined below), including, the fees charged by Discloser and such Confidential Information in tangible or other form.
- (b) A Party receiving Confidential Information ("**Recipient**") of the other Party ("**Discloser**") shall: (i) not disclose the Confidential Information to any third party at any time and Recipient shall limit disclosure of Confidential Information within its own organization to its employees or its legal, financial and accounting advisors having a need to know and who have agreed to be bound by the terms of this Agreement; and (ii) protect the confidentiality of the Confidential Information with at least the same degree of

care as Recipient uses to protect its own Confidential Information of a like nature, but no less than a reasonable degree of care. Recipient shall be entitled to disclose Confidential Information solely to the extent necessary to comply with a court order or as otherwise required by law or by a regulatory agency or government body, provided that Recipient shall first give notice to Discloser so as to allow Discloser a reasonable opportunity to obtain a protective order for protecting the confidentiality of such information (unless such notice would violate applicable law). If such protective order is not obtained, Recipient agrees to disclose only that portion of the Confidential Information which it is legally required to disclose. Recipient shall immediately notify Discloser of any actual or suspected unauthorized disclosure of Confidential Information. Recipient shall not modify, reverse-engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information without Discloser's prior written consent.

- (c) The obligations described in Section 13(b) impose no obligation upon Recipient with respect to any Confidential Information that (a) is or becomes a matter of public knowledge through no fault of Recipient; (b) is rightfully received by Recipient from a third party without a duty of confidentiality to a third party by, or with the authorization of, Discloser; (c) is disclosed without a duty of confidentiality; or (d) is independently developed by Recipient. The burden of proving any of the above exemptions is on Recipient.
- (d) Upon the written request of Discloser, Recipient shall immediately destroy or return to Discloser, as requested by Discloser, all Confidential Information of Discloser in its possession, together with all records in any manner pertaining to any of Discloser's Confidential Information. Recipient shall also, upon the written request of Discloser, furnish Discloser with a certificate of an authorized officer of Recipient stating that all of the foregoing have been destroyed or returned to Discloser.
- (e) The terms set forth in this Section 13 replace any prior non-disclosure or similar confidentiality agreement executed between the Parties.

14. Miscellaneous.

- (a) **Entire Agreement, Modifications, and Waivers.** This Agreement, together with all exhibits, schedules, Order Forms, Statements of Work, addenda and other amendments hereto entered into from time to time, collectively, contains the entire agreement between the Parties with respect to the subject matter hereof. All such ancillary documents are incorporated into this Agreement by reference. This Agreement may not be modified except by written instrument signed by both Parties and referring to the particular provisions to be modified. All terms, conditions, or provisions which may appear as pre-printed language or otherwise be inserted within any purchase order shall be of no force and effect notwithstanding the acceptance of such purchase order after the date of this Agreement. If any provision of this Agreement is declared invalid or unenforceable, then the court shall replace the invalid or unenforceable provision with a valid and enforceable provision that most accurately reflects the Parties' intentions and the remaining provisions of this Agreement shall remain in full force and effect. Failure by

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either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes, and together shall constitute one and the same agreement.

- (b) Headings, Advice of Counsel, and Drafting. Headings used in this Agreement are provided for convenience only and will not in any way affect the meaning or interpretation of each Section. Wherever the term “including” is used, it shall mean “including, but not limited to.” All references to “Sections” and “Schedules” refer to the corresponding Sections and Schedules of this Agreement. The Parties acknowledge that they have been advised by counsel of their own choosing, played equal parts in negotiating this Agreement and that its terms will be interpreted without any bias against one Party as drafter.

(c) Governing Law.

In the event VAR’s principal place of business is domiciled in United States of America or Canada, this Agreement shall be governed exclusively by the internal laws of the State of Georgia, without regard to its conflicts of laws rules. The state and federal courts located in Atlanta, Georgia shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. In the event of any suits or actions or other proceedings to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and other costs and expenses incurred therein.

In the event VAR’s principal place of business is domiciled in countries within EMEA, Sweden, Middle East or Africa, this Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

In the event of any suits or actions or other proceedings to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and other costs and expenses incurred therein.

- (d) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after mailing via certified mail, return receipt requested; (iii) the second business day after sending by confirmed facsimile; or (iv) except for notices of termination or an indemnifiable claim (“**Legal Notices**”), the first business day after sending by email. Notices to Licensor shall be addressed to the attention of its General Counsel and a copy to its Chief Financial Officer at the address set forth at the end of this provision. All notices to End User shall be addressed to the primary contact person as designated by End User. Billing-related notices to

End User shall also be addressed to the relevant billing contact designated by End User, and Legal Notices to End User shall also be addressed to End User’s signatory of this Agreement or any person designated beneath the signature area below. Notices to Licensor shall be delivered to the following address:

Aptean, Inc.
4325 Alexander Drive, Suite 100
Alpharetta, GA 30022
Attn: General Counsel

- (e) Force Majeure. Excluding End User’s payment obligations hereunder, neither Party shall be liable for failure to perform or for delay in performance hereunder due to causes beyond its reasonable control (each a “**Force Majeure**”), including acts of God, fires, floods, earthquakes, accidents, Internet service interruptions or slowdowns, vandalism or “hacker” attacks, strikes (other than those involving either Party’s employees), acts of war, acts of terrorism, riot, embargoes, acts of civil or military authorities, or intervention by governmental authority, provided that such Party gives prompt written notice thereof to the other Party. Any failure occasioned by the foregoing shall be remedied as soon as reasonably possible.
- (f) Injunctive Relief. End User acknowledges that the breach or threatened breach of this Agreement could give rise to irreparable injury to Licensor which would be inadequately compensated in money damages. Accordingly, Licensor may seek a restraining order and/or an injunction prohibiting such breach in addition to any other legal remedies which may be available. .
- (g) Compliance with Laws. End User agrees to comply with all applicable laws, including applicable data privacy laws, the U.S. Foreign Corrupt Practices Act of 1977, export and re-export control laws and regulations such as the Export Administration Regulations (“**EAR**”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“**ITAR**”) maintained by the Department of State. Specifically, End User covenants that End User shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, Services, Software, Documentation or Technology (including products derived from or based on such Technology or Documentation) received from Licensor under this Agreement to any destination, entity, or person prohibited by the laws or regulations of any jurisdiction, including without limitation, the United States, without obtaining prior authorization from the relevant government authorities as required by those laws and regulations. End User hereby indemnifies and holds harmless to the fullest extent permitted by law, Licensor and its assigns from and against any fines, penalties, judgments, settlements, and reasonable documented costs, including attorney’s fees, that may arise as a result of End User and End User’s agents, officers, directors or employees breach of this provision.
- (h) Assignment. End User may not assign or transfer (including by operation of law or Change of Control) this Agreement, End User’s interest herein or the license granted to End User herein without Licensor’s prior written consent.

- (i) Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- (j) Data Protection. Customer and Licensor acknowledge that Licensor processes personal data on Customer's behalf in

connection with this Agreement, and agree that the Data Processing Addendum at <https://legal.aptean.com/legal.html#dpa-center> which is incorporated by reference into this Agreement applies to the processing of any such personal data.

EXHIBIT A
PROFESSIONAL SERVICES TERMS

This Exhibit A sets forth the additional terms and conditions under which Licensor will provide Professional Services in connection with the solution(s) provided pursuant to this Agreement.

A1. Performance of Services.

(a) Statements of Work. Each Professional Services project Licensor undertakes shall be described in a statement of work (a “**Statement of Work**” or “**SOW**”) setting forth the agreed upon scope of the Professional Services, Service Deliverables, estimated hours/work effort, billing rates and other pricing information, project schedule (if applicable) and estimated delivery dates. Both Parties shall execute each Statement of Work, all of which shall be deemed incorporated into this Agreement. If there is a conflict between the terms set forth in this Agreement and a Statement of Work, the terms set forth in the applicable Statement of Work will control.

(b) Tasks and Service Deliverables.

i. Licensor shall perform the Services and provide the Service Deliverables described in the applicable Statement of Work and any Change Order Forms (as defined below) issued pursuant to the applicable SOW. Licensor and the End User agree to work together in good faith to mitigate any delay in completion or delivery or in the provision of the Services.

ii. Licensor shall perform the Services with reasonable skill and care.

iii. Licensor shall use reasonable endeavors to meet dates specified in a SOW for the delivery of Services and Service Deliverables. Licensor shall use commercially reasonable efforts to schedule resources upon request from the End User’s representative or their designee.

iv. It is understood and agreed that Licensor’s Services may include the provision of advice and recommendations, but adoption of any recommendations are the responsibility of the End User. Licensor shall be responsible for project management of Licensor’s resources and commitments however End User shall be responsible for overall management of the project.

v. Time and schedule estimates are based on Licensor’s experience with other similar change or services requests in the past, and the information available at the time of preparing the estimate. Licensor shall use reasonable endeavors to adhere to any estimate provided, however actual effort may vary and Licensor shall keep End User notified of effort incurred and planned and progress throughout.

vi. Licensor agrees to advise End User in writing at the earliest possible time when postponing or canceling scheduled activity. Licensor and End User shall collaborate with reasonable commercial diligence to resume or reschedule the cancelled activity.

(c) End User Obligations.

i. The End User shall deploy appropriately skilled and qualified personnel in the performance of its obligations under all SOWs, and shall provide information, decisions and

approvals in a timely manner to facilitate the agreed delivery schedule.

ii. The End User shall make available to Licensor access to all environments as required under a SOW, or as otherwise agreed between the parties.

iii. Licensor and the End User will work together in good faith to mitigate any delay in completion or delivery or in the provision of the Services resulting, in the reasonable opinion of Licensor, from End User’s failure to perform its obligations as described in the applicable SOW.

(d) Place of Performance, Expenses and Travel Time.

i. If Licensor’s personnel, agents or representatives are required to travel to a location other than one of Licensor’s facilities, End User will pay or reimburse Licensor for expenses that are specifically identified in an SOW or Purchase Order. Payment will be made in accordance with the payment terms set forth in Section A2 of this Exhibit A for all preapproved reasonable and actual travel expenses including airfare, ground transportation, lodging and meals for personnel required to travel. Licensor will adhere to its corporate travel policies and provide a copy, if requested by End User, as well as adhere to ASU’s Financial Services Policy FIN 421-01, unless otherwise agreed in writing prior to undertaking a project. Services to be provided on-site at End User’s facilities will be scheduled in advance by written agreement of both parties. Both parties will use reasonable efforts to accommodate any requested change in the scheduled dates for on-site services, subject to the availability of appropriate personnel. To obtain reimbursement for pre-approved expenses, Licensor must submit all receipts and any required backup documentation to End User within 60 days after the applicable expenses were incurred.

ii. If Licensor charges Travel Time the rate and conditions shall be agreed by Licensor and End User in advance and set out in the applicable Statement of Work. Travel time is defined as follows: (i) consultant’s roundtrip travel time from consultant’s location to the End User site; and (ii) consultant’s travel time between End User’s sites and/or any other End User designated locations.

A2. Payment Terms.

Unless otherwise stated in the Statement of Work, Licensor will invoice End User for the fees on a time and materials basis at the billing rates set forth in the Statements of Work for work performed. Invoices will include a summary of all time expended by Licensor for the work performed. End User shall pay Licensor the fees within thirty (30) days from End User’s receipt of invoice.

A3. Acceptance.

In this Agreement and any SOW, “**Customization Services**” means any services which involve modifications by Licensor to the source code of any Software in order to customize certain aspects of such Software for the End User pursuant to the terms of a SOW. Where Service Deliverables are provided as a result of Customization Services then unless otherwise specified in the SOW, the following

shall apply:

- (a) Following receipt of each Service Deliverable, End User will have thirty (30) days to perform acceptance testing of that particular Service Deliverable. If multiple Service Deliverables are provided to End User for acceptance testing during the same testing period, then both End User and Licensor will mutually agree on a modified testing period, if necessary.
- (b) If the particular Service Deliverable does not embody the mutually agreed characteristics set forth in the applicable SOW, End User may reject such Service Deliverable by giving Licensor written notice rejecting the particular Service Deliverable, and the reasons therefore, within the thirty (30) day testing period. If End User does not give Licensor written notice rejecting the particular Service Deliverable within the thirty (30) day testing period, such Service Deliverable shall conclusively be deemed accepted.
- (c) If End User gives Licensor written notice rejecting the particular Service Deliverable within the thirty (30) day testing period, then within thirty (30) days after receipt of End User's notice Licensor will make any reasonable corrections or changes and resubmit the Service Deliverable to End User for further acceptance testing.
- (d) Upon End User's receipt of the revised Service Deliverable, the procedure outlined in subparagraphs **a), b) and c)**, above will be repeated until the Service Deliverable is accepted. The table below defines the severity levels which shall be allocated to any issues raised relating to the Service Deliverable. The severity of the issue will be reviewed and finally determined by Licensor and in some cases the End User may be asked to provide a brief description of the impact and rationale for 'urgent' and 'critical' severity levels. The severity level may change during the life of an issue. For instance, severity may be reduced with a viable workaround or the inability to recreate the problem. Severity may also be upgraded based on increased frequency of the issue or project deadlines. An acceptance shall occur if there are no open items with a severity level of 'critical' or 'urgent.'

Severity Definition

1 – Critical: The entire system or functional component is inoperable and cannot be used until the error is resolved.

2 – Urgent: A serious error in a business critical function where no viable workaround is available.

3 – Standard: An error that does not stop the user progressing or a viable workaround is possible.

4 – Low: Errors that cause no loss of functionality, or which may be considered cosmetic or annoying in nature.

5 – Enhancement: Feature is operating to the agreed specification/requirement however its method of operation may be altered in order to deliver more business benefits.

- (e) End User will cooperate with Licensor to isolate, identify and resolve any problems in the Service Deliverables.
- (f) End User understands and agrees that Licensor makes no representations or warranties that the Service Deliverables provided as a result of Customized Services will be compatible with all future releases of the software. End User may be required to purchase additional professional services hours at an agreed to price to resolve any compatibility issues.

A4. Change Procedure

Project costs and durations set forth in a Statement of Work are based on the scope, requirements and assumptions as defined in such Statement of Work. Variance in the scope, requirements or assumptions will have an impact on the project's time and cost. Licensor utilizes a formal change control procedure to respond to and manage the changes that may occur throughout the duration of a project. The purpose of this procedure is not to inhibit or prevent change, but rather to facilitate change in an orderly manner. Licensor's change control procedure is summarized below:

- (a) Either End User or Licensor may initiate a change order.
- (b) End User will work with Licensor to document all requested changes in Licensor's standard change request form ("**Change Order Form**"). This documentation will include a description of the change, reason for the change, areas affected, estimated hours, costs and completion date. Licensor will then submit each Change Order Form to End User for review and approval before any work is started on the change. Licensor will, likewise, review and approve the changes before any work is started.
- (c) In the event that the Parties disagree about the proposed changes, each Party shall, within forty-eight (48) hours from the report of the issue, identify a Senior Management Officer who has decision making authority for each of the respective Parties. The Senior Management Officers will discuss and arrive at a mutually acceptable decision. The results of the meeting will be documented and filed with the project library and any milestone dates and costs will be adjusted accordingly.

A5. Service Deliverables License Grant.

All Service Deliverables developed by Licensor pursuant to a SOW shall be the property of Licensor provided, however, that End User is hereby granted a non-exclusive and non-transferable license to use the Service Deliverables solely for its internal business purposes, subject to the restrictions set out in this Agreement and the applicable SOW.