

## SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this "**Agreement**") is made by and between Limbic Arc LLC, a Utah limited liability Agreement, and its affiliated entities (collectively, the "**Company**"), and you, an individual or Business Entity ("**Subscriber**" or "**you**"). This Agreement shall become effective as of the date that you accept this Agreement by accessing the Services or by clicking to accept or agree to this Agreement when the option is made available to you, whichever first occurs. Company and Subscriber may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Company allows subscribers to access and use the Company's innovative Services; and

WHEREAS, Subscriber desires to access and use the Services, and Company desires to provide Subscriber access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the Parties agree as follows:

**1. DEFINITIONS.** In addition to the defined terms contained elsewhere in this Agreement, the following terms shall have the following meanings.

1.1 "**Aggregated Statistics**" means data and information related to Subscriber's use of the Services that is used by Company in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

1.2 "**Authorized User**" means Subscriber's employees (i) who are authorized by Subscriber to access and use the Services under the rights granted to Subscriber pursuant to this Agreement and (ii) for whom access to the Services has been purchased by Subscriber.

1.3 "**Business Entity**" means any business entity such as a corporation, partnership, limited liability company, trust, or other form of business organization legally formed under the laws of the jurisdiction in which it was organized.

1.4 "**Company IP**" means the Services and Documentation and all intellectual property embodied in and otherwise associated with them and any and all other intellectual property provided to Subscriber or any Authorized User in connection with the foregoing. For the avoidance of doubt, Company IP includes Aggregated Statistics and any information, data, or other content derived from Company's monitoring of Subscriber's access to or use of the Services.

1.5 "**Documentation**" means Company's user guides and materials relating to the Services made available by Company to Subscriber at [limbicarc.com](http://limbicarc.com).

1.6 "**Person**" means an individual or Business Entity.

1.7 "**Services**" means the software-as-a-service offering and content at [limbicarc.com](http://limbicarc.com), which the Company may modify and otherwise change from time to time in its sole discretion.

1.8 "**Subscriber Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Subscriber or an Authorized User through the Services.

## 2. ACCESS AND USE.

2.1 PROVISION OF ACCESS. Subject to and conditioned on Subscriber's payment of Fees and compliance with the terms and conditions of this Agreement, Company hereby grants Subscriber a non-exclusive, non-transferable right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions contained in this Agreement. Such use is limited to Subscriber's internal use. Company shall provide to Subscriber the necessary passwords and network links or connections to allow Subscriber to access the Services. The total number of Authorized Users shall not exceed the number purchased by Subscriber.

2.2 DOCUMENTATION LICENSE. Subject to the terms and conditions contained in this Agreement, Company hereby grants to Subscriber a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Subscriber's internal business purposes in connection with its use of the Services.

2.3 USE RESTRICTIONS. Subscriber shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Subscriber shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

2.4 RESERVATION OF RIGHTS. Company reserves all rights not expressly granted to Subscriber in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Subscriber or any third party any intellectual property rights or other right, title, or interest in or to the Company IP.

2.5 SUSPENSION. Notwithstanding anything to the contrary in this Agreement, Company may temporarily suspend Subscriber's and any Authorized User's access to any portion or all of the Services if: (i) Company reasonably determines that (A) there is a threat or attack on any of the Company IP; (B) Subscriber's or any Authorized User's use of the Company IP disrupts or poses a security risk to the Company IP or to any other customer or vendor of Company; (C) Subscriber, or any Authorized User,

is using the Company IP for fraudulent or illegal activities; (D) subject to applicable law, Subscriber has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Company's provision of the Services to Subscriber or any Authorized User is prohibited by applicable law; (ii) any vendor of Company has suspended or terminated Company's access to or use of any third-party services or products required to enable Subscriber to access the Services; or (iii) in accordance with any other Section of this Agreement (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Company shall use reasonable efforts to provide written notice of any Service Suspension to Subscriber and to provide updates regarding resumption of access to the Services following any Service Suspension. Company shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured, if cure is possible. Company will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Subscriber or any Authorized User may incur as a result of a Service Suspension.

2.6 **AGGREGATED STATISTICS.** Notwithstanding anything to the contrary in this Agreement, Company may monitor Subscriber's use of the Services and collect and compile Aggregated Statistics. As between Company and Subscriber, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Company. Subscriber acknowledges that Company may compile Aggregated Statistics based on Subscriber Data input into the Services. Subscriber agrees that Company may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

### **3. SUBSCRIPTIONS AND FEES.**

3.1 **SOFTWARE SUBSCRIPTIONS.** Unless otherwise agreed (such as a prepaid yearly license), you agree to the monthly subscription fee indicated on the purchase agreement or ecommerce transaction. This monthly subscription fee will be automatically renewed each month on approximately the purchase anniversary date unless Company is notified prior to the end of the previous subscription period.

3.2 **SUBSCRIPTION METHODS.** All subscriptions are handled through the Company's website, [limbicarc.com](http://limbicarc.com). Payment must be made by credit or debit card. You agree to provide the Company a credit or debit card to be processed each month. You agree to maintain updated and valid credit card information with the Company through the period of this Agreement. If a monthly subscription charge is declined by your bank card provider, the Company may immediately suspend your access to the Services.

3.3 **PRICING CHANGES.** Unless prepaid, you understand that Company may increase the monthly subscription fee at any time in its sole discretion. Company agrees to provide 20-days' notice to Subscriber prior to any price increase becoming effective.

3.4 **REVERSED PAYMENTS.** If any credit card payment is reversed (i.e., a chargeback), you must immediately make payment to the Company for the full amount of the reversed payment. If you fail to promptly make such payment you are in breach of the Agreement.

3.5 EXCESS USE. If Subscriber's use of the Services exceeds that set forth in an order form, agreement, or ecommerce transaction or otherwise requires the payment of additional fees (per the terms of this Agreement), Subscriber shall be billed for such usage and Subscriber agrees to pay the additional fees in the manner provided herein. If Subscriber believes that Company has billed Subscriber incorrectly, Subscriber must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

3.6 USE OF ANOTHER INDIVIDUAL'S CREDIT OR DEBIT CARD. You may not use another individual's card to subscribe to the Company's Services without the individual's prior written approval. You must provide a copy of written approvals to the Company upon request.

3.7 TAXES. All Fees and other amounts payable by Subscriber under this Agreement are exclusive of taxes and similar assessments. Subscriber 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 or foreign governmental authority on any amounts payable by Subscriber hereunder, other than any taxes imposed on Company's income.

3.8 AUDITING RIGHTS AND REQUIRED RECORDS. Subscriber agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of three years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Company may, at its own expense, on reasonable prior notice, periodically inspect and audit Subscriber's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Subscriber has underpaid Company with respect to any amounts due and payable during the Term, Subscriber shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 3.7. Subscriber shall pay for the costs of the audit if the audit determines that Subscriber's underpayment equals or exceeds five percent for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of three years after the termination or expiration of this Agreement.

#### 4. CONFIDENTIAL INFORMATION.

4.1 CONFIDENTIAL INFORMATION. From time to time during the Term, the Company may disclose or make available to you information about its business, products, intellectual property, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and you may disclose or make available to the Company some of your own confidential information (in either case, "**Confidential Information**").

4.2 EXCLUSIONS. Notwithstanding Section 4.2, "Confidential Information" does not include information that, at the time of disclosure is: (i) in the public domain; (ii) known to the receiving Party at the time of disclosure; (iii) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (iv) independently developed by the receiving Party.

4.3 **RESTRICTIONS.** The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party, if such disclosure is allowed by law, and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings.

4.4 **DUTIES ON TERMINATION.** On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection.

## **5. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK.**

5.1 **COMPANY IP.** Subscriber acknowledges that (i) as between Subscriber and Company, Company owns all right, title, and interest, including all intellectual property rights, in and to the Company IP and Subscriber Data, and (ii) with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

5.2 **FEEDBACK.** If Subscriber, any of its employees or Authorized Users, or anyone else associated with Subscriber sends or transmits any communications or materials to Company by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, Documentation, or other Company IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Company is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Subscriber hereby assigns and agrees to assign to Company on Subscriber's behalf, and on behalf of its employees, Authorized Users, and others associated with Subscriber all right, title, and interest in, and the Company shall be free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Company is not required to use any Feedback.

## **6. LIMITED WARRANTY AND DISCLAIMER.**

6.1 **LIMITED WARRANTY.** Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Services in a professional and workmanlike manner. Services may be temporarily

unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption. THE FOREGOING WARRANTY DOES NOT APPLY, AND COMPANY STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

6.2 **DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6.1, THE SERVICES, DOCUMENTATION, AND OTHER COMPANY IP IS PROVIDED "AS IS," AND COMPANY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. COMPANY 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. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6.1, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE COMPANY IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'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.

6.3 **SOLE REMEDY.** Company agrees to use reasonable efforts to correct any non-compliance of the Services with the limited warranty specified in Section 6.1 above, upon Subscriber's notice to the Company of any non-compliance. The remedies set forth in this Section 6.3 are Subscriber's sole remedy and Company's sole liability under the limited warranty set forth in this Section 6.

## 7. INDEMNIFICATION.

### 7.1 COMPANY INDEMNIFICATION.

(a) Company shall indemnify, defend, and hold harmless Subscriber from and against any and all third-party losses, damages, liabilities, costs (including reasonable attorneys' fees) incurred by Subscriber resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's United States patents, copyrights, or trade secrets, provided that Subscriber promptly notifies Company in writing of the claim, cooperates with Company, and allows Company sole authority to control the defense and settlement of such claim.

(b) If such a claim is made or appears possible, Subscriber agrees to permit Company, at Company's sole discretion, to (i) modify or replace the Services, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Subscriber to continue use. If Company determines that neither alternative is reasonably available, Company may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Subscriber.

(c) This Section 7.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Services in combination with data, software, hardware, equipment, or technology not



provided by Company or authorized by Company in writing; (ii) modifications to the Services not made by Company; (iii) Subscriber Data; or (iv) Third-Party Products.

7.2 **SUBSCRIBER INDEMNIFICATION.** Subscriber shall indemnify, hold harmless, and, at Company's option, defend Company from and against any Company and third-party losses, damages, liabilities, costs (including reasonable attorneys' fees) resulting from any Third-Party Claim that the Subscriber Data, or any use of the Subscriber Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Subscriber's or any Authorized User's (a) negligence or willful misconduct; (b) use of the Services in a manner not authorized by this Agreement; (c) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Company or authorized by Company in writing; or (iv) modifications to the Services not made by Company, provided that Subscriber may not settle any Third-Party Claim against Company unless Company consents to such settlement, and further provided that Company will have the right, at its option and Subscriber's cost, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

7.3 **SOLE REMEDY.** THIS SECTION 7 SETS FORTH SUBSCRIBER'S SOLE REMEDY AND COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL COMPANY'S LIABILITY UNDER THIS SECTION 7 EXCEED THE AMOUNT OF FEES PAID BY THE SUBSCRIBER TO THE COMPANY (AND RETAINED BY THE COMPANY) DURING THE TWELVE-MONTH PERIOD PRECEDING ASSERTION OF THE CLAIM.

## **8. LIMITATION OF LIABILITY.**

IN NO EVENT WILL COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF AGREEMENT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF AGREEMENT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO COMPANY UNDER THIS AGREEMENT (AND RETAINED BY THE COMPANY) IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## 9. TERM AND TERMINATION.

9.1 TERM. The term of this Agreement shall begin on the Effective Date and will continue in effect, subject to earlier termination as provided in this Agreement, for the Initial Service Term as specified in the purchase agreement or ecommerce transaction and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “**Term**”), unless either Party requests termination at least thirty (30) days prior to the end of the then-current Term.

9.2 TERMINATION. In addition to any other express termination right set forth in this Agreement:

(a) Company may terminate this Agreement, effective on written notice to Subscriber, if Subscriber: (i) fails to pay any amount when due hereunder, and such failure continues more than ten days after Company's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 2.3, Section 4, or Section 5; either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach: (1) is incapable of cure; or (2) being capable of cure, remains uncured thirty days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(b) Either Party may terminate this 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.

9.3 EFFECT. Upon expiration or earlier termination of this Agreement, Subscriber shall immediately discontinue use of the Services, Documentation, and other Company IP and, without limiting Subscriber's obligations under Section 4, Subscriber shall delete, destroy, or return all copies of the Company IP and certify in writing to the Company that the Company IP has been deleted or destroyed. No expiration or termination will affect Subscriber's obligation to pay all Fees that may have become due before such expiration or termination or entitle Subscriber to any refund.

9.4 SURVIVAL. This Section 9, Sections 1, 2.4, 2.6, 3.4, 3.7, 3.8, and 4-10, and all payment obligations shall survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.



## 10. MISCELLANEOUS.

10.1 INTEGRATED AGREEMENT. The Agreement is the final expression of the understanding and agreement between the Parties concerning all matters touched upon in the Agreement and supersedes all prior and contemporaneous agreements of understanding (both oral and written) between the parties, except any Affiliate Agreement of the Subscriber. The Agreement invalidates all prior notes, memoranda, demonstrations, discussions, and descriptions relating to the subject matter of the Agreement. The Agreement may not be altered or amended except as provided in this Agreement. The existence of the Agreement may not be contradicted by evidence of any alleged prior contemporaneous oral or written agreement. Should any discrepancy exist between the terms of the Agreement and verbal representations made to you by any Company employee or other person, the express written terms and requirements of the Agreement will prevail.

10.2 INTERPRETATION. The headings in the Agreement are for convenience of reference only and will not limit or otherwise affect any of the terms or provisions of the Agreement. All references to Sections herein refer to Sections of this Agreement unless otherwise indicated. All words will be deemed to include the plural as well as the singular and to include all genders. This Agreement shall be construed and interpreted as if both Parties participated, or had opportunity to participate, in drafting it.

10.3 NOTICES. Unless otherwise provided in the Agreement, any notice or other communications requested or permitted to be given under the Agreement will be in writing and will be delivered personally, transmitted by email, or sent by first class, certified (or registered) or express mail, postage prepaid. Unless otherwise provided in the Agreement, notices will be deemed given when delivered personally, or if transmitted by email, one day after the date of that email, or if mailed, five days after the date of mailing to the address of the Company's headquarters at 1172 W 700 N STE 300, Lindon, UT 84042-1461 or to the Subscriber's address or email address as provided in the Subscriber's account, unless notice of an address or email address change has been received by the Company.

10.4 FORCE MAJEURE. In no event shall Company be liable to Subscriber, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control, including but not limited to ISP and provider outages, technology or device failure, cyber-attacks, human error, acts of God, flood, fire, earthquake, OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

10.5 AGREEMENT CHANGES. The Company expressly reserves the right to make any modifications to the Agreement upon 30 days' notice by publication on the Company's websites, normal channels of communication with Subscribers, or as otherwise provided in this Agreement. You agree that 30 days after such notice, any modification becomes effective and is automatically incorporated into the Agreement between you and the Company as an effective and binding provision. By continuing to access

the Services after the modifications have become effective, you acknowledge acceptance of the new Agreement terms.

**10.6 WAIVERS AND EXCEPTIONS.** The Company reserves the right, in its sole discretion, to waive a breach of, or make an exception to, any provision of the Agreement. Any waiver by the Company of a breach of any provision of the Agreement or any exception made by the Company of any provision of the Agreement must be in writing and will not be construed as a waiver of any subsequent or additional breach or an exception for any other Person. Any right or prerogative of the Company under the Agreement may be exercised at the Company's sole discretion. Any exception made by the Company, or any failure or delay by the Company in exercising any right or prerogative under the Agreement, will not operate as a future exception or waiver of that right or prerogative.

**10.7 SEVERABILITY.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, Subscriber shall in good faith modify this Agreement so as to affect its original intent as closely as possible in order that the obligations contemplated hereby be implemented to the greatest extent possible.

**10.8 GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah 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 Utah.

**10.9 MANDATORY MEDIATION; BINDING ARBITRATION.** Any Dispute arising out of or related to this Agreement, or the licenses granted hereunder, are subject to mediation and binding arbitration in accordance with the mediation and arbitration provisions located at the end of this Agreement.

**10.10 ASSIGNMENT.** Subscriber may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Company. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

**10.11 EXPORT REGULATION.** Subscriber shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including without limitation obtaining any necessary export license or other governmental approval), in connection with the export or re-export of the Services, Documentation, or any Subscriber Data, or any product thereof. Without limiting the generality of the foregoing statement, Subscriber shall not export or re-export any of the Services, Documentation, or any Subscriber Data, or any product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of

Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement. The term “export or re-export” of the Services, Documentation, or any Subscriber Data means to make the Services, Documentation, or Subscriber Data available by any method or means to anyone outside the United States, including without limitation providing any of them by download, transfer, hyperlink, or otherwise.

10.12 AVAILABILITY OF EQUITABLE RELIEF. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 of this Agreement or, in the case of Subscriber, Sections 2.3 and 5 of this Agreement, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party 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.

### **MEDIATION & ARBITRATION**

1. WHAT IS MANDATORY ARBITRATION. In order to expedite the resolution of all Disputes, the Company has instituted a mandatory arbitration procedure. Arbitration is the referral of a Dispute to an impartial third party selected by you, the Company, and any others with a legal interest in the Dispute.

An arbitrator acts as a judge, listens to the parties’ evidence, and renders a binding decision. The arbitrator’s decision is a judgment that is enforceable in a court of law. The object of arbitration is the final disposition of differences of the parties in a faster, less expensive, and perhaps less formal manner than is available in ordinary court proceedings. For ease of reference, the party initiating mediation and each of the other participants in an arbitration are referred to herein as an “Arbitration Participant.”

2. ARBITRATION IS MANDATORY AND BINDING. AS TO ALL DISPUTES, YOU AND THE COMPANY AGREE THAT MANDATORY AND BINDING ARBITRATION IS THE SOLE MEANS TO RESOLVE ANY AND ALL DISPUTES. YOU WAIVE ALL RIGHTS TO JURY OR COURT TRIALS TO RESOLVE A DISPUTE. THE ARBITRATION IS FINAL AND THE DECISION CANNOT BE APPEALED. SALT LAKE COUNTY, UTAH WILL BE THE EXCLUSIVE VENUE FOR ARBITRATION OF ALL DISPUTES.

3. DEFINITION OF A DISPUTE. A “Dispute” means any and all past, present, or future claims, disputes, causes of action or complaints, whether based in contract, tort, statute, law, product liability, equity, or any other cause of action, arising out of or otherwise relating to this Agreement.

4. REQUEST FOR ARBITRATION. Either Party may notify, in writing, the other Party of a Dispute and that such Party requests that the Dispute be referred to arbitration before a neutral third-party arbitrator (the “Petition for Arbitration”). A Petition for Arbitration must be delivered no later than one year after the Dispute arises. Within a reasonable time after delivering or receiving the Petition for Arbitration, the Company, through its outside counsel, will contact all the Arbitration Participants regarding an arbitration date and provide a list of potential arbitrators.

5. MEDIATION. After delivery of a Petition for Arbitration, either Party may send to the other Party a written request for mediation. Mediation is a process whereby a neutral third party attempts to resolve a Dispute between contending Parties. The object of the mediator is to increase the Parties’ mutual understanding of the Dispute and persuade them to adjust their positions towards each other and hopefully reconcile the Dispute. The mediation will be conducted in the English language. All fees and costs of the mediation will be borne equally by the Parties in the mediation. If the Parties do not mutually agree to mediation, then the Dispute will proceed to be arbitrated as provided herein.

## 6. ARBITRATION PROCEDURE

6.1 RULES OF ARBITRATION; LOCATION. The arbitration will be conducted by a professional arbitrator who has been agreed to by the Parties. The arbitration will be conducted in accordance with the Utah Uniform Arbitration Act. The arbitration will be held in Utah at an address to be designated by the Company.

6.2 DISCOVERY. The arbitrator will have the discretion to order a pre-arbitration exchange of information by the Arbitration Participants, including but not limited to, production of requested documents, exchange of summaries of testimony of proposed witnesses, and the depositions of witnesses and the Arbitration Participants. Additionally, subject to the approval of the selected arbitrator, the Arbitration Participants may submit a pre-arbitration brief outlining the legal causes of action and factual background.

6.3 DATE OF ARBITRATION. Unless all the Arbitration Participants agree to extend the date of the arbitration, the arbitration will take place no later than six months after the date of the Petition for Arbitration. If the Parties agree to mediation, the amount of time reasonably needed to arrange and complete the mediation will be excluded from the six-month period for the completion of the arbitration.

6.4 LANGUAGE The arbitration will be conducted in the English language, but at the request and expense of the requesting Arbitration Participant, documents and testimonies will be translated into the requesting Arbitration Participant’s preferred language.

6.5 NO CLASS ACTIONS. No Dispute shall be adjudicated, in arbitration or any other judicial proceeding, as a class action.

6.6 PERMITTED ATTENDEES. Each Arbitration Participant in the arbitration is limited to the attendance of the Arbitration Participant, witnesses, and no more than two attorneys per Arbitration Participant.

6.7 FEES AND EXPENSES OF ARBITRATOR. All fees and expenses of the arbitrator will be borne equally by the Arbitration Participants in the arbitration, subject to the arbitrator awarding the Company its costs and attorneys' fees, in which case you will be responsible to reimburse the Company its share of the fees and expenses of the arbitrator and arbitration organization.

#### 6.8 ARBITRATION AWARDS

- (a) The arbitration award will be final and binding. It will be a full resolution of all claims and disputes between the Arbitration Participants in the arbitration. Judgment upon the award rendered by the arbitrator may be entered in and enforced by any court within the state of Utah. All Arbitration Participants, upline Affiliates, and Downline Organizations of the Arbitration Participants will be bound by the final arbitration award.
- (b) Any award by the arbitrator will be in writing and based on the application of the strict rules of law to the facts before the arbitrator. The arbitrator is authorized to award an Arbitration Participant any sums that are deemed proper for the time, expense, and trouble of arbitration including arbitration fees and attorney's fees. Punitive damages, however, will not be allowed in any Dispute. NEITHER ANY ARBITRATION PARTICIPANT NOR THE COMPANY, NOR ANY OF THE COMPANY'S RELATED ENTITIES, OFFICERS, DIRECTORS, EMPLOYEES, INVESTORS, OR VENDORS, WILL HAVE ANY LIABILITY FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THE AGREEMENT OR FOR ANY ACT, OMISSION, OR OTHER CONDUCT ARISING OUT OF THE ARBITRATION PARTICIPANT'S STATUS AS AN INDEPENDENT AGREEMENTOR AND AFFILIATE OF THE COMPANY'S PRODUCTS.

6.9 CONFIDENTIALITY. All arbitration proceedings will be closed to the public and confidential. Except as may be required by law and the Company's use of an arbitrator's award as precedence for deciding future Disputes, neither an Arbitration Participant nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all the Arbitration Participants.

6.10 ENFORCEMENT OF AWARD; INJUNCTIVE RELIEF. Notwithstanding this arbitration policy, any Arbitration Participant may apply to a court of competent jurisdiction in Salt Lake County in the State of Utah in the United States, or in any other jurisdiction where a party is located or the conduct at issue is occurring, (i) to enforce an arbitration award or the injunctive relief granted by an arbitrator; or (ii) to seek a temporary restraining order or a preliminary injunction, before, during the pendency of, or after a decision in any arbitration proceeding, to prevent irreparable harm, without the necessity of proving actual damages or posing a bond or other security. The institution of any action in a court for equitable relief, or to enforce an arbitration award or order, will not constitute a waiver of the obligation of any Arbitration Participant to submit any Dispute to arbitration.

6.11 SURVIVAL. Your agreement to arbitrate will survive any termination or expiration of the Agreement and any other agreements between you and the Company.

7. THIRD-PARTY CLAIMS. In order to protect the Company, its assets, and its reputation from claims or disputes created by outside (non-Affiliate) third parties, the Company requires the following: if any Affiliate is charged with any infringement of any proprietary right of any outside third party (who is not an Affiliate) arising from any of the Company's proprietary assets, or if the Affiliate becomes the subject of any claim or suit related to that Affiliate's business-related conduct or any other action that directly or indirectly negatively affects or puts the Company, its reputation, or any of its tangible or intangible assets at risk, the affected Affiliate will immediately notify the Company. The Company may, at its own expense and upon reasonable notice, take whatever action it deems necessary (including, but not limited to, controlling any litigation or settlement discussion related thereto) to protect itself, its reputation, and its tangible and intangible property. The Affiliate will take no action related to that claim and suit, unless the Company consents, which consent will not unreasonably be withheld.