

Zinier Terms of Service

FOR US & REST OF THE WORLD – ZINIER INC.
3182 Campus Drive Suite 333 San Mateo CA 94403, US

FOR EUROPE & UNITED KINGDOM – ZINIER UK LIMITED
16 Great Queen Street, Covent Garden, London,
WC2B 5AH, United Kingdom

Acceptance and Agreement of Zinier Terms of Service

The Zinier Terms of Service (the “**Terms**”) govern the services and products provided to you, your affiliates, subsidiaries, parent companies, and/or assignees (hereinafter referred to as the “Customer”, “you”, “yours”) by Zinier Inc., a company organized under the laws of Delaware, or if your domicile is registered within Europe or the United Kingdom, by Zinier UK Limited, a company organized under the laws of England (either of them hereinafter referred to as the “Provider”); each a “Party”, jointly the “Parties”.

By signing and accepting an Order Form (as defined below) for our services and products, or by downloading, installing or otherwise accessing or using the Solution, Software and/or Services (as defined below), you agree that you have read, understood, and accepted the terms and conditions described in this document identified as the Terms and you agree to be bound by all terms, policies and guidelines incorporated in the Terms by reference, including but not limiting to the Zinier Privacy Policy which can be found at <https://zinier.com/privacy-policy-app/> (or such other URL that the Provider may provide from time to time).

1. **DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

1.1. “**Order Form**” means a single document provided in writing by the Provider to the Customer containing the description of the services and products to be purchased by the Customer; which has to be signed by both Parties.

1.2. “**Access Protocols**” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the Services.

1.3. “**Authorized User**” means any individual who is an employee and/or

contractor of Customer or such other person or entity that is provisioned by Customer to access one or more Services pursuant to Customer's rights under these Terms.

1.3.1 **"IT Developer"** refers to users who have access to the Software via the web browser and can build and configure changes to Solutions that are used by Web Management and Mobile Technicians

1.3.2 **"Web Management"** refers to users who are able to access the Solution via the web browser to manage, automate and optimize the performance of field service operations. 1.3.3 **"Mobile Technician"** refers to users who are able to access the Solution via the Mobile Applications in order to track, perform and audit the required field services operations.

1.3.3 **"Mobile Technician"** refers to users who are able to access the Solution via the Mobile Applications in order to track, perform and audit the required field services operations.

1.4. **"Customer Content"** means any content developed by Customer and used with the Software, including but not limited to applications, online services, feature, technology, data, text, audio, images, or other content.

1.5. **"Documentation"** means the technical materials provided by the Provider to the Customer in hard copy or electronic form describing the use and operation of the Software.

1.6. **"Effective Date"** means the date the Order Form was signed.

1.7. **"Intellectual Property Rights"** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.8. **"PaaS"** means the Software Platform as a service provided to Customer under the terms and conditions of these Terms.

1.9. **"Customer Content"** means any content developed by Customer and used with the Software, including but not limited to applications, online services, feature, technology, data, text, audio, images, or other content.

1.10. **“Services”** means any professional services that the Customer may desire to engage Provider to perform, which may include by way of example, implementation, installation, training, configuration and/or customization of certain software or Customer’s computers, mobile devices and/or related systems. Subject to the terms and conditions set forth in these Terms, Provider shall use commercially reasonable efforts to perform the Services as set forth in Statements of Work (**“SOW”** as defined below in Section 3) separately executed by the Parties. Provider shall perform the Services in a professional manner in accordance with industry standards.

1.11. **“Software”** means the Provider’s product made available to the Customer described in the SOW and any associated user interfaces and related technology that Provider makes available pursuant to these Terms.

1.12. **“Solution”** refers to a set of capabilities that are configured as a custom solution for the Customer to manage, automate and optimize the performance of field service operations.

1.13. **“Support”** means any Software support and/or Customer Support services by the Provider as detailed in the SOW.

1.14. **“Supported Environment”** means the minimum hardware, software, and connectivity configuration specified by the Provider as required for use of the Services. The current requirements are described in the SOW.

2. PROVISION OF SERVICES

2.1. **Issuance of Statements of Work.** The Customer may request the Provider to perform services describing the scope of work. Provider shall prepare a draft statement of work as an exhibit to these Terms (each, a SOW). Such Statement of Work shall describe the fees, costs and expenses payable by the Customer to Provider in connection with the performance of such services. Until the acceptance in writing of the proposed Statement of Work, Provider shall have no obligation to perform the scope of work, in case that these Terms are no longer in full force and effect in accordance with Section 12. Each Statement of Work, regardless of whether it relates to the same subject matter as any previously executed Statement(s) of Work, shall become effective upon execution by authorized representatives of both Parties.

2.2. **Access.** Subject to Customer’s payment of the fees set forth in Order Form, Provider will provide the Services via an online user interface specified in the SOW. Provider shall provide to Customer the necessary passwords, security protocols and policies and network links or connections and Access

Protocols to allow Customer and its Authorized Users to access the Services.

2.3. Responsibility for Software and Content Hosting. Provider shall provide for the hosting of the Software which is accessible as part of the Services, provided that nothing herein shall be construed to require Provider to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Customer or any Authorized User to provide access from the Internet to the Services. In the event of a partial or absolute inoperability of the platform, Provider shall reestablish Customer Content up to the most recent verifiable back up.

3. PERSONNEL

3.1. Suitability. Provider shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. Provider may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2. Customer Responsibilities. Customer shall make available in a timely manner at no charge to Provider all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Customer required by Provider for the performance of the Professional Services as specified in the applicable Statement of Work. Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer shall provide, at no charge to Provider, office space, services and equipment (such as copiers, fax machines and modems) as Provider reasonably requires performing the Professional Services.

4. INTELLECTUAL PROPERTY

4.1. License Grant. Subject to the terms and conditions of these Terms Provider grants to Customer a non-exclusive, non-transferable license during the term, solely for Customer's internal business purposes, and in accordance with the limitations set forth in the SOW, (a) to access, use, perform, and digitally display the Software as required for use of the Services and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer's use of the Services.

4.2. Limitations. The Services, Software, Documentation, and all other materials provided by Provider hereunder, including but not limited to all manuals, reports, records, programs, data and other materials, and all

Intellectual Property Rights in each of the foregoing, are the exclusive property of Provider and its suppliers. Customer agrees that it will not, and will not permit any Authorized User or other party to: (a) permit any party to access the Software or Documentation or use the Services, other than the Authorized Users authorized under the Agreement; (b) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Software or Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Software; (e) use or copy the Software or Documentation except as expressly allowed under this subsection; or (f) disclose or transmit any data contained in the Software to any individual other than an Authorized User, except as expressly allowed herein. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of Customer's jurisdiction require Provider to give Customer the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that Customer must first request such information from Provider and Provider may, in its discretion, either provide such information to Customer or impose reasonable conditions, including a reasonable fee, on such use of the source code for the Software to ensure that Provider's and its suppliers' proprietary rights in the source code for the Software are protected. Customer acknowledges and agrees that the Services, Software, and Documentation will not be used, and are not licensed for use, in connection with any of Customer's time-critical or mission-critical functions. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, Software, Documentation, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Software.

4.3. Ownership. The Services, Software, Solution, PaaS, Documentation, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Provider and its suppliers. All rights in and to the Services, Software and Documentation not expressly granted to Customer in the Agreement are reserved by Provider and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Software, Documentation, and Services or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the Software. Ownership of all work product, developments, inventions, technology or materials provided under the Agreement shall be solely owned by Provider, subject to the usage rights granted to Customer under the relevant Statement of Work.

4.4. Open Source Software. Certain items of software may be provided to

Customers with the Software and are subject to “open source” or “free software” licenses (“Open Source Software”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of the section titled Indemnification or the subsection titled License Grant. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in the Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Provider makes such Open Source Software, and Provider’s modifications to that Open Source Software, available by written request at the notice address specified below.

5. FEES AND EXPENSES; PAYMENTS

5.1. Fees. In consideration for the access rights granted to Customer and the services performed by Provider under the Agreement, Customer will pay to Provider the fees set forth in the corresponding Order Form and in the SOW and in each corresponding SOW and/or as otherwise agreed by both parties. In the event that Customer wishes to increase the number of Authorized Users beyond the maximum number of Authorized Users for which fees have been paid and/or required additional hours and resources for the performance of the Services, Customer shall pay additional fees associated with the increased number of Authorized Users and/or additional hours and resources, prorated for the remainder of the term. Except as otherwise provided in Order Form, and in each corresponding SOW (Services cost and payments), all fees are due and payable to Provider in advance. Provider shall be entitled to withhold performance and discontinue the service until all amounts due are paid in full.

5.2. Fees Increase. The Platform Fees established in any current Order Form may be subject to adjustment, which shall take effect at the start of a Renewal Period, upon a written notification by Provider to Customer of 45 days in advance. For the avoidance of doubt, the Platform Fees shall not be increased more than ten (10%) of our pricing list (excluding discounts and applicable taxes) for the same products and services offered in the Order Form to be renewed.

5.3. Taxes. The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Provider’s income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or the license of the Software to

Customer. Customer will make all payments of fees to Provider free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Provider will be Customer's sole responsibility, and Customer will provide Provider with official receipts issued by the appropriate taxing authority, or such other evidence as the Provider may reasonably request, to establish that such taxes have been paid. Customer shall indemnify and defend Provider in connection with any proceedings brought by any taxing authorities in connection with the Agreement.

5.4. Expenses. Customer shall reimburse Provider for all costs, pre-approved by Customer, including Provider's reasonable out-of-pocket (including travel and living) expenses incurred in performing its obligations hereunder. All costs and expenses incurred by Customer in connection herewith are the sole responsibility of Customer.

5.5. Interest. Any amounts not paid when due shall bear interest at the rate of one- and one-half percent per month, or the maximum legal rate if less on any amount that is not the subject of a good faith dispute that is unpaid on the due date, and on any other outstanding balance.

6. CUSTOMER CONTENT AND RESPONSIBILITIES

6.1. License; Ownership. Customer grants Provider a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Customer Content as necessary for purposes of providing the Services and (b) to use the Customer trademarks, service marks, and logos as required to provide the Services. The Customer Content hosted by Provider as part of the Services, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. All rights in and to the Customer Content not expressly granted to Provider in the Agreement are reserved by Customer. Notwithstanding the foregoing, Customer authorizes Provider to and acknowledges that Provider may use Customer's Content and data that Customer provides to the Provider for the purpose of Provider's internal research, testing and development of improvements or enhancements to the PaaS, Software, Solution, Services, etc., or for the development of new services that provide a more tailored and meaningful experience for users. In doing so, Provider may compile and analyze, in aggregated and anonymized format, summary information reflecting the use of the PaaS, Software, Solution and/or Services by Customer's authorized users, and may prepare reports, studies, analysis and other work product resulting from this compilation and analysis (collectively the "Compiled Data"). Provider shall retain ownership rights in and to the Compiled Data.

6.2. Authorized Users Access to Services. Customer may permit any

Authorized Users to access and use the features and functions of the Services as contemplated by the Agreement. User IDs cannot be shared or used by more than one Authorized User at a time. If a Customer wishes to add additional User IDs, Customer may order such additional User IDs at any time detailing the number of additional User IDs. Upon written acceptance by Provider, Provider shall make the Service(s) available to the additional Authorized Users. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Provider promptly of any such unauthorized use known to Customer. Customer shall not sell, transfer, sublicense or otherwise disclose your User IDs to any other party or use them with any third-party application(s), technology, website(s) or property. Customer is responsible for maintaining the secrecy and security of its User IDs. Customer is fully responsible for all activities that occur using its User IDs, regardless of whether such activities are undertaken by Customer or a third party. Customer shall notify the Provider immediately. If it believes its User IDs have been compromised or misappropriated in any way, including, without limitation, by a third party.

6.3. Non-transferable Code. All the content generated under the Agreement can only be used in the context of the licensed granted hereunder and cannot be exported and reused in the context of any other Provider's license unless such content a) is made available as an open source software in the Provider's Community or b) it is authorized by the Provider, as may be the case.

6.4. Customer obligations. Customer shall: (i) be responsible for its, and its employees', agents' and contractors' compliance with the Agreement; (ii) use all commercially reasonable efforts to prevent unauthorized access to or use of the Software and notify the Provider promptly of any such unauthorized access or use; (iii) control access by its Users and be responsible for their use of the Software in accordance with the Agreement; (iv) to maintain the confidentiality of any non-public authentication credentials associated with its use of the Software. Customer must promptly notify the Provider about any possible misuse of its accounts or authentication credentials, or any security incident related to the Software.

6.5. Customer Content. Customer is solely responsible for its content. Customer acknowledges and agrees that Customer, and not the Provider, is entirely responsible for all content that it uploads or otherwise transmits via the PaaS. The Provider will have no liability for any such content, including without limitation the use or inability to use such contents with the PaaS, the performance of PaaS with such content, or any loss or damage to such Content. The Provider does not pre-screen or monitor or control the Customer Content and, as such, does not guarantee the accuracy, integrity, quality or

lawfulness of such content. By uploading content, the Customer warrants and represents that it owns or are authorized to exercise all of the rights to its contents necessary to upload and use the Customer Content on PaaS, and further warrants and represents that the Customer Content and the access to and/or use of such Customer Content does not infringe upon, misappropriate, or otherwise infringe any intellectual property, proprietary, privacy or other rights of any third parties. Customer hereby grants the Provider all rights necessary to host such Customer Content in connection with the PaaS. The Provider does not and will not accept any obligations set forth in any separate license or other agreement that may apply to the Customer Content or application components.

6.6. Restrictions. Customer may not (and will not allow any third party to): (i) sell, rent, lease, license, sublicense, distribute, pledge, assign or otherwise transfer in whole or in part the Software, the User IDs or any interest in them to another party; (ii) provide, disclose, divulge or make available to, or permit use of the Software in whole or in part by any third party without Providers' prior written consent; (iii) modify, translate, adapt or create derivative works based on the Software and/or the Users IDs; (iv) export or re-export the Software or any derivative work thereof; (v) remove or modify any markings or any notice of Providers' proprietary rights; (vi) use the Software to develop, test, host, or run and operate applications on behalf of third-parties to the Agreement, without Providers' prior written consent; (vii) use the Software to provide third party training , without Providers' prior written consent; (viii) disclose results of any Software benchmark tests to any third party without Providers' prior written consent; (ix) use the Software in any way that is contrary to the terms and conditions of the Agreement; or (x) use the Software for any unlawful purposes. Except to the extent expressly permitted by the Agreement or applicable law, and to the extent that Provider is not permitted by that applicable law to exclude or limit the following rights, Customer may not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part.

6.7. Compliance. By using the PaaS, Customer agrees to comply with all applicable domestic and international laws, statutes, ordinances and regulations that govern its use of the PaaS. Customer also agrees to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside, and to comply with any other local laws affecting the transmission or posting of its Customer Content or affecting the privacy of persons. Further, Customer agrees to comply with all applicable export or import laws of the United States and any other applicable countries. Failure to comply with this Section may result in deletion of the offending Customer Content without prior notice and/or termination of Customer's use of the PaaS under the Agreement.

6.8. Customer Warranty. Customer represents and warrants that any Customer Content hosted by Provider as part of the Services shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Provider's system or data; or (e) otherwise violate the rights of a third party. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services.

6.9. Reporting of Issues. Customer shall report any deviation of the Services from the "specification of the Services included in each corresponding SOW, directly to Zinier by raising a ticket through the Customer's profile created by the Provider in the Zendesk system describing the issue the Customer is facing, and or any suspected breach, if not possible, the Customer shall describe the characteristics of the issue or suspected breach. The Customer shall share with the Provider any additional information and/or documentation that may help identify the issue and/or suspected breach, to the email address of their Provider Project Manager as defined in the corresponding SOW.

6.10. Customer Responsibility for Data and Security. Customer and its Authorized Users shall have access to the Customer Content and shall be responsible for all changes to and/or deletions of Customer Content and the security of all passwords and other Access Protocols required in order to access the Services. Customer shall have the ability to export Customer Content out of the Services and is encouraged to make its own back-ups of the Customer Data. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content.

6.11. Data Protection. Each Party shall comply with all its obligations under the applicable Data Protection laws and regulations applicable to their domiciles and territory of service provision (including but not limited to "Personal Data Protection Acts 2012 ("PDPA"), General Data Protection Regulations ("GDPR"), ("US Privacy Act"), Ley Federal para la Protección de Datos Personales en Posesión de los Particulares ("LFPDPPP"), Lei Geral de Proteção de Dados ("LGPD")) at its own cost. The Customer is responsible to ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Personal Data to the Provider for the duration and purposes of the Agreement. As a result of the compliance above mentioned, the Parties shall be under the provisions of the Zinier's Data Protection Policy and the Data Processing Addendum which can be found in

<https://zinier.com/privacy-policy-app/>

6.12. **Copyright Policy.** Provider reserves the right to terminate its agreement with any Customer who repeatedly infringes third party copyright rights upon prompt notification to Provider by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if Customer believes that a copyrighted work has been copied and posted via the Services in a way that constitutes copyright infringement, Customer shall provide Provider with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyrighted work; (b) an identification and location in connection with the Services of the copyrighted work that Customer claims has been infringed; (c) a written statement by Customer that Customer has a good faith belief that the disputed use is not authorized by the owner, its agent, or the law; (d) the name and contact information, such as telephone number or e-mail address, of Customer; and (e) a statement by Customer that the above information in Customer's notice is accurate and, under penalty of perjury, that Customer is the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Provider's Copyright claims of copyright infringement shall be issued to legal@zinier.com.

7. WARRANTIES AND DISCLAIMERS

7.1. **Limited Warranty.** Provider warrants to Customer that the Software will operate free from Errors during the term of the Agreement. Provided that Customer notifies Provider in writing of any breach of the foregoing warranty during the term hereof, Provider shall, as Customer's sole and exclusive remedy, provide the support set forth in the SOW (Software Services) to the Agreement. This warranty gives Customer specific legal rights, and Customer may also have other rights which vary from jurisdiction to jurisdiction.

7.2. **Disclaimer.** THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS," AND "WITH ALL FAULTS", AND PROVIDER MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, OR SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED

TO CUSTOMER BY PROVIDER. PROVIDER DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SOFTWARE AND SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

8. LIMITATION OF LIABILITY

8.1. Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, PROVIDER OR ITS SUPPLIERS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH PROVIDER'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF PROVIDER HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

8.2. Amount of Damages. THE MAXIMUM LIABILITY OF PROVIDER ARISING OUT OF OR IN ANY WAY CONNECTED TO the Agreement SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO PROVIDER. IN NO EVENT SHALL PROVIDER'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO the Agreement. NOTHING IN the Agreement SHALL LIMIT OR EXCLUDE PROVIDER'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF PROVIDER OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.3. Basis of the Bargain. The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

9. CONFIDENTIALITY

9.1. **Confidential Information.** During the term of the Agreement, each party (the “Disclosing Party”) may provide the other party (the “Receiving Party”) with certain information regarding the Disclosing Party’s business, technology, products, or services or other confidential or proprietary information (collectively, “Confidential Information”). The Disclosing Party will mark all Confidential Information in tangible form as “confidential” or “proprietary” or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the Software, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Provider.

9.2. **Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under the Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Provider). In addition, the Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party’s request or upon termination of the Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under the Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

9.3. **Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its

rights under the Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

10. INDEMNIFICATION

10.1. **By Provider.** Provider will defend at its expense any suit brought against Customer, and will pay any settlement Provider makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Software or the Services misappropriated any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the Effective Date; Provider will be exempt of complying with the aforementioned obligation only if such claim or infringement suit is based upon: (a) any use by the Customer or any third parties of the Software or the Services not in accordance with the Agreement or as specified in the Documentation; (b) any use by the Customer or any third parties of the Software or the Services in combination with other products, equipment, software or data not supplied by Provider; or (c) any modification of the Software or the Services by any person other than Provider or its authorized agents. This subsection states the sole and exclusive remedy of Customer and the entire liability of Provider, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions. If any portion of the Software or the Services becomes, or in Provider's opinion is likely to become, the subject of a claim of infringement, Provider may, at Provider's option: (a) procure for Customer the right to continue using the Software or the Services; (b) replace the Software or the Services with non-infringing software or services which do not materially impair the functionality of the Software or the Services; (c) modify the Software or the Services so that it becomes non-infringing; or (d) terminate the Agreement and refund any fees actually paid by Customer to Provider for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Software, Documentation, and Services.

10.2. **By Customer.** Customer will defend at its expense any suit brought against Provider, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to Customer's breach of the subsections titled Customer Warranty and Copyright Policy. This subsection states the sole and exclusive remedy of Provider and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.

10.3. **Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

11. TERM AND TERMINATION

11.1. **Term.** The duration of the Agreement shall commence on the date each Order Form is signed (the "Effective Date"), and shall remain effective for the period established in such an Order Form, and for any subsequent terms as agreed between the Parties, unless earlier terminated pursuant to Section 11.3 (the "Term").

11.2. **Renewal.** Unless otherwise agreed between the Parties in writing on the corresponding Order Form, the Agreement will automatically renew for additional periods of twelve (12) months, unless a Party notifies the other its intentions to not renew the Agreement at least sixty (60) days prior to the expiration of the then current term.

11.3. **Termination.** Either party may terminate the Agreement immediately upon notice to the other party if the other party materially breaches the Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

11.4. **Effect of Termination.** Upon termination or expiration of the Agreement for any reason: (a) all rights and obligations of both Parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each Party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled Confidentiality; (c) within ten (10) days after the effective date of termination, Provider shall discontinue all use of Customer Content and destroy all copies of Customer Content in its possession; and (d) Provider, upon Customer's written request will make Customer Content available to Customer for electronic retrieval for a period of 30 business days. After the expiration of such period, Provider may, but will not be obligated to delete the stored Customer Content. Notwithstanding the aforementioned, all rights to access and use the Platform will cease immediately at expiration or termination. The sections and subsections titled Definitions, Limitations, Warranties and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous will survive

expiration or termination of the Agreement for any reason.

12. MISCELLANEOUS

12.1. Governing Law and Venue. In the event your address is registered within Europe or the United Kingdom, the Agreement and any action related thereto will be governed and interpreted by and under the laws of England, and the Parties irrevocably agree that the English Courts shall have exclusive jurisdiction over any claim or matter arising under or in connection with these Terms. In the event, your address is registered in the United States or elsewhere, excluding Europe and the United Kingdom, the agreement and any action related thereto will be governed and interpreted by the laws of California without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue for any lawsuit filed there against Customer by Provider arising from or related to the Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement. Customer shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Software, Documentation, or Services hereunder.

12.2. Export. Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Provider, or any products utilizing such data, in violation of the United States export laws or regulations.

12.3. Severability. If any provision of the Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of the Agreement will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer agrees that the section titled Limitation of Liability will remain in effect notwithstanding the unenforceability of any provision in the subsection titled Limited Warranty.

12.4. Waiver. Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.5. Remedies. Except as provided in the sections titled Limited Warranty and Indemnification, the parties' rights and remedies under the Agreement are cumulative. Customer acknowledges that the Services, Software, and Documentation contain valuable trade secrets and proprietary information of Provider, that any actual or threatened breach of the sections titled

Intellectual Property or Confidentiality or any other breach by Customer of its obligations with respect to Intellectual Property Rights of Provider will constitute immediate, irreparable harm to Provider for which monetary damages would be an inadequate remedy. In such case, Provider will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Software, Documentation, or any portions thereof, that Customer attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce the Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.6. No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer the Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign the Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of the Agreement shall be binding upon the parties and their respective successors and permitted assigns.

12.7. Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of the Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

12.8. Independent Contractors. Customer's relationship to Provider is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have and will not represent to any third party that it has any authority to act on behalf of the Provider.

12.9. Notices. Each party must deliver all notices or other communications required or permitted under the Agreement in writing to the other party at the address listed in the corresponding Order Form and in the preamble of these Terms, respectively, by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the

postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party. Notwithstanding the foregoing, with the exception of termination notices, a notification made by sending an email shall be considered as effective on the day in which such an email was sent.

12.10. **Publicity.** During the Term and at any point thereafter, Provider may publicly refer to Customer orally and in writing, including on Provider's website and sales presentations, as a Customer of Provider and may use Customer's logo on a list of Provider Customers. During the first month after signing the Agreement, both parties will be entitled to work together in an external press release which will be publicly published with the parties' prior written approval.

12.11. **Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to the Agreement, or any waiver of any rights under the Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and the Provider.