

## SOFTWARE-AS-A-SERVICE TERMS AND CONDITIONS

The following terms and conditions apply to the legal agreement formed between FiscalNote Inc., with offices at 1201 Pennsylvania Avenue NW, 6th Fl, Washington D.C. 20004 (“**Provider**”) and the Customer executing a Service Order that is accompanied by or references, this document (“**Customer**”).

### 1. DEFINITIONS. As used in this Agreement:

“Agreement” means the Software-as-a-Service (“Services”) agreement between Customer and Provider consisting of these Terms and Conditions, including any attached exhibits referenced herein, any Service Order Form signed by Customer and Provider that accompanies or references this document, and any supplementary Statements of Work entered into by Customer and Provider hereunder.

“API License” means, if and when applicable, a license granted by Provider to Customer through a separate written supplement to this Agreement in which Provider grants additional rights to Customer to access the application protocols of the Services for the purpose of integrating it with other Customer applications or platforms.

“Applicable Laws” means all legislation, statutes, regulations, ordinances, rules, judgments, orders, decrees, rulings, and other requirements enacted, promulgated, or imposed by any governmental authority or judicial or regulatory body (including any self-regulatory body) at any level (e.g., municipal, county, provincial, state or national) that are applicable to or enforceable against a party or its personnel in relation to their activities under or pursuant to this Agreement.

“Authorized Customer Entities” means specific Customer-affiliated entities named in a Service Order who are authorized to access and use the Services during the Subscription Term.

“Authorized User(s)” means end users of Customer and Authorized Customer Entities who have completed Provider’s online registration process or who otherwise receive a user ID or other access credentials from Provider or Customer authorizing them to access and use the Services.

“Confidential Information” means all non-public written or oral information, disclosed by either party to the other, related to the business or operations of either party or a third party that has been identified as confidential or that by the nature of the information or circumstances surrounding its disclosure ought reasonably to be understood as being confidential.

“Content” means any data, media, information and/or other type or form of content displayed, distributed or otherwise made available to a party through or in connection with the Services, including User Content and Provider Content.

“Customer Data” means any data owned by Customer or an Authorized Customer Entity that is submitted to the Services for processing transmission, and/or storage.

“Data Privacy and Security Laws” means all applicable federal, state, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, of or by any United States federal or state government entity, or any authority, department or agency thereof governing the privacy, data protection and security of Personally Identifiable Information and security breach notification(s) relating to

Personally Identifiable Information, and any other laws in force in any jurisdiction (regulatory or otherwise) in which the Services are being utilized.

“Including” (and its derivative forms, whether or not capitalized) means including without limitation.

“Intellectual Property Rights” means the legal rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the rights to exclude others from using, making, having made, selling, offering to sell, and importing patented subject matter and to practice patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including privacy rights and any rights in databases recognized by applicable law.

“Losses” means, in connection with a claim that is subject to defense and indemnification by a party under this Agreement, all reasonable attorneys’ fees, reasonable costs of investigation, discovery, litigation and settlement, and any resulting liabilities, damages, settlements, judgments and awards, including associated taxes, interest and penalties.

“Professional Services” means any professional services performed or contracted to be performed by Provider pursuant to a Statement of Work entered into by the parties under this Agreement.

“Provider Content” means Content owned, originated or controlled by Provider that is made accessible to Customer and Authorized Customer Entities via the Services.

“Provider’s Web Site” means the web interface of the Services platform that Provider offers for interaction with and receipt of the Services.

“Service Order” means an order form issued by Provider and executed by Customer and Provider setting forth the necessary information relating to the Services to be provided to Customer under this Agreement and the fees payable to Provider.

“Services” means, collectively: Provider’s proprietary web-based software-as-a-service, whether hosted or not hosted by Provider, and whether delivered on-premise or off-premise, including its technology components, such as Provider’s Web Site, applicable mobile applications, and related documentation; subscriptions to access certain applicable Provider Content; the Support Services; and any Professional Services performed or provided by Provider pursuant to this Agreement.

“Statement of Work” (or “SOW”) means a supplementary document in a mutually agreed form that is entered into by the Parties under this Agreement and describes particular Services ordered by Customer from Provider. Upon execution and delivery of a SOW, it is deemed to form part of this Agreement.

“Subscription Fees” means the non-recurring and recurring fees payable by Customer to Provider for the Services, as set forth in the relevant Service Order, which shall be payable in accordance with the payment terms set forth in the Service Order. Unless and except as otherwise expressly stated in this Agreement, the Subscription Fees are non-cancellable and non-refundable.

“Subscription Term” means the period during which Customer’s Authorized Users are permitted to access and use the Services, as set forth in the applicable Service Order.

“Update” means any improvement, enhancement, modification and/or changes to the Services offered or provided by Provider to its subscribers at no charge.

“User Content” means any Content submitted to, posted or displayed on the Services by Authorized Users.

## **2. ACCESS TO AND USE OF THE SERVICES.**

**2.1. Limited-Purpose Access Grant.** Subject to Customer’s and its Authorized Users’ continuing compliance with this Agreement and payment of the applicable fees, Provider hereby grants to Customer a limited, personal, non-exclusive, non-transferable right for Authorized Users of Customer and any other Authorized Customer Entities to access the features and functions of the Services during the Subscription Term. This access grant may not be sublicensed, in whole or in part. The scope of Customer’s use of the Services is subject to the terms and conditions of this Agreement, including any usage or other parameters or limitations set forth in the applicable Service Order.

**2.2. Access Protocols.** On or as soon as reasonably practicable after the execution of this Agreement, Provider shall provide to Customer the necessary access credentials and protocols to allow Authorized Users to access the Services (the “Access Protocols”). Customer acknowledges and agrees that, as between Customer and Provider, Customer shall be responsible for all acts and omissions of Authorized Users, including any act or omission by an Authorized User, which, if undertaken by Customer, would constitute a breach of this Agreement and any act by a person (whether or not an Authorized User) using Customer’s Access Protocols.

**2.3. Account Administration.** Customer shall designate at least one Authorized User to act as an administrator who will act as Customer’s principal point of contact with Provider for purposes of this Agreement.

**2.4. User Content.** The Services may enable Customer’s Authorized Users to search for, find, store, manage and use User Content of interest that is provided or made accessible by Provider. Customer acknowledges that Provider does not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, reliability or other attributes of any User Content, nor does Provider review or attempt to verify the accuracy or currency of any User Content. As between Customer and Provider, Customer is solely responsible for (i) determining the suitability of any User Content for its intended use by Customer and its Affiliates, and (ii) as necessary for its intended use, verifying the authenticity, integrity, legality and accuracy of the User Content prior to using or providing it. Provider has no obligation to preview, verify, flag, modify, filter or remove any User Content. Either Provider or Customer may remove or disable access to any User Content at its sole discretion, but Provider is not responsible for any failures or delays in removing or disabling access to any User Content. Provider reserves the right to immediately remove any User Content or suspend access to the Services or terminate this Agreement if Customer uses the Services to upload, post, or otherwise transmit Content that is unlawful, fraudulent, false, misleading, libelous, defamatory, derogatory, harassing, threatening, abusive, obscene, pornographic, profane, offensive, inciting, hateful, or otherwise objectionable.

**2.5. Compliance.** Customer’s and its Authorized Users’ access to and use of the Services is subject to their continuing compliance with all of the following: (a) the terms and conditions set forth in this Agreement; (b) Provider’s online Privacy and Security Policy, available on Provider’s Web Site, which includes policies and procedures pertaining to European Union regulations; (c) third party service terms and conditions governing any Content accessed through the Services that is published or distributed by a

third-party web site, and (d) Applicable Laws, including Data Privacy and Security Laws. In the event of a conflict between this Agreement (to include a SOW), and the online Privacy and Security Policy, this Agreement shall prevail and control. In addition to complying with applicable Data Privacy and Security Laws, Provider will employ commercially reasonable security and access controls designed to protect the types of data collected and stored by the Service, including Personally Identifiable Information.

**2.6. Restrictions.** Customer agrees not to act outside the scope of the rights that are expressly granted by Provider in this Agreement. Further, Customer will not (i) use the Services in any manner that is inconsistent with this Agreement; (ii) except as expressly permitted under an API License (if any) granted by Provider to Customer, modify any program code of the Services or attempt to create or permit the creation of any derivative works of the Services; (iii) access or use the Services or in order to develop or support, or assist another party in developing or supporting, any products or services competitive with the Services; (iv) decompile, reverse engineer (unless required by law for interoperability), or use any other method in an attempt to view or recreate any of the source code of the Services software or extract any trade secrets from it; (v) use the Services to operate the business of a third party or to process data or content provided by a third party for the operation of a third party's business, or otherwise use the Services on a third party's behalf, or to act as a service bureau or provider of application services to any third party; (vi) knowingly or intentionally re-use, disseminate, copy, or otherwise use the Services or associated Content in a way that infringes, misappropriates, or violates any trademark, copyright, patent, trade secret, publicity, privacy or other right of Provider or any third party; or (vii) sell, lend, lease, assign, transfer, pledge, permit a lien upon, or sublicense any of the rights granted by this Agreement with respect to the Services.

**2.7. No Interference with Service Operations.** Customer and its Authorized Users will not take any action designed or intended to: (a) interfere with the proper working of the Services; (b) circumvent, disable, or interfere with security-related features of the Services or features that prevent or restrict use, access to, or copying the Services or any Content or other data, or that enforce limitations on use of the Services or Content; or (c) impose (or which may impose, in Provider's sole discretion) an unreasonable or disproportionately large load on the Services infrastructure.

**2.8. Access and Use of the Services from Outside the U.S.** The Services is offered for use in the U.S. and any other territory set forth in the Service Order. As between Customer and Provider, Customer is solely responsible for compliance with Applicable Laws relevant to its Authorized Users accessing or using the Services while outside the U.S.

### **3. SUPPORT SERVICES.**

**3.1. Technical Support.** At no additional charge and during Provider's normal business hours (which are 9:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday, excluding Provider-designated holidays unless otherwise specified in the applicable Service Order), Provider will provide reasonable technical support and assistance for Authorized User requests by telephone or sent via email to support@FiscalNote.com. Provider may also offer upgraded support services for an additional fee.

**3.2. Updates.** Customer will be given access to Updates of the Services that Provider implements during the Subscription Term. Customer acknowledges, however, that Provider may in the future offer optional value-added functions, features, or other capabilities for a separate fee.

**3.3. Scheduled Maintenance.** Provider reserves the right to take down applicable servers hosting the Services to conduct scheduled and emergency maintenance. Provider will use commercially reasonable efforts to perform scheduled maintenance outside regular business hours and will provide at least 24 hours' advance notice for non-emergency maintenance. Provider will not be responsible

for any damages or costs incurred by Customer due to unavailability of the Services during scheduled or emergency maintenance.

**4. PROFESSIONAL SERVICES.** If Provider has agreed to perform Professional Services for Customer or an Authorized Customer Entity under this Agreement, the parties shall prepare and sign a Statement of Work describing the Professional Services to be performed and setting forth any other pertinent details, including the locations at which the Professional Services will be performed, the planned schedule of performance, the deliverables (if any) to be produced by Provider and delivered to Customer, the amount and manner of payment of Provider's fees for the Professional Services, and any associated responsibilities of Customer or Authorized Customer Entities relating to the Professional Services. Customer's obligation to pay the Subscription Fees set forth in a Service Order is not dependent on Provider's performance of any Professional Services pursuant to an SOW.

**5. ALLOCATIONS OF RISK.**

**5.1. Representations and Warranties.** (a) Each party represents to the other (i) that the execution and performance of its obligations under this Agreement will not conflict with or violate any provision of Applicable Law or any other agreement or order by which the representing party is bound; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms. (b) Provider warrants that any Professional Service performed by Provider under this Agreement will be performed in a good and workmanlike manner in accordance with prevailing industry standards. In the event of a breach of this warranty, Provider's sole obligation and Customer's sole remedy will be for Provider to correct or re-perform the affected Professional Service without undue delay to remedy the breach, at no charge to Customer.

**5.2. DISCLAIMERS.** (a) CUSTOMER REPRESENTS THAT IT IS ENTERING THIS AGREEMENT WITHOUT RELYING UPON ANY PROVIDER REPRESENTATION OR WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, SYSTEM RELIABILITY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, AND ALL WARRANTIES THAT MAY OTHERWISE BE IMPLIED. NO WARRANTIES ARE MADE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. (b) CUSTOMER ASSUMES COMPLETE RESPONSIBILITY, WITHOUT ANY RECOURSE AGAINST PROVIDER, FOR THE SELECTION OF THE SERVICES TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR ITS USE OF THE RESULTS OBTAINED FROM THE SERVICES IN CUSTOMER'S BUSINESS. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM USE OF THE SERVICES, INCLUDING THE COMPLETENESS, ACCURACY, AND CONTENT OF SUCH RESULTS. PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER EXPRESSLY ASSUMES ALL RISK AND LIABILITY FROM ANY DECISIONS MADE BY OR ON BEHALF OF CUSTOMER OR ITS RELATED PARTIES, INCLUDING THOSE DECISIONS BASED ON ANY PROVIDER CONTENT OR ADVICE FROM PROVIDER AND/OR OTHERWISE VIA THE SERVICES. (c) THE SERVICES ARE NOT DESIGNED OR PERMITTED TO BE USED IN OR FOR HIGH-RISK OR HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION,

COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"). PROVIDER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE SERVICES FOR HIGH-RISK ACTIVITIES. (d) PROVIDER IS NOT RESPONSIBLE FOR THIRD-PARTY PROVIDED PRODUCTS, CONTENT, OR SERVICES. PROVIDER CONTENT IS OFTEN AGGREGATED FROM UNAFFILIATED THIRD-PARTY SOURCES AND PROVIDER IS NOT RESPONSIBLE FOR SUCH CONTENT. (e) ANY PRODUCTS OR SERVICES DESIGNATED OR IDENTIFIED AS "BETA", "TEST", "EXPERIMENTAL" OR SIMILAR ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (INCLUDING WITHOUT LIMITATION OXFORD ANALYTICA'S NAVIGATOR RISKS).

**5.3. Indemnification of Customer by Provider.** Provider agrees to defend, indemnify, and hold harmless Customer and its Affiliates from and against all third-party claims and actions (collectively, "Claims" and individually, a "Claim"), that may, at any time, arise out of or relate to (a) a breach or alleged breach by Provider of any of its representations given in Section 5.1(a); or (b) a Claim that the Services or any Provider Content (excluding, however, User Content) provided by Provider hereunder or Customer's use of same in accordance with the terms hereof infringes any third party's Intellectual Property Rights.

**5.4. Indemnification of Provider by Customer.** Except for any Claims in respect of which Provider is obligated to indemnify Customer under Section 5.3, Customer agrees to defend, indemnify and hold harmless Provider and its Affiliates from and against all Claims, that may, at any time, arise out of or relate to: (a) use of the Services or any Content by or on behalf of Customer or an Authorized Customer Entity other than in accordance with this Agreement; or (b) the posting, display, distribution, broadcast or other use of User Content by or on behalf of Customer or an Authorized Customer Entity, including Claims that any such use infringes or otherwise violates the rights of any third party, including Intellectual Property Rights, privacy, publicity or other personal or proprietary rights, or that the User Content posted, displayed, distributed, broadcast or otherwise published contains libelous, defamatory or otherwise injurious or unlawful material; and, in each case, associated Losses.

**5.5. Indemnification Procedures.** If any third party makes a Claim covered by Section 5.3 or Section 5.4 against an indemnified party (the "Covered Party") with respect to which the Covered Party intends to seek indemnification under this Agreement, the Covered Party shall give prompt written notice of the Claim to the indemnifying party, including a brief description of the amount and basis for the claim, if known. Upon receiving such notice, the indemnifying party shall be obligated to defend the Covered Party (and its indemnitees) against the Claim and shall be entitled to assume control of the defense and settlement of the Claim. The Covered Party may participate in the defense and settlement of the Claim at its own expense, using its own counsel, but without any right of control. The indemnifying party shall keep the Covered Party reasonably apprised as to the status of the Claim. Neither the indemnifying party nor any Covered Party shall be liable for any settlement of a Claim made without its consent. Notwithstanding the foregoing, the Covered Party shall retain responsibility for all aspects of the Claim that are not subject to indemnification by the indemnifying party hereunder.

**5.6. Limitation of Liability.** Except as expressly provided in this Section 5.6, neither party shall have any liability under or in connection with this Agreement for any indirect, incidental, consequential, special, exemplary or punitive damages, nor any liability for lost profits, loss of data, loss of business opportunity, or business interruption, regardless of the theory of liability (including theories of contractual liability, tort liability, or strict liability), even if the liable party knew or should have known that those kinds of damages were possible. Each party's maximum cumulative liability under or in connection with this Agreement shall never exceed the injured party's actual direct damages, capped at an

amount equal to the lesser of (a) the total amount paid under this Agreement by Customer to Provider during the 12-month period preceding the occurrence of the event giving rise to liability, or (b) \$150,000. The foregoing limitations of liability shall not be applicable to a party's indemnification obligations under this Section 5 or to any damages that the liable party is not permitted to disclaim (or, as applicable, limit) under Applicable Law. Customer acknowledges that this Section 5.6 is an essential part of this Agreement, absent which the economic terms and other provisions of this Agreement would be substantially different.

## **6. DURATION AND TERMINATION.**

**6.1. Duration of Agreement.** This Agreement commences on the Subscription Term start date set forth in the first Service Order and continues for the initial term stated therein, unless terminated earlier in accordance with this Agreement. Thereafter, the Agreement will be extended automatically for periods of time equivalent to the initial term or the then-current renewal term at Provider's then-current prices and subject to the terms of this Agreement, unless the Agreement is cancelled in writing at least sixty (60) days prior to the expiration of the initial term or the then-current renewal term. Any initial pricing and/or payment terms shall only be applicable to the initial term.

**6.2. Termination.** Either Customer or Provider may terminate this Agreement, and all Service Order(s) or only affected Service Order(s) (a) for cause upon written notice to the other party if the other party has committed a material breach of this Agreement and the breach remains uncured 30 days after the breaching party has received written notice of the breach from the non-breaching party, or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**6.3. Effect of Termination on Fees.** If this Agreement is terminated by Customer pursuant to Section 6.2, any pre-paid fees for the unused portion of the terminated Subscription Term will be refunded to Customer. In all other cases, all fees paid or payable for the terminated Subscription Term are non-cancellable and non-refundable, and any unpaid fees for the remainder of the terminated Subscription Term will become immediately due and payable.

**6.4. Other Effects of Termination.** Effective immediately upon expiration or termination of this Agreement, (i) all rights granted under this Agreement will become void, (ii) Customer shall cease all use of the Services, and (iii) neither party will have continuing rights to use any Confidential Information of the other party or to exercise any Intellectual Property Rights of the other party that were licensed under this Agreement. However, Customer shall have 30 days after any such expiration or termination to download or otherwise obtain an extract of any Customer Data stored by the Services at the time of expiration or termination.

**6.5. Survival.** Any provision of the Agreement that contemplates or governs performance or observance subsequent to its termination or expiration will survive the expiration or termination of this Agreement (or the applicable Service Order) for any reason.

## **7. PROPRIETARY RIGHTS.**

**7.1. Services and Provider Content.** The Services and Provider Content, and any other products, services, and/or materials provided by or on behalf of Provider hereunder, and all Intellectual Property Rights in and to them, are and shall remain owned by Provider (and its licensors, as applicable) and are protected by copyright, trademark, patent, trade secret and other laws and treaties. Except to the limited extent of any licenses expressly granted herein during the Term, Provider retains all right, title and interest therein and thereto. Provider owns and retains all rights in and to all data in de-identified form pertaining to usage of the Services. Customer acknowledges that there are no licenses granted by Provider by

implication under this Agreement. Provider reserves all rights that are not expressly granted herein. Customer acknowledges that, as between the parties, Provider owns all Intellectual Property Rights and proprietary interests that are embodied in, or practiced by, the Services, with the exception of Intellectual Property Rights in or to Customer Data or to User Content that may be distributed through the Services.

**7.2. User Content.** Customer hereby grants to Provider a non-exclusive, non-transferable right and license to access, use, host, copy, display, process, transmit, and deliver the User Content as necessary or convenient for Provider to comply with its obligations and exercise its rights under this Agreement. Except for the foregoing License, Customer retains all right, title and interest in and to the Customer Content.

**7.3. Trademarks.** If Provider agrees to create, at Customer's request, any Customer-branded or co-branded user interfaces through which Authorized Users will access the Services, Customer hereby grants to Provider during the Subscription Term a non-exclusive, worldwide, royalty-free license to use and display the Customer's name, logo and other trademarks ("Customer Trademarks") designated by Customer on such user interface(s). In such event, Provider will use the relevant Customer Trademarks in accordance with Customer's then-current trademark usage guidelines, if any, provided by Customer to Provider and only for the agreed purposes. Subject to the foregoing license, Customer will retain all Intellectual Property Rights that it may have in and to the Customer Trademarks, and all use thereof by Provider shall inure to the sole benefit of Customer.

**7.4. Feedback.** If Provider receives from Customer or any of its Authorized Users any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Services or any other Provider products, offerings or services ("Feedback"), Provider may use, disclose and exploit such Feedback without restriction and without paying any royalties or other compensation, including to improve the Services and to develop, market, offer, sell and provide other products and services.

## **8. CONFIDENTIALITY OBLIGATIONS; PUBLICITY.**

**8.1.** All activities of the parties under or in relation to this Agreement are subject to the confidentiality terms set forth in these terms and conditions. Each party agrees (a) that it will not use, or disclose to any third party, any Confidential Information disclosed to it by the other party for any purpose except as expressly permitted in this Agreement, and (b) it shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case, using no less than a reasonable degree of care. Notwithstanding the foregoing, each party may disclose Confidential Information (i) to its employees, directors, affiliates, advisors, agents, independent contractors and consultants (together, "Representatives") on a need-to-know basis, provided that the receiving party has enforceable agreements or policies with each of such Representatives sufficient to enable compliance by the receiving party with all the provisions of this Agreement and requiring such Representative, for the benefit of the disclosing party, to maintain the confidence of the disclosing party's Confidential Information as provided in this Agreement, or (ii) in accordance with a judicial or other governmental order or request, provided the receiving party shall, if permitted by law, give the disclosing party reasonable opportunity to seek a protective order, or obtain written assurance from the applicable judicial or governmental entity that will afford the Confidential Information of the other party the highest level of protection afforded under applicable law or regulation. The receiving party shall be responsible for any failure by any of its Representatives to comply with any of the terms of this Agreement, and the receiving party agrees, at its sole expense, to restrain its Representatives from the disclosure or use of the disclosing party's Confidential Information to the extent prohibited or unauthorized by this Agreement. Neither Party may



use the name of the other in any published advertising or publicity materials without the prior written consent of the other party.

**8.2.** Notwithstanding anything to the contrary in the foregoing Section (8.1), Provider may include Customer's name on Provider's customer list and may describe briefly, and in general terms, the nature of the services provided by Provider to Customer.

## **9. JURY WAIVER**

CUSTOMER HEREBY EXPRESSLY, KNOWINGLY AND VOLUNTARILY FORFEITS ANY RIGHTS TO LITIGATE CLAIMS BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO ANY CLAIM.

## **10. GENERAL.**

**10.1. Governing Law.** The validity, construction, and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the internal laws of the state of New York without regard to principles of conflicts of laws.

**10.2. Force Majeure.** Notwithstanding any other provision of this Agreement, no party to the Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance (except for the payment of money) due to any cause beyond the reasonable control of, and without fault or negligence by, such party or its officers, directors, employees, agents or contractors.

**10.3. Insurance.** Provider shall have and maintain in force throughout the Subscription Term insurance coverage in types and amounts customarily maintained by reputable companies in the same or similar line of business as Provider.

**10.4. Taxes.** Posted prices do not include applicable taxes, which are the responsibility of Customer.

**10.5. Notice.** All notices required or permitted under this Agreement will be in writing and sent by certified mail, return receipt requested, or by reputable oversight courier, or by hand delivery. The notice address for Provider and Customer shall be their respective addresses specified in the applicable Service Order. Any notice sent in the manner set forth above shall be deemed sufficiently given for all purposes hereunder (i) in the case of certified mail, on the second business day after deposited in the U.S. mail and (ii) in the case of overnight courier or hand delivery, upon delivery. Either party may change its notice address by giving written notice to the other party by the means specified in this Section.

**10.6. Construction; Headings.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or arbitrator by reason of such party having or being deemed to have structured or drafted such provision. The headings in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.

**10.7. Assignment.** Neither party may assign or delegate rights or obligations under this Agreement or portion, or any related Service Order(s), without the other party's written consent. However, either party may assign the Agreement: (i) in the event of a merger in which the party is not the surviving party; (ii) in the event of a sale of all or substantially all of its assets; or (iii) to any party with sufficient assets that controls, or is controlled by, or is in common control with such party. This Agreement and related Service Order(s) will be binding upon any permitted successors and assignees.

**10.8. Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, then the parties agree to replace it with an enforceable provision reflecting the intent of the original provision as nearly as possible in accordance with applicable law, and the remaining provisions of this Agreement will remain in full force and effect.

**10.9. Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require the performance at any subsequent time. The waiver by either party of a breach of any provision of this Agreement shall not be taken or held to be a waiver of the provision itself. Any course of performance shall not be deemed to amend or limit any provision of this Agreement.

**10.10. Entire Agreement; Amendments.** This Agreement (including Service Order(s) entered under it) constitutes the entire agreement between Provider and Customer with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the Parties with respect to such matter. This Agreement may be amended only by an instrument in writing executed by the Parties' duly authorized representatives. In the case of any conflict in terms and conditions among those in this document and those in an associated Service Order, the terms in the Service Order shall control, followed by those in this document and any attached exhibits, followed by those in an associated Scope of Work.

**10.11. Counterparts; Signatures.** This Agreement is hereby incorporated into the Service Order(s) signed by Customer, which may be signed in counterparts with the same effect as if the signatures were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, an online, email, or facsimile copy of a party's signature made by reliable means shall be sufficient to bind such party.