

Terms and Conditions

TERMS OF USE VERSION 2.0

LAST UPDATED 01/11/2023

**PLEASE READ THIS AGREEMENT CAREFULLY. BY PURCHASING, INSTALLING, DOWNLOADING OR OTHERWISE USING THE ELEMENTS SERVICE (INCLUDING THE WEBSITE LOCATED AT : [HTTPS://GETELEMENTS.COM/](https://getelements.com/)), ITS COMPONENTS AND ANY ASSOCIATED SOFTWARE, INCLUDING THE DOWNLOADABLE SOFTWARE) (THE “SERVICE”), YOU AGREE TO THE TERMS OF THIS AGREEMENT AND ANY CHANGES TO THIS AGREEMENT ELEMENTS MAY MAKE IN THE FUTURE. IF YOU DO NOT AGREE WITH THESE TERMS, YOU ARE NOT PERMITTED TO USE THE SERVICE AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SERVICE TO OBTAIN A REFUND. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY.**

**YOU MAY ONLY ACCESS THE SERVICE IF YOU ARE A RESIDENT OF, AND PHYSICALLY LOCATED WITHIN, THE UNITED STATES. IF YOU DO NOT MEET THESE CRITERIA YOU MAY NOT USE THE SERVICE AND MUST DISCONTINUE YOUR ACCESS TO THE SERVICE IMMEDIATELY.**

**WE WILL ALERT YOU ABOUT ANY CHANGES BY UPDATING THE “LAST UPDATED” DATE OF THESE TERMS OF USE AND YOU WAIVE ANY RIGHT TO RECEIVE SPECIFIC NOTICE OF SUCH CHANGE. IT IS YOUR RESPONSIBILITY TO PERIODICALLY REVIEW THESE TERMS TO STAY INFORMED OF UPDATES. YOU WILL BE SUBJECT TO, AND WILL BE DEEMED TO HAVE BEEN MADE AWARE OF AND TO HAVE ACCEPTED, THE CHANGES IN ANY REVISED TERMS OF USE BY YOUR CONTINUED USE OF THE SITE AFTER THE DATE SUCH REVISED TERMS ARE POSTED.**

**BY USING THE SERVICE YOU ALSO AGREE TO PROVIDER’S PRIVACY POLICY FOUND HERE: [HTTPS://GETELEMENTS.COM/PRIVACY](https://getelements.com/privacy).**

These terms (the “Agreement”) is a legal agreement between You (an entity or a person) (“You”, “Customer”) and Elements Technologies, Inc. (“Licensor”, “Provider”). You affirm that You are fully able and competent to enter into the Agreement and to abide by and comply with this Agreement. To access the Services you must be eighteen (18) years old. Your access may be terminated without warning if we believe that You are under the age of 18 or are otherwise

ineligible. You agree it will be a material breach of the Agreement if You provide any information that is untrue, inaccurate, not current, or incomplete. You agree upon such breach Provider has the right to suspend or terminate your account and refuse any and all current or future use of the Provider IP (or any portion thereof).

Provider software products for which You have acquired licenses, any media or reproductions (physical or virtual) and accompanying documentation (collectively the "Software") are protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. Any add-on, extension, update, mobile application, module, adapter or support release to the Software that You may download or receive that is not accompanied by a license agreement is Software and is governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release. Provider and Customer may be referred to herein collectively as the "Parties" or individually as a "Party."

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement;

WHEREAS, Provider licenses Downloadable Software to its customers; and

WHEREAS, Customer desires to obtain a license to the Downloadable Software, and Provider desires to provide Customer a license to the Downloadable Software, 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, The Parties agree as follows:

1. Definitions.

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

(b) "**Authorized User**" means Customer's customers, employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Provider System under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Provider System has been purchased hereunder.

(c) "**Customer 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 Customer or an Authorized User through the Provider System.

(d) "**Downloadable Software**" means downloadable tools (including applications downloaded to, and used on, mobile phones) or other software that Provider makes available for download specifically for purposes of facilitating access to, operation of, or use with the Services, and any updates Provider may make available to such

software from time-to-time. For the avoidance of doubt, Downloadable Software does not include Third-Party Products.

(e) **"Provider IP"** means the Provider System, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services or Downloadable Software, but] does not include Customer Data.

(f) **"Provider System"** means the Services and the Downloadable Software.

(g) **"Documentation"** means Provider's user manuals, handbooks, and guides relating to the Services provided by, or made available by, Provider to Customer either electronically or in hard copy form/end user documentation relating to the Services

(h) **"Services"** means the Provider System.

(i) **"Third-Party Products"** means any third-party provided with or incorporated into the Provider System, including any open source software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

## 2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(g)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use.. The total number of Authorized Users will not exceed the number set forth in the applicable Provider ordering documentation ("Order"), except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b) Downloadable Software and Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g)) license during the Term to: (i) use Downloadable Software, in object code format, solely for Customer's internal use, Authorized Users, in connection with its use of the Services and (ii) use and make a reasonable number of copies of the SaaS Documentation solely for Licensee's internal business purposes in connection with Licensee's use of the Software during the Term up to the number of Authorized Users set forth in the Order (the "**Downloadable Software License Terms**"). Customer's use of Downloadable Software must be in compliance with **Downloadable Software License Terms**. In the

event of any inconsistency between the Downloadable Software License Terms and this Agreement, the Downloadable Software License Terms shall apply only with respect to the Downloadable Software that the Downloadable Software License Terms reference and not the Services provided under this Agreement.

(c) Use Restrictions. Customer shall not use the Provider IP for any purposes beyond the scope granted in this Agreement. Customer 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 Provider IP, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Provider IP other than as provided in the Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Provider IP, in whole or in part; (iv) remove any proprietary notices from the Provider IP; or (v) use the Provider IP 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.

(d) Reservation of Rights. Provider reserves all rights not expressly granted to Customer 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 Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, without liability to Provider, notice, or refund, and in Provider's sole discretion, Provider may suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer 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; (E) Customer uploads content that are excessive in size or are in any way burdensome to the Service, or (E) Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider 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. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

Provider reserves the right to change, modify, or remove the contents of the Provider IP at any time or for any reason at Provider's sole discretion without notice. Provider has no obligation to update any information within Provider IP. Provider also reserves the right to modify or discontinue all or part of the Service without notice at any time. Provider will not be liable to Customer or any third party for any modification, price change, suspension, or discontinuance of the Service.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider 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; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(g) User Data. Provider may maintain certain data that transmit to the Service for the purpose of managing the Service, however, Customer is solely responsible for all data that transmitted to the Service or that relates to any activity Customer as performed using the Service. Customer agrees that Provider has no liability for any loss or corruption of any such data and has no obligation to provide copies or downloads of Customer data.

### 3. Customer Responsibilities.

(a) General. Customer is responsible and liable for all uses of the Provider IP resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Provider IP and shall cause Authorized Users to comply with such provisions. Customer agrees to keep passwords confidential and will be responsible for all use of Customer's Authorized User accounts and passwords. Provider reserves the right to remove, reclaim, or change a username an Authorized User selects if Provider determines, in its sole discretion, that such username is inappropriate, obscene, or otherwise objectionable.

(b) Acceptable Use. Customer may not access or use the Provider IP for any purpose other than that for which Provider makes Provider IP. The Service may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by us. Customer agrees not to: a) Systematically retrieve data or other content from Provider IP to create or compile, directly or indirectly, a collection, compilation, database, or directory, b) Make any unauthorized use of Provider IP,

including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses, c) Circumvent, disable, or otherwise interfere with security-related features of Provider IP, including features that prevent or restrict the use or copying of any content or enforce limitations on the use of Provider IP and/or the content contained therein, d) Engage in unauthorized framing of or linking to Provider IP, e) Trick, defraud, or mislead Provider or other users, especially in any attempt to learn sensitive account information such as user passwords, f) Make improper use of Provider support services or submit false reports of abuse or misconduct, g) Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools, h) Interfere with, disrupt, or create an undue burden on the Service or the networks or services connected to the Service, h) Attempt to impersonate another user or person or use the username of another user, i) Sell or otherwise transfer a profile used with the Service, j) Use any information obtained from the Service in order to harass, abuse, or harm another person, k) Use the Service as part of any effort to compete with Provider or otherwise use the Service and/or content for any revenue-generating endeavor or commercial enterprise, l) Decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site, m) Attempt to bypass any measures of the Service designed to prevent or restrict access to the Service, or any portion of the Site, n) Harass, annoy, intimidate, or threaten any of Provider employees or agents engaged in providing any portion of the Service, o) Delete the copyright or other proprietary rights notice from any content, p) Copy or adapt the Service's software, including but not limited to Flash, PHP, HTML, JavaScript, or other code, q) Upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interferes with any party's uninterrupted use and enjoyment of the Service or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Service, r) Upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats ("gifs"), 1×1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as "spyware" or "passive collection mechanisms" or "pcms"), s) Except as may be the result of standard search engine or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Service, or using or launching any unauthorized script or other software, t) Disparage, tarnish, or otherwise harm, in our opinion, Provider and/or the Service, u) Use the Service in a manner inconsistent with any applicable laws or regulations.

(c) Third-Party Products. Provider may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow through provisions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products. The Downloadable Software also contains certain open source software. Customer

understands and acknowledges that such open source software is not licensed to Customer pursuant to the provisions of this Agreement and that this Agreement may not be construed to grant any such right and/or license. Customer shall have only such rights and/or licenses, if any, to use the open source software as set forth in the applicable open source licenses referenced in the flow through terms included with Third Party Products.

4. Service Levels and Support.

(a) Support. Provider will make commercially reasonable efforts to maintain availability of the Services. Unavailability shall not be deemed to occur as a result of: a) maintenance activities during a scheduled maintenance period; b) beta periods; c) force majeure events; d) an outage in the underlying infrastructure required to provide the Services that is not controlled by Provider which includes, but is not limited to, internet network, backbone, or DNS outages. Provider will use commercially reasonable efforts to provides responses to customer support requests during normal business hours (9am – 6pm MDT) and resolve issues that materially impact the Services.

5. Professional Services. Customer may purchase professional services, including training services and services relating to the implementation or configuration the Services (including, where applicable, migration of data) (“Professional Services”), as detailed in the Order and separate statement of work executed by the Parties setting forth the details of the Professional Services (“Statement of Work”). Any and all outputs and deliverables resulting or arising from or generated or created (whether by Provider or a Third-Party Provider) when performing the Professional Services shall remain the sole and exclusive property of Provider and Customer shall have a limited right to use such outputs and deliverables only to the extent necessary to receive the commercial benefit of the Professional Services and associated outputs and deliverables.

6. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees (“Fees”) as set forth in the applicable Order without offset or deduction. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 10 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

(b) Methods of Payment. Provider accepts Apple Pay, Visa, Mastercard, American Express and Discover. Customer may be required to purchase or pay a fee to access some of the Provider IP. Customer agrees to provide current, complete, and accurate purchase and account information for all purchases made to procure Provider IP. Customer further agrees to promptly update account and payment information, including email address, payment, method, and payment card expiration date, so Provider can

complete Customer's transactions and contact Customer as needed. Provider will bill you through an online billing account for purchases made via the Service. Sales tax will be added to the price of purchases as required by law. Provider may change prices at any time by providing at least thirty (30) days' notice after which such price change will apply to Customer's next subscription period. All payments shall be in U.S. dollars.

(c) Customer agree to pay all charges or fees at the prices then in effect for Customer purchases, and Customer authorize us to charge Customer's chosen payment provider for any such amounts upon making purchase. If a purchase is subject to recurring charges, then Customer consents to the applicable charge to Customer's payment method on a recurring basis without requiring prior approval for each recurring charge, until Provider receives proper Notice otherwise. Provider reserves the right to correct any errors or mistakes in pricing, even after a transaction has completed. Provider also reserve the right to refuse any order placed through the Service.

(d) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(e) Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records during the with respect to matters necessary for accurately determining amounts due hereunder. Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records (and where relevant, take copies) with respect to matters covered by this Agreement. Customer shall provide reasonable access to, any relevant premises, equipment, servers, systems, personnel, books and records for the purpose of auditing Customer's and its users use of the Services, If such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a). Customer shall pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds 5% for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement .

7. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. 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 (but only so far as such notice is lawful) 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. On the expiration or termination of the Agreement, the receiving Party shall promptly destroy all of the disclosing Party's Confidential Information. 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 under applicable law.

8. Intellectual Property Ownership; Feedback.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and, 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.

(b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is 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 Provider is not required to use any Feedback.

9. Customer Warranty; Provider Warranty Disclaimer.

(a) Customer Warranty. By using Provider IP, Customer represents and warrants that: (1) all registration information Customer submits will be true, accurate, current, and complete; (2) Customer will maintain the accuracy of such information and promptly update such registration information as necessary; (3) Customer will not access the Provider IP through automated or non-human means, whether through a bot, script or otherwise; (4) Customer will not use Provider IP for any illegal or unauthorized purpose; and (5) Customer's use of Provider IP will not violate any applicable law or regulation.

(b) PROVIDER WARRANTY DISCLAIMER:

(i) PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(ii) THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'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.

10. Indemnification.

(a) Customer Indemnification. Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs including attorneys' fees ("**Losses**") incurred by Provider resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") alleging that: the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property right. Customer agrees to indemnify, defend, and hold harmless Provider from any Third Party Claim arising from Customer's or any Authorized User's: (a) negligence or willful misconduct; (b) use of the Provider IP in a manner not authorized by this Agreement; (c) use of the Provider IP in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing, (d) use of the Site; (e) breach of the Agreement; (f) breach of any applicable representations or warranties; (g) violation of the rights of a third party, including but not limited to intellectual property rights; or (h) any overt harmful act toward any other user of the Service with whom Customer connected via the Service or (i) modifications to the Provider IP not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to

defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

11. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, 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 PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED ONE TIMES (1X) THE AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. PROVIDER DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROVIDER WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN CUSTOMER AND ANY THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

CLASS ACTION WAIVER. CUSTOMER AND PROVIDER EXPRESSLY INTEND AND AGREE THAT TO THE FULLEST EXTENT ALLOWABLE AND ENFORCEABLE UNDER APPLICABLE FEDERAL LAW: A) CLASS ACTION AND COLLECTIVE ACTION PROCEDURES SHALL NOT BE ASSERTED, AND WILL NOT APPLY, IN ANY PROCEEDING UNDER THIS AGREEMENT; B) EACH PARTY WILL NOT ASSERT CLASS OR COLLECTIVE ACTION CLAIMS AGAINST THE OTHER IN ARBITRATION, COURT, OR ANY OTHER FORUM; C) EACH PARTY SHALL ONLY SUBMIT THEIR OWN INDIVIDUAL CLAIMS TO A COURT OR TRIBUNAL, AND SHALL NOT BRING CLAIMS AGAINST THE OTHER IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANY OTHER INDIVIDUAL; AND D) ANY CLAIMS BY THE EITHER PARTY WILL NOT BE JOINED, CONSOLIDATED, OR HEARD TOGETHER WITH CLAIMS OF ANY PERSON OR ENTITY.

12. Term and Termination.

(a) Term. The term of this Agreement begins on the date on which you first access the Service and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until for the period indicated on the Order (the "**Initial**

**Term**"). This Agreement will automatically renew unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Provider may terminate this Agreement, effective on written notice to Customer, or any Authorized User, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 10 days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 7.

(ii) Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach.

(iii) Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) 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; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) 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.

(iv) Provider may terminate this Agreement for any reason, or no reason, effective on thirty days written notice to Customer, or any Authorized User (a "Termination for Convenience"). Upon Provider's Termination for Convenience Provider will refund to Customer or the applicable Authorized User, any pre-paid but unused fees calculated as of the effective date of the termination. Customer may terminate this Agreement by logging into Customer's account and cancelling by using the method provided, or by contacting us using the contact address provided on the Provider website. Your cancellation will take effect at the end of the current paid term and no refund is available.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer, or applicable authorized User, shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 7, Customer shall cease using and delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation

to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund. If Provider terminates or suspends Customer's account for any reason, Customer is prohibited from registering and creating a new account whether under Customer's own name, a fake or borrowed name, or the name of any third party, even if Customer may be acting on behalf of the third party.

(d) Survival. This Section 11(d) and Sections 1, 6, 7, 8, 9(b)(ii), 10, 11, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

### 13. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. Except as otherwise set forth in Section 2(b), in the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the Order (or to such other address that may be designated by each respective Party from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email to the address provided by Customer and by Company, or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall Provider be liable to Customer or any Authorized User, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, 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.

(d) Amendment and Modification; Waiver. Company may update these terms at any time and Your continued use of the Company IP will constitute your agreement to

any update or change to this Agreement. Except for updates to this Agreement posted on Company's website, or otherwise transmitted by notice to Customer, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party except that the No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) 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, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is 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. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Utah, in each case located in the city of Salt Lake City and County of Salt Lake, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. In no event shall any dispute brought by either Party related in any way to the Service be commenced more than (1) year after the cause of action arose.

(g) Assignment. Customer 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 Provider. 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.

(h) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval) that prohibit or restrict the export or re-export of the Provider IP or any Customer Data outside the US.

(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 7 or, in the case of Customer, Section 2(c), 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 seek 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.

## **EXHIBIT A**

### **SERVICE LEVELS AND SUPPORT**

Provider will provide the following support services during the subscription term according to the standard support levels described below.

Unless otherwise separately contracted with Provider, all post-installation system administration tasks, including software installation, upgrade installation, hardware diagnostics, replacement and reconfiguration, custom enhancements, and support of any installation specific functionality, is the responsibility of Customer.

The Provider help desk is open Monday through Friday (excluding public holidays) via web portal or email, between the hours of 8 AM and 5 PM Mountain Time.

#### **(a) First-Level Support and Maintenance**

Help-Desk services to open and track support cases;

Basic guidance for using the Product;

Basic problem analysis and resolution;

Use of problem-tracking tools for support case management;

Provision of problem/case status; and

Communication with expert second level support personnel when necessary.

#### **(b) Second-Level Support and Maintenance**

Acceptance of qualified support cases reported by first-level support personnel;

Expert guidance on Product installation, configuration, and trouble-shooting;

Advanced problem analysis and resolution (second-level support personnel will engage directly with the end user as necessary);

Verification of Product version compatibility with regard to evolving versions of the operating system; and

Provision of workarounds to avoid known defects.

#### **(c) Third-Level Support and Maintenance**

Acceptance of qualified support cases reported by second-level support personnel;

Provision of patches and minor version releases;

Adaptation of the Product to new or modified operating system versions; and

Product technical documentation