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(e) “Order Form” is the agreement provided by the Licensor which will outline the various Services that will be provided to the Licensee. By way of example and without limiting the forgoing definition, the Order form will outline the various modules licensed and the associated costs.

(f) “Service” means the most current version of the Licensor’s hosted, online service including all software, programs or applications, as outlined in the Order Form, necessary to access and use the Service, and all related documentation and manuals.

(g) “User Interface Page” means the secure web site accessible via the URL or other designated web site or IP address that Licensor will host and maintain to enable Licensee and its Users to access and use the Service.

(h) “Users” means employees, representatives, consultants, contractors or agents of the Licensee or any of its customers, resellers, suppliers or distributors, who are authorized by Licensee to use the Service and have been supplied user identifications and passwords to access and use the Service.

(i) Provision of Service. Licensor will host and provide the Service to the Licensee and its Users. The service will be provided in accordance with the Service Level Agreement (“SLA”), as provided on the Licensor’s website, including making the Service available 24 x 7 (twenty-four hours per day, seven days per week). With respect to the provisions of the Service, Licensor represents, warrants and covenants that unless otherwise agreed to in writing: (i) the Service is and will be hosted within the United States and/or Canada; unless a specific country of the two is requested by the Licensee in writing (ii) Licensor may sublicense any or all hosting capabilities for the Service to third parties without Licensee’s prior written consent; however, at all times remain primarily responsible for any third parties that may provide any assistance with respect to the provision of the Service. Licensor will be responsible for ensuring that privacy requirements of the Licensee are met by the third parties.

(j) Privacy and Security. Licensor shall maintain security and confidentiality of the Service, the User Interface Page and any Licensee Data thereon.

(k) Publicity. Licensor may use the name of the Licensee in marketing materials and on its website for marketing purposes.

(l) Support. Licensor will provide support and maintenance services as set forth in the SLA.

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(d) License Restrictions. Licensee may not modify, sell, distribute or transfer Service in whole or in part, except as provided in this Agreement. Licensor may not disclose the Licensee personally identifiable Data to any third party except as provided in Section 7. Licensor may use Licensee anonymized data to create aggregate data reports that do not include personally identifiable information as it deems necessary.

#### **4. TERM AND TERMINATION**

(a) Term. This Agreement is effective on the date the Order Form is signed and will continue until terminated, as provided in the Order Form, or expired.

(b) The Licensee may terminate this agreement as provided in the Order Form.

(c) The Licensor may terminate this agreement if the Licensee has failed to pay the fee outlined on the Order Form in the manner outlined on the Order Form.

(d) If Licensor terminates this agreement for the Licensee’s failure to pay, the Licensee’s access to the Service will be terminated without notice. Licensor may restore access upon full payment of all outstanding balances plus a restoration fee as determined by the Licensor.

#### **5. INVOICES AND PAYMENTS**

(a) During the term of the contract, Licensor will issue invoices as outlined in the Order Form.

(b) If there is a price increase in the services, Licensor will provide sixty (60) day notice of such price increase.

(c) If Licensee fails to pay any outstanding balances plus interest at contracted rate outlined in the Order Form and including without limiting the generality of foregoing, amounts for the balance of term of contract, Licensor may assign the outstanding balances to a Collection Agency. Any and all fees incurred, including all actual legal fees by the Licensor to collect outstanding balances from the Licensee shall be added to the outstanding Licensee balance.

## 6. USER CONDUCT

(a) **Conduct.** Licensee is solely responsible for the conduct of Licensee and Licensee Registered Users' and Employees' transmissions through the Service. Licensor does, however, reserve the right to take any action with respect to the Service, including without limitation suspension or termination of Licensee access to the Service, that Licensor deems necessary or appropriate in Licensor's sole discretion if Licensor believes Licensee or Licensee Registered Users' or Employees' transmissions or use of the Service may create liability for Licensor. Licensee's use of the Service is subject to all applicable local, state, provincial, national and international laws and regulations (including without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination or false advertising). Licensee agrees:

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- (ii) not to use the Service for illegal purposes;
- (iii) not to interfere or disrupt networks connected to the Service;
- (iv) not to use the Service to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
- (v) not to transmit through the Service, any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, profane or otherwise objectionable material of any kind or nature; and
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(b) **Proprietary Rights.** Licensor and its suppliers and licensors of any software or technology comprising part of the Service are and will remain the sole and exclusive owner of all right, title and interest, including copyright and all intellectual property rights, in and to the Service, all of the technology used by Licensor to provide the Service, all information, documents, files, text and graphics (collectively "Materials")

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**8. MODIFICATIONS TO AGREEMENT.** Unless otherwise agreed to in writing, Licensor may amend this Agreement at any time by

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**10. SERVICE WARRANTY**

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(d) **Warranty Remedies.** If the Service does not meet the warranties in this Agreement, then Licensee may require Licensor to

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- (d) Licensee will promptly notify Licensor of any Claim for which it seeks indemnity under the terms of this Agreement. Licensee will permit Licensor to control, in a manner not adverse to Licensee, the defense and settlement of any Claim using counsel reasonably acceptable to Licensee. Licensee may employ counsel at their own expense with respect to any Claim. If Licensee employs counsel due to a Licensor conflict of interest or because Licensor does not assume control of the defense, then Licensor will bear the expense. Licensee will give reasonable assistance and cooperation to Licensor in the defense of the Claim. Licensor will



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