

## CLouDBerry AND MSP360 SERVICE AGREEMENT

PLEASE READ THIS SERVICE AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE OR SERVICE YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE OR SERVICE. EXCEPT AS PROVIDED BY LAW OR BY AGREEMENT OF THE PARTIES, THIS AGREEMENT SUPERSEDES ANY OTHER WRITTEN AGREEMENT BETWEEN YOU AND THE COMPANY.

This agreement (the “Agreement”) is made between MSPBYTES, Corp., a Delaware corporation d/b/a MSP360, (“Company”) and you, the customer (“Customer”) (Company and Customer, the “Parties”), and includes:

(1) the MSP360 Privacy Policy (“Privacy Policy”), as may be amended from time to time, incorporated herein by reference and available at <https://www.msp360.com/company/legal/privacy-policy/> and

(2) the MSP360 Data Processing Agreement, as may be amended from time to time, incorporated herein by reference and available at <https://www.msp360.com/company/legal/dpa/>

This Agreement sets forth the terms under which the Company will provide Customer with access to and use of a certain software-as-a-service or SaaS offerings known as either CloudBerry (“Subscription Service” and the “Perpetual Service”) or MSP360 Managed Backup (the “Subscription Service”) (collectively, the “Services”) which provide Customers with online backup services through Cloud Storage Providers (“CSP”) of Customer’s choosing, utilization of remote desktop connectivity, or remote monitoring and management capabilities. The Services can be provided directly to the Customer by the Company or, in the case of the Subscription Service, made available for use by the Customer as a reseller under the Customer’s own name subject to the terms and conditions found in the MSP360 Reseller License Agreement available at <https://www.msp360.com/company/legal/reseller-license-agreement/>. With the exception of technical management and administration data including, but not limited to, usernames, email addresses, or computer names created by Customer in order to access the Services, the Services have

no access to and do not store any Customer Data or Customer Content (defined below) of any kind. Rather, the Services facilitate the transfer of Customer Data contained in Backup Storage to a CSP of Customer’s choosing and / or storage under the control of the customer.

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

“Third Party” or “Third Parties” means any person or entity not employed by Company.

“Administrator Users” means the Authorized User(s) designated by Customer who are responsible for administering the Services and who are issued an Administrator login by Company or Customer.

“Agreement” means these terms and conditions, the links to documentation incorporated herein or exhibits attached hereto and any other statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.

“Authorized Users” means individuals who are authorized by Customer to use the Services, or in the case of the Subscription Service, the individuals for whom subscriptions to the Subscription Service have been purchased and who have been supplied user identifications and passwords by Customer.

“Backup Storage” means any local or cloud storage identified, created or accessed by Customer.

“Customer” means the customer entity that has accepted this Agreement and is authorized to use the Services.

“Customer Data” or “Customer Content” (Collectively the “Data”) means all electronic data or information of any kind that Customer (or its authorized users including administrative users, employees, managers, manager users, and Third Parties regardless of whether or not the Customer Data is owned by Customer during the Term) inputs into the Services or Backup Storage that is transferred by the Company via the Services to a CSP of Customer’s choosing and / or storage under the control of the Customer.

**“Electronic Communications”** means any information transmitted in whole or part, electronically received and/or transmitted through the Services.

**“Term”** has the meaning set forth in Section 16 below.

**“Third Party Integrated Services”** means applications or services that are provided or managed by Third Party Providers, and interoperate with the Services including, but not limited to, any Third Party that enables the provision of the Services.

## **2. Limited Rights.**

Company grants to Customer a limited, revocable, non-exclusive, nontransferable right to access and use and permit Authorized Users to access and use the Services solely for the internal business operations of Customer and its affiliates during the Term. Except for the Subscription Service under the MSP360 Reseller License Agreement, Customer shall not allow the Services to be used for, or on behalf of, third parties that are not authorized under this Agreement. Customer shall use its best efforts to ensure that the Authorized Users use the Services in accordance with the terms and conditions of this Agreement. Customer acknowledges that its right to use the Services will be web-based only pursuant to the terms of this Agreement and that the Services will not be installed on any servers owned or controlled by Customer or otherwise provided to Customer without Company’s consent.

## **3. Authorized Users: Passwords, Access, and Notification.**

Where applicable, Customer, through its Administrator Users, shall authorize access to and assign unique passwords and user names for users to access the Services. Authorized User logins are for designated Authorized Users and cannot be shared or used by more than one Authorized User. Customer will be responsible for the confidentiality and use of Authorized User’s passwords and user names. Company will act as though any Electronic Communications it receives under Customer’s passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall promptly notify Company of any unauthorized access, use, loss or theft, or unauthorized use of any Authorized User’s password or name and/or account numbers.

## **4. Use of the Services; Customer Responsibilities.**

Customer is responsible for all activities and Electronic Communications conducted by its Authorized Users and for its Authorized Users’ compliance with this Agreement, including the content of all Data. Customer will not: (i) sell, lease, license or sublicense the Services, except for the Subscription Service as authorized under the MSP360 Reseller License Agreement; (ii) introduce into or transmit

through the Services any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents, or programs; (iii) transmit or transfer infringing material in the Services; (iv) send any Electronic Communication from the Services that is unlawful, harassing, libelous, defamatory or threatening; or (v) place nor cause to be placed into any Backup Storage any Content or Data that contains any content or materials which is obscene, threatening, malicious, which infringes on or violates any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes Company to civil or criminal liability.

Customer shall have the sole responsibility for: (i) the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright, trademark patent or other intellectual property permissions for all Data entered into a Backup Storage; (ii) where applicable to the Customer Data, Customer is solely responsible for compliance with data security and privacy laws and regulations including, but not limited to, the General Data Protection Regulation, HIPAA and state privacy laws; and (iii) obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

Customer further acknowledges that: (i) the Company will rely on the accuracy of the Data inputted into Backup Storage by Customer as it performs requested functions under this Agreement and Company assumes no responsibility for the accuracy, propriety, or usefulness to Customer of Customer Data; (ii) Company shall not be liable to Customer or any third-parties for any loss, damage or expense whatsoever and howsoever arising from any Customer Data inputted or entered into Backup Storage by Customer or by an entity on its behalf; (iii) except as permitted by this Agreement, no part of the Services may be copied, republished, displayed in any form or by any means; (iv) Company has no obligation to monitor Customer’s use of the Services; provided, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of this Agreement; and (v) all Data has been designed, created or provided solely by Customer or by Third Parties on Customer’s behalf without the participation or involvement of Company. Customer agrees not to access the Services by any means other than through the interfaces that are provided by Company.

#### **4.1 Customer Representations and Warranties.**

Customer represents and warrants that: (i) the individual executing this Agreement on behalf of Customer has all necessary power and authority to enter into this Agreement and bind Customer to the terms of this Agreement; (ii) Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policies") and all applicable laws and regulations including, but not limited to, all applicable data privacy laws and regulations; (iii) that it owns all of the Data or has all rights, consents, or permissions necessary to enable the Company to provide the Services without infringement or violation of any third party rights; and (iv) with respect to any Customer Data that contains personal information, all required consents from any individuals with respect to the use of such information have been obtained by Customer.

#### **5. Third Party Integrated Services.**

Third Party Integrated Services may be provided by vendors, service providers, software developers and information systems companies to enable Company to offer applications, and/or features via the Company's Services. Company may offer Third Party Integrated Services by either (a) licensing technology from a Third Party and embedding it in the Service; or (b) establishing a connection with a Third Party's software platform or information system enabling Customer Data to be sent to the Third Party Integrated Service or the intended party. Customer hereby consents to use of Third Party Integrated Services.

With respect to Third Party Integrated Services, Customer acknowledges that: (i) in order to use certain Third Party Integrated Services, there may be additionally applicable terms and conditions including those which may establish a direct contractual relationship between Customer and an Integrated Services provider; and (ii) pursuant to the Service Level Agreement (the "SLA") available at <https://www.msp360.com/company/legal/service-level-agreement/>, availability of support for Third Party Integrated Services from the Company is limited but may be available from the provider of Third Party Integrated Services.

If subscribed for Third Party Integrated Services, Customer agrees to allow the provider of such Third Party Integrated Services to access Customer Data as required for the interoperation of that Third Party Integrated Services with the Company's Services. Customer acknowledges Company is not responsible for any disclosure, modification or deletion of Customer's Data resulting from access by a Third Party Integrated Service or its provider. Company does not provide any warranty or support with respect to Third Party Integrated Services, whether they are designated as "certified" or otherwise, unless agreed upon by both parties in writing and incorporated into this agreement as an addendum related to the Third Party Integrated Services.

Third Party Integrated Services may also be used to: (i) make recommendations to the Customer or improvements to the software underlying the Services; and (ii) to measure Key Performance Indicators ("KPIs"). Company has no duty to verify the accuracy or reliability of any such Third Party information and KPIs and shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, or claim caused by Customer or any Third Party's reliance on any such Third Party information and KPIs.

**5.1 Hosting Center Facilities.** All hosting center facilities supporting the Services, all related applications, and the Third Party Integrated Services, where applicable and delivered by Company for use by the Customer, shall be provided for and managed by a Third Party not a party to this Agreement (a "Third Party Provider"). Company shall not be liable in respect of any breach or error in delivery, loss, damage or interruption to the Services, applications or Third Party Integrated Services during the Term of this Agreement caused by or attributable to a Third Party Provider. Customer shall immediately notify Company, in writing of any such error, loss, breach, damage or interruption. Company shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, defect or interruption to the Services caused by a Third Party Provider.

#### **6. Security.**

Each party will use commercially reasonable measures to maintain and enforce physical and logical security procedures to prevent unauthorized access to and/or use of the Services and the Customer Data. Company will use commercially reasonable measures to secure and defend the Services against malicious attempts to modify or access the Services or the Customer Data without authorization. Company will use commercially reasonable efforts to remedy any breach of security or unauthorized access. Company shall not be responsible or liable for the disclosure of or unauthorized access to Customer Data caused by Customer, its Authorized Users, Customer's affiliates, or the employees, agents or contractors of any of the foregoing.

#### **7. Transmission of Data.**

The Services allows Customer to send and receive Electronic Communications and Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Subscription Service. Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Company. Company is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted

or stored during the transmission of any data across networks not owned and/or operated by Company, including but not limited to, the internet and Customer's local network.

## **8. Services and Support**

Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the SLA. As part of the registration process for the Services, Customer may identify an administrative user name and password for Customer's company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate. Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in the MSP360 Customer Support Reference Guide, available at: <https://www.msp360.com/download/MSP360-customer-support-reference-guide.pdf>.

## **9. Company Responsibilities.**

Company will comply with applicable laws and regulations affecting the operation of Company's business, including any applicable export restrictions and data privacy or protection laws; provided, however, Customer will be solely responsible: (i) for compliance by Customer with all applicable laws and governmental regulations affecting Customer's business or Customer Data, including applicable data privacy or protections laws; and (ii) for using the Services in a manner consistent with Customer's obligations under this Agreement.

## **10. Confidentiality**

For purposes of this Agreement, "Confidential Information", to include Proprietary Information as defined below, means Customer Data, each party's proprietary technology, software, code, business processes and technical product information, designs, issues, all communication between the Parties regarding the Services, and any information that is clearly identified in writing at the time of disclosure as confidential or such other information that, through its context, usage or nature, would reasonably be considered Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is known publicly; (ii) is generally known in the industry before disclosure; (iii) has become known publicly, without fault of the Receiving Party; (iv) the Receiving Party becomes aware of from a third party not bound by nondisclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; (v) is independently developed by the Receiving Party without use of or reference to the Confidential Information, or (vi) is aggregated, de-identified data that does not contain any personally identifiable or Customer specific information. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or

financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information"). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes nonpublic data provided by Customer to Company to enable the provision of the Services. To the extent known by the Receiving Party, the Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a Third Party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

### **10.1 Non-Disclosure Obligations.**

Each party agrees: (i) not to use or disclose Confidential Information except to the extent reasonably necessary to perform its obligations or exercise rights under this Agreement or as directed by the disclosing party; (ii) to protect the confidentiality of Confidential Information in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information; and (iii) to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors or service providers who have a need to use such information provided such use is only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law, court order or other governmental authority or regulation; provided, however: (i) the Receiving party shall cooperate with the Disclosing Party, at Disclosing Party's sole cost, in obtaining a protective order or other appropriate remedy with respect to the Disclosing Party's confidential information; and (ii) the Receiving Party shall furnish and limit disclosure to only that portion of the Confidential Information which is required.

## **11. Ownership**

**11.1 Ownership of the Services.** Except as provided in the MSP360 Reseller License Agreement with respect to the Subscription Services, Customer agrees that all rights, title and interest in and to all intellectual property rights of the

Services including without limitation the software used to provide the Services are retained and owned exclusively by Company or its licensors. In addition, Company shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, and perpetual license to use or incorporate into the Services and its other product and service offerings any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the operation of the Services. Any rights not expressly granted herein are reserved by Company. Company service marks and trademarks, logos and product and service names are marks of Company (the "Company Marks"). Customer agrees not to display or use the Company Marks in any manner without Company's express prior written permission. The trademarks, logos and service marks of Third Party Providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party who may own the Mark. Except for the right to use the Services as expressly provided herein this Agreement does not grant to Customer any rights to or in patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the software used to provide the Services. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the software; modify, or create derivative works based on the Services or any Software (except to the extent expressly authorized by Company within the Subscription Service and MSP360 Reseller License Agreement).

With respect to any software that is distributed or provided to Customer for use on Customer's premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services. The provisions of this paragraph 11.1 shall survive termination of this Agreement.

**11.2 Ownership of Customer Data.** Customer Data shall remain the sole and exclusive property of the Customer. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and non-infringement of all Customer Data. Company will not use and does not have the capacity to use the Customer Data for any purpose other than to provide the Services to Customer and to improve the Services.

**11.3 Limited License to Data.** Subject to the terms and conditions of this Agreement, Customer grants Company a limited, non-exclusive, non-transferable terminable license to transfer the Data contained in Backup Storage, but only

to the extent reasonably necessary to provide the Services to Customer and to improve the Services.

## **12 Payment Terms, Taxes**

**12.1 Fees.** Customer shall pay Company the then applicable fees for use of the Perpetual Service or Subscription service, as applicable (the "Fees"). Company shall invoice Customer for the then applicable Fees and charges for the Services. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 30 days after the date of invoice. Unpaid amounts are subject to a finance charge of 5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. Customer hereby acknowledges and understands that Company's pricing may be revised and increased from time to time upon prior written or electronic notice to Customer. Any new Term created by automatic renewal of a Term six months or longer shall not increase the monthly cost by more than 5% of the monthly cost of the Initial Term or the monthly cost of the immediately preceding Term, not including initial customer discounts.

**12.2 Refunds.** Subject to Section 12.1, the Company does not offer refunds; provided, however, the Company may offer service credit towards usage of the specific platform or Services already in use by Customer.

**12.3 Platform Service Credits.** Subject to Section 12.1, the Company does not offer refunds; All unused service credits expire at the end of the existing contract term. For clarity if the credits were for software on a monthly contract, they expire at the end of the next month. If it was part of an annual pre-paid contract, then all unused credits expire at the end of that contract year.

**12.4 Taxes.** Customer will be responsible for, and will promptly pay, any applicable duties, sales or use tax, and value added taxes (VAT) or other similar taxes, if any, associated with this Agreement or Customer's receipt or use of the Services, excluding taxes based on Company's gross or net income or franchise taxes. In the event that Company is required to collect or pay any tax for which Customer is responsible, Customer will pay such tax directly to Company. If Customer is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Customer will provide Company with any required documentation to verify its tax-exempt status with the applicable taxing authorities.

## **13. Warranties**

EXCEPT AS STATED IN THE ATTACHED SLA, THE SERVICES ARE PROVIDED "AS IS" AND THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT

LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICES OR THIRD PARTY INTEGRATED SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICES OR THIRD PARTY INTEGRATED SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. THE SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED MAINTENANCE OR FOR UNSCHEDULED EMERGENCY MAINTENANCE EITHER BY COMPANY OR THIRD PARTY PROVIDERS, OR BECAUSE OF OTHER CAUSES BEYOND COMPANY'S REASONABLE CONTROL.

#### **14. Limitations of Liability.**

TO THE EXTENT PERMITTED BY LAW, CUSTOMER ASSUMES THE ENTIRE COST OF ANY DAMAGES RESULTING FROM CUSTOMER'S USE OF THE SERVICES, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES, THE INFORMATION CONTAINED IN OR COMPILED IN THE SERVICES, THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE WHETHER PROVIDED BY COMPANY OR A THIRD PARTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, EXEMPLARY, INDIRECT, RELIANCE, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, BUSINESS OPPORTUNITIES, LOSS OR CORRUPTION OF BUSINESS INFORMATION OR ANY PERSONAL OR CUSTOMER DATA, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION, IMPAIRMENT OR FAILURE, REPAIR COSTS, TIME VALUE OR OTHER PECUNIARY LOSS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE SERVICES, OR THE INCOMPATIBILITY OF THE SERVICES WITH ANY HARDWARE, SOFTWARE OR USAGE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION OR

ARBITRATOR AND THE COMPANY BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED, THE COMPANY'S TOTAL LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE TOTAL AMOUNT PAID IN FEES TO THE COMPANY UNDER THIS AGREEMENT FOR THE TWELVE MONTHS PRIOR TO A CLAIM OF DAMAGES BEING BROUGHT BY CUSTOMER WHETHER IN CONTRACT, TORT OR OTHERWISE.

#### **15. Indemnification**

**15.1 By Company.** Company shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Services, as used in accordance with the terms and conditions of this Agreement, infringe on the copyrights, trade secrets, patents or trademarks of a third party and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") to the extent based upon such a Claim. Excluded from these indemnification obligations are Claims to the extent arising from (a) use of the Services in violation of this Agreement or applicable law, (b) use of the Services after Company notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Services not made by Company, or (d) use of the Services in combination with any software, application or service not provided by Company. If a Claim is brought or threatened, Company shall, at its sole option and expense, use commercially reasonable efforts either: (i) to procure for Customer the right to continue using the Subscription Service without cost to Customer; (ii) to modify or replace all or portions of the Subscription Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (iii) if the remedies described in (i) and (ii) above are not commercially feasible, terminate this Agreement and provide to the Customer any pro-rata refund of any fees prepaid under the Agreement for the remaining terminated portion of the Term. The rights and remedies granted to Customer under this Section 15.1 state Company's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of any third party.

**15.2 By Customer.** Customer shall, at its own expense, defend and hold harmless Company from and against any and all Claims, Damages, Losses or Lawsuits alleging: (i) the Customer Data, Customer Content or any Customer trademarks or service marks, or any use thereof, infringes the intellectual property rights or other rights, including privacy rights of third parties, or has caused harm to a third party; (ii) Customer's or Authorized User's use and misuse

of the Services and failure to comply with all of the Company's policies and documentation; and (iii) Customer's failure to pay all applicable taxes associated with Customer's use of the Service. Customer shall defend and hold Company harmless from and against liability for any Losses to the extent based upon such Claims.

**15.3 Indemnification Procedures.** In the event of a potential indemnity obligation under this Section 15, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's expense, with the indemnifying party in the investigation and defense of such Claim. The indemnification obligations under this Section 15 are expressly conditioned upon the indemnified party's compliance with this Section 15.3.

#### **16. Term, Termination, and Survival.**

**16.1** In addition to any other express termination right set forth in this Agreement, and subject to earlier termination as provided below, this Agreement is for the initial billing service term (the "Initial Term"), and shall be automatically renewed for additional periods as defined in Section 16.2 (collectively, the "Term"), unless either Party requests termination at least twenty (20) days prior to the end of the then current Term. In the event of termination by Customer pursuant to the forgoing sentence, Customer will be responsible for any and all Fees applicable to the then current Term.

**16.2** Automatic renewal periods ("Automatic Renewal Term") shall be of the specified length identified in the following chart:

<u>Initial/Current Term</u>	<u>Automatic Renewal Term</u>
1 month	1 month
6 months	12 months
12 months	12 months
24 months	24 months

All Automatic Renewal Terms will be for the same number of licenses as those purchased in the Initial Term or the immediately preceding Term. During the Automatic Renewal Term, Customer can agree to renew for a term longer than the Automatic Renewal Term ("Contractual Renewal Term"). Any such Contractual Renewal Term will replace the current Automatic Renewal Term. Any future automatic renewals will then renew for the length and number of licenses of the Contractual Renewal Term, not the length and number of licenses of the replaced Automatic Renewal Term.

**16.3** Either Party may terminate this Agreement effective upon twenty (20) days' notice (or without notice in the case of nonpayment by Customer), if the other Party materially breaches any of the terms or conditions of this Agreement. In the event of termination by Company pursuant to the forgoing sentence, Customer will be responsible for any and all Fees applicable to the then current Term, regardless of whether it be an Initial Term, Automatic Renewal Term, or Contractual Renewal Term. All sections of this Agreement which by their nature or terms should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability shall survive termination of this Agreement.

#### **17. General Provisions.**

**17.1 Notices.** Notices between the parties will be by personal delivery, courier, facsimile transmission, email, or certified or registered mail, return receipt requested, and will be deemed given upon receipt at the address of the recipient party or ten (10) days after deposit in the mail. Addresses used will be those the Parties hereto have provided

**17.2 Severability.** In the event of any invalidity of any provision of this Agreement, the Parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement, and further agree to substitute for the invalid provision a mutually agreeable valid provision that most closely approximates the intent of the invalid provision.

**17.3 Headings.** The headings in this Agreement are for convenience of reference only and have no legal effect.

**17.4 No Third Party Beneficiaries.** Except as required by law, this Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

**17.5 Assignment.** Customer shall not be permitted to assign any of its rights under this Agreement without the written consent of Company. Company shall be permitted to assign its rights under this Agreement.

**17.6 Relationship.** Each party hereto is an independent contractor, and neither party is, nor will claim to be, a legal representative, partner, franchisee, agent or employee of the other.

**17.7 Publicity.** Company will not make other use of Customer's name, logo or trademarks or issue any public announcements or press releases regarding this Agreement without Customer's prior written consent.

**17.8 Force Majeure.** Neither party will be liable to the other for a failure or delay in its performance of any of its obligations under this Agreement (except for the payment of amounts due hereunder) to the extent that such failure or delay is caused by circumstances beyond its reasonable control or by events such as fire, riot, flood, labor disputes, natural disaster, regulatory action, internet or telecommunications failures, terrorist acts, or other causes beyond such party's reasonable control. Customer acknowledges and agrees that Company shall have no responsibility for its inability to use the Service or access the Service due to network interruption, communications failure, or server downtime.

**17.9 Counterparts and Electronic Signatures.** Company and Customer agree to conduct this transaction by electronic means and this Agreement may be executed in counterparts. A signature or acknowledgement affecting execution transmitted via facsimile, scan or an esignature system will be deemed an enforceable signature for the purpose of demonstrating the assent to the Agreement.

**17.10 Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter addressed herein and supersedes any and all prior or contemporaneous oral or written communications with respect to such subject matter. In the event of a conflict between the foregoing terms and conditions and any links to documentation incorporated herein or exhibits attached hereto and any other statements of work, exhibits or appendices thereto, whether attached or incorporated by reference, to this Agreement, the foregoing terms and conditions will control unless the provision or provisions of the given linked documentation, exhibit, statement of work or appendices specifically indicate that such provision or provisions should control. The parties agree that in the event Customer utilizes a purchase order, any term therein which purports to modify or supplement the terms of this Agreement will be void with no force or effect. No modification, termination or waiver of any provisions of this Agreement shall be binding upon a Party unless in writing signed by an authorized individual of the relevant Party.

**17.11 Governing Law.** By using the Services, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern this Agreement and any dispute of any sort that might arise between you and the Company.

**17.12 Arbitration; Jury Trial.** PRIOR TO FILING ANY CLAIM, CUSTOMER AGREES TO ATTEMPT RESOLUTION OF ANY DISPUTE INFORMALLY; PROVIDED, HOWEVER, IN THE EVENT INFORMAL RESOLUTION IS NOT POSSIBLE, COMPANY MAY, AT ITS SOLE DISCRETION, REQUIRE CUSTOMER TO

SUBMIT DISPUTES ARISING FROM THIS AGREEMENT TO FINAL AND BINDING ARBITRATION. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, CUSTOMER HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

