



## Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR ACCESS TO AND USE OF THE THREEKIT OR CLARA.IO APPLICATION AND/OR RELATED SERVICES, THIS AGREEMENT ALSO GOVERNS YOUR PURCHASE AND ACQUISITION OF SUCH SUBSCRIPTIONS AND/OR RELATED SERVICES AND YOUR ONGOING USE OF THOSE SUBSCRIPTIONS AND THE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE AND/OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS OR USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on April 21, 2021. It is effective between You and Us as of the date You accept this Agreement as indicated above.

### 1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Beta Services" means services or functionality that may be made available to You to try at Your option at no additional charge and are clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"Documentation" means Our online help and training materials for the Services accessible via <https://docs.threekit.com/doc> as updated from time to time.

"Malicious Code" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses.

"Order Form" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

"Services" means the online, Web-based applications and platform provided by Us via <http://mythreekit.com> and/or <http://clara.io> and/or other designated websites as described in the Documentation, subscriptions to which are purchased by You or Your Affiliates under an Order Form, including any associated offline components but excluding Third-Party Applications.



"Subscription Term" means the period of time from the start date to the end date specified in each Order Form for each subscription purchased thereunder. Each renewal of a subscription, whether automatic or in writing, shall constitute a new Subscription Term.

"Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties but may be configured to interoperate with the Services, including but not limited to those listed on the AppExchange.

"Users" means individuals who are authorized by You to use the Services, for whom subscriptions to the Services have been purchased, and who have been supplied user identifications and passwords by You. Users may include but are not limited to Your employees, consultants, contractors, and agents; or third parties with which You transact business.

"We", "Us", or "Our" means ThreeKit, Inc., and Affiliates of ThreeKit, Inc.

"You" or "Your" means the company or other legal entity for which You are accepting this Agreement and Affiliates of that company or entity.

"Your Data" means electronic data and information submitted by or for You to the Services (excluding Third Party Applications) or collected and processed by or for You using the Services (excluding Third Party Applications).

## 2. SERVICES

**2.1. Provision of Services.** We shall make the Services available to You pursuant to this Agreement and the relevant Order Forms during each Subscription Term and your timely payment of all applicable fees. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**2.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (a) subscriptions to the Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (b) additional User subscriptions may be purchased during the Subscription Term by signing an additional Order Form and paying the additional fees for such additional User subscriptions, prorated for the portion of that Subscription Term remaining at the time the subscriptions are added, and (c) the added User subscriptions shall terminate on the same date as the underlying subscriptions.

**2.3 Usage Limits.** Our Services are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Services may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Services. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services promptly upon Our request and/or pay any invoice for excess usage in accordance with Section 4.2 (Invoicing and Payment).

## 3. USE OF THE SERVICES

**3.1 Our Responsibilities.** In addition to providing the Services as described in Section 2.1, We shall provide You with standard support, in accordance with Our then-current support policy for the Services, during the applicable Subscription Term and at no additional charge. The current version of the support policies can be found at <https://www.threekit.com/hubfs/support-policies.pdf>.



**3.2. Your Responsibilities.** You shall (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be solely responsible for the accuracy, quality, integrity, and legality of Your Data and of the means by which You acquired Your Data and Your use of Your Data with our Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (d) use the Services only in accordance with this Agreement, Documentation, Order Forms, and applicable laws and government regulations.

**3.3 Usage Restrictions.** You will not (a) make any Services available to, or use any Services for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any part of the Services, or include any Services in a service bureau or outsourcing offering, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Services or third-party data contained therein, (f) attempt to gain unauthorized access to any Services or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, (h) copy Services or any part, feature, function or user interface thereof, (i) frame or mirror any part of the Services, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (j) access any part of the Services in order to build a competitive product or service, or (k) reverse engineer any part of the Services (to the extent such restriction is permitted by law).

**3.4. Your Data.** We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data. We will not access Your Data except: (a) at Your request, to provide technical support or to assist in the implementation or configuration of the Services; or (b) as compelled by law in accordance with Section 6.3 (Compelled Disclosure).

## **4. FEES AND PAYMENT**

**4.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (a) fees are based on subscriptions purchased and not actual usage, (b) payment obligations are non-cancellable and fees paid are non-refundable, and (c) quantities purchased cannot be decreased during the relevant Subscription Term stated on the Order Form. Subscription fees are based on annual periods that begin on the subscription start date and each year anniversary thereof; fees for subscriptions added in the middle of a yearly period will be prorated based on the month in which they are added and thereafter will be charged for the full yearly periods remaining in the Subscription Term.

**4.2. Invoicing and Payment.** Fees will be invoiced annually in advance. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information, as well as for payment of any fees or charges associated with Your payment, other than those charged by Our bank.

**4.3. Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies and at Our discretion, (a) those amounts may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid and/or (b) We may condition future subscriptions on payment terms shorter than those specified in Section 4.2 (Invoicing and Payment).

**4.4. Suspension of Services and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under this Agreement and/or such other agreements so that all such obligations become immediately due and payable, and suspend access to the Services and/or Our other services to You until such amounts are paid in full. We will give You at least ten (10) days' prior notice that Your account is overdue, in accordance with Section 11.1 (Notices), before suspending Your access to the Services and/or any other services to You.



**4.5. Payment Disputes.** We shall not exercise Our rights under Section 4.3 (Overdue Charges) or 4.4 (Suspension of Services and Acceleration) if the applicable fees are under reasonable and good-faith dispute, and You are cooperating diligently to resolve the dispute.

**4.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 4.6, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property, and employees.

## 5. PROPRIETARY RIGHTS

**5.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title, and interest in and to the Services, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. You agree not to, and not to permit Your Affiliate(s) or User(s), to remove any proprietary notices on or related to the Services, including, without limitation, any statements that the Services or displays generated therefrom are "powered by" Us or the ThreeKit platform.

**5.2. Ownership of Your Data.** As between Us and You, You exclusively own all rights, title, and interest in and to all of Your Data.

**5.3. Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations, correction, or other feedback provided by You, including Users, relating to the functionality and/or operation of the Services.

## 6. CONFIDENTIALITY

**6.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether electronically, orally, or in writing, that (i) if disclosed in tangible form, is conspicuously marked as "Confidential", and (ii) if disclosed in non-tangible form, is identified as confidential at the time of disclosure and summarized in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure. In addition, Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party (provided that either party may disclose the terms and conditions of this Agreement and any Order Forms to potential investors and acquirers in connection with bona fide financing or acquisition due diligence). However, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation of confidentiality owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation of confidentiality owed to the Disclosing Party, (c) is received from a third party without breach of any obligation of confidentiality owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

**6.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party in the Receiving Party's possession for any purpose outside the scope of this Agreement and (b) the Receiving Party shall only disclose Confidential Information of the Disclosing Party to those of its employees,



contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than as permitted in Section 6.1 or to its Affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 6.2. For clarity, You acknowledge and agree that We have no control over (or responsibility for) any information that You may provide to, store on, or otherwise process using any Third Party Applications.

**6.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 7. WARRANTIES AND DISCLAIMERS

**7.1. Our Warranties.** We warrant that (a) the Services shall perform materially in accordance with the Documentation, and (b) subject to Section 7.4 (Third-Party Applications), the functionality of the Services will not be materially decreased during a Subscription Term. For any breach of either such warranty, Your exclusive remedy shall be as provided in Section 10.3 (Termination for Cause) and Section 10.4 (Refund or Payment upon Termination) below.

**7.2. Mutual Warranties.** Each party represents and warrants that (a) it has the legal power to enter into this Agreement and (b) it will not transmit to the other party any Malicious Code (except for Malicious Code first transmitted to the warranting party by the other party).

**7.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY AND THEIR LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, UNINTERRUPTED OR ERROR-FREE SERVICE, ERROR CORRECTION, AVAILABILITY, ACCURACY, AND ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BETA SERVICES ARE PROVIDED "AS IS", EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

**7.4. Third-Party Applications.** Your use of Third-Party Applications is governed entirely by the terms of Your agreement with the relevant third party. Nothing in this Agreement creates any rights or obligations on Our part with respect to such Third-Party Applications, nor should this Agreement be construed as creating any rights or obligations on the part of any third party providing Third-Party Applications with respect to Our Services.

## 8. MUTUAL INDEMNIFICATION

**8.1. Indemnification by Us.** We will defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of a Services in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "**Claim Against You**"), and will indemnify You from any damages, attorney fees, and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may



not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to the Services, We may in Our discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under Section 7.1 (Our Warranties), (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your subscriptions for the Services or impacted portion of the Services upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (a) the allegation does not state with specificity that our Services are the basis of the Claim Against You; (b) a Claim Against You arises from the use or combination of our Services or any part thereof with software, hardware, data, or processes not provided by Us if our Services or use thereof would not infringe without such combination; (c) a Claim Against You arises from Services under an Order Form for which there is no charge or (d) a Claim Against You arises from Third Party Applications or Your breach of this Agreement, the Documentation or applicable Order Forms.

**8.2. Indemnification by You.** You will defend Us and Our Affiliates against any claim, demand, suit, or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "**Claim Against Us**"), and will indemnify Us from any damages, attorney fees, and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

**8.3. Exclusive Remedy.** This Section 8 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 8.

## **9. LIMITATION OF LIABILITY**

**9.1. Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 (MUTUAL INDEMNIFICATION), IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, TOGETHER WITH ALL OF ITS AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES AND PAYMENT).

**9.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. FOR CLARITY, THE FOREGOING DISCLAIMER DOES NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THIRD-PARTY CLAIMS UNDER SECTION 8.

## **10. TERM AND TERMINATION**

**10.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated.





**10.2. Term of Subscriptions.** The term of each subscription to the Services shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions to the Services will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**10.3. Termination for Cause.** A party may terminate this Agreement for cause: (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period or (b) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

**10.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**10.5. Surviving Provisions.** Section 4 (Fees and Payment), 5 (Proprietary Rights), 6 (Confidentiality), 7.3 (Disclaimer), 8 (Mutual Indemnification), 9 (Limitation of Liability), 10 (Term and Termination), and 11 (General Provisions) shall survive any termination or expiration of this Agreement.

## **11. GENERAL PROVISIONS**

**11.1. Notices.** Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnification claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

**11.2. Compliance.** During the term of this Agreement and for a period of one (1) year following its termination or expiration, ThreeKit reserves the right, during Your normal business hours, to audit Your use of the Services to verify compliance with this Agreement. You shall maintain and make available to ThreeKit records sufficient to permit ThreeKit or an independent auditor retained by ThreeKit to verify, upon ten (10) days' written notice, Your compliance with the terms and requirements of this Agreement. In the event that an audit reveals any non-compliance, including but not limited to underpayment of fees, You shall promptly cure the non-compliance, pay ThreeKit any shortfall, and, if such shortfall exceeds 10% in any one-year period, shall pay such shortfall at ThreeKit's then-current list price and reimburse ThreeKit the reasonable costs of such audit, provided, however, that the obligations under this Section 11.2 do not constitute a waiver of ThreeKit's termination rights or any other rights hereunder.

**11.3. Governing Law and Jurisdiction; Waiver of Jury Trial.** This Agreement shall be governed exclusively by the substantive and procedural laws of the State of Illinois, without regard to its conflicts of laws rules. The state and federal courts located in Chicago, Illinois, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction and venue of such courts. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.



**11.4. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (a) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports and (b) You shall not permit Users to access or use the Services in violation of any U.S. export embargo, prohibition, or restriction.

**11.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**11.6. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**11.7. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**11.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law and the remaining provisions of this Agreement shall remain in effect.

**11.9. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**11.10. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of the Services and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

**11.11. Customer Attribution.** You agree that We may use and display Your name and logo: (a) on Our customer list; and (b) with Your prior written approval, not to be unreasonably withheld or delayed, in other marketing materials of Us.