

BiznusSoft Inc. Terms of Service | BiznusSoft HR

PLEASE READ ALL OF THE FOLLOWING TERMS OF SERVICE CAREFULLY AS THEY CONTAIN INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS.

BiznusSoft Inc. (“Company”) is an Illinois corporation (located at 1350 Lake street, Ste K, Roselle, IL-60172) that owns the BiznusSoft HR software application with which Company provides its cloud-based human resources solution (the “Platform,” as defined herein). This Terms of Service Agreement (“Agreement”) states the terms and conditions under which User may install, access, and use the Platform and obtain consulting services related thereto. User and Company are each, alternatively, a “Party” and collectively “Parties.”

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION IN SECTION 15 THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

IF YOU PURCHASE LICENSES HEREUNDER, YOUR LICENSE PERIOD(S) WILL AUTOMATICALLY RENEW FOR CERTAIN PERIODS OF TIME IF YOU DO NOT CANCEL. SEE SECTION 14 FOR MORE INFORMATION ON THE AUTOMATIC RENEWAL TERMS APPLICABLE TO LICENSE PERIODS

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS FREE TRIAL OF THE SERVICES. IF YOU PURCHASE ANY OF OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THOSE SERVICES. YOU ACCEPT THIS AGREEMENT 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 USE THE SERVICES.

You may not access the Services if you are our competitor, except with prior written consent from us. In addition, you may not access the Services for purposes of monitoring availability, performance, or functionality, or for any other competitive purposes. This Agreement was last updated on September 04, 2020. It is effective between You and Us as of the date You accept this Agreement.

1. Definitions. For the purposes of this Agreement and in addition to any other terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Affiliate” means, with respect to a Party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such Party.

“Confidential Information” has the meaning set forth in Section 13.

“Consulting Services” means the installation, implementation, training, or other professional services provided hereunder by Company to User.

“Control” means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

“Documentation” means the published specifications of the Platform contained in the user manuals relating to the use of the Platform, as may be updated or amended from time to time as necessary due to updates and enhancements, provided by Company to User upon purchase of Platform licenses.

“Force Majeure Event” means a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without

the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against.

“Intellectual Property Rights” means all patents (including patent applications and disclosures), copyrights (including copyright applications), trade secrets, moral rights, trademarks (including trademarks, service marks, trade dress, and trade names as well as any applications therefor), knowledge, and any related or other rights and interests or other intangible assets recognized under any laws, regulations, or international conventions, in any country or jurisdiction in the world.

“License Fees” mean the fees paid by User for the right to access and use the Platform and receive standard support during the Term.

“License Period” means the license period identified in an Order Form or, if no such period is identified, twelve (12) months.

“Order Form” means a license purchasing document for Platform access.

“Platform” means the online, Web-based BiznusSoft HR application and platform service provided by Company that is hosted on the infrastructure of salesforce.com (“Salesforce”) via <http://www.salesforce.com/AppExchange>, and/or other designated websites, including associated offline components.

“System Availability” means the percentage of the time that the Platform is available to User as measured against the time that the Salesforce Web-based application and platform service is available.

“Taxes” means any direct or indirect local, state, federal or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

“Term” means the period from User’s installation or access of the Platform until this Agreement, Order Forms, and/or SOWs executed hereunder expires or is terminated as provided herein.

“User” collectively means User, its Affiliates, and User and its Affiliates’ employees, agents, contractors, or consultants who are authorized by User to use the Platform and who have been supplied user credentials by User or by Company at User’s request.

“User Equipment” means User’s computer hardware, software, and network infrastructure used to access the Platform.

“User Guide” means the user guide for the Platform, available upon request.

“User Information” means all data, text, files, data, output, programs, files, information, or other information material that User or its Affiliates provides, develops, generates, creates, makes available, or uses in conjunction with the Platform.

“Work Product” means the deliverables, ideas, concepts, processes, methods, branding, inventions, innovations, improvements, methodologies, designs, documentation, materials, software, code, and any works of authorship in any form or media and all components, parts, copies, version, enhancements, modifications, and derivative works thereof that Company may conceive, develop, or create in the course or as a result of performing Consulting Services (including those specifically set forth in any SOW) and whether or not eligible for patent, copyright, trademark, trade secret, or other legal protection. Work Product does not include any User Information or User Confidential Information.

2. Acceptance of Terms of Service.

By accessing and using the Platform, whether to purchase a license or otherwise, User hereby READS, UNDERSTANDS, ACCEPTS, and AGREES to be bound by this Agreement’s terms and conditions. Should User NOT accept these terms and conditions, User must neither install, access, nor otherwise use the Platform or any Services provided hereunder. To the extent permitted by law, Company may amend, at any time and from time to time, this Agreement by posting a version of this Agreement to <https://appexchange.salesforce.com/> or another designated website(s). Company will notify User via email that amended terms have been posted, such terms becoming effective seven (7) days thereafter. User agrees that its continued use of the Platform constitutes an acceptance of such amendments.

This is a “master” agreement under which User may use the Platform as described herein, subject to the terms and conditions set forth herein including any Order Forms or Statements of Work (“SOW”) which are incorporated into this Agreement by reference. To the extent there is any conflict between the provisions of this Agreement and an Order Form or SOW, the terms of this Agreement shall control the rights and obligations of the parties, unless a properly executed Order Form or SOW expressly amends and supersedes this Agreement for the purposes of such Order Form or SOW.

3. **Residency and Age.** The Platform is intended to be accessed and utilized by Users who have attained the age of majority in their respective state or province. By accessing and using the Platform, User hereby represents, warrants, and affirms that it is either at least 18 years of age, an emancipated minor, or has acquired a parent or guardian’s consent. User hereby affirms that it is, at a minimum and without exception, 13 years old. The Platform is not intended to be accessed or utilized by children less than 13 years of age.

4. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN:
 - a. COMPANY DOES NOT GUARANTEE OR WARRANT, AND MAKES NO REPRESENTATIONS REGARDING, THE RELIABILITY, QUALITY OR SUITABILITY OF ITS DATA OR SERVICES, INCLUDING THE PLATFORM, OR THOSE OF ANY GOVERNMENTAL AGENCY, THIRD-PARTY, OTHER DATA PROVIDERS OR THEIR SERVICES.

 - b. THE PLATFORM AND THE ENTIRETY OF ITS CONTENTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED “AS IS,” AND COMPANY HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATION THAT: (I) THE PLATFORM WILL MEET USER’S REQUIREMENTS; (II) ACCESS TO THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (III) ANY INFORMATION OBTAINED THROUGH OR FROM THE PLATFORM WILL BE ACCURATE OR RELIABLE; (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY USER THROUGH THE PLATFORM WILL MEET EXPECTATIONS; (V) ANY USER-PROVIDED INFORMATION WILL NOT BE DISCLOSED TO THIRD-PARTIES; OR (VI) ANY DATA OR SOFTWARE ERRORS WILL BE CORRECTED.

5. **Limited License.** Subject to the terms and conditions herein and only during the Term, Company grants User a limited, revocable, non-exclusive, worldwide, non-sublicensable, and non-transferable license to install, access, and use the Platform for User’s internal business purposes only as authorized hereunder. The license(s) granted hereunder is limited to the maximum number of Users specified in trial registration or on each Order Form, for each License Period, and is subject to any additional terms and conditions specified in trial registration or on each Order Form which are incorporated into this agreement by reference. Licenses are for named Users and cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users who no longer use the Platform. Any thirdparty component embedded, included, or provided by Company for use with the Platform may only be used in conjunction with the Platform, and such use is subject to this Agreement

6. **User Responsibilities.** User is responsible for obtaining and maintaining any User Equipment and any ancillary services needed to install, access, or otherwise use the Platform. Except as otherwise expressly provided herein, User agrees that it shall NOT:
 - a. use any content or information available through the Platform for any unauthorized purpose;

 - b. interfere with or damage the Platform including, without limitation, through the use of viruses, spyware, malware, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing, or methods that in any way reproduce or circumvent the navigational structure or presentation of the Platform or its contents;

- c. collect, store, or distribute any information about any other user other than in the course of the permitted use of the Platform;
- d. send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third-party privacy rights;
- e. impersonate any person, company, or entity, either through identity masking or otherwise;
- f. modify, sublicense, transfer, translate, sell, resell, reverse engineer, decipher, decompile, or otherwise disassemble any content on or portion of the Platform or any software used on or for the Platform;
- g. attempt to gain unauthorized access to the Platform or its related systems or networks or prevent or attempt to prevent Company's own access to the Platform;
- h. use any robot, spider, site search/retrieval application, or other software or device to retrieve or index any portion of the Platform or collect information about the Platform or its users for any unauthorized purpose;
- i. use the Platform in any way that competes with products or services offered by Company, or install, access, or use the Platform when User or its Affiliates are engaged in any business competitive with that of Company;
- j. use the Platform or components thereof in any way that that contains or displays or promotes spyware, adware, or other malicious programs or code, counterfeit goods, items subject to US embargo, hate materials or materials urging acts of terrorism or violence, goods made from protected animal/plant species, recalled goods, any hacking, surveillance, interception, or descrambling equipment, illegal drugs and paraphernalia, unlicensed sale of prescription drugs and medical devices, the sale of tobacco or alcohol to persons under twenty-one (21) years of age, pornography, prostitution, body parts and bodily fluids, stolen products and items used for theft, fireworks, explosives, and hazardous materials, government IDs, police items, unlicensed trade or dealing in stocks and securities, gambling items, professional services regulated by state licensing regimes, non-transferable items such as airline tickets or event tickets, non-packaged food items, or weapons and accessories;
- k. violate any applicable law or regulation in connection with User's use of the Platform;
- l. disclose, without authorization, any proprietary or confidentially-marked information to Company or thirdparties; and
- m. assist any third-party in doing any of the foregoing.
- n. cannot use system admin rights to change partner admin user id or password. Changing password for partner admin and limiting BiznusSoft's access will lead to immediate termination of services and possible legal action.

7. **Proprietary Rights.**

- a. **Ownership.** To the fullest extent permitted by law and excepting any User Information, all rights, title, and interest in and to the Platform and the Work Product, including, without limitation, all Intellectual Property Rights, are owned by Company. User shall retain all ownership rights in User Information.
- b. **Limited License.** Company hereby grants User a perpetual, worldwide, non-exclusive, royalty-free, fully paidup, sublicensable, and transferable (only under the terms and conditions herein), license to use, copy, modify, distribute, or otherwise exploit the Work Product solely for User's internal business purposes and within the scope of this Agreement. User hereby grants to Company a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up, sublicensable, and transferable license to use, copy, modify, distribute, or otherwise exploit, including by incorporating into the Platform, any suggestions, enhancement requests, recommendations or other feedback provided by User.

- c. **Press Releases.** Neither Party may issue press releases relating to this Agreement without the other Party's prior written consent. Either Party may include the other Party's name and/or logo in customer or vendor lists in accordance with the other Party's standard guidelines, if any. Any use of a Party's trademarks or service marks will inure to the benefit of that Party. Company may refer to User's intended use of the Platform in Company's marketing materials and on its websites as well as in discussions with Company customers, prospective customers, and industry and financial analysts.
- d. **Reservation.** All rights not expressly granted hereunder are reserved.

8. **Fees.**

- a. License Fees are payable in advance. Unless otherwise specified on an Order Form, the License Fees stated in each Order Form shall be effective for the period specified therein. If additional licenses are added under an existing Order Form, the period of the additional User license shall be coterminous with the expiration of the period applicable to such Order Form and the pricing for the additional licenses shall be the same as that defined in such Order Form, prorated for the remainder of the period.
- b. All fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice. Any payment not received from User by the due date may result in suspension of User's ability to access the Platform until payment is made.
- c. Unless expressly provided herein, Company's fees do not include any Taxes, and User is responsible for paying all Taxes arising from its purchases hereunder, excluding Taxes based on Company's net income or property. If Company has the legal obligation to pay or collect Taxes for which User is responsible, the appropriate amount of such Taxes shall be invoiced to and paid by User, unless User provides a valid tax exemption certificate authorized by the appropriate taxing authority.
- d. User shall reimburse Company for all reasonable, pre-approved, and appropriately documented, out-of-pocket travel and related expenses incurred by Company in performing Consulting Services at User's location, in each case in accordance with User's standard expense policy, if any. User shall be responsible for its own travel and out-of-pocket expenses associated with attending any training services at a Company's facility.
- e. If User's actual use of the Platform exceeds that which is licensed under any Order Forms, User will be invoiced for the additional License Fees (at the rates specified in the applicable Order Form) for the period commencing on the date of use of such excess usage through the remainder of the Term.
- f. Company reserves the right to increase License Fees by up to ten percent (10%) upon License Period renewal. Company reserves the right to increase License Fees by up to fifteen percent (15%) measured over any three (3) year period of time in which the Term is effective. In the event Company increases User's License Fees for a subsequent License Period renewal, Company will inform User at least sixty (60) days prior to the end of the License Period.
- g. Payments for all outstanding invoices should be rendered before the payment due date. If payment is not received before/on the due date, penalties will apply.

9. **Platform Support.** Excepting Users who have not purchased any licenses, Company shall provide basic support for the Platform to User at no additional charge. User may purchase upgraded support pursuant to a SOW.

10. **Warranties.** User hereby represents and warrants that: (i) it has the legal right and authority to enter into this Agreement and bind the respective User parties; (ii) User's use of the Platform or Work Product shall not violate any agreement User has with any other person or entity; and (iii) any materials or information provided by User to Company shall not violate any law nor infringe upon nor violate any rights of any person or entity including, but not limited to, Intellectual Property Rights, the right of privacy, right of publicity, or the right against libel or slander.

11. **Limited Liability.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND IN ADDITION TO ANY OTHER LIABILITY LIMITATIONS CONTAINED HEREIN, COMPANY, ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, SUCCESSORS, OR ASSIGNS (“COMPANY PARTIES”) SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING FROM OR RELATING TO: (I) PLATFORM PERFORMANCE OR AVAILABILITY; (II) THE ACTS, OMISSIONS, OR CONDUCT OF ANY USER OR THIRD-PARTY, WHETHER ONLINE OR OFFLINE; (III) ANY PLATFORM CONTENT; (IV) ANY GOODS OR SERVICES ACQUIRED AS A RESULT OF ANY INFORMATION OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH THE PLATFORM; OR (V) ANY USE OF GOODS OR SERVICES MADE AVAILABLE ON ANY INTERNET RESOURCE OR WEBPAGE LINKED TO THE PLATFORM. THE COMPANY PARTIES SHALL NOT BE HELD RESPONSIBLE FOR TECHNICAL MALFUNCTIONS OF ANY TELEPHONE SYSTEM, CELLULAR NETWORK, CABLE SYSTEM, COMPUTER EQUIPMENT, SERVER, PROVIDER, OR SOFTWARE. THE COMPANY PARTIES SHALL NOT BE HELD RESPONSIBLE FOR ANY INJURY OR DAMAGE TO USER’S COMPUTER RESULTING FROM USE OF THE PLATFORM INCLUDING, BUT NOT LIMITED TO, WEB PAGE VIEWING, FILE DOWNLOADING, SERVER USE OR ACCESS, OR FOLLOWING HYPERLINKS. USER INSTALLS, ACCESSES, AND USES THE PLATFORM AT ITS OWN RISK AND IS SINGULARLY RESPONSIBLE FOR ANY LOSS, DAMAGE, OR COSTS INCURRED DURING SUCH ACTIVITY. THE COMPANY PARTIES SHALL NOT BE RESPONSIBLE FOR ANY INCORRECT OR INACCURATE CONTENT POSTED ON OR RECEIVED FROM THE PLATFORM, REGARDLESS OF THE CAUSE OF SUCH INACCURACY. THE COMPANY PARTIES SHALL NOT BE RESPONSIBLE FOR ANY CONDUCT OF ANY USER. THE COMPANY PARTIES SHALL NOT BE RESPONSIBLE FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, OPERATIONAL DELAY, COMMUNICATION LINE FAILURE, OR THEFT, DESTRUCTION, OR ALTERATION OF USER’S COMMUNICATIONS. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY TO USE FOR ANY DAMAGES WHATSOEVER, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT USE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNLESS OTHERWISE PROVIDED HEREIN, NO DATA OR INFORMATION OBTAINED FROM THE COMPANY PARTIES SHALL CREATE ANY WARRANTY.

THE COMPANY PARTIES AGGREGATE LIABILITY TO USER OR ANY THIRD-PARTY, IN ANY MATTER ARISING FROM OR RELATED TO THE PLATFORM OR THE AGREEMENT, SHALL NOT EXCEED THE SUM OF ONE HUNDRED DOLLARS (\$100.00).

USER’S ACCESS OR USE OF ANY THIRD-PARTY SOFTWARE, WEBSITE, OR INTERNET RESOURCE LINKED TO OR FROM THE PLATFORM, OR USER’S USE OF GOODS OR SERVICES FROM THIRD-PARTY WEBSITES OR INTERNET RESOURCES LINKED TO OR FROM THE PLATFORM, IS MADE AT USER’S OWN RISK. USER HEREBY RELEASES THE COMPANY PARTIES FROM ANY DAMAGES USER SUFFERS FROM USER’S ACCESS TO THIRD-PARTY WEBSITES OR INTERNET RESOURCES, AND USER AGREES NOT TO MAKE ANY CLAIMS AGAINST THE COMPANY PARTIES ARISING FROM ANY PURCHASE OR ACQUISITION OF GOODS AND SERVICES MADE AVAILABLE THROUGH THE PLATFORM OR THROUGH THIRD-PARTY WEBSITES OR INTERNET RESOURCES.

THE COMPANY PARTIES SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE FAILURE, BY ANY PARTY, TO PROTECT USER PASSWORDS OR ACCOUNT INFORMATION. THE COMPANY PARTIES SHALL NOT BE LIABLE FOR ANY FAILURE OR PERFORMANCE DELAY UNDER THE AGREEMENT DUE TO CIRCUMSTANCES BEYOND THE COMPANY PARTIES’ CONTROL INCLUDING, BUT NOT LIMITED TO, A FORCE MAJEURE EVENT.

12. Indemnity.

a. Indemnification by Company.

- i. Company shall defend, indemnify, and hold User harmless against any loss, damage, or costs (including reasonable attorneys’ fees) incurred in connection with claims, demands, suits, or proceedings (“Claims”) made or brought against User by a third-party alleging that use of the Platform as contemplated herein:

- (i) violates any applicable law or regulation; or (ii) infringes the intellectual property rights of such thirdparty, provided User (a) promptly gives written notice of the Claim to Company (provided that the obligations under this Section shall not be reduced by the failure to give such notice except to the extent Company is materially prejudiced by such failure); (b) gives Company sole control of the defense and settlement of the Claim (provided that Company may not settle any Claim unless it unconditionally releases User of all liability and obligation); and (c) provides to Company, at User's cost, all reasonable assistance.
- ii. Company will, at its sole option and expense: (i) procure for User the right to continue using the Platform under the terms of this Agreement; (ii) replace or modify the Platform to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate User's Platform license(s) and refund User all prepaid fees for the remainder of the relevant Order Form period.
- iii. Company shall have no liability for any Claim to the extent the Claim is based upon: (i) the use of the Platform in combination with any other product, service or device not furnished, recommended or approved by Company; or (ii) User's use of the Platform other than in accordance with this Agreement.
- iv. THE PROVISIONS OF THIS SECTION SET FORTH COMPANY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND USER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- b. **Indemnification by User.** User shall defend, indemnify, and hold Company Parties harmless against any loss, damage, or costs (including reasonable attorneys' fees) against any Claims made or brought against Company by a third-party arising out of or related to: (i) any allegation that any User material posted or submitted through the Platform violates or infringes any of the third-party's rights; (ii) any User breach of any provision of this Agreement and/or any representation or warranty identified herein; (iii) any allegation that User's use of the Platform violates any applicable law or regulation; or (iv) any cost or expense Company incurs in enforcing this Section. Company reserves the right to control the defense and settlement of any action or proceeding against any Company Party that User is bound to defend pursuant to the foregoing.

13. Confidentiality.

- a. As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including Documentation, User Guide, pricing, and other terms reflected in Order Forms or SOWs), User Information, business and marketing plans, login credentials, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently received or developed by Receiving Party without breach of any obligation owed to Disclosing Party.
- b. Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).
- c. Company may compile aggregate data related to User's use of the Platform and may disclose such aggregate data to third-parties to the extent that User is not identified as the source of such data. Each party represents and warrants that it will collect, maintain, and handle all personal data in compliance with all applicable data privacy

and protection laws. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

- d. If Receiving Party is legally compelled to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.
- e. Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request and to the extent practicable, return to the Disclosing Party or destroy (at the Receiving Party's election) all materials containing such Confidential Information.

14. **Term and Termination.**

- a. This Agreement commences upon User's access or installation of the Platform and continues until all User licenses granted hereunder have expired or have been terminated. Each License Period will automatically renew for a subsequent, equivalent License Period in the absence of User's sixty (60) day prior written notice to Company of User's election to not renew it license(s). **USER ACKNOWLEDGES, UNDERSTANDS, ACCEPTS, AND AGREES THAT USER'S FAILURE TO TIMELY NOTIFY COMPANY OF USER'S ELECTION TO CANCEL UNDER THIS SECTION WILL RESULT IN USER BEING LIABLE FOR LICENSE FEES FOR RENEWED LICENSE PERIODS.**
- b. Either Party may terminate this Agreement for cause: (i) upon thirty (30) day written notice to the other Party of a material breach of this Agreement if such breach remains uncured at the expiration of such notice period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (iii) as otherwise provided herein. Upon any termination for cause by Company, Company shall refund to User any fees under current Order Forms.
- c. Upon request by User made within thirty (30) days of the expiration or termination of this Agreement, Company will make available to User for download a file of User Information. After such period, Company will have no obligation to maintain or provide any User Information and will not retain copies or records of User Information in its Platform or otherwise.

15. **Dispute Resolution.**

- a. **Controlling Law and Jurisdiction.** This Agreement will be interpreted in accordance with the laws of the State of Illinois and the United States of America, without regard to its conflict-of-law provisions. User and Company agree to submit to the personal jurisdiction of the Circuit Court of Cook County, Illinois or the United States District Court, Northern District of Illinois also located in Cook County, Illinois, for any actions for which the Parties retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights, as set forth herein.
- b. **Negotiations.** In the event any dispute arises, User and Company agree to first attempt to negotiate the resolution any dispute, except those disputes the involving actual or threatened infringement, misappropriation, or violation of a Party's copyrights, trademarks, trade secrets, patents, or other Intellectual Property Rights, informally for at least thirty (30) days before initiating any arbitration or court proceeding.
- c. **Other parties.** User accept that, as a corporation, Company has an interest in limiting the personal liability of its officers and employees. User agrees that it will not bring any claim personally against Company's officers or employees in respect of any losses User suffers in connection with the Platform. Without prejudice to the foregoing, User agree that the limitations of warranties and liability set out in this Agreement will protect Company's officers, employees, agents, subsidiaries, successors, assigns, and sub-contractors as well as Company.

- d. **Binding Arbitration.** All claims arising from use of the Platform (except those disputes the involving actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other Intellectual Property Rights) will be finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party will be final and binding on the other. User understands that if either party elects to arbitrate, neither party will have the right to sue in court or have a jury trial. The arbitration will be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes both of which are available at the AAA website <http://www.adr.org>. The Parties will submit briefs of no more than 10 pages and the arbitration hearing will be limited to two (2) days maximum. The arbitrator will apply Illinois law. Unless otherwise agreed by the Parties, arbitration will take place in Chicago, Illinois. User's arbitration fees and User's share of arbitrator compensation will be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. If User's claim for damages does not exceed \$10,000, Company will pay User's ultimate share of fees unless the arbitrator finds that either the substance of User's claim or the relief sought was frivolous or brought for an improper purpose as determined pursuant to Federal Rule of Civil Procedure 11(b). The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will produce a written decision. The arbitrator must follow Illinois law and any award may be challenged if the arbitrator fails to do so. The Parties may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.
- e. **WAIVER OF RIGHT TO BE A PLAINTIFF OR CLASS MEMBER.** USER AND COMPANY AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN COMPANY AND USER INDIVIDUALLY. USER ACKNOWLEDGES AND AGREES THAT USER AND COMPANY ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE USER'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF ANY CLASS OR REPRESENTATIVE PROCEEDING.

16. **General Terms.**

- a. **Government Use.** If User is a federal government entity, Company provides the Platform, including related technology, for ultimate federal government end use solely in accordance with FAR 12.211 (Technical Data), and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be executed between the Parties in this Agreement.
- b. **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 hereunder), without consent of the other Party, to its successor in interest resulting from a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party. Any attempted assignment in breach of this section shall be void ab initio. This Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- c. **Injunctive Relief.** User acknowledges that the services and information furnished by Company hereunder and the rights granted by Company herein are of a special, unique, and intellectual nature, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law. The breach by User of the provisions of this Agreement will cause Company irreparable injury and damage for which Company will be entitled, without posting any bond or security, to seek injunctive or other equitable relief. The granting of equitable relief will not be construed as a waiver of any other rights of Company in law or in equity.
- d. **Waiver; Remedies Cumulative.** To the maximum extent permitted by applicable law: (i) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by a Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by such Party; (ii) no

waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

- e. **Entire Agreement and Modification.** This Agreement, and addenda, exhibits, Order Forms, and SOWs incorporated hereto, supersedes all prior agreements, whether written or oral, between the Parties with respect to the Platform and Consulting Services and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect thereto. The Parties acknowledge that they have not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by both Parties (*e.g.*, Licensee Fees or Customer Services paid in acknowledgement of modifications to this Agreement).
- f. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. This Agreement is not intended, and will not be construed, to render Company, User, and/or third-parties partners, joint venturers, or co-owners.
- g. **Export Compliance.** Each Party agrees to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the provision and use of the Platform.
- h. **Survival.** Sections 11, 12, 13, 14(c), 15, and 16 shall survive the termination or expiration of this Agreement.

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