

## TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE (THESE “**TERMS**”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY SPICE LABS, INC. (“**COMPANY**”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH COMPANY THAT REFERENCE THESE TERMS (EACH, AN “**ORDER FORM**”), YOU (“**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS (SUCH MUTUAL EXECUTION, “**ACCEPTANCE**”). FOR CLARITY, ANY ONLINE ORDER FORM THAT YOU SUBMIT VIA COMPANY’S STANDARD ONLINE PROCESS AND THAT IS ACCEPTED BY COMPANY SHALL BE DEEMED TO BE MUTUALLY EXECUTED. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND SUCH ENTITY TO THE TERMS OF THIS AGREEMENT, AND ALL REFERENCES TO “**CUSTOMER**” HEREIN SHALL BE DEEMED TO BE A REFERENCE TO SUCH ENTITY.

### 1. DEFINITIONS.

**1.1** “**Applicable Laws**” means any state, federal or foreign law(s), rule(s) or regulation(s) applicable to this Agreement, including those concerning privacy, data protection, confidentiality, information security, availability and integrity, or the handling or processing of Personal Data. Applicable Laws expressly include, to the extent applicable, (a) the California Consumer Privacy Act, as amended by the California Privacy Rights Act of 2020; (b) the General Data Protection Regulation (Regulation (EU) 2016/679); and (c) the EU GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018, in each case as updated, amended or replaced from time to time.

**1.2** “**Customer Data**” means all other information and data provided by Customer, which may be stored, analyzed, processed and used by the Service which excludes Customer Registration Data and shall not include any Personal Data.

**1.3** “**Customer Registration Data**” means information and data provided by Customer for Registration purposes (excluding Customer Data).

**1.4** “**Documentation**” means any user instructions, help information and other documentation regarding the Service that are provided by Company to Customer in electronic or other form.

**1.5** “**Open Source**” means any object code or source code which is licensed under any form of open-source license meeting the Open Source Initiative’s Open Source Definition as amended, revised or updated from time to time (<http://www.opensource.org/docs/osd>).

**1.6** “**Platform**” means the technology platform developed and/or used by Company in providing the Service (including all related ideas, concepts, inventions, systems, hardware, software, interfaces, tools, utilities, content, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information), and including all corrections, improvements and extensions thereto.

**1.7** “**Personal Data**” means any information relating to an identified or identifiable person which is subject to Applicable Laws, including any Sensitive Personal Data.

**1.8** “**Registration**” means the process by which Customer registers with Company to access and use the Service including any Order Form, purchase order or other form of electronic registration.

**1.9** “**Sensitive Personal Data**” means any (a) government-issued identification number (including social security number, driver’s license number or state-issued identification number); (b) financial account number, credit card number, debit card number, credit report information, with or

without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account; (c) genetic, biometric or health data; (d) Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, sexual orientation or sexual activity, or trade union membership; (e) Personal Data relating to criminal convictions and offenses (including commission of or proceedings for any offense committed or alleged to have been committed); and (f) any other Personal Data designated as sensitive or deserving of heightened protection under Applicable Laws.

**1.10** “**Service**” means the Company products and services identified in the applicable Registration, including certain Internet-accessed business application(s) identified during Registration, which includes a hosted service (in a cloud environment), branded and provided on a software-as-a-service basis by Company.

### 2. COMPANY SERVICE.

**2.1 Service.** Subject to all terms and conditions in this Agreement including terms set forth during Registration and any applicable usage limitations set forth therein, Company grants Customer (without right to sublicense) a nonexclusive, nontransferable right and license to (a) access and use the Service and solely for Customer’s internal business purposes, and (b) use the Documentation solely in connection with Customer’s authorized access and use of the Service. Customer’s access and use of the Service shall comply with all other conditions set forth herein or during Registration (such as, for example, any requirements regarding data formats, number or identity of authorized users, size limits, time limits or prohibited uses).

**2.2 Hosting Provider.** Customer acknowledges and agrees that Company is free to use any hosting or internet-as-a-service provider in connection with the Services (a “**Hosting Provider**”) including.

**2.3 Access Credentials.** Upon Acceptance, Company may provide access credentials to Customer for the authorized users specified during Registration. Customer is solely responsible for maintaining the confidentiality of its access credentials and other account information, and will be solely liable for any and all activities under its account. Customer shall be responsible for keeping all account information up to date. Customer agrees to notify Company immediately of any unauthorized use of Customer’s account or any other breach of security of which it becomes aware.

**2.4 Customer Data.** Customer bears all responsibility and liability for the accuracy and completeness of the Customer Data and Company’s access, possession and use as permitted herein. Other than Registration data, Company has no obligation to

backup, retain or deliver any Customer Data. Customer hereby grants Company a nonexclusive, royalty-free, worldwide right and license to access, copy, store, process, distribute, transmit and otherwise use the Customer Data for the purposes of providing the Service (and support services) to Customer. Without limiting the generality of the foregoing, Customer represents and warrants that it (a) has properly obtained, and will not share any Customer Data with Company unless it has obtained, all necessary rights, consents and authorizations to share the Customer Data with Company and (b) will at all times comply with all Applicable Laws pertaining to the collection, use and disclosure of the Customer Data.

**2.5 Data Security.** Company agrees that, during the term of this Agreement, it shall maintain a commercially reasonable information-security program that complies with prevailing industry practices and Applicable Law and includes appropriate administrative, technical, and physical safeguards reasonably designed to (a) ensure the security and confidentiality of Customer Data; (b) protect against any reasonably anticipated threats or hazards to the security or integrity of such Customer Data; (c) protect against unauthorized access to or use of such Customer Data that could result in material harm or inconvenience to Customer; and (d) dispose of such Customer Data in a secure manner as described herein (which disposal, for the avoidance of doubt, shall consist of deleting the private key used to encrypt such Customer Data). To comply with the safeguard obligations generally described in this Section 2.5, Company has (i) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer Data that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such Customer Data, and assessed the sufficiency of any safeguards in place to control these risks; and (ii) designed and implemented information safeguards (including encryption of Customer Data at rest and during transmission), to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures. In the event that Company experiences an actual or suspected security breach (as defined below) in relation to any Customer Data, Company shall notify Customer as soon as practicable but no later than seventy-two (72) hours after Company becomes aware of such security breach.

**2.6 Personal Information.** Except for Personal Data contained in Customer Registration Data specifically requested by Company during Registration, Customer agrees and acknowledges that Company does not wish to receive any Personal Data from or on behalf of Customer in its use of the Services, and unless the parties specifically agree in writing, Customer shall not provide any Personal Data to Company, and Customer shall not use the Services to transmit, store or otherwise process any Personal Data. Notwithstanding the foregoing, Customer shall not disclose or make available to Company any Sensitive Personal Data without the express prior written consent of Company.

**2.7 Systems.** At its sole cost and expense, Customer is responsible for providing all (a) rights, licenses and permissions necessary for Company to receive and use the Customer Data, (b) modems, servers, devices, storage, software, databases, network and communications equipment and ancillary services needed to connect to, access or otherwise use the Service from Customer's facility and (c) corresponding back-up, recovery, network security and maintenance service (collectively, "Customer

Systems"). Customer shall ensure that Customer Systems are compatible with the Service and comply with all configurations and specifications described in the Documentation.

**2.8 Limitations.** Company will use commercially reasonable efforts to make the Service available to Customer at all times, subject to downtimes for scheduled maintenance, upgrades, repairs and emergency outages. Company will not be responsible or liable for any failure in the Service resulting from or attributable to (a) unusually high usage volumes, (b) failures in any telecommunications services, networks or systems, (c) Customer's or any third party's negligence, acts or omissions, (d) any force majeure or other cause beyond Company's reasonable control or (e) unauthorized access to the Service, breach of firewalls or other hacking.

**2.9 Support.** Company will use commercially reasonable efforts to provide Customer with technical support for the Service in accordance with its standard practices. Customer agrees that Company may charge in accordance with its then current policies for any support service resulting from problems, errors or inquiries related to the Customer Data or Customer Systems.

**2.10 Privacy.** Company's current privacy policy is available at <https://documents.spicelabs.io/privacy/> (the "Privacy Policy"). Company will not intentionally disclose, distribute, transmit or use any Customer Data or Customer Registration Data except as set forth in the Privacy Policy or (a) as reasonably necessary for Company (or its contractors) to provide the Service, (b) as authorized by Customer or as otherwise expressly permitted under this Agreement or (c) as required by court order, law or regulation, or if Company reasonably believes that such action is necessary to conform or comply with any legal, regulatory, law enforcement or similar requirement or investigation, to protect or defend the rights or property of Company or any third party or to enforce this Agreement.

**2.11 Third-Party Integrations.** Customer acknowledges and agrees that (a) the Service may operate on, with or using application programming interfaces or other services operated or provided by third parties (e.g., other vendors of Customer), including without limitation authentication services provided by Stytc, Inc. (collectively, "Third-Party Integrations"), (b) the availability and operation of the Service or certain portions thereof may be dependent on Company's ability to access such Third-Party Integrations, and (c) Customer's failure to provide adequate access or any retraction of permissions relating to such Third-Party Integrations may result in a suspension or interruption of the Service. Customer hereby represents and warrants that it has all rights, licenses, permissions and consents necessary to connect, use and access any Third-Party Integrations that it integrates with the Service. Company cannot and does not guarantee that the Service shall incorporate (or continue to incorporate) any particular Third-Party Integrations and does not make any representations or warranties with respect to Third-Party Integrations. Customer is solely responsible for procuring any and all rights necessary for it to access Third-Party Integrations (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Any exchange of data or other interaction between Customer and a third-party provider is solely between Customer and such third-party provider and is governed exclusively by such third party's terms and conditions.

**2.12 Changes.** Company reserves the right, at its sole discretion and at any time, to modify or discontinue the Service and/or to modify the terms and conditions of this Agreement (in whole or in part). Company may communicate any such change via the Service, the effective date posted in connection with this Agreement, electronic mail or other permitted notice. Following any such notice, continued use of the Service after the effective date of the change constitutes Customer's acceptance of that change.

### 3. PAYMENTS.

**3.1 Free Trials.** If Customer is using a free version of the Services, all usage of the Services will be subject to all applicable terms and limitations communicated to Customer by Company including during Registration. Upon expiration of the trial, Customer must pay all applicable fees for continued use of the Services.

**3.2 Fees.** Customer agrees to pay Company all fees in the amounts and at the times specified during Registration, and as otherwise provided in this Agreement. Such fees may be specified as being payable in advance or in arrears; fees may be fixed, contingent or variable (e.g., depending on usage factors); and fees may be specified on a recurring basis (e.g., subscription fees and/or usage fees, which may be payable monthly, quarterly or annually) or non-recurring basis (e.g., one-time activation fees). If Customer exceeds any user or usage limitations specified during Registration, then Company shall invoice Customer, and Customer shall pay, for such additional users or usage at the overage rates set forth on the Registration (or if no overage rates are set forth during Registration, at Company's then-current standard overage rates for such usage). For the avoidance of doubt, Customer's failure to timely pay all fees due under this Agreement will be considered a material breach of this Agreement, and without limiting any of Company's rights and remedies hereunder, Company may terminate this Agreement or suspend Customer's access to the Service until such fees are paid.

**3.3 Payment Terms.** Unless specified otherwise, all amounts due hereunder shall be paid in full (without deduction, set-off or counterclaim) within thirty (30) days after invoice in US dollars at Company's address or to an account specified by Company. Past due amounts shall bear a late payment charge, until paid, at the rate of one and a half percent (1.5%) per month or the maximum amount permitted by law, whichever is less. Customer agrees to reimburse Company for all costs (including attorneys' fees) incurred by Company in collecting late payments.

**3.4 Payment Methods.** Company may use a third-party payment processor (the "Payment Processor") to bill Customer through a payment account linked to Customer's account on the Services ("Billing Account") for use of the Services. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to this Agreement. Currently, Company uses Stripe, Inc. as our Payment Processor. Customer can access Stripe's terms of service at <https://stripe.com/legal/consumer> and its privacy policy at <https://stripe.com/us/privacy>. Company is not responsible for any error by, or other acts or omissions of, the Payment Processor. By choosing to use Services, Customer agrees to pay Company, through the Payment Processor, all charges at the prices then in effect for any use of such Services in accordance with the applicable payment terms, and Customer authorizes Company, through the Payment Processor, to charge Customer's chosen

payment provider (Customer's "Payment Method"). Customer agrees to make payment using that selected Payment Method. Company reserves the right to correct any errors or mistakes that the Payment Processor makes even if it has already requested or received payment. The terms of Customer's payment will be based on Customer's Payment Method and may be determined by agreements between Customer and the financial institution, credit card issuer or other provider of Customer's chosen Payment Method. If Company, through the Payment Processor, does not receive payment from Customer, Customer agrees to pay all amounts due on Customer's Billing Account upon demand.

**3.5 Taxes.** All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon Company's net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government.

### 4. CONFIDENTIALITY.

**4.1 Scope.** The term "Confidential Information" means all trade secrets, know-how, inventions, developments, software and other financial, business or technical information disclosed by or for a party in relation to this Agreement, but not including any information the receiving party can demonstrate is (a) already known by it without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any obligation to the disclosing party, (c) generally available to the public without breach of this Agreement or (d) independently developed by it without reliance on such information. The Platform and pricing information are Company's Confidential Information.

**4.2 Confidentiality.** Except for the specific rights granted by this Agreement, the receiving party shall not access, use or disclose any of the disclosing party's Confidential Information without its written consent, and shall use reasonable care to protect the other's Confidential Information, including ensuring that its employees and contractors with access (a) have a need to know for the purposes of this Agreement and (b) have been apprised of and agree to the restrictions in this Agreement. Each party shall be responsible for any breach of confidentiality by its employees and contractors. Promptly after any termination of this Agreement (or at the disclosing party's request at any other time), the receiving party shall return all of the other's tangible Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records and materials developed therefrom. Each party may disclose only the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; *provided*, either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any legal or regulatory requirement, financing transaction or due diligence inquiry.

**4.3 Compelled Disclosure.** Nothing herein shall prevent a receiving party from disclosing any Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); *provided*, prior to any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party in writing of such requirement to disclose and

(b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

## **5. PROPRIETARY RIGHTS.**

**5.1 Customer.** Except for the limited rights and licenses expressly granted hereunder, no other license is granted, no other use is permitted and Customer (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Customer Data.

**5.2 Limited Rights to Customer Data.** Customer hereby grants Company a non-exclusive, royalty-free, worldwide, revocable right and license to access, copy, store, process and otherwise use (but not, for the avoidance of doubt, disclose or transfer to any third party other than a Hosting Provider) Customer Data in connection with developing, improving, extending and testing the Platform and Service. Customer may revoke the foregoing license with respect to any Customer Data at any time upon written notice to Company, and Company shall promptly dispose of such Customer Data in accordance with this Agreement (including, without limitation, Section 2.5); *provided*, in no event shall Company be deemed to be in breach of this Agreement for any failure to provide the Service occasioned by Customer's revocation of such license. Customer agrees that Company is free to use and disclose the aggregate measures of Service usage and performance, and to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) acquired during provision of the Service under this Agreement (including without limitation, that which it could have acquired performing the same or similar service for another customer).

**5.3 Company.** Except for the limited rights and licenses to access and use the Service and Documentation expressly granted hereunder, and in the case of Open Source, granted as part of the Open Source license, no other license is granted, no other use is permitted and Company (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Documentation, Platform, and Service.

**5.4 Restrictions.** Customer shall not, directly or indirectly (a) use any Company Confidential Information to create any software, platform, service or documentation that is similar to the Platform, Service or Documentation, (b) attempt to access any Platform or Service component or to disassemble, decompile, reverse engineer or otherwise discover any source code or underlying organization, structures, ideas or algorithms of the Platform or Service, (c) encumber, sublicense, distribute, transfer, rent, lease, lend, access or use the Platform or Service in any time-share or service bureau arrangement, (d) copy, adapt, combine, create derivative works of, translate, localize, port or otherwise modify the Platform, Service or Documentation, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to do any of the foregoing.

## **6. LIMITED WARRANTY AND DISCLAIMERS.**

**6.1 Customer.** Customer represents and warrants to Company that it owns all rights, title and interest in and to the

Customer Data and Customer Registration Data, or that Customer has otherwise secured all necessary rights in the Customer Data and Customer Registration Data as may be necessary to permit the access, use and processing thereof as contemplated by this Agreement.

**6.2 Company.** Company warrants to Customer that it will use commercially reasonable efforts to provide and maintain the Service in a professional and workmanlike manner in accordance with applicable industry standards.

**6.3 Disclaimers.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. COMPANY DOES NOT WARRANT THAT THE SERVICE OR ANYTHING PROVIDED BY COMPANY UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY HEREBY DISCLAIMS (FOR ITSELF AND ITS LICENSORS) ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## **7. INDEMNIFICATION.**

**7.1 Customer.** Customer agrees to defend Company against any demand, suit, action or other claim by a third party that is related to any Customer Data or breach of Customer's representations or warranties hereunder, and to indemnify Company for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such claim.

**7.2 Company.** Company agrees to defend Customer against any demand, suit, action or other claim by a third party that the Service infringes a valid US patent, or any copyright or trade secret, of such third party, and to indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such claim. The foregoing states the entire liability of Company, and Customer's exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the Service, any part thereof or its use or operation. Notwithstanding the foregoing, Company shall have no liability or obligation to Customer hereunder with respect to any claim based upon (a) any use of the Services not strictly in accordance with this Agreement, (b) use of any Services in an application or environment or on a platform or with devices for which it was not designed or contemplated, (c) alterations, combinations or enhancements of the Services not approved by Company, (d) Customer's continuing allegedly infringing activity after being notified thereof or its continuing use of any version of the Services after being provided modifications that would have avoided the alleged infringement or (e) any intellectual property right in which Customer or any of its affiliates has an interest.

**7.3 Conditions.** The indemnifying party's obligations hereunder are conditioned on (a) the other party's providing prompt written notice of any claim for which indemnification may be sought and reasonable cooperation, information, and

assistance in connection therewith and (b) the indemnifying party having sole control and authority to defend, settle or compromise such claim. The indemnified party may participate in the defense at its sole cost and expense. The indemnifying party will not enter into any settlement that adversely affects the indemnified party's rights or interest without its prior written approval, not to be unreasonably withheld. The indemnifying party shall not be responsible for any settlement it does not approve in writing.

8. **LIMITATION OF LIABILITY.** EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY (OR ITS LICENSORS) BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OF DATA, LOSS OR INTERRUPTION OF USE, OR COST TO PROCURE SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES, (B) ANY MATTER BEYOND ITS REASONABLE CONTROL INCLUDING ERRORS ON CUSTOMER SYSTEMS, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL OR (D) AGGREGATE DAMAGES IN EXCESS OF THE AMOUNT PAID TO COMPANY FOR THE SERVICE DURING THE PRIOR TWELVE (12) MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

#### 9. **TERM AND TERMINATION.**

9.1 **Term.** This Agreement shall commence upon Acceptance and continue in effect for the time period specified during Registration or, if no such time period was specified, then for one (1) year from the date of acceptance. Thereafter, this Agreement shall renew automatically for additional terms of one (1) year each (unless another renewal term is specified during Registration), unless either party notifies the other of its intent not to renew at least thirty (30) days prior to the end of the then-current term.

9.2 **Termination.** This Agreement may be earlier terminated (in whole, or in respect of any Service) by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party, or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within ninety (90) days, or the other party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. Notwithstanding the foregoing, Company may suspend or terminate this Agreement upon written notice to Customer in the event Customer's breach of this Agreement is incurable or upon Customer's failure to timely pay all invoices hereunder.

9.3 **Effects of Termination.** Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except that (a) all obligations that

accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive and (b) the provisions of Sections 3 (for amounts incurred prior to termination), 4, 5, 6, 7, 8, 10 and this Section 9 shall survive.

#### 10. **GENERAL PROVISIONS.**

10.1 **Entire Agreement.** This Agreement (including the Privacy Policy and Registration records) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom). Any inconsistent or additional terms on any related purchase order, confirmation or similar form, even if signed by the parties hereafter, shall have no effect under this Agreement. Except as expressly provided herein, no change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is in English only, which language shall be controlling in all respects. No version of this Agreement in another language shall be binding or of any effect.

10.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Unless waived by Company in its sole discretion, exclusive jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in Wilmington, DE, and both parties consent to the jurisdiction of such courts with respect to any such action.

10.3 **Remedies.** Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 4 or 5, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of proving actual damages or posting any bond.

10.4 **Notices.** All notices under this Agreement will be in writing, in English and delivered to the parties at their respective addresses stated herein, during Registration or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or electronic mail; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.5 **Publicity.** Customer hereby consents to inclusion of its name and logos in customer lists that may be published as part of Company's marketing and promotional efforts. Otherwise, neither party may issue any press release or other public announcement concerning the arrangements under this Agreement without the

other party's prior written consent, not to be unreasonably delayed, conditioned or withheld.

**10.6 Assignment.** This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld. However, either party may assign this Agreement to any successor to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

**10.7 Independent Contractors.** The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

**10.8 Acknowledgment.** Customer acknowledges that (a) it has read and understands this Agreement, (b) it has had an opportunity to have its legal counsel review this Agreement, (c) this Agreement has the same force and effect as a signed agreement, (d) Company requires identification of the Customer before issuing this license to access and use the Service and (e) entering into this Agreement does not constitute general publication of the Platform or Documentation.