



## SUBSCRIPTION SERVICES TERMS AND CONDITIONS

These Subscription Services Terms and Conditions (the “**Subscription Terms**”) are made and entered into on the Effective Date by execution of an order form or statement of work, as applicable, referencing these Subscription Terms (the “**Order Form**”, or the “**Statement of Work**” or “**SOW**”, and together with these Subscription Terms the “**Agreement**”) by and between RocketDocs, Inc., a Delaware corporation (“**Company**”), and the entity identified to as the Customer in the Order Form or SOW (“**Client**”).

**1. DEFINITIONS.** In addition to capitalized terms that are otherwise defined herein, the following capitalized terms shall have the meanings set forth in this Section 1.

“**Affiliate**” means any entity that 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.

“**Aggregated Data**” means anonymous or de-identified aggregated data, including statistical data, and certain usage information related to Client’s use of the Subscription Services (per example, log data), that Company collects and uses for (i) performing Company’s obligations under this Agreement, and (ii) improving the Company Software, Subscription Services and the various elements and components thereof.

“**Authorized Users**” means individuals who are authorized by Client to use the Subscription Services, for whom subscriptions to the Subscription Services have been purchased, and who have been supplied user identifications and passwords by Client. Authorized Users may include but are not limited to Client’s employees, consultants or contractors.

“**Confidential Information**” means any material, data or information relating to a Party’s software, inventions, processes, formulas, technologies, designs, drawings, research, development, products, product plans, services, customers, customer lists, customer contact information, markets, marketing plans, financial statements, or other business information, trade secrets or intellectual property that such disclosing Party treats as proprietary or confidential, and is marked as “confidential” or “proprietary” or that, given the circumstances, should be reasonably apparent that such information is of a confidential or proprietary nature. Without limiting the foregoing, (i) the Company Software and all IP Rights associated therewith shall constitute Confidential Information of Company, (ii) Client Data shall constitute Confidential Information of Client and (iii) all software and any databases (including any data models, structures, non-Client specific data and Client specific data and aggregated statistical data contained therein) disclosed by a Party shall constitute Confidential Information of the disclosing Party.

“**Client**” has the meaning set forth the first paragraph of this Agreement and includes Affiliates.

“**Client Data**” means any data, regardless of whether in printed or electronic form, that is (i) provided to Company by Client in order for Company to perform its obligations under this Agreement, (ii) otherwise obtained by Company in the course of performing services, (iii) provided to Company by Authorized Users, or (iv) derived from Client’s use of the Subscription Services.

“**Documentation**” means the technical documentation provided by Company to Client in connection with the Subscription Services, expressed in any medium or format.

“**Effective Date**” means, for this Agreement the date the Order Form or Statement of Work referencing these Subscription Terms has been executed by both Parties (which is the latter date if executed by the Parties on different dates).

“**IP Rights**” means any and all intellectual property rights of any type, recognized in any country or jurisdiction throughout the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation, all: (i) inventions, including patents, patent applications and statutory invention registrations or certificates of invention, and any divisions, continuations, renewals or re-issuances of any of the foregoing; (ii) trademarks, service marks, domain names, trade dress, logos, and other brand source distinctions; (iii) copyrights and works of authorship, or (iv) trade secrets and know-how.

**"Order Form(s)"** means the ordering document for a purchase of Subscription Services that is executed by Client and Company and incorporating these Subscription Terms.

**"Company Software"** means Company's proprietary software application(s) that are made available to Client as a subscription service (e.g., a software-as-a-service) under this Agreement as described in the Order Form..

**"Professional Services"** means, in each instance, the implementation, integration, configuration, customization, training, consulting or other professional services provided by Company pursuant to a SOW that is executed by Client and Company and incorporating these Subscription Terms.

**"Statement of Work" or "SOW"** means the ordering document for purchases of Professional Services that is executed by Client and Company under separate agreement between the Parties and incorporating these Subscription Terms. The SOW shall contain, at a minimum, the following information: (i) the scope of the Professional Services to be provided; (ii) applicable rates and fees; (iii) responsibilities and dependencies of each Party; (iv) agreed upon Work Product and specific deliverables, if any; and (v) signatures of authorized representative of both Parties.

**"Subscription Services"** means the online, Web-based applications and platform provided by Company as described in the Documentation, that are ordered by Client or Client's Affiliates under the Order Form, but excluding Third-Party Applications and Professional Services.

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

**"Technology"** means all software, designs, formulas, algorithms, processes, and programs that are owned by Company or its licensors, including without limitation the Company Software, and that are used to provide the Subscription Services.

**"Third-Party Applications"** means software products that are provided by third parties but may be configured to interoperate with the Subscription Services and Technology.

**"Work Product"** means any expression of Company's findings, developments, inventions, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, source code, object code and other technical information resulting from the performance of Professional Services, support services, or any other services performed for the benefit of Client in relation to the Subscription Services.

## **2. SUBSCRIPTION SERVICES**

2.1. Provision of Subscription Services. Company shall make the Subscription Services available to Client pursuant to this Agreement and the applicable Order Form during the Subscription Term, subject to Client's timely payment of all applicable fees. Company may provide the Subscription Services and host the Technology on its own infrastructure or using a third party cloud computing services provider. Client's purchases of Subscription Services are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features. Company may, in its sole discretion, modify, enhance and/or expand the Subscription Services at no additional cost to Client. Company may also modify, enhance or expand the Subscription Services by providing additional features or functionality, which may, but are not required to be, added by Client to this Agreement at additional cost. Such additional cost features and functionality may be added by mutual written agreement of the Parties.

2.2. Subscriptions. Unless otherwise specified in the Order Form, (a) Subscription Services are purchased by levels or packages subscriptions, which include certain number of Authorized Users, (b) additional subscriptions (and/or Authorized Users) may be purchased during the Subscription Term by signing an amendment to this Order Form and Agreement and paying the additional fees for such additional subscriptions/Authorized Users, prorated for the portion of that Subscription Term remaining at the time the Subscriptions are added and (c) the added subscriptions shall terminate on the same date as the underlying subscriptions in this Agreement. Client acknowledges and agrees that, as between Client and Company, Client shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Client, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Client. Client shall undertake appropriate efforts to make Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User's use of the Subscription Services, and shall cause Authorized Users to comply with such provisions.

2.3. Usage Limits. The Subscription Services are subject to usage limits that are specified in the Order Form. Unless otherwise specified in the Order Form: (a) a quantity in the Order Form refers to Authorized Users, and the Subscription Services may not be accessed by more than that number of Authorized Users; (b) an Authorized User's password may not be shared with any other individual; and (c) an Authorized User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Subscription Services.

2.4. License Grant. Subject to Client's compliance with all of the terms and conditions of this Agreement, Company hereby grants Client a limited, revocable, non-exclusive, non-transferable right to access/use the Technology, solely in connection with Client's use of the Subscription Services under this Agreement.

2.5. Compliance. Client shall maintain books and records sufficient to permit Company to verify Client's compliance with the terms and requirements of this Agreement. During the term of this Agreement, Company has the right to verify and/or audit Client's use of the Subscription Services to verify compliance with this Agreement. Client understands and agrees that the Company Software may include audit-tracking tools that facilitate usage reporting. Any such verification or audit may be performed automatically. Notwithstanding the foregoing, if an onsite verification or audit is required, this shall be performed with reasonable advance written notice to Client, during Client's normal business hours and in a manner not disruptive to Client's operations. In the event that any verification or audit reveals any non-compliance, including but not limited to underpayment of fees, Client shall promptly cure the non-compliance, pay Company any shortfall (at Company's then current list price) and, if such shortfall exceeds 10% in any one-year period, reimburse Company the reasonable costs of such audit. This Section 2.5 does not limit any other rights and remedies that Company may have.

### 3. GENERAL RESTRICTIONS AND LIMITATIONS ON SUBSCRIPTION SERVICES

3.1. Company Responsibilities. As part of the Subscription Services, Company will (a) provide Client with Company's standard maintenance and support for the Subscription Services at no additional charge, and/or upgraded support if purchased for an additional fee, and (b) use commercially reasonable efforts to make the Subscription Services available in accordance with the service level agreement attached hereto as **Exhibit B** and incorporated herein by this reference, except for any unavailability caused by circumstances beyond Company's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Company's employees), Internet service provider failure or delay, failure or delay of service from any third party cloud computing services provider, or denial of service attack. Company will provide maintenance and support services in accordance with its standard policies, as in effect from time-to-time, which policies will be provided on request. Upon activation of Client's Subscription Services, Company will create a user account to provide Company access to Client's account for purposes of providing Client with onboarding, training and customer support. Company reserves the right to modify its maintenance and support services documentation from time-to-time and, other than immaterial changes and corrections, will give Client reasonable notice of modifications thereto.

3.2. Client Responsibilities. Client shall (a) be responsible for Authorized Users' compliance with this Agreement, (b) be solely responsible for the accuracy, quality, integrity, and legality of Client Data and of the means by which Client acquired Client Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services, and notify Company promptly of any such unauthorized access or use, (d) use the Subscription Services only in accordance with the Documentation and applicable laws and government regulations, and (e) provide Company with assistance, information and materials that are reasonably requested as necessary to effectively provide the Subscription Services.

3.3. Restrictions. Client will not, directly or indirectly, do any of the following: (a) make any Subscription Services available to, or use any Subscription Services for the benefit of, anyone other than Client or its Authorized Users; (b) sell, resell, license, sublicense, distribute, rent or lease any Subscription Service, or include any Subscription Services in a service bureau or outsourcing offering; (c) use the Subscription 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 Subscription Services to store or transmit code, files, scripts, agents or programs intended to do harm (including, for example, viruses, worms, time bombs and Trojan horses); (e) interfere with or disrupt the integrity or performance of any Subscription Services or third-party data contained therein; (f) attempt to gain unauthorized access to any Subscription Services or the Technology; (g) permit direct or indirect access to or use of any Subscription Services or Technology in a way that circumvents a contractual usage limit, (h) copy any part, feature, function or user interface of the Subscription Services; (i) access any Subscription Services or Technology in order to build a competitive product or service; or (j) reverse engineer, disassemble or decompile any portion of the Technology.

3.4. Client Data. The Subscription Services can be used to access and process Client Data in order to generate reports, analyses, documents, and/or results. If Client chooses to save such output, it will be saved as Client Data in Client's account. Upon any termination, Company will make all Client Data available to Client for electronic retrieval for a period of sixty (60) days, but thereafter Company may, but is not obligated to, delete stored Client Data.

#### **4. PROFESSIONAL SERVICES (applicable to a SOW incorporating these Subscription Terms)**

4.1. Professional Services. The Parties may enter a SOW for Professional Services to be performed by Company that incorporates these Subscription Terms. No Professional Services shall be furnished to Client by virtue of an Agreement and Order Form for Subscription Services, but shall require the execution of a SOW incorporating these Subscription Terms as a separate agreement between the Parties.

4.2. Scope Modifications. Client may at any time request a modification to the Professional Services to be performed pursuant to the SOW by making a written request to Company specifying the desired modifications. Company shall submit an estimate of the cost for such modifications and a revised estimate of the time for performance pursuant to the SOW. Modifications in the SOW shall become effective only when a written change request or amendment is executed by authorized representatives of both Parties.

4.3. Company Personnel. Company shall be responsible for securing, managing, scheduling, coordinating and supervising Company personnel, including its subcontractors, performing the Professional Services. Company will designate a Company project manager in the SOW who will be responsible for coordinating Company's provision of Professional Services under such SOW. Company shall have the right to remove or replace any personnel providing Professional Services with similarly skilled personnel. Company shall provide reasonable notice to Client of any change in personnel providing Professional Services. Company may, in its sole discretion, subcontract or delegate any work under the SOW to any third party without Client's prior written consent, provided that, Company shall remain responsible for the performance, acts and omissions of any such subcontractors. Client may request that Company remove or replace Company personnel if Client believes, in Client's reasonable discretion, that such personnel's involvement is inappropriate, unsafe or detrimental to the delivery of the Professional Services. In the event such a request is made, any project timelines shall automatically extend by the amount of time required to replace said personnel and assimilate them into the project.

4.4. Cooperation. Client shall perform its obligations as set forth in the SOW, as well as the following obligations: (a) designate and provide one Client project manager who will be responsible for coordinating the Client obligations under the SOW; (b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Client obligations set forth in the SOW; (ii) making timely decisions necessary to move the Professional Services forward; and (iii) participating in the project and assisting Company in rendering the Professional Services; and (c) in the case of on-site Professional Services, provide Company with reasonable access to Client's facilities during Client's normal business hours and otherwise as reasonably requested by Company, including such working space as Company may reasonably request. Client acknowledges and agrees that the performance by Client of its obligations is material to Company's ability to commence, proceed with and complete the Professional Services. In the event Client does not perform Client obligations in a timely manner, Company may take any action as set forth in the applicable SOW, or terminate the applicable SOW in accordance with these Subscription Terms.

#### **5. FEES AND PAYMENTS**

5.1. Fees. Client agrees to pay Company the fees (in US dollars) and other amounts set forth on the applicable Order Form or SOW. Except as otherwise specified in the Order Form, (a) fees for Subscription Services are based on Subscription Services 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. Except as otherwise specified in the SOW, fees for any and all Professional Services shall be based on then-current hourly rates.

5.2. Payment Terms. Unless otherwise specified in the applicable Order Form or SOW, all undisputed fees and other amounts due under this Agreement shall be due payable net thirty (30) calendar days after date of receipt by Client of the applicable invoice. Company may charge a late charge equal to the lesser of (a) one percent (1%) per month or (b) the maximum amount allowed by applicable law, on any outstanding past due balance that is not the subject of a good faith dispute.

5.3. Taxes. Client will, within thirty (30) days of the Effective Date of this Agreement, provide Company with applicable sales tax exemption certificate(s). Unless the applicable tax-exempt certificate is provided, Client shall be responsible for, all taxes, duties, and assessments imposed on Client in connection with fees paid under the provisions of this Agreement, including without limitation, all sales, use, excise or other taxes and duties, and Company will include all such taxes, duties and assessments on each applicable invoice.

5.4. Expenses. Client shall reimburse Company for any reasonable, actual out-of-pocket expenses incurred and approved by Client, including travel expenses and related costs, incurred by Company employees and subcontractors, provided that such expense and costs are consistent with Client's own travel policies and approved in advance by Client.

5.5. Client Information. Client will provide complete and accurate billing and contact information to Company and promptly notify Company of any changes to such information.

5.6. Disputed Charges. Client must notify Company in writing of any dispute or disagreement with invoiced charges within thirty (30) calendar days after the date of receipt of the applicable invoice by Client. Absent such notice, Client shall be deemed to have agreed to the charges as invoiced.

5.7. Suspension. If any amount owing by Client under this Agreement is thirty (30) or more days past due, Company may, without limiting its other rights and remedies, accelerate Client's unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend the Subscription Services and/or Professional Services to Client until such amounts are paid in full. Company will give Client at least ten (10) days' prior notice that Client's account is overdue before implementing any such suspension.

## 6. CONFIDENTIAL INFORMATION

6.1. Access. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain Confidential Information of the other Party or Confidential Information of third parties that the disclosing Party is required to maintain as confidential.

6.2. Mutual Obligations. Except as may be expressly set forth in this Agreement, each Party that receives Confidential Information of the other Party agrees during the term of this Agreement and thereafter, to: (a) use the Confidential Information only for the purposes of performing this Agreement; (b) hold the Confidential Information of the other Party in confidence and restrict it from dissemination to, and use by, any third party; (c) protect the confidentiality of the other Party's Confidential Information using the same degree of care, but no less than reasonable degree of care, as the receiving Party uses to protect its own Confidential Information; (d) not create any derivative work from Confidential Information of the other Party; and (e) restrict access to the Confidential Information of the other Party to such of its personnel, subcontractors, and/or consultants who have a need to have access to such Confidential Information, who have been advised of the confidential nature of such information, and who have agreed in writing to terms no less protective than the terms set forth in this Agreement with respect to the treatment of such Confidential Information.

6.3. Confidentiality Exceptions. Section 6.2 shall not apply to Confidential Information that is: (a) publicly available or in the public domain at the time disclosed; (b) publicly available, becomes publicly available or enters the public domain through no fault of the recipient; (c) rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) independently developed by the recipient without use of or reference to the disclosing Party's Confidential Information and by employees or other authorized agents of the receiving Party who have not been exposed to the disclosing Party's Confidential Information; or (f) approved for release or disclosure in writing by the disclosing Party.

6.4. Compelled Disclosure. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to the limited extent required to: (a) comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, to the extent allowed by law, first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (b) establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

6.5. Data Security. Each party warrants and represents to the other that it shall at all times implement and maintain appropriate and commercially reasonable data security measures to protect its systems, the Client Data, and other Confidential Information from unauthorized access, acquisition, use, destruction, or loss, as applicable to its own systems in the course of the parties' performance of their respective obligations under this Agreement. Without limiting the generality of the foregoing, Client acknowledges that Company is responsible only for the security of its own proprietary systems and not for the systems of any other third-party. Without limiting any of the foregoing, Company represents and warrants that: (a) it will comply with its data security commitments set forth in its Documentation; and (b) it shall provide to Client, on request, available audit reports issued by an independent auditor.

6.6. Equitable Relief. The Parties acknowledge and agree that money damages would not be a sufficient remedy for breaches of this Section 6, and that each Party may seek injunctive relief, specific performance, or other equitable relief as a remedy for any such breach.

## 7. INTELLECTUAL PROPERTY/PROPRIETARY RIGHTS

7.1. Company. Company and its licensors own all right, title and interest, including all IP Rights, in and to all Company Confidential Information, the Technology, the Company Software and the Aggregated Data, including, without limitation, all modifications, improvements, upgrades, derivative works, and feedback related thereto, and any third party software provided by Company, and all software, associated documentation, hardware, materials, information, processes or subject matter that is proprietary to Company and is provided under this Agreement. Company expressly reserves all rights not expressly granted to Client under this Agreement or the Order Form or SOW. Client shall not knowingly engage in any act or omission that would impair the IP Rights of Company or its licensors. In no event shall Client obtain any ownership rights in or to the Confidential Information of Company, the Company Software or any IP Rights of Company.

7.2. Client. Client and its licensors own all right, title and interest, including all IP Rights, in and to the Client Data and all Confidential Information disclosed by Client. Company shall not knowingly engage in any act or omission that would impair Client's IP Rights or Confidential Information. In no event shall Company obtain any ownership rights in or to the Confidential Information of Client, the Client Data or Client's IP Rights.

7.3. Client Data; License. As between Company and Client, Client exclusively owns all rights, title, and interest in and to all of the Client Data. Client hereby grants Company a worldwide, limited-term license to host, copy, transmit and display Client Data, as necessary for Company to provide the Subscription Services in accordance with this Agreement. Subject to the limited licenses granted herein, Company acquires no right, title or interest from Client under this Agreement in or to Client Data. Client hereby grants to Company a perpetual, non-exclusive, royalty-free license to (a) use Client Data in order to provide, monitor and improve the Subscription Services to Client and (b) use all of Client Data that is anonymous and does not personally identify Client or any Authorized Users to create Aggregated Data for statistical, analytical and other aggregate use.

7.4. Content; License. Client represents and warrants to Company that it owns all right, title and interest in, or otherwise have full and sufficient authority to use in the manner contemplated by this Agreement, any content furnished by Client to Company for incorporation into the Subscription Services. Client hereby grants Company a limited, non-exclusive, royalty-free license to use such content in the manner contemplated by this Agreement.

7.5. Suggestions. Client hereby grants Company a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Subscription Services and/or Technology any suggestions, enhancement requests, recommendations, correction or other feedback provided by Client, including Authorized Users, relating to the functionality and/or operation of the Subscription Services and/or Technology

#### 7.6. Work Product.

7.6.1. Unless otherwise specified in the Statement of Work, all Work Product created under this Agreement, including all IP Rights related thereto, shall be owned by Company.

7.6.2. All Work Product created under this Agreement that is owned by Company and is made available to Client to enable Client's use of the Subscription Services pursuant to the terms of this Agreement. Company hereby grants Client a worldwide, non-exclusive, non-transferable, non-sublicensable right and license to use the Work Product, solely in connection with Client's use of the Subscription Services.

7.6.3. Unless otherwise specified in the SOW, to the extent Client acquires any rights in the Work Product, Client hereby assigns such rights to Company. Client shall give Company all reasonable assistance and execute all documents necessary to assist or enable Company to perfect, preserve, register and/or record such assignment and Company's rights in any Work Product.

### **8. REPRESENTATIONS AND WARRANTIES**

8.1. General. Each Party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement, and that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it, including any confidentiality obligations.

8.2. Subscription Services Warranties. Company warrants that: (a) the Subscription Services shall perform materially in accordance with the Documentation and (b) subject to Section 8.3 (Third-Party Applications), the functionality of the Subscription Services will not be materially decreased during a Subscription Term. For any breach of either such warranty, Client's exclusive remedy shall be for Company to repair the Service until it conforms with its Documentation, and failing that, as provided in Section 11.5 (Termination for Breach). Client acknowledges that availability of the Subscription Services depends upon the availability of the Internet and any third-

party cloud computing services provider and that Company has no control over such availability. Accordingly, Company makes no representations, warranties, or covenants regarding the availability of the Subscription Services to the extent that such availability depends upon the availability of the Internet or any third-party cloud computing services provider.

8.3. Third Party Applications. The Subscription Services have been built as a software-as-a-service on a cloud-computing platform. The Subscription Services are designed to work with the cloud-computing platform and with certain other Third-Party Applications. Client's use of Third-Party Applications is governed entirely by the terms of Client's agreement with the relevant third party. Nothing in this Agreement creates any rights or obligations on the part of Company 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 the Subscription Services provided by Company.

8.4. Professional Services Warranty; Exclusive Remedy. Company warrants the Professional Services performed hereunder will be performed in a professional and workmanlike manner in accordance with industry standards ("**Professional Services Warranty**"). The Professional Services Warranty shall not apply if the Work Product is implemented, customized, modified, enhanced or altered by Client or any third party that is not specifically retained by Company as a contractor for such purposes. Client's sole and exclusive remedy, and Company's sole obligation, in the event of a breach of the Professional Services Warranty is for Company, at its expense, to re-perform the Professional Services which were not as warranted, provided Company has received notice from Client within thirty (30) calendar days of the completion of the Professional Services that Client alleges were not performed consistent with the Professional Services Warranty. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THIS SECTION 8.4 SETS FORTH COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE PROFESSIONAL SERVICES WARRANTY.

8.5. Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, COMPANY MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED OR STATUTORY, AND COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF OPERABILITY, CONDITION, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, SUITABILITY, TITLE (IN CASE OF SOFTWARE), OR FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY IS MADE BY COMPANY ON THE BASIS OF TRADE USAGE OR COURSE OF DEALING. COMPANY DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES, TECHNOLOGY OR ANY OTHER INFORMATION, MATERIALS, OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

## 9. LIMITATIONS OF LIABILITY

9.1. EXCEPT FOR DAMAGES ARISING OUT OF (I) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S IP RIGHTS, OR (III) WHERE A CLAIM RESULTS FROM INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, OR COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, EVEN IF THE PARTY FROM WHOM SUCH DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED.

9.2. EXCEPT FOR DAMAGES ARISING OUT OF (I) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S IP RIGHTS, OR (III) WHERE A CLAIM RESULTS FROM INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY BEFORE ANY EVENT GIVING RISE TO A CLAIM BY THE OTHER PARTY HEREUNDER. EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THIS LIMITATION.

9.3. Essential Basis. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## 10. INDEMNIFICATION

### 10.1. Infringement Claim.

10.1.1. Company shall indemnify, defend and hold harmless Client from and against all losses, liabilities, damages, claims, costs and reasonable expenses (including reasonable attorneys' fees) arising out of or related to a third party claim that Client's use of, or access to, the Subscription Services, Company Software or Technology infringes a United States copyright or trademark or misappropriates any third party trade secrets (an "**Infringement Claim**"); provided that, Client must give Company: (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as Company may reasonably request, at Company's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Company shall not, without the prior written consent of Client, settle any third-party claim against Client unless (x) such settlement completely and forever releases Client with respect thereto or (y) does not involve any financial obligation on the part of Client. In any action for which Company provides defense on behalf of Client, Client may participate in such defense at its own expense by counsel of its choice.

10.1.2. Upon the occurrence of any Infringement Claim for which indemnity is or may be due under this Section 10.1, or in the event that Company believes that such a claim is likely, Company will, at its option: (a) appropriately modify the Subscription Services, Company Software or Technology to be non-infringing, or substitute functionally equivalent software or services; (b) obtain a license to the applicable third-party intellectual property rights; or (c) if the remedies set forth in clauses (a) and (b) above are not commercially feasible, as determined by Company in its sole discretion, Company may terminate this Agreement on written notice to Client and refund any pre-paid fees for services that have not been provided.

10.1.3 THE PROVISIONS OF THIS SECTION 10.1 STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF COMPANY TO CLIENT, AND IS CLIENT'S SOLE REMEDY, WITH RESPECT TO ANY INFRINGEMENT CLAIM.

10.2. Mutual Indemnity. Each Party ("**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its officers, directors, shareholders, members, managers, employees, agents and Affiliates (each, an "**Indemnified Party**") against any claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the grossly negligent or intentional acts or omissions of the Indemnifying Party, its employees or agents, while performing its obligations pursuant to this Agreement or any SOW, which result in death, personal injury or property damage. The Indemnified Party must give the Indemnifying Party: (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as the Indemnifying Party may reasonably request, at the Indemnifying Party's expense, in connection with such defense and/ or settlement. Notwithstanding the foregoing, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle any third-party claim against the Indemnified Party unless (x) such settlement completely and forever releases t the Indemnified Party with respect thereto or (y) does not involve any financial obligation on the part of the Indemnified Party. In any action for which the Indemnifying Party provides defense on behalf of the Indemnified Party, the Indemnified Party may participate in such defense at its own expense by counsel of its choice.

## 11. TERM AND TERMINATION

11.1. Agreement. This Agreement shall become effective upon the Effective Date hereof, and shall continue in effect until it is earlier terminated in accordance with this Section 11.

11.2. Term of Purchased Subscriptions. The Initial Subscription Term shall be the Subscription Term as specified in the Order Form. Unless otherwise specified in the Order Form, subscriptions to Subscription Services will automatically renew for successive additional periods (each a "Renewal Subscription Term", and together with the Initial Subscription Term, the "Term") equal to the Initial Subscription Term, unless either Party gives the other Party written notice of non-renewal at least sixty (60) days before the end of the then expiring Initial Subscription Term or Renewal Subscription Term. Invoicing will be issued annually 30 days prior to the start of each Renewal Subscription Term and each anniversary thereafter. Unit prices shall increase by five percent (5%) per year during each Renewal Subscription Term for the same scope of work, unless otherwise agreed in writing by the Parties

11.3. Term of Statements of Work. Unless otherwise stated in the SOW, the term of the SOW shall last until performance thereunder is completed.

11.4. RESERVED.



11.5. Termination for Breach. Either Party may terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party; specifically identifying the breach on which such notice of termination is based. The breaching Party will have a right to cure such breach within sixty (60) calendar days of receipt of such notice (ten (10) calendar days in the case of non-payment). The non-breaching Party may terminate this Agreement in the event that such cure is not made within such sixty (60)-day period (or ten (10)-day period in the case of non-payment).

11.6. Bankruptcy. This Agreement may be terminated immediately by a Party through written notice if the other Party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.

11.7. Termination of Individual Order Forms or SOWs. In the event a Party terminates an agreement for an individual Order Form or SOW in accordance with Sections 11.5 or 11.6 of such agreement, any agreements for any other Order Forms or SOWs shall remain in full force and effect in accordance with their respective terms.

11.8. Accrued Obligations. Termination of this Agreement shall not release either Party from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement to survive termination.

11.9. Cumulative Remedies. Termination of this Agreement regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

11.10. Effect of Termination. Upon any termination of this Agreement, Client shall immediately discontinue all use of the Subscription Services and promptly pay to Company all amounts due and payable under this Agreement. In addition, each Party shall: (a) immediately discontinue all use of the other Party's Confidential Information; (b) at the option of the disclosing Party, either return or destroy all Confidential Information of the disclosing Party in its possession; and (c) delete the disclosing Party's Confidential Information from its computer storage or any other media, except for archival copies which may be retained and shall be destroyed in accordance with the party's Record retention policy. Any such retained copies shall remain subject to Section 6 (Confidentiality). Each Party will, on request from the disclosing Party, provide the disclosing Party with a written certification of compliance with this Section 11.10 signed by an officer.

11.11. Survival of Obligations. The provisions of Sections 2.5, 5, 6, 7 (excluding Section 7.3 and 7.4), 8.6, 9, 10, 11.8 thru 11.11 and 12, as well as Client's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

## 12. MISCELLANEOUS

12.1. Applicable Law; Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without giving effect to its rules regarding conflicts of laws. THE PARTIES AGREE THAT ANY AND ALL CAUSES OF ACTION BETWEEN THE PARTIES ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED WITHIN THE STATE OF MARYLAND.

12.2. Order of Precedence. In the event of a conflict between these Subscription Terms and any Order Form, SOW or other document referencing these Subscription Terms, these Subscription Terms shall govern, except to the extent that the Order Form, SOW or other executed document expressly states the intent of the Parties to supersede or change one or more provisions in these Subscription Terms and clearly identifies the provision(s) to be superseded or changed. This Agreement, including the Order Form or SOW, as applicable, shall prevail over any different, conflicting, inconsistent or additional terms contained in any purchase order or like document issued by Client.

12.3. 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 Subscription 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) Client shall not permit Authorized Users to access or use the Subscription Services in violation of any U.S. export embargo, prohibition, or restriction.

12.4. Force Majeure. Either Party shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of such Party. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

12.5. Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by registered mail, return receipt requested; or (c) sent overnight using an overnight air courier. Notices will be considered to have been given at the time of actual delivery if delivered in person, three (3) business days after posting if sent by mail, or one (1) day after delivery to an overnight air courier service. All such notices shall be sent to each Party at its address specified on the signature page of this Agreement, or addressed to such other address as that Party may have given by written notice in accordance with this provision.

12.6. Assignment. Neither Party shall assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement, without requiring such prior consent, in connection with a merger or sale of all or substantially all of its assets, provided that the assignee agrees in writing to assume the assignor's obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of Company and Client and their successors and permitted assigns.

12.7. Independent Contractors. The Parties are acting as independent contractors in making and performing this Agreement. The relationship arising from this Agreement does not constitute or create any partnership, joint venture, employment relationship or franchise between the Parties.

12.8. Amendment. No amendment to this Agreement shall be valid unless it is made in writing and is signed by the authorized representatives of both Parties.

12.9. Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

12.10. Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

12.11. No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

12.12. Counterparts. The Order Form, SOW or other document incorporating these Subscription Terms may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute, together with these Subscription Terms, one Agreement.

12.13. Headings. The headings in these Subscription Terms are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of these Subscription Terms.

12.14. Entire Agreement. This Agreement (including the applicable Order Form or SOW incorporating these Subscription Terms) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof.

12.15. No Solicitation. Client agrees that during the term of this Agreement, and for a period of one (1) year after the termination or expiration of this Agreement, it shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any employee or consultant of Company without the prior written consent of Company. Client shall not be in breach of this Section 12.15 if it can show by written records that the person hired or engaged responded to a job posting or general advertisement (for example, through online job postings) that was publicly available and placed in connection with an open position.

12.16. Acknowledge Partnership. Company may use Client's name and logos to identify Client as a customer in Company's marketing and advertising materials, including, but not limited to, on its website and in its promotional presentations. Subject to Client's consent

and on a case-by-case basis, Company may request that Client agree to be profiled in a case study or similar Company marketing initiative discussing Client's use of Company's services. Client's participation shall be entirely voluntary, and will be managed to ensure minimum impact on Client.

**Exhibit B**  
**Support Terms and Service Level Agreement**

Primary service hours: 09:00 to 20:00 EST, local time for the contracting Customer entity, not including Saturday, Sunday or public holidays. Phone Support is available at 833-9RESPONSE

Company will use commercially reasonable efforts to respond to Customer production related issues based on the following response times (within the primary service hours above):

<b>Severity with Critical Business Impact</b>	<b>Severity with Significant Business Impact</b>	<b>Severity with Some Business Impact</b>	<b>Severity with Minimum Business Impact</b>
The production use of the software is stopped or so severely impacted that work cannot continue.	Important features of the software are unavailable with no acceptable work around. Production use of the software continues with serious impact to productivity.	Important features of the software are unavailable but a workaround is available OR Less significant features of the software are unavailable with no workaround.	Customer requests information, an enhancement or documentation. Use of the software continues and there is no work being impeded.
60 min	120 min	8 hours	Next business day
<b>Level 1 – Critical</b>		<b>Level 2 – High</b>	<b>Level 3 – Medium</b>

**System Uptime**

Company guarantees a 99% System Uptime Percentage (as defined below) each calendar month, 24 hours a day 7 days a week (“Agreed Hours of Service”).

- (a) Should Company fail to achieve a 99% System Uptime Percentage over a calendar month, Customer shall have the right to receive the applicable Service Level Credit as set forth in the table in Section (d) below.
- (b) In addition, should Supplier fail to achieve 99% System Uptime Percentage in each of three (3) calendar months during any six (6) consecutive month period or fail to achieve a 95% System Uptime Percentage in any two consecutive calendar months, Customer shall have the right to terminate this Agreement for cause, in which case Company shall refund to Customer any prepaid fees for the remainder of the Term after the date of termination.
- (c) System Uptime Percentage for a calendar month shall be based on the monthly average of availability, rounded down to the nearest minute, and calculated as follows:

$$\text{System Uptime Percentage} = 100 * [(\text{Agreed Hours of Service} - \text{Downtime}) / \text{Agreed Hours of Service}]$$

Downtime, for purposes of this formula, shall be defined as the period of time during which the Company’s systems, software, and data transmission that are utilized by Customer are wholly unavailable to Customer, including maintenance occurring outside of Maintenance Hours for which less than 24 hours’ notice was provided to affected Customers. However, Downtime shall not include:

- 1. Scheduled Maintenance;
- 2. Degraded Performance;
- 3. factors outside of Company’s control, including any Force Majeure Events;
- 4. failures, acts or omissions of Company’s upstream providers;
- 5. failures of the internet;
- 6. acts or omissions of Customer and its users

- (d) Service Level Credit. The Service Level Credit amount for any calendar month shall be as follows:

<u>System Uptime Percentage (Monthly)</u>	<u>Service Level Credit (% of monthly Services fees)</u>
99% and Above	No Credit
99% - 98%	10%
97.99% - 96%	25%
95.99% - 94%	50%
Below 94%	100%

To apply for a Service Credit under this Service Level Agreement, Customer must submit a request to your Customer Services Manager, within 30 days of the end of the applicable calendar month with the subject line “SLA Service Credit”. The request must include the dates and times of the Downtime for which Service Credit is being requested, and any additional documentation that demonstrates the claimed Downtime. Service Credits as set forth in Section (a) above, and the termination right as set forth in Section (b) above, are the exclusive remedies available to Customer for Company’s failure to meet its System Uptime Percentage guarantee and no other or additional types of damages can be claimed by Customer, including breach of warranty. Service Level Credits shall be applied against the next invoice following determination of the Service Level Credit. In the event there are no new invoices to be issued, Company will pay out the Service Credit to Customer directly.