



Software-as-a-Service Terms and Conditions

Last Updated: July 31, 2023

This Software-as-a-Service (SAAS) Terms and Conditions Document forms an integral part of the Proposal and, together with the Proposal, sets forth the terms and conditions under which the Company will provide the SAAS to You or for Your benefit. By executing the Proposal and/or accessing or using the SAAS, you acknowledge the existence of this Terms and Conditions Document and agree to be bound by the terms and conditions contained herein.

If the individual who executes the Proposal does so on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to this Agreement.

Article 1: DEFINITIONS.

Unless otherwise defined herein, capitalized terms shall have the meaning given to such terms in Schedule "A".

Article 2: LICENSES; USE.

2.1. Grant of Licenses

Subject to and in accordance with the terms and conditions of this Agreement, the Company hereby grants You the Licenses to be used solely in conjunction with the operation of your business.

2.2. Term

The Licenses and this Agreement shall commence on the date set forth in the Proposal and shall continue for a period of one (1) year, meaning three hundred sixty-five (365) days (the "Initial Term"), unless sooner terminated in accordance with this Agreement.



The Licenses and this Agreement shall automatically renew for additional, successive renewal periods of one (1) year each (each, a “Renewal Term” and, together with the Initial Term, the “Term”), unless You provide written notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or the then current Renewal Term, as applicable, or unless sooner terminated in accordance with this Agreement.

2.3. Reservation of Rights

The Company reserves all rights not expressly granted to You by the Licenses. Except for the limited rights granted under this Agreement, nothing in this Agreement grants to You or any third party, by implication, waiver, estoppel, or otherwise, any intellectual property rights or other right, title, or interest in or to the Company IP. As such, you shall have no rights or licenses to the SAAS other than as set out in this Agreement.

2.4. Performance

The Company shall use commercially reasonable efforts to ensure that the SAAS will be available 99% of the time each month other than during scheduled maintenance. You understand that normal maintenance and backup procedures will cause temporary downtime during which the SAAS cannot be used. It is possible that there will be interruptions of the SAAS during non-scheduled maintenance.

The Company shall make commercially reasonable efforts to address errors and omissions in the SAAS, and You shall have access to the Company’s technical support during Business Day Hours of the Company. You shall not be billed for customer support. Notwithstanding the foregoing, the Company shall have no obligation to support, train or troubleshoot issues for any third-party user due to problems arising out of the use of the SAAS. Such third parties shall include, but are not limited to the Company’s contractors, Your contractors, Your customers, Your clients, or any third party not directly contracted with Company for the SAAS.

Your access to the SAAS is primarily through the internet, and you understand that your ability to use the SAAS is dependent on the global telecommunications infrastructure involving the reliability and performance. The SAAS may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. The Company shall not be responsible for any delays, delivery failures, or other damage resulting from such problems.



2.5. Service Upgrades; Enhancements; Branding

The Company shall have the right to make regular changes and improvements to the SAAS from time to time but in no event will such changes materially reduce the functionality provided by the SAAS. The Company shall communicate with You about planned changes as may be necessary to ensure Your efficient use of the SAAS.

The Company may use Feedback for the purpose of optimizing, improving, enhancing, and/or creating derivative products. The Company shall have no obligation to compensate You in connection with the use of such Feedback nor shall the Company identify You as the source of any such Feedback without your prior consent. All Feedback shall be owned by the Company, and You shall and hereby do, assign all of Your right, title, and interest in and to such Feedback to the Company.

2.6. Your Responsibilities

Your operations may include use of the SAAS by related third-party partners, vendors, and clients, upon written consent from the Company. You acknowledge and agree that You are responsible and liable for all uses of the Company IP, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, You are responsible for all acts and omissions of Your authorized users, and any act or omission by an authorized user that would constitute a breach of this Agreement if taken by You shall be deemed a breach of this Agreement by You. You shall use reasonable efforts to make all authorized users aware of this Agreement's provisions as applicable to such authorized user's use of the Company IP and shall cause authorized users to comply with such provisions.

2.7. Restrictions on Use

You acknowledge and agree that you shall not:

- be entitled at any time to download, distribute, install or otherwise redistribute any software provided in any form not explicitly covered by this Agreement;
- post defamatory, scandalous, or private information about a person without their consent or with intention to inflict emotional distress, or post any information that violates any rightful trademarks, copyrights, or other intellectual property rights;
- send unsolicited email messages from or through the Company's servers;
- falsify any user information provided to Company or to other users of the SAAS;



- license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the SAAS available to any unrelated third party or competitor of the Company;
- modify or make derivative works based upon the SAAS;
- frame or mirror the SAAS on any other server or wireless or internet-based device;
- decompose, disassemble, decode, reverse engineer, or access the SAAS in order to build or offer a competitive product or service, build or offer a product or service using similar ideas, features, functions or graphics of the SAAS, or copy any ideas, features, functions or graphics of the SAAS;
- transmit or allow to be transmitted Proprietary Information to any third party except as necessary for the fulfillment of this Agreement;
- use the SAAS for any illegal purpose, for unauthorized access or distribution of any software, data, or material protected by copyright, patent, or trade secret, or to post or transmit any hateful, vulgar, threatening, libelous, abusive, harassing, defamatory, racially, ethnically, or otherwise unlawful or tortious material, including material harmful to children;
- intentionally interfere with or disrupt the integrity or performance of the SAAS;
- attempt to gain unauthorized access to the SAAS;
- intentionally send or store software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents or programs intended to interfere with the SAAS or other users of the SAAS;
- integrate or use in the SAAS any trademarks or copyrighted materials to which You do not have rights;
- use the SAAS for the storage, processing, or handling of Personally Identifiable Data, other than as required by this Agreement; or
- fail to comply with all Laws regarding Your use of the SAAS, including applicable international export rules and regulations, Laws and treaties governing Your use of the SAAS, laws related to data privacy, international communications, and the transmission of technical or personal data.

2.8. Suspension

Notwithstanding anything to the contrary in this Agreement, the Company may temporarily suspend Your access to any portion or all of the SAAS if: (i) the Company reasonably determines that (A) there is a threat or attack on any of the Company IP; (B) Your use of the Company IP disrupts or poses a security risk to the Company IP or to any other customer or



vendor of Company; (C) You are using the Company IP for fraudulent or illegal activities; (D) subject to applicable Law, You have ceased to continue Your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) the Company's provision of the SAAS is prohibited by applicable Law; or (ii) any vendor of the Company has suspended or terminated the Company's access to or use of any third-party services or products required to enable You to access the SAAS.

The Company shall use commercially reasonable efforts to provide written notice of any suspension of the SAAS to You and to provide updates regarding resumption of access to the SAAS following any such suspension. The Company shall use commercially reasonable efforts to resume providing access to the SAAS as soon as reasonably possible after the event giving rise to the suspension is cured.

The Company shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that You may incur as a result of such suspension.

2.9. Termination

You acknowledge and agree that:

1. You shall have the right to terminate the Licenses and/or this Agreement by providing the Company with thirty (30) days' written notice following the occurrence of any of the following:
 - a. A material breach of this Agreement, granted You provide notice of the breach in Your intent to terminate, and the breach remains uncured for that thirty (30) day period; or
 - b. In the event the Company becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, liquidation that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors and results in the Company's inability to provide access to or support the SAAS.
2. The Company shall have the right to terminate the Licenses and/or this Agreement immediately following the occurrence of any of the following:
 - a. You fail to make a subscription payment in accordance with the terms set forth in this Agreement;



- b. You violate this Agreement and/or fail to cure any purported violation after receiving written notice of the violation from the Company; or
 - c. In the event You become the subject of a petition in bankruptcy or any proceeding related to Your insolvency, receivership, liquidation.
3. You and the Company shall have the right to terminate the Licenses and/or this Agreement immediately upon written agreement;
4. In the event of any termination of the Licenses and/or this Agreement, You shall pay to the Company all Fees, expenses for any work performed or the SAAS provided prior to the date of the notice of termination, and other amounts owed through and including the date of termination. Any pre-paid amounts for the SAAS after the date of termination shall be promptly refunded to You. Upon termination, each party will promptly return to the other party its Confidential Information;
5. Access to the SAAS shall terminate concurrently with termination of the Licenses and/or this Agreement;
6. Upon termination of Your access to or use of the SAAS for any reason, the Company shall retain Your Content for up to sixty (60) days from the effective date of termination. If you wish to export Your Content following a termination, the Company will either, at its option, enable short-term access to the SAAS at a scheduled time so that you may export Your Content, or export Your Content using its standard export tools. The Company has no obligation to retain Your Content after the sixty (60) day period and may destroy Your Content any time thereafter; and
7. The following provisions shall survive expiration or termination of the Licenses and/or this Agreement: Section 6, Section 2.7, Section 3.3, Section 4.4, Section 4.5, Section 4.6, and Article 5.

Article 3: WARRANTY.

3.1. Company Warranties

The Company represents and warrants that:

- it has the right, power, and authority to enter into this Agreement, grant the Licenses, and fully perform its obligations under this Agreement; and
- it will perform all Services hereunder in a proper and workperson-like manner.

The warranties set forth in this section shall not apply to the SAAS if there is a failure of the SAAS or any part thereof which is attributable to Your gross negligence, or willful or wanton



act or omission, which directly results in an inappropriate or unauthorized use of the SAAS, or misuse or abuse of the SAAS.

3.2. Limitation of Liability

You acknowledge and agree that the Your entire recourse for any breach of the warranties set forth in this section by the Company shall be, at the Company's option, to:

1. at its own expense, re-perform the SAAS within a reasonable time such that they comply with the warranty;
2. replace the SAAS; or
3. allow You to terminate this Agreement, in which case You shall return the Company's Confidential Information, and other Company materials to the Company, and this Agreement shall terminate. In such event, the Company shall refund unused portion of the Fees paid in accordance with this Agreement.

3.3. Limitation of Warranties

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Article 4: INFORMATION; DATA; CONFIDENTIALITY; PRIVACY; SECURITY.

4.1. Copyright

Title and copyrights in and to the SAAS, including any images, applets, photographs, animations, video, audio, music, and text incorporated into or made a part of the SAAS, and all accompanying electronic materials, together with any copies You are permitted to make under this Agreement, are owned by the Company or its licensors and are protected by copyright laws and international treaty provisions.

4.2. Third Party Platforms



The SAAS may interoperate with Third-Party Platforms. You acknowledge that such integration features may be unavailable or may not work properly if the Third-Party Platform is unavailable or if the service provider modifies it in a way that impacts the Company's integration feature. Continued interoperation of the SAAS with any Third-Party Platform is dependent upon the availability of each such platform and the Company may cease to provide such functionality if access to any Third-Party Platform is not available to the Company on commercially reasonable terms.

4.3. Your Content

The Company does not own Your Content, and Your Content is considered Confidential Information. You retain all right, title, and interest (including, where appropriate, copyright and other proprietary or intellectual property rights) in Your Content, and the Company explicitly disclaims any ownership of, or right, title, and interest in such content.

As between the Company and You, You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of, or right to use, Your Content. The Company shall only use Your Content solely for purposes of providing the Services, providing support for the SAAS, and confirming Your compliance with this Agreement. In addition, You acknowledge that the Company may collect and analyze Your Content and other information about Your usage of the SAAS to improve and enhance the SAAS, provide support, and for other development purposes including industry-wide benchmarking.

4.3.1 Artificial Intelligence

Company agrees that it has no right to use artificial intelligence and related technologies to provide the Services in connection with this Agreement unless approved by the Customer. Customer reserves the rights, and Company has no rights to, reproduce and/or otherwise use i) Work Product, ii) Confidential Information, and iii) Personal Information in any manner in connection with artificial intelligence and related technologies, including without limitation, technologies that are capable of generating works in the same style or genre as the Work Product or Confidential Information, unless Company obtains Customer's specific and express written permission to do so. Company also agrees that it has no rights to subcontract the Services to others that will use artificial intelligence and related technologies to provide the Services in connection with this Agreement. Nor does Company have the right to sublicense others to reproduce and/or otherwise use the i) Work



Product, ii) Confidential Information, and iii) Personal Information in any manner with artificial intelligence and related technologies without Customer's specific and express written permission.

4.4. Aggregated Statistics

Notwithstanding the foregoing section, Your Content used for benchmarking may be aggregated and anonymized as Aggregated Statistics. As between the Company and You, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by the Company. You acknowledge that the Company may compile Aggregated Statistics based on Your Content input into the SAAS. You agree that the Company may (i) make Aggregated Statistics publicly available in compliance with applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable Law.

4.5. Company IP

You acknowledge that, as between You and the Company, the Company owns all right, title, and interest, including all intellectual property rights, in and to the Company IP.

4.6. Confidentiality

The parties may disclose information to one another, and You may access information in connection with the SAAS, which is considered Confidential Information. All Confidential Information shall remain the sole property of the disclosing party and its confidentiality shall be maintained and protected by the receiving party with the highest degree of care during the Term of this Agreement, and for a period of three years following the expiration or termination of this Agreement. The receiving party shall not use the Confidential Information of the other party except as necessary to fulfill its obligations under this Agreement, nor shall it disclose such Confidential Information to any third party without the prior written consent of the disclosing party; provided, however, the receiving party may disclose the disclosing party's Confidential Information to its employees, consultants, and agents who are bound by obligations of confidentiality no less protective than those set forth in this Agreement, and the receiving party shall be responsible for any unauthorized disclosure of any Confidential Information by such persons as if receiving party had made such unauthorized disclosure itself.



The restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information: (i) after it has become generally available to the public without breach of this Agreement by the receiving party; (ii) is rightfully in the receiving party's unrestricted possession prior to disclosure to it by the disclosing party; (iii) is independently developed by the receiving party; (iv) is rightfully received by the receiving party from a third party without a duty of confidentiality; or (v) is disclosed under operation of law. Further, in the event such disclosure is required of either party under judicial order or requirement of law, such party will promptly notify the disclosing party of such order or requirement.

You understand that the Company's implementation and support personnel may need to access Your account to assist You in Your implementation, as well as to address support requests that may occur from time to time, but such access shall be on a need-to-know basis. You permit the Company's implementation and support personnel to access Your account with the understanding that all information in Your account shall be considered Confidential Information by the Company's personnel. The Company agrees to hold in confidence and not reproduce, distribute, infringe on, transmit, or transfer, directly or indirectly, in any form, by any means, the Confidential Information.

4.7. Privacy; Security

The Company acknowledges that Your Content may include Personally Identifiable Information. Without limiting any other provision in this Agreement, the Company shall comply with all applicable current and future Laws relating to data privacy, personal data, and data protection. The Company shall use best efforts to maintain security in the performance of the SAAS and in regard to any of Your Content that contains Confidential Information, including Personally Identifiable Information. The Company shall use best in class encryption technologies for transmitting and storing Personally Identifiable Information. The Company also agrees to employ best in class network security techniques including firewalls, intrusion detection, and authentication protocols in its provision of the SAAS. The Company reserves the right to change or modify these procedures for commercially reasonable purposes, but at all times will maintain best in class security in the performance of the SAAS and in regards to any of Your Content that contains Personally Identifiable Information.

4.8. Security Requirements



The Company has and at all times shall maintain an information security program that includes administrative, electronic, technical, physical and other security measures and safeguards reasonably designed, at a minimum, to: (i) ensure the security and confidentiality of Your Confidential Information (specifically including Your Content); (ii) protect against any unauthorized access to or use of such Confidential Information; (iii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information; (iv) limit access to Your Confidential Information to only Company personnel who have a reasonable need for such information; (v) instruct all persons who have access to Your Confidential Information of the necessity to maintain the confidentiality of the Confidential Information; and (vi) ensure the proper, secure and lawful disposal of Your Confidential Information within its possession or control. If the Company has access to any Personally Identifiable Information, without limiting the Company's obligations hereunder, at a minimum, the Company agrees that all employees and authorized contractors with access thereto will, prior to performing Services hereunder, have undergone background investigations, including education, Social Security number verification, employment, and criminal checks as deemed reasonably necessary by You and in accordance with the Company's standard screening practices. You shall have the right to require the Company to certify in writing that any and all such individuals meet these criteria. In no event shall the Company use to perform the SAAS any individual whose background investigation has disclosed an invalid Social Security number, illegal immigration status, or a felony conviction or pending proceedings related to a criminal offense involving dishonesty, breach of trust, money laundering or violence. The Company shall conduct quarterly internal and external vulnerability scans of the SAAS, as applicable, upon Your request to ensure the public web servers and VLANs stay secure over time. The Company shall either itself correct or work with the applicable hosting provider to resolve critical and high vulnerabilities found in such scans. You shall be notified if critical or high vulnerabilities cannot be resolved within thirty (30) days from the date of discovery of such vulnerability.

Article 5: INDEMNIFICATION; LIABILITY.

5.1. Indemnification by the Company

The Company shall indemnify, defend and hold You harmless from and against any Losses incurred by You arising out of any third-party claim, including a claim that the SAAS delivered under this Agreement infringe any patent, copyright or other intellectual property



right of a third party. Notwithstanding the foregoing, the Company shall not defend You if the claim is caused by: (i) Your misuse of the SAAS; (ii) Your modification of the SAAS without the Company's prior written consent; (iii) Your failure to use corrections or enhancements made available by the Company; or (iv) Your use of the SAAS in combination with any product or information not owned, developed or recommended in writing by the Company.

If the SAAS or any part thereof becomes the subject of a valid claim of infringement under any patent, copyright or trade secret law, the Company shall either procure the right, at the Company's sole expense, to permit Your continued use of the SAAS, or replace or modify the SAAS so as to avoid infringement without materially altering the functionality and performance thereof. If the Company reasonably and in good faith determines that neither of the foregoing are commercially practicable, the Company may terminate this Agreement and the License effective immediately upon written notice to You and will refund the unearned pro-rata portion of any prepaid amounts.

THIS SECTION SETS FORTH YOUR SOLE REMEDIES AND THE COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE COMPANY INFRINGED, MISAPPROPRIATED, OR OTHERWISE VIOLATED ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

5.2. Indemnification by You

You shall indemnify, hold harmless, and, at the Company's option, defend each Company Indemnitee against any and all Losses incurred by a Company Indemnitee in any action between such Company Indemnitee and any third party arising out of or in connection with Your use of the SAAS.

5.3. Indemnification Process

The indemnification obligations set forth herein are contingent upon the following conditions:

- the Company or You, as the case may be (for the purposes of this section, the "**Indemnified Party**") must promptly notify the other party (for the purposes of this section, the "**Indemnifying Party**") in writing of the third party claim or action (however, failure of the Indemnified Party to so promptly notify the Indemnifying



Party will not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent it has been damaged thereby);

- the Indemnified Party shall reasonably cooperate with the Indemnifying Party in the defense of the matter; and
- the Indemnifying Party shall have sole control of the defense of the action and negotiations for its settlement and compromise; provided, however, that the Indemnified Party may, at its own cost, obtain separate counsel to represent its interests.

5.4. Limitation of Liability

EXCEPT FOR (I) A MATERIAL BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 4.6, (II) EACH PARTY'S INDEMNIFICATION OBLIGATIONS, AND (III) YOUR OBLIGATION TO REMIT ALL AMOUNTS PROPERLY DUE AND OWING UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING WITHOUT LIMITATION, BREACH OF WARRANTY AND NEGLIGENCE CLAIMS) SHALL BE LIMITED TO THE ACTUAL, AWARDED DIRECT DAMAGES, NOT TO EXCEED THE AMOUNTS ACTUALLY PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION AROSE. IN NO EVENT WILL EITHER PARTY, THEIR RESPECTIVE LICENSORS, OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS OR AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY FOR (1) ANY CLAIMS OR DEMANDS OF THIRD PARTIES (OTHER THAN THOSE THIRD PARTY CLAIMS COVERED BY SECTION 5.1); OR (2) ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR ANTICIPATED PROFITS, LOSS OF REVENUE, ECONOMIC LOSS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT, OR INTERRUPTION OF BUSINESS, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

Article 6: GENERAL.

6.1. Fees; Payment Terms



The Fees payable to the Company by You, including the proper currency, shall be stated in the Proposal, and shall be paid within timeframe set forward and upon the terms set out in the Proposal.

If any invoiced amount is not received by the Company by the due date, then those amounts shall accrue late interest commencing on the date that payment was due at a commercially responsible rate or, if applicable, at the rate set forth in the Proposal.

All Fees are exclusive of Taxes, and You are responsible for the payment of all Taxes, excluding Taxes on the Company's net income.

6.1.1 Bundle Pricing

- Client will be provided access to their list of programs and licence type assigned
- Term of a license shall remain yearly
- Available (unassigned) license can be assigned to a new program at the discretion and approval of the client
- The client shall have the option to:
 - Purchase a new individual license for the new program using the FLEX pricing model, or
 - Upgrade the current license bundle to the next level

6.2. Authorization

Each party represents to the other party that: (i) it has the power and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) the execution, delivery, and performance of this Agreement has been duly approved and authorized by it; and (iii) the execution and delivery of, and performance by, such party of this Agreement does not and will not, directly or indirectly, (A) require the consent, approval, or action of, or any filing or notice to any corporation, firm, person or other entity or any public, governmental or judicial authority, which consents have not already been obtained, (B) violate the terms of any instrument, document or agreement to which it is a party, or by which it is bound, or be in conflict with, result in a breach of or constitute (upon the giving of notice or lapse of time or both) a default under any such instrument, document or agreement, or (C) violate any order, writ, injunction, decree, judgment, ruling, law rule or regulation of any federal, state, county, municipal, or foreign court or governmental authority applicable to it.



6.3. Force Majeure

Neither party shall be under any liability to the other for any delay in performing any obligation under this Agreement to the extent caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the affected party shall give prompt written notice to the other party, stating the period of time the same is expected to continue. If any such failure or delay in performance continues for more than sixty (60) days, either party may terminate this Agreement upon written notice to the other.

6.4. Independent Contractors

The parties acknowledge that the Company shall perform its obligations hereunder as an independent contractor. The manner and method of performing such obligations shall be under the Company's sole control and exclusive discretion, Your sole interest being in the result of such obligations. The Company's employees, contractors and subcontractors performing the SAAS and any other employees and agents of the Company are not employees or agents of You, and shall have no authority to bind You by contract or otherwise. Nothing contained herein shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the parties. Moreover, the Company shall be solely responsible for, if applicable, the payment or provision of any compensation, federal, state and local payroll taxes, workers' compensation and unemployment compensation coverage, disability benefits and all such legal obligations of its employees and agents.

6.5. Waiver

No failure to exercise and no delay in exercising any right, remedy, privilege, or power under or pursuant to this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, privilege, or power provided for under or pursuant to this Agreement by either party hereto preclude or limit such party from any other or further exercise thereof or from pursuing any other right, remedy, privilege, or power available pursuant to this Agreement, at law, in equity, or otherwise.

6.6. Remedies

Except for remedies specifically designated as exclusive, no remedy conferred by the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or



hereafter existing at law, in equity, by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

6.7. Notices

Except as explicitly stated otherwise, any notice to the Company shall be given by email to the following email address **contact@rhythmq.com**. Any notice to You will be given to Your address stated in the Proposal. Either party may update its address by proper notice to the other party in the same manner as provided herein. Notice shall be deemed given on the same business day (in Toronto, Ontario, Canada) that it was sent by email transmission, if sent and delivered (via verifiable record of delivery) during Business Day Hours, or on the first (1st) Business Day thereafter if the day on which it was sent by email transmission was not a Business Day or if it was sent and delivered (via verifiable record of delivery) Business Day Hours.

6.8. Governing Law; Dispute Resolution

This Agreement is subject to the laws of the Province of Ontario, and the Courts in Ontario shall have exclusive jurisdiction over all matters. The SAAS may also be subject to export laws and regulations of the United States, Canada, the United Kingdom, the European Union, and other jurisdictions.

Any dispute that cannot be resolved by mutual discussion shall be determined by way of arbitration according to the Laws of the Province of Ontario.

6.9. Compliance with Laws

The Company shall perform its obligations in a manner that complies with all Laws: (i) applicable to the Company and the Company's business, activities, the Company's facilities and the provision of SAAS hereunder, and (ii) applicable to You and Your affiliates, only to the extent that You notify the Company of the specific requirements of such Laws in writing.

6.10. Entire Agreement

This Agreement shall only be considered effective upon execution of the Proposal by both parties. Upon execution, this Agreement shall comprise the entire agreement between the parties as to the subject matter hereof and fully supersedes all prior understandings,



written or oral, between the parties regarding such subject matter. This Agreement may not be modified or amended except by a written instrument executed by both parties.

In the event of any conflict between the terms, conditions, and provisions of this Terms and Conditions Document and the terms, conditions, and provisions of the Proposal, the terms, conditions, and provisions of the Proposal shall prevail, control, and take precedence.

6.11. Severability

If one or more of the paragraphs in this Agreement are found to be unenforceable or invalid, such invalidity or unenforceability will not invalidate or render unenforceable this entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

6.12. Assignment

You shall not assign or transfer this Agreement, in whole or in part, without the prior written consent of the Company which shall not be unreasonably withheld. In the event that You contemplate a whole or partial sale of Your business, ownership change, or change in jurisdiction, You shall notify the Company by mail, facsimile, or email no less than sixty (60) days prior to the effective date of the event.

6.13. Successors and Assigns

This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

6.14. Construction

The term “including” and its derivatives (such as “include” and “includes”) shall be construed as meaning “including, but not limited to” or “including, without limitation.” Defined terms in this Agreement shall be deemed to include their respective derivatives so as to give due and proper intended meaning within the context of their usage. Unless otherwise specified, whenever approvals or consents are required or permitted, such approvals or consents shall be determined in good faith and shall not be unreasonably withheld or delayed. Words importing the singular include the plural and vice versa and words importing gender include all genders.



6.15. Company Website

You agree that the Company may include identification of you as a customer on the Company's website, provided that such identification is no more prominent than the identification of the Company's other customers and is otherwise consistent with the Company's practice of identifying its customers on its website at the time.

6.16. Insurance

The Company shall maintain, through the Term of this Agreement, at its own expense, the types and minimum amounts of insurance coverage reasonably required for the SAAS. The coverage under the Company's insurance shall be primary, and any other insurance available to or carried by You shall be non-contributory or excess. The Company shall provide written notice to the You within five (5) business days of any knowledge of any cancellation, termination, or non-renewal of the insurance coverage by the Company. Any errors, omissions or misrepresentations by Company that may invalidate coverage to Company shall not prejudice Your rights under the aforementioned insurance required of Company.



SCHEDULE "A"

DEFINITIONS

The following definitions shall have the corresponding meanings set forth below:

- **"Aggregated Statistics"** means data and information related to Your use of the SAAS in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SAAS.
- **"Agreement"** means, collectively, this Terms and Conditions Document and the Proposal;
- **"Business Day"** means any day, which is not a Saturday, Sunday, statutory or other holiday in Toronto, Ontario, Canada or other day that Company has elected to be closed for business;
- **"Business Day Hours"** means **9:00 am to 9:00 p.m.** Toronto, Ontario, Canada time on a Business Day;
- **"Company"** means RhythmQ Inc.;
- **"Company Indemnitee"** means the Company and the Company's officers, directors, employees and agents;
- **"Company IP"** means the SAAS and any and all intellectual property in respect of the SAAS. For the avoidance of doubt, Company IP includes any source code in respect of the Services, Aggregated Statistics and any information, data, or other content derived from the Company's monitoring of Your access to or use of the SAAS but does not include Your Content;
- **"Confidential Information"** means proprietary or confidential information disclosed in connection with the SAAS by You or the Company, and includes any information or data, in any form, including, but not limited to oral, written, graphic or electromagnetic forms, models, or samples, which the disclosing party identifies as confidential or which is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect such information or data against unrestricted disclosure or use, including business information, financial data, and marketing data;
- **"Documentation"** means any user manuals, handbooks, and guides relating to the Services and the Software provided by the Company to You either electronically or in hard copy form;



- **“Documentation License”** means a non-exclusive, non-sublicensable, non-transferable (except in compliance with this Agreement) license to use and make a reasonable number of copies of the Documentation solely for Your internal business purposes in connection with Your use of the Software;
- **“Feedback”** means any feedback or suggestion it receives from You with respect to the SAAS;
- **“Fees”** means the fees payable by You to the Company for the Services;
- **“Force Majeure Event”** means an event which is caused by reason of circumstances beyond the reasonable control of that party and without such party’s fault or negligence, which shall include but not be limited to acts of God, war, strikes, lack or failure of transportation facilities, acts of terrorism, fire, acts of government authority;
- **“Initial Term”** has the meaning given to it in Section 2;
- **“Laws”** means all federal (national), state, provincial, municipal or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, including any and all directives of regional legislative and regulatory bodies and implementing legislation, as well as rules and regulations of any self-regulatory organization by which any party may be bound, including the laws of each and every jurisdiction applicable to You, the Company, this Agreement and the performance of the SAAS.
- **“Licenses”** means, collectively, the Service License, the Software License, and the Documentation License;
- **“Losses”** means all claims, actions, losses, damages, liabilities, costs, and expenses including, without limitation, reasonable attorneys’ fees and disbursements;
- **“Personally Identifiable Information”** means any and all information provided by You and/or any and all information collected by the Company for You (i) that identifies, or when used in combination with other information provided by You or processed by the Company on behalf of You identifies, an individual, or (ii) from which identification or contact information of an individual person can be derived. Personally Identifiable Information can be in any media or format, including computerized or electronic records as well as paper-based files. Personally Identifiable Information includes, without limitation, a person’s name, home and work contact information, email address, social security number, social insurance number, or other government-issued identifier, and all information about the individual’s relationship with You (such as compensation and benefits information,



education, training and professional qualification data, job information, health and disability data, products and services purchased data, products and services usage data, etc.). Additionally, to the extent any other information (such as, but not necessarily limited to, biometric information) is associated or combined with Personally Identifiable Information, then such information also will be considered Personally Identifiable Information and shall treat it as such.

- **“Proposal”** means a proposal between You and the Company whereby you contracted with the Company for the use of the SAAS;
- **“Proprietary Information”** shall include, but is not limited to, the provisions of this Agreement, product and services information, materials, software, code, pricing, or any other materials transmitted to You under this Agreement
- **“Renewal Term”** has the meaning given to it in Section 2;
- **“SAAS”** means the Services, the Software, and the Documentation, as applicable, as described and/or set forth in one more Proposals;
- **“Services”** means the software-as-a-service offering as described and/or set forth in one more Proposals;
- **“Service License”** means a limited, non-exclusive, non-transferable (except in compliance with this Agreement), right to access and use the Services;
- **“Software”** means tools or other software that the Company may make available for purposes of facilitating access to, operation of, or use with the Services, and any updates the Company may make available to such software from time-to-time, if and as applicable. For the avoidance of doubt, Software does not include products on Third-Party Platforms;
- **“Software License”** means a non-exclusive, non-sublicensable, non-transferable (except in compliance with this Agreement) license to use the Software solely for Your internal use in connection with Your use of the Services;
- **“Taxes”** means any federal, state, provincial, local and foreign taxes, duties, levies, withholdings and similar assessments;
- **“Term”** has the meaning given to it in Section 2;
- **“Terms and Conditions Document”** means this terms and conditions document, which is forms an integral part of the Proposal;
- **“Third-Party Platforms”** means various platforms hosted by third-parties, from time to time;
- **“You”** and **“Your”** means you, your company, your firm or entity, and/or your officers, directors, shareholders, and employees; and



- **“Your Content”** means any data, information, or material that is submitted by You, but does not include Aggregated Statistics.