

## STANDARD STANDARD TERMS OF SERVICE

### 1. Definitions.

**"Affiliate"** means any entity which directly or indirectly Controls, is controlled by, or is under common Control with the subject entity.

**"Applicable Law"** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of Ontario.

**"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.

**"Customer"** has the meaning ascribed to it in the first page of the Agreement and any Order Form.

**"Customer Agent"** means a person identified in the Agreement or any additional Order Form who represents the Customer and who is authorized to make commitments and decisions on behalf of the Customer regarding the performance of the Agreement.

**"Customer Agent Software"** has the meaning ascribed to it in Section 2.3 herein.

**"Customer Client"** means the customers or clients of Customer, who indirectly benefit from the Service through a direct relationship with the Customer. For example, where the Customer and the Customer's customer enter into an agreement whereby the Customer provides to its customers certain monitoring and/or response services (i.e. managed security service provider services) in connection with the Services that the Vendor provides to the Customer and those customers download the SMART-Sentinel™ Agent Software for the purposes of transmitting Sensor Data to the Services, those customers shall be deemed to be Customer Clients under the Agreement (including these Terms of Service).

**"Customer Data"** means all electronic data or information (i) uploaded by the Customer's Users in the process of using the Services; (ii) calculated and populated in a form(s) by the Services as part of the Customer created workflow following the uploading of such electronic data and/or information; (iii) created as a result of additional inputs

by the Customer's Users in the process of using the Services; (iv) generated by the Services in the form of output data (i.e. reports) received by the Customer (but does not mean output formats, layouts or features that are intrinsic to the Services); and/or (v) Sensor Data originating from Customer's information technology and network infrastructure (but not Customer Client's Sensor Data).

**"Customer Login"** has the meaning ascribed to it in Section 2.2 herein.

**"Endpoints"** has the meaning ascribed to it in Section 2.2. herein.

**"EULA"** means the [End-User License Agreement](#), if applicable, which governs the use of the SMART-Sentinel™ Agent Software by Customer;

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

**"Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. For greater certainty, Personal Data does not include information that is anonymized or aggregated.

**"Platform"** means the SMART-Sentinel™ online security platform, as well as the related documentation, provided by Vendor. The Platform is distributed to the Customer through the Vendor's SaaS model and includes the platform accessed by the Customer's Users through the Internet or other remote means (such as websites and "cloud-based" applications).

**"Process"** and similar terms mean any operation or set of operations which are performed on Personal Data or on sets of Personal Data, whether or not by automated means.

**"SaaS"** means "Software as a Service".

“**Sensor Data**” means raw sensor data originating from the Customer or Customer’s Client (as applicable) information technology and network infrastructure and communicated to the Platform, including but not limited to, servers, firewalls, end nodes, devices, web proxies, net flows, usage logs and intrusion detection systems. For greater certainty, Sensor Data does not include any Personal Data.

“**Services**” means all services and the Platform made available by the Vendor to the Customer and its Users on a subscription-basis through the Vendor’s proprietary technology and any additional Order Forms. Each Service is more fully described in the “[Description of Services](#)”. For clarity, Services include SMART-Monitor Services where Customer has purchased and agreed to receive SMART-Monitor Services.

“**SMART-Monitor Services**” has the meaning ascribed to it in Sections 2.4 herein.

“**SMART-Sentinel™ Agent Software**” means the software agent that will be installed on Customer or Customer’s client’s monitored assets for the purposes of providing the Services (if applicable).

“**Support Services**” means the support, maintenance and training services provided or to be provided by the Vendor to the Customer.

“**Terms and Conditions**” means these Standard Terms of Service.

“**Trial**” has the meaning ascribed to it in Section 2.1 herein.

“**Users**” means individuals who are authorized by Customer to use the Customer Login and access the Service. Users may include employees, consultants, contractors and Customer Agents of Customer or its Affiliates.

“**Vendor**” means **CYBER DEFENCE QCD CORPORATION / CORPORATION DE CYBER-DÉFENSE QCD** (referred to as CYDEF).

## 2. [Service](#).

**2.1 Trial.** If the parties agree in the Agreement that Customer will participate in a Trial, Vendor

agrees to make available the Services to Customer for the Trial Term and grants Customer the right to test, access and use the Services and to report to Vendor the usefulness and functionality of the Services (the “**Trial**”). This Section 2.1 only applies if Customer elects to participate in the Trial this Section 2.1 is void and of no legal effect.

**2.2 Provision of Service.** Vendor shall make the Service available to Customer and its Users pursuant to the Agreement and any additional Order Forms during the Trial Term and/or Term, as applicable. Customer may subscribe for Services for the number of individually monitored endpoints on the Customer information technology and network infrastructure or any additional Order Form (“**Endpoints**”). Upon signed quote, will be granted a username, password and authentication material to access the Services (“**Customer Login**”). Customer may share the Customer Login with its Users, provided that the Service is only accessed by one User at a time. Customer agrees that its purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Vendor with respect to future functionality or features.

**2.3 SMART-Sentinel™ Agent Software.** Customer shall download or shall ensure that Customer download the SMART-Sentinel™ Agent Software in accordance with Vendor’s instructions prior to Services being provided to Customer. The SMART-Sentinel™ Agent Software is used to facilitate the transmission of Sensor Data as part of providing the Services and to improve performance. SMART-Sentinel™ Agent Software (including any third-party support software) is owned by Vendor or applicable third-party licensors and suppliers and is subject to the terms of the EULA. Vendor will not supply any Services to Customer unless it accepts the EULA’s Terms of Service and/or ensures that its Customer Client accepts the EULA. Notwithstanding the forgoing, if the Customer can demonstrate the Customer will be using separate compatible agent software for the purposes of transmitting the Sensor Data to the Services (“**Customer Agent Software**”), no EULA will be required by Vendor. The determination as to whether the Customer Agent Software is compatible with the Services shall be in the sole

discretion of the Vendor and such use of the Customer Agent Software is conditional upon the payment of an additional fee as set out in any additional Order Form.

**2.4 SMART-Monitor Services.** Vendor may from time to time offer, and Customer may from time to time agree to purchase and receive, for an additional fee, Services through Vendor's SMART-Sentinel™ Agent Software wherein Vendor monitors devices on Customer's network, alerts Customer of threats on Customer network, and takes limited action once a threat has been identified on Customer network ("**SMART-Monitor Services**"). Threats may include, but are not limited to, ransomware, malware, phishing, network communications, potentially unwanted programs, and policy violations. Customer agrees to provide Vendor with necessary contact information and reasonable assistance required to set up and deliver SMART-Monitor Services to Customer. Vendor shall assess threats on Customer network and may take immediate action to isolate and/or shut down a device on Customer network that has been infected by the threat(s) ("**Infected Device**"). Customer is responsible for any remedial actions to remove the threat from the Infected Device. Customer may at any time, through its local system administrator, re-integrate the Infected Device on Customer's network.

**2.5 SMART-Monitor Acknowledgements.** The parties acknowledge that: (1) once an Infected Device has been isolated and/or shutdown, Vendor will no longer have access to or control of the Infected Device; (2) if Customer provides written instruction to Vendor to refrain from isolating and/or shutting down any specific devices, files, data or otherwise, Vendor shall not be liable for any damages arising pursuant to such instructions from Customer.

**2.6 SMART-Monitor Customer Acknowledgments.** Customer acknowledges and agrees that: (1) Vendor shall not be liable for any costs, fees, damages, lost profits, or otherwise arising pursuant to the re-integration of an Infected Device on Customer's network; (2) while Vendor shall use commercially reasonable efforts to detect and remove threats on Customer's network, there is no full proof method to detect or remove threats, and Vendor shall not be liable for any costs, fees,

damages, lost profits, or otherwise arising from non-detection, action, inaction, or omissions, regarding any threat on Customer's network; (3) the SMART-Monitor Services are provided on a weekday basis from Monday to Friday between 9:00AM to 5:00PM Eastern Standard Time ("**EST**") excluding statutory holidays; and, (4) the SMART-Monitor Services and the use thereof are subject to quote.

### **3. Use of the Service.**

**3.1 Vendor Responsibilities.** Vendor shall: (i) maintain the integrity of the Service; (ii) provide certain Support Services to Customer's Users (additional support services may be purchased from Vendor for a fee and shall be specified in any additional Order Forms); and (iii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for (each of the following being an "**Exception**"): (a) planned downtime (of which Vendor shall give at least 8 hours' notice via the Service and which Vendor shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. EST Friday to 3:00 a.m. EST Monday); or (b) any unavailability caused by circumstances beyond Vendor's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, security breaches, strikes or other labor problems (other than those involving Vendor employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Vendor's possession or reasonable control, and denial of service attacks.

**3.2 Customer Responsibilities.** Customer is responsible for all activities that occur in User accounts and for Users' compliance with these Terms of Service. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use the Service in compliance with the Use Guidelines described in Section 3.3; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Vendor promptly of any such unauthorized access or use; (iv) accepts and abides by the terms of the EULA; and (v) comply with all Applicable Laws in using the Service.

**3.3 Use Guidelines.** Customer shall use the Service solely for its internal business purposes, and/or for the purposes of the Trial during the Trial Term (if applicable), as contemplated by these Terms of Service and shall not, and ensure its Customer Clients shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Users or as otherwise contemplated by these Terms of Service; (ii) send spam or otherwise duplicative or unsolicited messages in violation of Applicable Laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party intellectual property or privacy rights; (iv) send or store Malicious Code (whether intentional or inadvertent); (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

**3.4 Publicity.** Neither party may issue press releases or otherwise publicize the parties' relationship without the other party's prior written consent.

#### **4. [Fees & Payment.](#)**

**4.1 User Fees.** Except during Trial Term (if applicable), Customer shall pay all fees specified in the Agreement and all Order Forms hereunder. Except as otherwise provided, all fees are quoted and payable in Canadian Dollars. Except as otherwise specified in Article 11 herein: (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable, (iii) fees paid are non-refundable, and (iv) the number of Endpoints purchased cannot be decreased during the applicable Subscription Term Agreement or any additional Order Form. Fees for Services (including any additional Endpoints) purchased in the middle of a monthly period will be charged for that monthly period in full and going forward based on the number of monthly periods remaining in the Subscription Term.

**4.2 Invoicing & Payment.** Fees for the Service will be invoiced in advance and otherwise in accordance with the quote or any additional Order Form. Unless otherwise stated in the quote or additional Order Form, charges are due net 30 days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information.

**4.3 Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Vendor's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Suspension of Service.** If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Vendor reserves the right to suspend the Service provided to Customer, without liability to Vendor, until such amounts are paid in full.

**4.5 Taxes.** Unless otherwise stated, Vendor's fees do not include any direct or indirect local, provincial, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Vendor's net income or property. If Vendor has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. [Proprietary Rights.](#)

**5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Vendor reserves all right, title, and interest, including all intellectual property rights, in and to the Services and all technologies related thereto, including any and all algorithms or processes developed by Vendor and all derivatives, modifications, or improvements of or to any of the foregoing made by or for Vendor, whether or not created or developed in connection with the Services. No rights are granted to Customer hereunder other than as expressly set forth herein.

**5.2 Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than for its own internal business purposes; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Service.

**5.3 Customer Data.** As between Vendor and Customer, Customer exclusively owns all rights, title, and interest in and to all Customer Data. Customer Data is deemed Confidential Information under these Terms of Service. Subject to Section 5.4, Vendor shall not access Customer's User accounts, including Customer Data, except to evaluate system usage, performance, or capacity, respond to service requirements or technical problems, or at Customer's request. Notwithstanding the foregoing, Vendor may use Customer Data for purposes other than those described above only with the express written consent of the Customer. Customer represents and warrants having provided the necessary consent or legal right required for the disclosure of any Customer Data to Vendor under this Agreement.

**5.4 Usage Data.** Vendor may collect certain data and information regarding Customer and/or Users use of the Services, including, but not limited to, data involving workflow, opinions, the classification and characterization of events, programs or other items ("Usage Data"). Vendor may

use and exploit Usage Data for any purpose in connection with operating, improving, and supporting the Services and any machine learning technology that underlies the Services ("Usage Data Purpose"). Notwithstanding any term in the quote to the contrary, Customer hereby consents to the use of such Usage Data for the Usage Data Purpose, and Customer represents and warrants it has obtained the necessary consent and legal right from Users to do the same, and Customer irrevocably assigns all rights, title and ownership of the Usage Data to the Vendor, and Customer hereby waives any applicable non-assignable rights to such Usage Data to the extent Customer is legally permitted to do so, and Customer represents and warrants it has obtained the necessary consent and legal right from Users to do the same. Vendor represents and warrants that it shall not use the Usage Data for any other purpose other than the Usage Data Purpose.

**5.5 Statistical Information.** Vendor may anonymously compile statistical information related to the performance of the Services for purposes of improving the Services.

**5.6 Suggestions.** Vendor shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Service.

## 6. [Privacy Rights.](#)

**6.1 Privacy Obligations.** Notwithstanding any provisions, representations and warranties to the contrary, Vendor and Customer acknowledge that there is a possibility that the Customer Data may contain Personal Data, the use of which data is subject to various privacy laws, including all provincial, state, federal and international laws and regulations and provincial, state, federal and national government agency orders and decrees to which Customer may be subject ("Privacy Laws"), as well as certain restrictions imposed on the Personal Data by the data subjects or other third party data providers. Vendor and Customer agree to strictly abide by all such restrictions pertaining to the Personal Data, as they are promulgated and applied, currently and in the future. Vendor and

Customer agree to be bound by the terms of Vendor's [Privacy Policy](#), as amended from time to time, such policy being available on Vendor's website or by request. Furthermore, Vendor shall in good faith execute any and all agreements that Customer is required to have Vendor execute in order that Customer may comply with any Privacy Laws. If Vendor or Customer's use (whether directly or indirectly) of the Personal Data is contrary to any Privacy Law, or contrary to any of the restrictions set forth in these Terms of Service, the non-violating party shall have the right to: (a) terminate the service for cause if such breach has not been cured within five (5) days of receipt by the violating party of written notice, and (b) pursue any other legal and equitable remedies.

**6.2 General Data Protection Regulation.** If the Personal Data relates to natural persons in the European Economic Area in connection with Vendor's provision of the Services, the Parties shall enter into a General Data Protection Regulation [Data Processing Addendum](#), to be attached hereto if applicable, which shall apply to Customer's use of the Service and to Vendor's Processing of such Personal Data in the use of the Service.

## 7. [Confidentiality.](#)

**7.1 Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the quote (including pricing and other terms reflected in the quote, these Terms of Service and any additional Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes and any other proprietary data that belongs to a party other than the Disclosing Party or Receiving Party. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was

known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**7.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms of Service, except with the Disclosing Party's prior written permission.

**7.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

**7.4 Notice.** Where Customer and/or its Users has received Confidential Information which the Customer or its Users reasonably believes it received inadvertently through the use or provision of the Services, Customer shall notify Vendor of the inadvertent disclosure immediately upon discovery.

**7.5 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**7.6 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 8. [Warranties & Disclaimers.](#)

**8.1 Warranties.** Each party represents and warrants that it has the legal power to enter into the Agreement and any additional Order Form and to be bound by these Terms of Service. Customer represents and warrants that no Personal Data shall be included nor embedded with any Sensor Data transmitted by Customer to Vendor, whether advertent or otherwise, Customer has obtained the necessary consent or legal right to provide or transmit such data. Vendor represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the functionality of the Service will not be materially decreased during the Term; (iii) the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (iv) it owns or otherwise has sufficient rights in the Service to grant to Customer the rights to use the Service granted herein; and (v) the Service does not infringe any intellectual property rights of any third party.

**8.2 Disclaimer** CUSTOMER ACKNOWLEDGES THAT NO SECURITY SOLUTION IS CAPABLE OF PROVIDING COMPLETE PROTECTION AGAINST ALL KNOWN AND UNKNOWN VULNERABILITIES/ZERO-DAY THREATS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE DOCUMENTATION AND SERVICES ARE PROVIDED "AS IS," AND VENDOR MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE DOCUMENTATION OR THE SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY VENDOR. VENDOR DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT THE OP-

ERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

## 9. [Mutual Indemnification.](#)

**9.1 Indemnification by Vendor.** Subject to these Terms of Service, Vendor shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party; provided, that Customer (a) promptly gives written notice of the Claim to Vendor; (b) gives Vendor sole control of the defense and settlement of the Claim (provided that Vendor may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Vendor, at Vendor's cost, all reasonable assistance.

**9.2 Indemnification by Customer.** Subject to these Terms of Service, Customer shall defend, indemnify and hold Vendor harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Vendor by a third party alleging that the Customer Data, or Customer's use of the Service: (i) infringes the intellectual property rights of such third party, or (ii) has harmed such third party because Malicious Code was uploaded or inputted by Users, (iii) electronic data or information was uploaded or inputted by Users without such third party's authorization or permission, or (iv) violates any Applicable Law, or has otherwise harmed a third party; provided, that Vendor (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Vendor of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

## 10. [Limitation of Liability.](#)

**10.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED \$100.00.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.3 Exclusions.** THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 10.1 AND 10.2 SHALL NOT APPLY TO DAMAGES ARISING FROM A PARTY'S OBLIGATIONS WITH RESPECT TO (A) INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; OR (B) ARISING FROM A PARTY'S GROSS NEGLIGENCE, RECKLESSNESS, INTENTIONAL OR WILLFUL MISCONDUCT, OR VIOLATION OF ANY APPLICABLE LAW.

## 11. [Term and Termination.](#)

**11.1 Termination for Cause.** A party may terminate the quote for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, Vendor shall refund Customer any prepaid fees covering the remainder of the applicable Subscription Term after the date of termination.

**11.2 Termination for Convenience.** Customer may terminate the order for convenience upon 30 days prior written notice to the Vendor. Upon the termination of the order for convenience, Customer shall pay to Vendor all undisputed amounts due and payable hereunder, if any, and Vendor shall pay to Customer all amounts due and payable hereunder, such as the ratable refund of prepaid fees, if any.

**11.3 Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Vendor prior to the effective date of termination.

**11.4 Return of Customer Data.** Upon request by Customer made within 60 days after the effective date of termination, Vendor will make the Services available to Customer on a limited basis to download a file of Customer Data in comma separated value (.csv) format (or such other format as agreed to). After such 60-day period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

**11.5 Surviving Provisions.** The following provisions of these Terms of Service shall survive any termination or expiration of these Terms of Service: Sections 4 through 12.

## 12. [General Provisions.](#)

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

**12.2 No Third-Party Beneficiaries.** There are no third-party beneficiaries.

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



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

**12.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign the order in its entirety (including all Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under the order is in breach of this section shall be void and of no effect.