

SAAS TERMS OF SERVICE

This Software-as-a-Service Agreement (this “**Agreement**”) is entered into by and between Terryberry Company, LLC, and/or its affiliates set forth in an applicable Order (“**Terryberry**”), and the company or legal entity accessing and utilizing the SaaS products hereunder (“**Customer**”). Terryberry and Customer may each be referred to individually as a “**Party**” and collectively as the “**Parties**.” By entering into this Agreement on behalf of Customer, the individual executing this Agreement represents and warrants that they have the authority to bind Customer to this Agreement. This Agreement sets forth the terms and conditions under which Terryberry will provide access to and maintain certain software-as-a-service offerings as Terryberry may provide from time to time as set forth in an Order (collectively, the “**SaaS Products**”) and any associated Support Services (together with the SaaS Products, the “**Subscription Services**”).

1. ACCESS AND USE.

- 1.1. **Subscription Service.** Terryberry grants to Customer the right, during the Subscription Term, a non-exclusive, nontransferable right to access and use (and to permit its Authorized Users to access and use) the SaaS Products solely for Customer’s and its Affiliates’ internal business purposes in the quantity specified in the applicable Order. Customer may exercise its right set forth in this [Section 1.1](#) via its Authorized Users. Such license grant is subject to payment of all applicable fees set forth in the Order and the terms and conditions of this Agreement.
- 1.2. **Subscription Service Updates.** Customer acknowledges that Terryberry reserves the right at any time, or from time to time, with or without notice, to update, change or remove the content, functionality, or user interface of the SaaS Product at Terryberry’s sole discretion. Notwithstanding the foregoing, if any such change results in a material degradation of the primary functionality of the SaaS Product as reasonably determined by Terryberry, Customer shall have the right to terminate the applicable Order upon written notice to Terryberry.
- 1.3. **Access and Use Restrictions.** Customer shall not (directly or indirectly): (a) copy or reproduce the SaaS Products except as permitted under this Agreement; (b) exceed the subscribed quantities, Authorized Users or other entitlement measures of the SaaS Products as set forth in the applicable Order; (c) remove or destroy any copyright, trademark or other proprietary marking or legends placed on or contained in the SaaS Products or Terryberry Intellectual Property; (d) assign, sell, sublicense, distribute or otherwise transfer or make available the rights granted to Customer under this Agreement to any third party except as expressly set forth herein; (e) modify, reverse engineer or disassemble the SaaS Products; (f) except to the limited extent applicable laws specifically prohibit such restriction, decompile, attempt to derive the source code or underlying ideas or algorithms of any part of the SaaS Products, attempt to recreate the SaaS Products or use the SaaS Products for any competitive or benchmark purposes; (g) create, translate or otherwise prepare derivative works based upon the SaaS Products or Terryberry Intellectual Property; (h) interfere with or disrupt the integrity or performance of the SaaS Products; (i) attempt to gain unauthorized access to the SaaS Products or its related systems or networks, or perform penetrating testing on the SaaS Products without Terryberry’s prior written approval; (j) use the SaaS Products in a manner that infringes on the Intellectual Property rights, publicity rights, or privacy rights of any third party, or to store or transfer defamatory, trade libelous or otherwise unlawful data; (k) store in or process with the SaaS Products any personal health data, or other such sensitive regulated data not required for the purpose of the Agreement; (m) store in or process with the SaaS Products any Payment Card Industry (PCI) data, including Cardholder Data (as these terms are defined under the PCI DSS, or; (n) use the SaaS Products to send, store or process with the SaaS Products any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the United States Department of State. Fees for the SaaS Products are based on use of the SaaS Products in a manner consistent with this Agreement and the Acceptable Use Policy (as defined herein), provided that Terryberry may not unreasonably modify or change the Acceptable Use Policy and any changes shall be limited to those required by product updates, security considerations, or other reasonable business or legal requirements. If Customer uses, or is reasonably suspected of using, the SaaS Products in violation of the Agreement or exceeding the licensed quantities or other entitlement measures as set forth in an applicable Order, Customer shall cooperate with Terryberry to resolve any non-compliance, which may include payment for any such overages at then-current applicable rates.
- 1.4. **Customer Responsibilities.**
 - 1.4.1. **Login Access to the SaaS Products.** Customer is solely responsible for using commercially reasonable measures to ensure: (i) that only appropriate Authorized Users have access to the SaaS Products, which may include, but is not limited to, providing prompt notice to Terryberry whenever an Authorized User is no longer permitted to access the SaaS Products and take necessary steps to prevent unauthorized access, (ii) that such Authorized Users have been trained in proper use of the SaaS Products, if reasonably necessary, and comply with the terms of this Agreement and the Acceptable Use Policy, (iii) compliance with all reasonable Terryberry instructions relating to Customer’s access to or use of the SaaS Products, including instructions specifying specific windows of time for certain types of Customer Data uploading, (iv) proper usage of passwords, tokens and access procedures with respect to logging into the SaaS Products, (v) access is not provided to any unaffiliated third party without prior written consent of Terryberry. Customer shall be responsible for all acts that occur in connection with the accounts of its Authorized Users, including all transmissions initiated by Authorized Users during use of SaaS Products or Support Services. Terryberry reserves the right to refuse registration of, or to cancel, login IDs that it reasonably believes to violate the terms and conditions set forth in the Agreement, in which case Terryberry will promptly inform Customer in writing of such refusal or cancellation.
 - 1.4.2. **Security.** Customer will: (i) notify Terryberry promptly upon detection of any unauthorized access to or use of the SaaS Products; and (ii) cooperate with any reasonable investigation by Terryberry of any outage, security problem or suspected breach of the Agreement. Terryberry shall have no liability for any access to Customer Data or the SaaS Products by unauthorized individuals that results from Customer’s failure to implement reasonable precautions to secure its systems and access credentials.

- 1.5. **Support.** As part of its provision of the SaaS Products, Terryberry shall make available technical support to Customer. Upon notification from Terryberry, Customer shall promptly update any internet browsers on Customer systems that interact with the SaaS Products and, as applicable, ensure that all Authorized Users download and install all available browser updates without undue delay. Customer acknowledges and agrees that its failure to timely install such updates may result in disruptions to or failures of the SaaS Products, security risks, or suspension of Customer's access to the SaaS Products, without any liability on the part of Terryberry to Customer.
- 1.6. **Redemptions.** Solely as it applies to the the BeSaving, BeRecognized, BeWell, subscriptions that may be set forth in an Order, and subject at all times to the limits associated with applicable subscription tier limits for Customer may, in its sole discretion, allocate and assign award points to its Authorized Users, provided that the total number of award points allocated does not exceed the number of points included in Customer's then-current subscription tier or otherwise purchased by Customer. If and to the extent specified in an applicable Order Form, Authorized Users may redeem points for certain tangible goods, gift cards, or other rewards made available through the Subscription Services (each a "**Redemption**"). Customer is responsible for all applicable product sales taxes and shipping or delivery charges associated with Redemptions. Certain Redemptions may be subject to additional terms imposed by the applicable Marketplace Provider (for example, terms for prepaid cards or gift cards), and such additional terms will be made available to Authorized Users by the Marketplace Provider prior to completion of the Redemption. Customer acknowledges and agrees that, in connection with certain Redemptions, Terryberry may receive affiliate fees, rebates, discounts, or similar benefits under its arrangements with Marketplace Providers.
- 1.7. **Marketplace Providers.** Terryberry may offer Redemptions through third-party providers made available within the Subscription Services (each a "**Marketplace Provider**"). Customer may configure or otherwise restrict which Marketplace Providers are available to its Authorized Users for Redemptions. Marketplace Providers are independent third parties and will not be treated as Terryberry's subcontractors or agents under the Agreement. Terryberry may change, add, or remove Marketplace Providers available through the Subscription Services at any time in its discretion. If an Authorized User's proper use of the Subscription Services is adversely affected by a Marketplace Provider, Terryberry will cooperate with Customer and use commercially reasonable efforts to help resolve or mitigate the issue.

2. PAYMENT.

- 2.1. **Fees.** Customer shall pay all invoices as set forth in any applicable Order (except for any amount disputed promptly and in writing by Customer in good faith), and payment will be sent to the address or banking institution specified by Terryberry. Without prejudice to Customer's rights set out elsewhere in the Agreement, all fees are non-refundable and payable in advance. Terryberry may invoice for purchases of SaaS Products upon delivery. Any amounts arising in relation to this Agreement not paid when due will be subject to a late charge of one and one-half percent (1 ½ %) per month on the unpaid balance or the maximum rate allowed by law, whichever is less.
- 2.2. **Payment Terms.** Customer shall pay Terryberry in accordance with the payment terms set forth in the applicable Order. If the Order does not set forth payment terms, Customer shall pay Terryberry all undisputed invoices within thirty (30) days of the invoice date.
- 2.3. **On-Site Travel.** Terryberry will not travel in connection with the Services except as expressly requested in writing by Customer and set forth in an applicable Order.
- 2.4. **Taxes.** The fees and charges covered by this Agreement are exclusive of any Indirect Taxes imposed or levied, currently or in the future based on applicable legislation, on the SaaS Products. Unless otherwise agreed between the Parties, Customer will be liable for compliance with reporting and payment of such Indirect Taxes in its tax jurisdiction. Terryberry shall include the Indirect Taxes on its invoice to Customer and remit such Indirect Taxes collected to the relevant authority if required by applicable law. Terryberry will be responsible for direct taxes imposed on Terryberry's net income or gross receipts in its tax jurisdiction. Notwithstanding the foregoing, all payments made under this Agreement shall be in cleared funds, without any deduction or set-off, and free and clear of and without deduction from any Indirect Taxes or other withholdings of any nature.
- 2.5. **Deposit Accounts.** Customer will pay a refundable deposit (the "Deposit") in the amount set out in the applicable Order Form. Terryberry may invoice the Deposit together with the initial subscription, implementation, and/or other SaaS fees under the applicable Order Form. Customer will pay the Deposit and all other amounts on that initial invoice in accordance with Section 2.1, and in any event prior to Terryberry's obligation to provide access to the Platform for production use or to commence the "go-live," "launch," or similar production deployment (the "**Platform Launch**"). Payment of the Deposit (and any invoiced initial SaaS fees) is a condition precedent to Platform Launch, and Terryberry may suspend or delay Platform Launch until payment is received in full. Unless otherwise stated on the Order Form, the Deposit will be held as security for Customer's payment and performance obligations under this Agreement and may be applied by Terryberry to satisfy any past-due undisputed amounts. Any unapplied portion of the Deposit will be refunded to Customer after the later of (i) expiration or termination of the applicable Order Form and (ii) payment in full of all amounts due under this Agreement. Terryberry may refund the Deposit by crediting Customer's final invoice or by other commercially reasonable means.

3. CUSTOMER DATA.

- 3.1. **Content of Customer Data.** As between Terryberry and Customer, Customer is solely responsible for: (i) the content, quality and accuracy of Customer Data as made available by Customer and by its Authorized Users; (ii) providing notice to Authorized Users with regards to how Customer Data will be collected and used for the purpose of the services provided via the Subscription Services; (iii) to the extent required by Applicable Law, ensuring Customer has a valid legal basis for processing Customer Data and for sharing Customer Data with Terryberry; and (iv) ensuring that the Customer Data as made available by Customer to Terryberry complies with Applicable Law.
- 3.2. **Security of Customer Data.**
 - 3.2.1. **Terryberry Obligations.** Terryberry shall: (i) ensure that it has in place appropriate administrative, physical and technical measures designed to protect the security and confidentiality of Customer Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; and (ii) access and use the Customer Data solely to perform

its obligations in accordance with the terms of the Agreement , and as otherwise expressly permitted in the Agreement. Terryberry shall not materially diminish its security controls with respect to Customer Data during a particular Subscription Term.

- 3.2.2. Mutual Obligations.** The Parties shall comply with their respective data protection obligations under Applicable Laws. In particular, if Customer is established in the European Economic Area (“EEA”), in the United Kingdom (“UK”) or in California, or will, in connection with the SaaS Products, provide Terryberry with personal data relating to an individual located within the EEA, the UK or California, the Parties shall comply with the Data Processing Addendum found at <https://www.terryberry.com/data-processing-addendum.pdf> (“DPA”) which in such case is hereby incorporated into this Agreement.

4. WARRANTIES.

- 4.1. Limited SaaS Products Warranty.** During the applicable Subscription Term, Terryberry warrants that: (a) the SaaS Products will perform in substantial conformity with the Documentation; and (b) Terryberry will use industry standard measures designed to detect viruses, worms, Trojan horses or other unintended malicious or destructive code in the SaaS Products. The warranty set forth in Section 4.1(a) is void if the failure of the SaaS Products has resulted from negligence, error, or misuse of the SaaS Products by Customer, its Authorized Users, or by anyone other than Terryberry. Customer shall be required to report any breach of warranty to Terryberry within a period of thirty (30) days of the date on which the incident giving rise to the claim occurred. Terryberry’s sole and exclusive liability, and Customer’s sole and exclusive remedy, for breach of these warranties will be for Terryberry, at its expense, to use reasonable commercial efforts to correct such nonconformity within thirty (30) days of receipt of such notice. If Terryberry fails to correct the breach within such cure period, Customer may terminate the licenses of the affected SaaS Products contained in an Order and receive a pro-rata refund of any unused pre-paid fees for the period following termination as calculated on a monthly basis for the affected SaaS Products.
- 4.2. Customer Data and Marks Warranty.** Customer represents and warrants to Terryberry that Customer owns and will at all times own, or otherwise has and will at all times have, all necessary rights, licenses, permissions and consents in and relating to the data provided or made available by or on behalf of Customer so that, as used, disclosed, hosted, stored and processed by Terryberry in accordance with the terms of this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any right of any third party or violate any Applicable Law. Customer further represents and warrants to Terryberry that the receipt and use by Terryberry of the Customer Marks and any other material provided by the Customer to Terryberry in the performance of this Agreement, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 4.3. Operational Consistency.** Without derogating from Terryberry’s obligations under the Agreement , Customer warrants that it shall take and maintain appropriate steps within its control to protect the confidentiality, integrity, and security of its Confidential Information and Customer Data, including: (i) operating the SaaS Products in accordance with this Agreement, Terryberry’s reasonable instructions, and Applicable Law and; and (ii) dedicating reasonably adequate personnel and resources to implement and maintain appropriate security controls.
- 4.4. Mutual Warranties.** Each Party hereby represents and warrants to the other Party as follows: (i) such Party is an entity duly formed, organized and existing in good standing in such Party’s state of formation; (ii) such Party has full power and all requisite legal and entity authority to enter into this Agreement; and (iii) such Party’s execution, delivery, and performance of this Agreement shall not constitute (a) a violation of any judgment, order, or decree; (b) a material default under any material contract by which such Party or any of its material assets are bound; or (c) an event that would, with notice or lapse of time, or both, constitute such a default.
- 4.5. Third-Party Materials.** Customer acknowledges and agrees that Terryberry may provide, disclose, resell, make available or facilitate the access to materials, content, works of authorship, data, software, software tools, products, goods, services and documentation that are not proprietary to Terryberry or that are licensed, leased, acquired or otherwise obtained by Terryberry or any of its Affiliates from a third party (collectively, “**Third-Party Materials**”). Terryberry warrants that the inclusion of such Third-Party Materials in the SaaS Products will not prevent Customer from exercising the license rights provided to Customer herein in respect of the SaaS Products or limit Customer’s ability to use the SaaS Products in accordance with this Agreement. Customer, as applicable, will be responsible for complying with the terms of any licenses and terms and conditions related to Customer’s access, use or disclosure of Third-Party Materials. Nothing in this Agreement shall diminish or affect any mandatory rights or warranties that Customer may have in respect of the Third-Party Materials. Notwithstanding anything to the contrary in this Agreement or elsewhere, Third-Party Materials are provided “as-is” and “as available,” and Terryberry hereby disclaims all representations and warranties in connection with Third-Party Materials, including, without limitation, warranties of merchantability, fitness for a particular purpose, noninfringement, title and compliance with law. Customer hereby forever releases Terryberry from any and all claims and liabilities relating to or arising from Third-Party Materials.
- 4.6. Compliance with Law.** Each Party shall comply with all Applicable Laws and regulations in connection with the performance of its obligations and the exercise of its rights under the Agreement.
- 4.7. Disclaimer** Any and all warranties, expressed, incorporated or implied, are limited to the extent and period mentioned in the Agreement . To the maximum extent allowed by applicable law, Terryberry disclaims (and disclaims on behalf of its licensors and/or contributors to any Third-Party Materials) all other warranties, conditions and other terms, whether express or implied or incorporated into the Agreement by statute, common law or otherwise, including the implied conditions and warranties of merchantability and fitness for a particular purpose. Terryberry will have no liability for delays, failures or losses attributable or related in any way to the use or implementation of third-party hardware, software, or services not provided by Terryberry. Without limiting the foregoing, any implied warranty of merchantability, implied warranty against infringement, and implied warranty of fitness for a particular purpose are hereby expressly excluded and disclaimed by Terryberry to the maximum extent allowed by Applicable Law.

5. TERM, TERMINATION, AND SUSPENSION.

- 5.1. Term and Renewal.** This Agreement shall be in effect from the Effective Date and shall continue until the end of the term set forth in the Order (the “**Initial Term**”), until terminated in accordance with the provisions set forth herein. If no term is set forth in the

Order, the Initial Term shall be twelve (12) months. At the end of the Initial Term and each Renewal Term (as defined herein), this Agreement and the applicable Order(s) will automatically renew for a successive twelve (12) month period (each a “**Renewal Term**”, together with the Initial Term, the “**Term**”) unless either party gives 90 days written notice of its intent not to renew. Pricing for any Renewal Term shall be calculated based on Terryberry’s then-current rates in effect at the beginning of such Renewal Term, unless otherwise agreed in writing by the parties.

- 5.2. Termination by Either Party.** Either Party may immediately terminate this Agreement by providing written notice to the other Party if the other Party: (i) materially breaches any obligation under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice demanding cure; (ii) becomes insolvent or assigns all or substantially all of its assets or business for the benefit of creditors; (iii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial portion of its assets, or ceases to operate in the ordinary course of business; (iv) suspends, ceases, or threatens to suspend or cease all or a substantial part of its business; or (v) resolves to wind up, dissolve, or liquidate its business. In addition, either Party may terminate this Agreement, in whole or in part, or suspend provision of or access to Subscription Services, to the extent necessary to comply with Applicable Law, and such termination or suspension shall not constitute a breach of this Agreement.
- 5.3. Termination by Terryberry.** Terryberry may immediately terminate this Agreement by providing written notice to Customer if Customer assigns its rights or obligations in violation of this Agreement, or if Customer fails to pay any amount due when due and remains in default for thirty (30) days after receiving written notice demanding payment.
- 5.4. Effect of Termination.** Upon termination or expiration of this Agreement: (i) Customer shall immediately cease using the Subscription Services and shall have no further right to access or use the applicable Subscription Services; (ii) Terryberry’s obligation to provide the Subscription Services shall terminate immediately; (iii) any accrued rights and obligations will survive; and (iv) all outstanding fees and other charges under the Agreement or Order (as applicable) will become immediately due and payable. Customer is solely responsible for exporting any Customer Data it wishes to retain following termination or expiration of its Subscription Term. Terryberry shall have no liability for failure to retrieve such data and is not required to retain it beyond thirty (30) days after termination or expiration. Customer Data in the SaaS Products will be deleted in accordance with Terryberry’s then-current document retention policies. Terryberry will maintain the security of Customer Data during this time in accordance with the terms of this Agreement. Upon Customer’s written request, Terryberry will provide reasonable assistance to support Customer’s exit strategy, including providing relevant information, subject to a separate Order for such services.
- 5.5. Suspension; Refusal of Registration.**
- 5.5.1. Customer Access.** Terryberry may, upon written notice, suspend Customer’s or its Authorized Users’ access to the SaaS Product, without liability, if any of the following occur: (i) Terryberry reasonably believes the SaaS Product is being used in violation of this Agreement or in a manner that is fraudulent or materially disruptive; (ii) Customer fails to cooperate with a reasonable investigation; (iii) the SaaS Product or Customer Data is accessed or manipulated by a third party without consent of either Party; (iv) suspension is required by law; (v) any invoiced amounts remain unpaid more than ten (10) days past due; or (vi) there is an unusual and material spike or increase in Customer’s use of the SaaS Products and Terryberry reasonably suspects or knows that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the SaaS Products. Terryberry may also suspend access to Professional Services or the SaaS Product upon thirty (30) days’ notice for any uncured material breach or overdue payment. Customer’s access will be promptly reinstated once the issue is resolved, except that if the Agreement has been terminated for an uncured material breach, Terryberry is not obligated to restore Customer’s access.
- 5.5.2. Individual Authorized User Access.** Terryberry may refuse registration of, or suspend, Customer’s or a specific Authorized User’s access to and use of the SaaS Products if Terryberry knows or reasonably suspects that such access or use is malicious or otherwise harmful to Customer, the SaaS Products, or Terryberry’s other customers. Terryberry will provide notice prior to any such suspension if permitted by applicable law and unless Terryberry reasonably believes that providing notice would create a risk to the security of the SaaS Products. Terryberry will promptly reinstate Customer’s access and use once the issue has been resolved.

6. CONFIDENTIALITY.

- 6.1. Confidential Information.** The Parties acknowledge that each Party (the “**Discloser**”) may disclose Confidential Information to the other Party (“**Recipient**”). Each Party further acknowledges that the Confidential Information of the other Party, and all other intellectual property rights of the other Party, are and shall remain the exclusive property of the other Party, whether or not protected under Applicable Laws, including intellectual or property laws.
- 6.2. Exclusions.** Notwithstanding anything to the contrary in this Section 6, Confidential Information shall not include information which: (i) was already known to Recipient at the time of disclosure by Discloser, and Recipient was under no obligation of confidentiality with respect to such information; (ii) is becomes known (independently of disclosure by the Discloser) to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of Recipient has become, generally available to the public; or (iv) is independently developed by the Recipient without use of, access to, or reliance upon the Discloser’s Confidential Information, and the Recipient can provide evidence to that effect.
- 6.3. Obligations.** The Recipient will not disclose the Discloser’s Confidential Information to any third party, except as permitted in Section 6.4. The Recipient will protect and keep confidential the Discloser’s Confidential Information using the same degree of care that the Recipient uses to protect its own nonpublic or proprietary business, technical or financial information of similar importance, but in no event less than a reasonable degree of care. The Recipient will not use the Discloser’s Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Agreement. The disclosure of Confidential Information pursuant to this Agreement is not intended in any way to transfer or grant any right, title or interest in or to such Confidential Information to the Recipient unless otherwise expressly indicated in this Agreement or by the Discloser in writing.
- 6.4. Permitted Disclosure.** The Recipient may disclose the Confidential Information of the Discloser only to those of its officers, directors, employees, agents, representatives and contractors (“**Representatives**”) who have a legitimate need to know such Confidential Information consistent with the purposes of this Agreement and who have agreed, either as a condition of employment, representation

or in a written agreement, to be bound by terms and conditions substantially as protective as the confidentiality terms and conditions applicable to the Recipient under this Section 6. The Recipient shall be responsible and liable for any breach by its Representatives of the obligations of the Recipient set forth in this Section 6. The Recipient shall be allowed to disclose Confidential Information of the Discloser to the extent that such disclosure is: (i) approved in writing by the Discloser; (ii) necessary for the Recipient to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by Applicable Law or by the order of a court or similar judicial or administrative body, provided that, to the extent it is legally permitted to do so, the Recipient notifies the Discloser of such required disclosure promptly and in writing and cooperates with the Discloser at the Discloser's reasonable request and expense in any lawful action to contest or limit the scope of such required disclosure. This Section 6 supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the Parties with respect to Confidential Information and is a complete and exclusive statement thereof. Additionally, the obligations set forth in Section 4.4 and not this Section 6 herein apply to Customer Data.

- 6.5. **Equitable Relief.** The Parties agree that a breach of Section 6 may result in irreparable and continuing damage for which there will be no adequate remedy at law, and each Party will be entitled to seek temporary or permanent injunction or other equitable relief restraining such breach or threatened breach from any court of competent jurisdiction without the need for posting bond and/or a decree for specific performance, and such other relief as may be proper. Notwithstanding anything to the contrary in this Agreement, either Party may seek injunctive relief against the other Party from any other judicial or administrative authority pending the resolution of such controversy or claim.
- 6.6. **Obligations Related to Confidential Information Upon Termination.** The Recipient's obligations in respect of Confidential Information will survive the termination of the Agreement, any discussions, or any business relationship between the Parties: (i) for information that is not considered a trade secret under applicable law, a period of three (3) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient, or (ii) for information that is considered a trade secret under applicable law, until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Recipient or its Authorized Representatives. On Discloser's written request, Recipient shall, at Discloser's discretion, promptly return to Discloser or destroy all Confidential Information in its and its Representatives' possession other than Notes, and destroy all Notes, and, at Discloser's written request, certify in writing the destruction of such Confidential Information; provided, however, that Recipient may retain copies of Confidential Information that are (i) required to be retained in accordance with Applicable Law, or (ii) created pursuant to its standard electronic backup and archival procedures and stored until its deletion in compliance with such procedures. Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to any retained Confidential Information.
- 6.7. **Advertising and Publicity.** Neither Party shall make or permit any public announcement concerning the existence, subject matter, or terms of this Agreement or the relationship between the Parties without the prior written consent of the other Party, except as expressly permitted in this section. Customer grants Terryberry and its Affiliates, during the term of this Agreement, the right to use Customer Marks in Terryberry's public promotional materials and communications solely for the purpose of identifying Customer as a Terryberry customer. Terryberry shall not modify the Customer Marks or display them larger or more prominently in its promotional materials than the names, logos, or symbols of other Terryberry customers. Such promotional materials and communications may be created, displayed, and reproduced without Customer's review, provided they comply with this section and any Customer Marks usage guidelines that Customer provides to Terryberry in writing.

7. INTELLECTUAL PROPERTY.

- 7.1. **Intellectual Property.** Except for the rights expressly granted in this Agreement, all rights, title, and interest in and to the SaaS Products and Terryberry Intellectual Property are reserved by Terryberry, its Affiliates, or licensors. Customer agrees not to take any action that interferes with intellectual proprietary rights of Terryberry. Except as provided herein, all rights, title, and interest in and to Customer Intellectual Property are reserved by Customer, its Affiliates, or licensors. Nothing in this Agreement shall transfer ownership of any Intellectual Property rights from one Party to the other.
- 7.2. **Customer Data and Marks.** Customer owns all right, title, and interest in all Customer Data and Customer Marks. Nothing in this Agreement shall be construed to grant Terryberry any rights in Customer Data or Customer Marks other than those expressly set forth herein. Customer grants Terryberry and its Affiliates a limited, non-exclusive, worldwide license to access and use Customer Data and Customer Marks solely to enforce this Agreement and to provide, manage, improve, and assess the quality and performance of the SaaS Products. Customer will furnish Terryberry with all Customer Marks it desires to include in configuration of the applicable licensed SaaS Product(s).
- 7.3. **Usage Analytics.** Terryberry shall be permitted to collect and use Usage Analytics for its reasonable business purposes and for Customer's benefit. In the event Terryberry wishes to disclose the Usage Analytics or any part thereof to third parties (either during the Subscription Term or thereafter), such data shall be anonymized and/or presented in the aggregate so that it will not identify Customer or its Authorized Users. The foregoing shall not limit in any way Terryberry's confidentiality obligations in Section 6 of the SaaS Terms.
- 7.4. **Suggestions.** To the extent that Customer provides Terryberry with Suggestions, such Suggestions shall be free from any confidentiality restrictions that might otherwise apply to Terryberry under this Agreement and may be implemented by Terryberry at its sole discretion. Customer grants Terryberry and its Affiliates a royalty-free, fully paid, worldwide, perpetual, and irrevocable license to use, implement, modify, and incorporate such Suggestions into Terryberry products or materials at Terryberry's sole discretion. Customer acknowledges that any Terryberry products or materials incorporating such Suggestions shall be the sole and exclusive property of Terryberry.

8. INDEMNIFICATION.

- 8.1. **Terryberry Indemnification.** Terryberry shall defend and indemnify Customer and its Affiliates, and their respective officers, directors, and employees, against all third-party claims, suits, and proceedings, and all directly related losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) resulting from (i) the violation, misappropriation, or infringement of any third party's patent, copyright, trademark, or trade secret arising from Customer's use of the SaaS Products in accordance with this

Agreement and reasonable Terryberry instruction related to the use of the SaaS Product, and (ii) Terryberry's gross negligence, fraud, or willful misconduct.

- 8.2. Customer Indemnification.** Customer will indemnify and defend Terryberry, its Affiliates, and its and their respective directors, officers, employees, agents, successors and permitted assigns from and against any third-party claims, suits and proceedings (including those brought by a government entity) resulting from: (i) actual or alleged infringement of a third party's intellectual property rights, (including, but not limited to patent, copyright, or trade secret rights) arising out of, or in connection with, the receipt or use in the performance of the Agreement of the Customer Data or Customer Marks; (ii) Terryberry's use of the Customer Data violating Applicable Law, provided that such use is in accordance with the terms of this Agreement and (where applicable) with the terms of the DPA, (iii) the content or structure of Customer Data; or (iv) Customer's gross negligence, fraud or willful misconduct.
- 8.3. Procedure.** Each Party's defense and indemnification obligations herein will become effective upon, and are subject to: (a) the Party entitled to indemnification under this Agreement ("**Indemnified Party**") giving prompt notification to the Party that is obligated to provide indemnification ("**Indemnifying Party**") of any claims in writing; and (b) the Indemnified Party providing the Indemnifying Party with full and complete control, authority and information for the defense of the claim, provided that the Indemnifying Party will have no authority to enter into any settlement or admission of the Indemnified Party's wrongdoing on behalf of the Indemnified Party without the Indemnified Party's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. The Indemnifying Party will promptly, and in no event less than a reasonable number of days before the date on which a response to such claim is due, assume and diligently pursue the defense and settlement of such claim, engaging attorneys who have appropriate expertise to handle and defend the same, at the Indemnifying Party's sole cost and expense. At the Indemnifying Party's request and sole expense, the Indemnified Party shall reasonably cooperate with the Indemnifying Party in defending or settling any claim. If the Indemnifying Party fails to timely assume, or ceases to diligently pursue, such defense, the Indemnified Party may defend or settle the claim in such manner as it may deem appropriate at the cost of the Indemnifying Party.
- 8.4. Remedies.** If Customer's use of the SaaS Products is prevented by injunction or court order because of any claim subject to indemnification under Section 8.1, or, in Terryberry's opinion, if the SaaS Products are likely to become the subject of any such claim, then Terryberry, at its sole discretion and at no additional expense to Customer, shall either: (i) procure the right for Customer to continue using the SaaS Products in accordance with the terms of this Agreement; or (ii) replace or modify the SaaS Products so that such SaaS Products become non-infringing. If Terryberry determines that neither (i) nor (ii) is available in a timely manner on commercially reasonable terms, then Terryberry may terminate Customer's right to use the infringing SaaS Products, in which event Customer shall receive a pro-rata refund of all unused, pre-paid fees for the affected SaaS Products licensed in an Order for the period following termination as calculated on a monthly basis for the affected Services. This section titled "Indemnification" states the sole liability of Terryberry and the exclusive remedy of Customer with respect to any indemnification claims arising out of or related to this Agreement.
- 8.5. Exclusions.** The foregoing Terryberry obligations to defend and indemnify shall not apply to the extent a claim arises from or relates to: (a) use of the SaaS Products not in accordance with this Agreement or reasonable Terryberry instructions pertaining to the use of the SaaS Products; (b) Customer's use of the SaaS Products in violation of applicable laws; (c) any modification, alteration, or conversion of the SaaS Products not created or approved in writing by Terryberry; (d) any combination of the SaaS Products with any computer, hardware, software, data, or service not provided by Terryberry; (e) Terryberry's compliance with specifications, requirements, or requests of Customer; or (f) Customer's gross negligence or willful misconduct.

9. LIMITATION OF LIABILITY.

- 9.1. Liability Cap.** Except for liability caused by Terryberry's indemnification obligations in Section 8.1, Customer's indemnification obligations in Section 8.2, and Customer's payment obligations herein, in no event will either Party's maximum aggregate liability arising out of or related to this Agreement, regardless of the cause of action and whether in contract, tort (including negligence), warranty, indemnity or any other legal theory, exceed the total amount paid or payable to Terryberry under this Agreement during the twelve (12) month period preceding the date of initial claim. The exclusions and limitations set forth in this Section 9.1 shall apply even if an exclusive remedy of Customer under this Agreement has failed of its essential purpose.
- 9.2. Consequential Damages.** Neither Party or its Affiliates will have any liability to the other Party, its Affiliates, or any third party for any loss of profits or revenues, loss of goodwill, or for any indirect, special, incidental, consequential or punitive damages arising out of, or in connection with the supply, use, or performance of, or inability to use, the Services or arising out of or in connection with this Agreement, however caused, whether in contract, tort (including negligence), indemnity, breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise, or any other legal theory, and whether or not the Party has been advised of the possibility of such damages.
- 9.3. Construction.** This Agreement is not intended to and will not be construed as excluding or limiting any liability which cannot be limited or excluded by Applicable Law, including liability for (a) death or bodily injury caused by a Party's negligence; or (b) gross negligence, willful misconduct, or fraud.

10. GENERAL PROVISIONS.

- 10.1. Force Majeure.** Any delay in or failure of performance by either Party under this Agreement, other than a failure to pay amounts when due, shall not be considered a breach of this Agreement, and shall be excused to the extent caused by any occurrence beyond the reasonable control of such Party. Such acts shall include, but not be limited to, fortuitous events and acts of God; wars, riots, terrorism and insurrections; laws, decrees, ordinances and governmental regulations; change in Applicable Laws; strikes and lockouts; transportation stoppages or slowdowns; hurricanes, earthquakes, floods, fires and explosions; pandemics and epidemics; and shelter-in-place or similar orders. Notwithstanding the foregoing, if such act or condition beyond the reasonable control of such Party continues for a period of one hundred and eighty (180) days or more, the unaffected Party may, on notice to the Party affected, terminate this Agreement, and neither Party shall have any further obligation to the other save for those provisions hereunder which, by their terms, survive the termination or expiration of this Agreement.
- 10.2. Compliance with Export Controls.** Customer will not export, re-export, divert, transfer, or disclose, directly or indirectly, or allow the use of, any Subscription Services or Terryberry Intellectual Property, or any direct product thereof in violation of applicable

United States export control requirements. Without limiting the generality of the immediately preceding sentence, Customer will not (i) re-export the SaaS Product or Terryberry Intellectual Property to, or allow the use of the Subscription Services or Terryberry Intellectual Property by, an unauthorized or prohibited destination; or (ii) transfer the SaaS Product or Terryberry Intellectual Property to, or allow the use of the Subscription Services or Terryberry Intellectual Property by, any Prohibited Person.

- 10.3. Commercial Computer Software.** If Customer is an agency or contractor of the United States Government, Customer acknowledges and agrees that: (i) the SaaS Products (including any software forming a part thereof) were developed entirely at private expense; (ii) the SaaS Products (including any software forming a part thereof) in all respects constitute proprietary data belonging solely to Terryberry; (iii) the SaaS Products (including any software forming a part thereof) are not in the public domain; and (iv) the software forming a part of the SaaS Products is “Commercial Computer Software” as defined in sub-paragraph (a)(1) of DFAR section 252.227-7014 or FAR Part 12.212. Customer shall provide no rights in the Software (including any software forming a part thereof) to any U.S. Government agency or any other party except as expressly provided in this Agreement.
- 10.4. Notice.** Any and all notices, requests, demands and other communications required or otherwise contemplated to be made under this Agreement shall be in writing and in English to 2033 Oak Industrial Drive NE, Grand Rapids, Michigan 49505, United States, Attn: General Counsel, provided by one or more of the following means and deemed to have been duly given (i) if delivered personally, when received; (ii) if delivered by certified or registered mail (postage prepaid and return receipt requested), when received; (iii) if transmitted by facsimile (to those for whom a facsimile number is set forth below), on the date of receipt of the transmission confirmed by receipt of a transmittal confirmation; or (iv) if delivered by courier SaaS Product, on the third business day following the date of deposit with such courier service. Either Party may change its address by giving notice as provided herein of the new address to the other Party. Notices to Terryberry shall be sent to the address specified for the applicable Terryberry entity below. Notices to Customer shall be sent to the address provided on the Order.
- 10.5. Governing Law; Jurisdiction.**
- 10.5.1. Customers Located in Canada, the United States, or the Americas.** If Customer’s billing address set forth on the Order is located in Canada, North America, Central America, or South America, each Party agrees to the governing law of the State of Michigan, United States, without regard to choice or conflict of law rules, and to the exclusive jurisdiction of the state and federal courts located in Kent County, Michigan, United States with respect to any dispute, claim, action, suit, or proceeding (including non-contractual disputes or claims) arising out of or in connection with this Agreement, or its subject matter formation.
- 10.5.2. Customers Located in the United Kingdom, EEA, or APAC.** If Customer’s billing address set forth on the Order is located in United Kingdom, European Economic Area, or the Asia-Pacific Region, each Party agrees to the governing law of England and Wales without regard to choice or conflict of law rules, and to the exclusive jurisdiction of the state and federal courts located in England and Wales with respect to any dispute, claim, action, suit, or proceeding (including non-contractual disputes or claims) arising out of or in connection with this Agreement, or its subject matter formation.
- 10.5.3. Application of Legislation.** Except to the extent expressly required by Applicable Law, neither the United Nations Convention on Contracts for the International Sale of Goods 1980, nor any international and domestic legislation implementing such Convention, applies to this Agreement. The Parties’ rights and obligations under this Agreement are solely and exclusively as set forth in this Agreement and the Uniform Computer Information Transactions Act (“UCITA”), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, does not apply to this Agreement and is hereby disclaimed. The Parties will amend this Agreement as may be necessary to comply with any mandatory disclaimer language required by UCITA in any applicable jurisdiction.
- 10.6. Waiver of Jury Trial.** To the extent not prohibited by Applicable Law, each of the Parties hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement.
- 10.7. Assignment.** Neither Party may assign any of its rights or obligations under this Agreement without the other Party’s prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign any and all of its rights and obligations under this Agreement to a successor in interest in the event of a merger or acquisition or to an Affiliate, upon written notice to the other Party. Any purported assignment, pledge, delegation or transfer in violation of this [Section 10.8](#) is null and void. All provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, the respective successors and permitted assigns of Terryberry and Customer.
- 10.8. Waivers; Amendments.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion. This Agreement may be amended only by a written document signed by duly authorized representatives of each Party. Notwithstanding anything to the contrary herein or elsewhere, Terryberry may amend this Agreement from time to time by posting an amended version at its website, available at www.terryberry.com/legal/terms-and-conditions/. Such amendment will be deemed accepted and become effective 30 days after such notice (the “**Proposed Amendment Date**”) unless Customer first gives Terryberry written notice of rejection of the amendment. In case of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer’s next renewal term following the Proposed Amendment Date (unless this Agreement is earlier terminated in accordance with its provisions). Customer’s continued use of the SaaS Product following the effective date of an amendment will confirm Customer’s consent thereto.
- 10.9. Severability.** If a court of competent jurisdiction holds any provision, or part of any provision, of this Agreement to be illegal or invalid, the provision, or the affected part of such provision, shall be null and void and deemed automatically severed from this Agreement. Any such holding shall not affect the legality or validity of the remaining provisions or remaining parts or unaffected provisions of this Agreement.
- 10.10. Relationship of The Parties.** The relationship between the Parties is that of independent contractors only, and nothing in this Agreement shall be interpreted or construed to create a partnership, joint venture, employer-employee, or agency relationship, or any other relationship between the Parties, other than that of independent contractors. Neither Party shall have the power to obligate the other Party in any manner whatsoever unless expressly provided in this Agreement.

- 10.11. **Counterparts.** The Order may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Agreement or Order (in counterparts or otherwise) by fax, .pdf, .pic, .tif, .jpg, other legible image file or by widely accepted electronic signature SaaS Products (ex. DocuSign) shall be sufficient to bind the Parties to the terms and conditions of this Agreement.
- 10.12. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties regarding this matter, and they supersede all prior discussions or Agreements related to the same. Should Customer utilize a purchase order (or other form which includes additional terms and conditions), any additional terms and conditions in such document shall not bind Terryberry, unless such additional terms and conditions have been expressly acknowledged in writing by Terryberry in an amendment as overriding this Agreement. Fulfillment of Customer's order by Terryberry does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement.

11. DEFINITIONS AND INTERPRETATION.

- 11.1. **Definitions.** Capitalized terms shall have the meaning set forth below. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement. Defined terms stated in the singular may be used in the plural, and vice versa.
- 11.1.1. **"Acceptable Use Policy"** means Terryberry's then-current acceptable use policy, located at <https://www.terryberry.com/terms-and-conditions/>.
- 11.1.2. **"Affiliate"** means, with respect to a Party, any entity or individual that directly or indirectly controls, is controlled by, or is under common control with such Party. For purposes of the Affiliate definition, an entity or individual "controls" an entity if it has the power to direct the management and policies of the entity, through ownership of more than 50% of the voting securities of an entity, representation on its board of directors or other governing body, or by contract.
- 11.1.3. **"Applicable Law(s)"** means all laws, regulations, rules, ordinances, and legally binding requirements of any U.S. or foreign authority, including applicable court or governmental orders, in effect as of the Effective Date and as amended or supplemented from time to time.
- 11.1.4. **"Authorized User"** means any individual to whom Customer grants access authorization in compliance with a license to use the SaaS Products that is an employee, agent, contractor or representative of Customer or Customer's Affiliates.
- 11.1.5. **"Confidential Information"** means the nonpublic or proprietary business, technical or financial information disclosed to the Recipient by or on behalf of the Discloser pursuant to this Agreement and includes all information marked by the Discloser as confidential or proprietary and any other information, whether written or oral, that the Recipient should reasonably understand is confidential or proprietary to the Discloser.
- 11.1.6. **"Customer Data"** means all electronic data, files and records which are provided or made available by Customer or any Authorized User and received, processed or stored by Terryberry, its contractors or the Subscription Service as part of the SaaS Products provided to Customer.
- 11.1.7. **"Customer Marks"** means all registered or common law Customer trademarks, trade names, service marks, slogans, and logos and such other Customer trademarks or logos as Customer identifies from time to time to Terryberry for branding or other use in connection with the SaaS Products.
- 11.1.8. **"Indirect Taxes"** means excise, sales, use, gross-turnover, value added, goods and services tax or other similar types of indirect taxes on turnover and/or revenues, duties, customs or tariffs (however designated, levied or based and whether foreign or domestic, federal, state or province).
- 11.1.9. **"Intellectual Property"** means proprietary material, technology, or processes, including, but not limited to: services, software tools, proprietary framework and methodology, hardware designs, algorithms, works of authorship, inventions, deliverables, work product, trade secrets and developments objects, network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned or licensed by a third party), and any derivatives, improvements, enhancements or extensions of such Intellectual Property conceived, reduced to practice, or developed. For avoidance of doubt, Intellectual Property of Terryberry shall also include Intellectual Property created, developed, conceived, acquired, authored or reduced to practice by or on behalf of a Terryberry, whether alone or jointly with others.
- 11.1.10. **"Order"** means a Terryberry quote or other ordering document agreed to by Customer, specifying the SaaS Products, pricing, payment terms, quantities, expiration date, and other applicable terms.
- 11.1.11. **"Third-Party Services"** means any individual or entity that has an agreement with Customer or its Authorized Users to administer, manage, support, or otherwise facilitate Customer's (or its Authorized Users' or Affiliates') access and/or use of the Subscription Services or any features thereof.
- 11.1.12. **"Prohibited Persons"** means anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list.
- 11.1.13. **"Subscription Term"** means the period of time during which Customer is subscribed to the SaaS Products, as specified in an Order and which shall begin upon delivery of the SaaS Products.
- 11.1.14. **"Suggestions"** means any feedback, ideas, or suggestions for improvements, new features, customer experience, functionalities, corrections, enhancements, or changes to the SaaS Products provided by Customer to Terryberry, excluding any Customer Data and Customer Intellectual Property.
- 11.1.15. **"Support Services"** means the maintenance and support services for the SaaS Products provided by Terryberry to Customer as part of an active SaaS Products subscription.
- 11.1.16. **"Usage Analytics"** means data generated in connection with Customer's access, use and configuration of the SaaS Products and data derived from it (e.g., types of applications or accounts utilized or interacting with the SaaS Products, including metadata, usage statistics, telemetry, support data, session metadata, logs, types of applications or accounts utilized or interacting with the SaaS Products and threat detection data).