



PlexTrac Commercial Terms & Conditions

These PlexTrac Commercial Terms & Conditions (herein, “Agreement”) govern Customer’s use of the Services. Capitalized terms have the definitions set forth herein. If Customer registers for or receives a free trial of the Services (“Free Trial”), the applicable provisions of this Agreement will also govern that Free Trial.

Customer agrees to be bound by this Agreement by 1) clicking a box indicating acceptance; 2) executing an Order Form that references this Agreement, or 3) using a Free Trial. An individual accepting this Agreement on behalf of a legal entity represents and warrants they have the authority to bind such entity to the terms and conditions of this Agreement, in which case the term “Customer” shall refer to that entity. Any individual who does not have the authority to bind an entity, or any individual or entity who does not agree to be bound by this Agreement may not use the Services under any circumstances.

1. Definitions.

“**Action**” means a claim, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, investigation, or any civil, criminal, administrative, regulatory or other proceeding.

“**Affiliate**” of a Person means any other Person that directly, indirectly, or through intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control,” “controlled by,” and “under common control with” means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or ownership of more than 50% of the voting securities of such Person.



pursuant to a fully executed Order Form, Price List, or otherwise authorized by Company.

“Business Day” means a day other than Saturday, Sunday, or other days on which commercial banks in Boise, Idaho are closed for business.

“Company” means PlexTrac, Inc., and any of its current and future subsidiaries, affiliates, successors, and assigns.

“Documentation” means Company’s user manuals, handbooks, and installation guides relating to the Software/end user documentation relating to the Software that Company provides or makes available to Customer in any medium which describes the functionality, components, features, or requirements of the Software, including installation, configuration, integration, operation, or use of the Software.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirements of any federal, state, local, or foreign government or political subdivision thereof, any arbitrator, court, or tribunal of competent jurisdiction.

“Loss” or **“Losses”** means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of any kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Maintenance Release” means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Company may provide to Customer from time to time during the Term, which may contain, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.

“New Version” means any new version of the Software that Company may introduce as a distinct licensed product, which Company may make available to Customer at an additional cost under a separate agreement.



Operations.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, trust, association, or other entity.

“Representatives” means a Party’s employees, officers, consultants, agents, contractors & service providers.

“Services” means the Software and Documentation and other services provided by Company to Customer pursuant to this Agreement.

“Software” means the executable, object code version of Company’s cybersecurity reporting and tracking platform, and any Maintenance Releases provided to Customer pursuant to this Agreement.

“Third-Party Materials” means all materials and information that are not proprietary to Company.

2. License & Renewal.

2.1 License Grant. Subject to Customer’s compliance with this Agreement, Company grants to Customer a non-exclusive, non-sublicensable, and non-transferable (except in compliance with **Section 15.5** enterprise license for all Authorized Users to use the Software and Documentation solely for the Permitted Use during the Term (the “Services”).

2.2 Open Source. The Software includes **Open-Source Components** (<https://app.plextrac.com/licenses>) that are subject to an open-source license agreement and approved by the Open Source Initiative (each, an **“Open Source License”**). Use of Open-Source Components is governed by the terms and conditions of the applicable Open-Source License(s).

2.4 Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use. Customer acknowledges and agrees that: (a) Company may use these and other lawful measures to verify Customer’s compliance with the terms of this Agreement and enforce Company’s rights, in and to the Software; (b) Company may deny any individual access to and/or use of the Software on written notice to Customer if Company, in its reasonable discretion, believes that person’s use of the Software would violate any provision of this Agreement, regardless of whether that person is an Authorized User; and (c) Company and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Customer’s computers, systems and software, that Company may gather



time, which can be viewed at: www.plextrac.com.

3. License Restrictions. Except as expressly permitted herein, Customer shall not:

1. copy in whole or in part, modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Software;
2. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party;
3. reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software;
4. bypass or breach any security device or protection contained in the Software or Documentation;
5. remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;
6. use the Software in any manner that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or violates any Law;
7. use the Software for: (i) benchmarking or competitive analysis; (ii) developing, using, or providing a competing product or service; or (iii) any other purpose that is to Company's detriment or commercial disadvantage;
8. use the Software in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or
9. use the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement

4. Purchases via Channel Partners. If Customer is purchasing the License (and/or any related Support and/or Professional Services) through a Channel Partner, then:



the Company-Channel Partner Order, and Company shall have no responsibility or liability for any discrepancy between the License scope under such Company-Channel Partner Order on the one hand, and the order issued to Customer by Channel Partner (the "Customer-Channel Partner Order") on the other hand;

(b) Customer shall pay the applicable amounts to the Channel Partner, as agreed between Customer and the Channel Partner. If Customer is entitled to a refund under this Agreement, then Company will refund any applicable fees to the Channel Partner (and under no circumstances shall Company be required to refund more than it received from the Channel Partner), and the Channel Partner alone will be responsible for refunding the appropriate amounts to Customer;

(c) Company may suspend or terminate Customer's License if Company does not receive payment from the Channel Partner, as a result of Customer not paying the corresponding amount to the Channel Partner;

(e) The Channel Partner is not authorized to make any promises or commitments on Company's behalf, and Company is not bound by any obligations to Customer other than as set forth in this Agreement.

5. Support Obligations of Customer. Customer will be responsible for its own technical support of the Software.

6. Maintenance Releases. During the Term, Company at its sole discretion will provide Customer with all Maintenance Releases (including updated Documentation) at no additional charge. All Maintenance Releases provided by Company to Customer are deemed Software. Customer will install all Maintenance Releases as soon as practicable after receipt. Customer has no right herein to receive any New Versions of the Software that Company may, in its sole discretion, release from time to time. Customer may license any New Version at Company's then-current list price and subject to a separate license agreement.

7. Fees and Payment.

7.1 License Fees. Customer agrees to pay Company the annual license fee ("License Fee") in accordance with the terms set forth in the Order Form and this **Section 7**.

7.2 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available to Company: (a) Company may charge interest on the past due amount at the rate of 1.5% per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) Customer shall reimburse Company for all reasonable costs incurred by Company in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees; and (c) if such failure



withhold, suspend or revoke its grant of a license hereunder, and/or (iii) terminate this Agreement under **Section 14.3(a)**.

7.3 No Deductions. All amounts payable under this Agreement shall be paid by Customer to Company in full without any right of setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any tax withholding as required by applicable Law).

8. Audits. Company may, on reasonable request, audit Customer's use of the Software under this Agreement at any time during the Term. All audits: will be conducted during regular business hours, no more frequently than once in a 12-month period and shall not unreasonably interfere with Customer's business. Customer shall make available, and Company may examine all books, records, equipment, information, and personnel directly related to Customer's use of the Software. If an audit determines that Customer's use of the Software exceeded 5% of the usage permitted by this Agreement, Customer shall pay to Company all amounts due for such excess use of the Software. Customer shall make all payments required under **Section 8** within five (5) Business Days of receipt of written audit results.

9. Confidentiality.

9.1 Confidential Information. Each Party (the "Disclosing Party") may disclose or make available Confidential Information to the other Party (the "Receiving Party"). Subject to **Section 9.2**, "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential." Without limiting the foregoing: (a) the Software and Documentation are the Confidential Information of Company; and (b) the financial terms of this Agreement are the Confidential Information of each of the Parties.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by



9.3 Protection of Confidential Information. As a condition to being provided with any Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under this Agreement;
- (b) except as permitted under the terms and conditions of **Section 9.4**, not disclose Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 9**; and (iii) are bound by confidentiality obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9**;
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the same degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care;
- (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and use commercially reasonable best efforts to prevent further unauthorized use or disclosure; and
- (e) ensure its Representatives' compliance with and be responsible for any of its Representatives' non-compliance with, the terms of this **Section 9**.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this **Section 9** with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws.

9.4 Compelled Disclosures. If the Receiving Party is compelled by applicable Law to disclose any Confidential Information, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party in challenging such disclosure. If the Disclosing Party waives compliance or, after providing notice and assistance required under this **Section 9.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, will use its best efforts to obtain assurances from the applicable court or presiding authority that such Confidential Information will be afforded confidential treatment.



10.1 **Intellectual Property Ownership.** Customer acknowledges and agrees that:

- (a) Company (and/or its licensors and suppliers, as the case may be) is and shall be the sole and exclusive owner of (and is hereby irrevocably assigned) all right, title, and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Software; (b) the Documentation; and (c) any improvements, modifications, and derivatives thereof/to, regardless of inventorship or authorship.
- (b) The Software & Documentation are protected by various Intellectual Property Rights, and its copies are licensed (not sold) to User by Company pursuant to this Agreement.

10.2 Customer Cooperation and Notice of Infringement. During the Term, Customer shall:

- (a) take all commercially reasonable steps to safeguard Company's Intellectual Property Rights from infringement, misappropriation, theft, misuse or unauthorized access;
- (b) at Company's request and expense, take all steps to assist Company in maintaining the validity, enforceability and Company's ownership of the Intellectual Property Rights;
- (c) promptly notify Company in writing if Customer becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of Company's Intellectual Property Rights in or relating to the Software or Documentation; or (ii) any claim that the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and
- (d) at Company's sole expense, reasonably cooperate with, and assist Company in the conduct of any Action by Company to prevent or abate any actual or threatened infringement, misappropriation or violation of Company's rights in, and attempts to resolve any Actions relating to, the Software or Documentation, including having Customer's employees testify when requested and making available for discovery or trial all relevant records, papers, information, samples, specimens and the like.

10.3 No Implied Rights. Except for the limited rights and licenses expressly granted herein, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Customer or any third party any Intellectual Property Right, other right, title, or interest in or to any of the Software or Documentation.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that:



- (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations required under this Agreement;
- (c) the execution of this Agreement by its signatory representative whose signature is set forth on the Order Form has been duly authorized by all necessary corporate or organizational action; and
- (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation, enforceable against each Party in accordance with its terms.

11.2 DISCLAIMER OF WARRANTIES. ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY COMPANY ARE PROVIDED “AS IS.” COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR OTHER PERSONS’ REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERRORS. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE SAME.

12. Indemnification.

12.1 Company Indemnification. Company shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns (each, a “**Customer Indemnitee**”) from and against any and all Losses incurred by Customer Indemnitees resulting from any Action by a third party alleging that the Software or Documentation, or any use thereof in accordance with this Agreement, infringes or misappropriates such third party’s US Intellectual Property Rights. This **Section 12.1** does not apply to the extent that the alleged infringement arises from any:

- (a) Open-Source Components or other Third-Party Materials;
- (b) operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Company, specified for Customer’s use in



(ii) with Company's express written authorization and in strict accordance with Company's written directions and specifications;

(d) use of any release of the Software other than the most current release or failure to timely implement any Maintenance Release, modification, update or replacement of the Software made available to Customer by Company;

(e) use of the Software after Company's notice to Customer of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;

(f) use of the Software or Documentation by Customer, Customer's Representatives, or any third party that is contrary to the purpose, scope, or manner authorized by this Agreement, or any negligence, abuse, misuse or other manner contrary to Company's instructions;

(g) events or circumstances outside of Company's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or

(i) Third-Party Claims or Losses for which Customer is obligated to indemnify Company pursuant to **Section 12.2**.

12.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, a "**Company Indemnitee**") from and against any and all Losses incurred by the Company Indemnitees resulting from any Action by a third party:

(a) that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any:

(i) use or combination of the Software by or on behalf of Customer or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided nor authorized by Company in this Agreement, the Documentation or otherwise in writing; and

(ii) information, materials, or technology directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;



(c) instance of gross negligence, abuse, misappropriation, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Customer or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement; or

(d) relating to use of the Software or Documentation by or on behalf of Customer or any of its Representatives that is outside the purpose, scope, or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Company's instructions.

12.3 Indemnification Procedure. A Party shall promptly notify the other Party in writing of any Action which such Party believes it is entitled to be indemnified under this **Section 12**. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. Indemnitor shall promptly assume control of defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee, at the Indemnitor's sole cost and expense. Indemnitee may participate in any proceedings at its own cost and expense with counsel of its own choosing. Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of Indemnitee without Indemnitee's prior written consent, which shall not be unreasonably withheld. If Indemnitor fails or refuses to assume control of the defense of such Action, Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to Indemnitor, in such manner and on such terms as the Indemnitee may deem appropriate. Indemnitor's failure to perform any obligations under this **Section 12.3** will not relieve Indemnitor of its obligations under **Section 12**, except to the extent that Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

12.4 Mitigation. If the Software, or any part of the Software, is, or in Company's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's use of the Software is enjoined or threatened to be enjoined, Company may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Software materially as contemplated by this Agreement;

(b) modify or replace the Software, in whole or in part, in order to make the Software non-infringing, while providing materially equivalent features and functionality; all modified or replaced software will constitute Software under this Agreement; or



in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Customer, in which event:

- (i) Customer shall cease all use of the Software and Documentation immediately on receipt of Customer's notice; and
- (ii) provided that Customer fully complies with its post-termination obligations set forth herein, Company shall promptly refund to Customer, a pro rata share of any fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

12.5 SOLE REMEDY. SECTION 12 SETS FORTH CUSTOMER'S SOLE REMEDIES AND COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. EXCEPT FOR COMPANY'S OBLIGATIONS UNDER SECTION 12, IN NO EVENT WILL COMPANY BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, REVENUES, OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE OR OPEN SOURCE COMPONENTS, (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES – REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID TO COMPANY UNDER THIS AGREEMENT FOR TWELVE (12) MONTHS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14. Term and Termination.

14.1 Term. The term of this Agreement commences as of the Effective Date and continues for the period set forth on the Order Form, unless terminated earlier pursuant to any provision herein



14.2 Renewal. The License shall automatically renew upon the lapse of the Initial Term, each time for successive periods identical to the Initial Term (each, an “**Additional Term**”, and together with the Initial Term, the “**Term**”) unless earlier terminated by either party by written notice at least sixty (60) days prior to the end of the Initial Term or any Additional Term then in effect. For each Additional Term, the price of the Services under the License shall increase by three percent (3%) over the previous Term.

14.3 Termination. This Agreement may be terminated at any time:

- (a) by Company, effective on written notice to Customer, if Customer fails to pay any amount when due under this Agreement (“**Payment Failure**”);
- (b) by either Party, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;
- (c) Upon written notice by Company, effective immediately, if Customer: (i) is dissolved or liquidated; (ii) becomes insolvent or is generally unable to pay its debts; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any valid bankruptcy or insolvency Law; (iv) makes a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

14.4 Effect of Termination or Expiration. On the expiration or termination of this Agreement, all rights, licenses, and authorizations granted to Customer hereunder will immediately terminate and Customer will: (A) immediately cease all use of the Services; (B) within five (5) Business Days destroy and permanently erase from all devices and systems Customer directly or indirectly controls, the Software and Documentation and Company’s Confidential Information, including all documents, files, and tangible materials (including any partial or complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; (C) certify in writing to Company that it has complied with the requirements of this **Section 14.4**; and (D) no later than ten (10) business days after the expiration or termination of this Agreement, pay to Company all amounts payable by Customer under this Agreement.

14.5 Survival. The following Sections shall survive any expiration or termination of this Agreement: this **Section 14.5**, **7 (Fees and Payment)**, **9 (Confidentiality)**, **10 (Intellectual Property Rights)**, **12 (Indemnification)**, **13 (Limitations of Liability)**, and **15 (Miscellaneous Provisions)**.



15.1 **Relationship of the Parties.** Nothing contained in this Agreement shall create any agency, fiduciary, partnership, franchise, or joint venture relation between the Parties. No Party shall have the power to obligate or bind the other party in any manner whatsoever.

15.2 **Public Announcements.** Neither party will make any announcements or statements to the public concerning the relationship between them or the transactions described herein without the prior written consent of the other party. Unless otherwise provided herein, neither party will use the other party's name, trademark, or logos without the prior written consent of the other party.

15.3 **Notices.** Any notice required or permitted under this Agreement shall be in writing to the Parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section and shall be deemed to have been received by the addressee if given by overnight courier service, or by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

15.4 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral.

15.5 **Assignment.** This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns. Neither Party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or a substantial portion of such party's assets or voting securities. Any attempt to transfer or assign this Agreement in violation of this Section 15.8 is null and void.

15.6 **Export Regulation.** The Software may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer will not directly or indirectly, export, re-export, release, or make the Software accessible to any jurisdiction, country, or Person to which export, re-export, or release is prohibited by applicable Law. Customer will comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the U.S.

15.7 **US Government Rights.** Each of the Documentation and software components that constitute the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. If Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Software and



contractors, or (b) to certain state or local government customers and their contractors.

15.8 Force Majeure. Except for payment obligations, neither Party is liable for any failure or delay in performance due to any cause beyond its reasonable control.

15.9 No Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

15.10 Amendment and Modification; Waiver. No amendment or modification of this Agreement is effective unless in writing and signed by an authorized representative of each Party. No failure by either Party in exercising any right under this Agreement will constitute a waiver of that right.

15.11 Severability. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be unenforceable, illegal or invalid, said provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

15.12 Governing Law & Forum. This Agreement, and any disputes arising from it, shall be construed according to the laws of the State of Idaho. The Parties agree to accept the exclusive jurisdiction and venue of the state and federal courts located in Ada County, Idaho for the adjudication of any dispute arising in connection with or related to this Agreement or the interpretation of this Agreement.

15.13 Waiver of Jury Trial. Each Party unconditionally waives its rights to a trial by jury in any legal action relating to this Agreement.

15.14 Equitable Relief. Customer acknowledges and agrees that a breach or by Customer of any of its obligations under **Sections 2.4, 7, 10, or 12** of this Agreement would cause Company irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach, Company shall be entitled to equitable relief, including: a restraining order, injunction, specific performance, or any other form of equitable relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, or prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available to Company at law, in equity, or otherwise.

15.15 Attorneys' Fees. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs from the non-prevailing Party.



expense in the following amounts: **Comprehensive Commercial General Liability** – with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, covering bodily injury, property damage liability, Contractual Liability, Business Interruption of not less than 6 months of lost income, and \$1,000,000 products/completed operations aggregate; **Professional Liability (Errors & Omissions)** – coverage in the amount of at least \$1,000,000 per occurrence and \$5,000,000 in the annual aggregate; and **Cyber/Privacy Liability** – coverage in the amount of at least \$5,000,000 containing coverage for data privacy and network security liability, Internet and electronic media liability, professional services liability, business interruption, cyber extortion, data and identity theft, Intellectual Property, expenses related to responding to a privacy event.

Platform

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