



LICENSEE AND VOXJAR, INC. (“LICENSOR”) HEREBY AGREE AS FOLLOWS:

SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

THIS SOFTWARE SUBSCRIPTION LICENSE AGREEMENT shall apply to Licensee’s use of Licensor’s subscription services, packaged professional services, all linked pages, content, products and offline components (“Service” or “Services”) identified in one or more ordering documents signed by the parties, including any exhibits thereto (“Order” or “Orders”). These Terms and Conditions and all Orders (collectively referred to as the “*Agreement*”) represent the parties’ entire understanding regarding the Services and shall control over any different or additional terms of any purchase order or other non-Licensor ordering document, and no terms included in any such purchase order or other non-Licensor ordering document shall apply to the Services. In the event of a conflict between these Terms and Conditions and an Order, the terms of the Order shall control. All capitalized terms not defined herein shall have the meanings attributed in the Order. For purposes of this Agreement, Licensee shall also mean and include any and all of its “Affiliates”. Licensor and Licensee are collectively referred to hereinafter as the “Parties”.

RECITALS:

WHEREAS, Licensor has developed certain software applications and platforms which it makes available to subscribers via the Internet for the purpose of analyzing phone calls.

WHEREAS, Licensee desires to use certain Licensor’s software applications and platforms via the Internet in connection with its business operations.

WHEREAS, Licensor has agreed to provide Licensee with certain Licensor’s software applications and platforms via the Internet subject to the terms and conditions of this Agreement.

THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT:

SECTION I: DEFINITIONS

As used herein, the following terms shall have the following meanings, unless the context otherwise specifies:

“*Affiliates*” means, with respect to any person, entity, or enterprise, any other person, entity, or enterprise that, directly or indirectly, through one or more intermediaries, “Controls”, is “Controlled by”, or is “under common Control with” (as those terms are hereinafter defined) such person, entity, or enterprise.

“Control,” “Controls,” “Controlled by,” and “under common Control” with means, with respect to any person, entity, or enterprise, the power, directly or indirectly, direct or cause the direction of the management and policies of such person, entity, or enterprise, whether through the ownership of voting securities, by contract, or otherwise.

“Authorized Users” means those employees, agents and independent contractors of Licensee who are authorized by Licensee to use the “Services”, “Software”, and the “Documentation” (as those terms are hereinafter defined). The number of Authorized Users is tracked by the Software as added by Licensee.

“Active Agents” means Authorized Users who have at least one call recording added to the Software during the current billing period. The number of Active Agents is tracked and stored automatically by the Software.

“Services” means those certain software application and platform subscription services provided by Licensor to Licensee under this Agreement via that certain website located at <https://app.voxjar.com/> or any other website used by Licensor to provide the Services to Licensee from time to time as more particularly described in this Agreement and the “Documentation” (as hereinafter defined).

“Documentation” means any and all user manuals, specifications, and/or written documentation made available by Licensor from time to time to Licensee in connection with and/or relating to the Services and/or “Software” (as hereinafter defined).

“Software” means the online software applications and/or platforms provided by Licensor as part of the Services.

“Subscriptions” means those certain user subscriptions purchased by Licensee pursuant to this Agreement that entitle Authorized Users to access and use the Services, Software, and the Documentation in accordance with this Agreement.

“Use” means Licensee’s right to perform, display, copy, load into a computer’s memory, and test the Software, as well as to maintain copies of the Software and Documentation for back-up or archival purposes, as well as to allow third-party contractors or subservicers to utilize the software exclusively for the purpose of processing Licensee’s data. Licensee shall be authorized to use the Software to process, through applications owned and/or provided by Licensee, Licensee’s data and its Affiliates’ data. Notwithstanding, nothing contained in this Agreement shall in any way be construed to authorize or permit Licensee to utilize, directly or indirectly, the Software in connection with a non-affiliated third party in a service bureau, facilities manager, or under a time share arrangement.

SECTION II: SERVICES

2.1 **BEST EFFORTS.** During the “Subscription Term” (as hereinafter defined), Licensor shall use its best efforts to provide and otherwise make available the Software and Services to Licensee pursuant to the terms and conditions set forth in this Agreement.

2.2 **AVAILABILITY.** Unless otherwise specified in this Agreement, Licensor shall make the Services and Software available to Licensee twenty-four (24) hours a day, seven (7) days a week.

2.3 CUSTOMER SUPPORT. Unless otherwise specified in this Agreement, Licensor shall, as part of the Services and at no additional cost to Licensee, provide Licensee with Licensor's standard customer support services during normal business hours in accordance with Licensor's support services policy in effect at the time that the Services are provided.

SECTION III: TERM

3.1 TERM. This Agreement shall become effective on the date set forth in the first Order ("*Effective Date*") and shall continue in full force and effect unless or until terminated by either party as provided for in this Agreement ("*Subscription Term*").

3.2 TERMINATION. This Agreement may be terminated as follows:

i. if Licensor makes an assignment for the benefit of creditors, files a petition in bankruptcy, commences any proceeding relating to it under any bankruptcy or similar statute, or there is commenced against Licensor any proceeding which is not dismissed within thirty (30) calendar days, Licensee may terminate immediately upon giving notice to Licensor.

ii. by Licensee, for Licensor's material breach and failure of Licensor to cure such breach within thirty (30) calendar days after receiving written notice of such breach from Licensee.

iii. by Licensee by giving Licensor thirty (30) calendar days' prior written notice in the event of a month-to-month agreement.

3.3 TERMINATION ASSISTANCE. Upon the termination of this Agreement by either party for any reason, including Licensee's convenience:

i. Licensor will provide Licensee with reasonable termination assistance services related to an orderly and smooth transition to another Licensor or other solution. This termination assistance service will be provided to Licensee at Licensor's then-current rates;

ii. all licenses granted under this Agreement shall immediately terminate;

iii. each party shall return and make no further use of any equipment, property, Documentation, and other items (and all copies of them) belonging to the other party;

iv. Licensor shall destroy any of Licensee's Confidential Information in its possession unless Licensor receives, no later than ten (10) business days after the effective date of the termination of this Agreement, a written request for the delivery to Licensee of the then most recent back-up of the Confidential Information in Licensor's custody, control, or possession. Licensor shall use commercially reasonable efforts to deliver the Confidential Information back-up to Licensee, at Licensor's sole cost and expense, within thirty (30) calendar days of its receipt of such a written request.

SECTION IV: SUBSCRIPTIONS



4.1 **LICENSE TERM.** Upon Licensee's purchase of the Subscription pursuant to this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, royalty-free, worldwide, enterprise-wide license and right for Licensee's Authorized Users to use the Services, Software, and the Documentation during the Subscription Term solely for Licensee's internal business operations.

4.2 **AUTHORIZED USERS.** Licensee shall use good faith efforts to ensure that the maximum number of Authorized Users that Licensee authorizes to access and use the Services, Software, and the Documentation pursuant to this Agreement shall not exceed the number of Subscriptions Licensee has purchased from Licensor.

4.3 **MULTIPLE USERS.** Licensee shall use good faith efforts to prevent any User Subscription to be used by more than one individual Active Agent unless it has been reassigned in its entirety to another individual Active Agent, in which case the prior Active Agent shall no longer have any right to access or use the Services, Software, and/or Documentation.

4.4 **SECURE PASSWORDS.** Licensee shall use good faith efforts to ensure that each Authorized User shall (i) keep a secure password for its use of the Services, Software, and Documentation, (ii) that such password shall be changed no less frequently than monthly, and (iii) that each Authorized User shall keep his password confidential.

4.5 **USER LIST.** Licensee shall maintain a current written list of all Authorized Users and provide such written list to Licensor within ten (10) business days from Licensee's receipt of Licensor's written request for same.

4.6 **DISTRIBUTION.** Unless expressly provided under this Agreement, Licensee shall not, without Licensor's prior written consent (which may not be unreasonably withheld or delayed), (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Software and/or Documentation (as applicable) in any form or media or by any means, (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or Software, or (iii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software, and/or Documentation available to any third party except the Authorized Users.

SECTION V: PROPRIETARY RIGHTS

5.1 **PROPRIETARY RIGHTS.** Licensee acknowledges and agrees that Licensor owns all intellectual property and other proprietary rights in and to the Services, Software, and the Documentation. Except as may be expressly stated in this Agreement, this Agreement does not grant Licensee any rights in or to patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other intellectual or proprietary rights or licenses in connection with the Services, Software, or the Documentation.

SECTION VI: REPRESENTATIONS & WARRANTIES

6.1 **BY LICENSOR.** Licensor hereby makes the following representations and warranties:

(a) Licensor warrants and represents that it has full power and authority to enter into this Agreement, and that Licensor has all rights necessary to grant the licenses and perform the Services hereunder to Licensee without the consent of any other person or entity;

(b) Licensor warrants and represents that neither the performance of any Services by Licensor nor Licensee's use of the Software and/or Documentation (including the copying thereof) will in any way infringe upon or violate any United States or foreign copyright, patent, or trademark, or misappropriation of any trade secrets or other proprietary rights of any third party;

(c) Licensor warrants and represents that the Services will be performed in a timely, professional, and workmanlike manner by qualified professional personnel using reasonable skill and care;

(d) Licensor warrants and represents that the Services and Software shall operate and conform to the Documentation and any performance capabilities, specifications, functions or other descriptions that the Parties have agreed to and which are identified in this Agreement;

(e) Licensor warrants and represents that for a period of one (1) year, commencing upon the Effective Date, the Software and Services furnished under this Agreement shall be free from significant programming errors and defects;

(f) Licensor warrants and represents that the Software, its license to and use by Licensee, and the performance by Licensor of any related services, shall be in compliance with applicable laws, rules and regulations whether of the United States, or any state, country, or government authority or agency. Licensor shall, at its own expense, comply with all such laws, rules and regulations and assume all liabilities or obligations imposed by such laws, rules and regulations with respect to Licensor's performance;

(g) Licensor warrants and represents that the advent of any date or year change shall not adversely affect the performance of the Software;

(h) Licensor warrants and represents that the Services and Software provided under this Agreement, and including any and all modifications, enhancements, or updates provided thereafter, shall neither cause nor introduce into Licensee's computer systems, databases, or software, any virus or any other contaminants (including, but not limited to, codes, commands, instructions, devices, techniques, bugs, or design flaws) that may be used to access, alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down Licensee's computer systems, databases, software, or other Licensee information or property, in a manner other than in accordance with the terms of this Agreement;

(i) Licensor warrants and represent that it shall: (a) not introduce into Licensee's computer systems, databases, or software, any virus or any other contaminants (including, but not limited to, codes, instructions, devices, techniques, bugs, or design flaws) that may be used to access, alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down Licensee's computer systems, databases, software, or other Licensee information or property, in a manner other than in accordance with the terms of this Agreement; (b) not, without Licensee's prior written consent and without complying with Licensee's security policies and procedures, access or remove from Licensee's

premises any Confidential Information, computer systems, and/or other property of Licensee, its Affiliates, employees, or customers; and (c) shall at all times comply with Licensee's policies, procedures, and guidelines regarding information protection, systems and data security, and privacy, and shall not tamper with, compromise, or attempt to circumvent any physical or electronic security or audit measures employed by Licensee in the course of Licensee's business operations, and/or compromise the security of Licensee's computer systems, networks, and/or facilities; *and*

(j) Licensor represents and warrants to Licensee that all data types, structure, formats, and content will be converted completely and accurately such that Licensee will be able to reconcile the original data with the converted data without any loss to or deviation from the original data. In the event of data loss caused by the Services or Software, including, but not limited to, a Services or Software failure resulting from an error, malfunction, or overloading, Licensor shall undertake its best efforts to restore or recover any data or results at no cost to Licensee within a commercially reasonable time.

6.2 BY LICENSEE. Licensee hereby makes the following representations and warranties:

(a) Licensee warrants and represents that it will comply with all applicable laws and regulations with respect to its obligations under this Agreement; *and*

(b) Licensee warrants and represents that it will provide Licensor with all necessary access to such information as may be reasonably required by the Licensor to perform and/or otherwise render the Services under this Agreement.

SECTION VII: LIMITATION OF LIABILITY

EXCEPT AS SPECIFICALLY MADE HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LICENSEE'S LIABILITY FOR ANY LIABILITIES, LOSSES, COSTS, DAMAGES AND EXPENSES IN ASSOCIATION WITH ANY CLAIM OR ACTION RELATED TO, IN CONNECTION WITH OR ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO LICENSOR'S DIRECT DAMAGES, ACTUALLY INCURRED, WHICH UNDER NO CIRCUMSTANCES SHALL EXCEED THE AMOUNT OF FEES PAID BY Licensee TO LICENSOR UNDER THIS AGREEMENT WHICH GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE.

LICENSOR ACKNOWLEDGES THAT IN NO EVENT SHALL LISCENSEE BE LIABLE FOR LOSS OF PROFITS, LOSS OF BUSINESS, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR FOR THE CLAIMS OR DEMANDS MADE BY ANY THIRD PARTIES. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST LISCENSEE MORE THAN ONE (1) YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED. THE PARTIES HEREBY AGREE THAT THE PROVISIONS OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT SHALL NOT BE APPLICABLE TO THIS AGREEMENT AND/OR THE SOFTWARE LICENSED BY LISCENSEE PURSUANT HEREUNDER.

SECTION VIII: CONFIDENTIAL INFORMATION AND DATA SECURITY

8.1 **CONFIDENTIAL INFORMATION.** Licensee (including its Affiliates) and Licensor may from time to time disclose to each other (both orally and in writing and in any form or medium) in connection with the Services provided hereunder “Confidential Information” (as hereinafter defined). As used in this Agreement, the term “Confidential Information” shall mean any and all information furnished or disclosed, in whatever form or medium, concerning a disclosing party, including, without limitation, such disclosing party’s intellectual property, clients, customer lists, business contacts, business plans, policies, procedures, techniques, know-how, standards, products, source or object code, product or service specifications, manuals, agreements, economic and financial information, marketing plans, data, reports, analyses, compilations, statistics, summaries, studies, and any other materials or information, or any materials based thereon, whether written or oral, furnished directly or indirectly by a disclosing party or any of such disclosing party’s directors, officers, employees, agents, attorneys, accountants, advisors and other representatives. For purposes herein, any technical or business information of a third person furnished or disclosed by one party to the other shall be deemed Confidential Information of the disclosing party and subject to the terms of this Section. Licensee’s Confidential Information also shall include any proprietary and/or confidential information related to Licensee’s Affiliates, sales representatives, and/or customers. Licensor’s Confidential Information also shall include Licensor’s (and its subcontractors’) pre-existing proprietary software, if any, provided to or accessed by Licensee hereunder.

8.2 **THIRD-PARTY DISCLOSURE.** The receiving party agrees to treat all Confidential Information provided by the disclosing party pursuant to this Agreement issued hereunder as proprietary and confidential to the disclosing party, and the receiving party shall not (without the prior written consent of the disclosing party) disclose or permit disclosure of such Confidential Information to any third party, provided that the receiving party may disclose, on a need-to-know basis, such Confidential Information to its third party subcontractors who have signed non-disclosure agreements with the receiving party which contains confidentiality and non-disclosure obligations that are at least as protective of the disclosing party’s Confidential Information as set forth herein, and/or to its current employees, officers, or directors, or legal or financial representatives. The receiving party agrees to safeguard all Confidential Information of the disclosing party with at least the same degree of care (which in no event shall be less than reasonable care) as the receiving party uses to protect its own Confidential Information.

8.3 **PERSONALLY IDENTIFIABLE INFORMATION.** In addition to the foregoing, in the event that Licensee’s Confidential Information contains any personally identifiable information of Licensee’s (and/or its Affiliates’) employees, or customers, Licensor agrees to comply at all times with (and maintain and safeguard such information in accordance with) (i) Licensee’s (and/or its Affiliates’) then-current privacy policies and procedures, which policies and procedures can be made available to Licensor upon Licensor’s reasonable request, and (ii) any and all applicable privacy laws, regulations, statutes, and guidelines.

8.4 **NON-CONFIDENTIAL INFORMATION.** Notwithstanding the foregoing, the Parties agree that the following information shall not be deemed Confidential Information, and the receiving party shall have no obligation with respect to any such information:

(a) Information which is independently developed by the receiving party without use of the disclosing party’s Confidential Information;

(b) Information which is or becomes in the public domain by no fault or wrongful act of the receiving party;

(c) Information which is known by the receiving party prior to disclosure by the disclosing party;

(d) Information which is disclosed to the receiving party by third party who was not under a similar restriction or obligation of confidentiality to the disclosing party, and without breach of this Agreement; *or*

(e) Information which is approved for release by written authorization of the disclosing party and/or the third party owner of the disclosed information.

8.5 **LAWFUL DISCLOSURE.** The receiving party may disclose the disclosing party's Confidential Information pursuant to the lawful requirement or order of a court or governmental agency; provided that, upon the receiving party's receipt of a request for such a disclosure, the receiving party gives prompt notice thereof to the disclosing party (unless such notice is not legally possible under the circumstances) so that the disclosing party may have the opportunity to intervene and contest such disclosure and/or seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not legally possible under the circumstances, the receiving party shall furnish only that portion of the Confidential Information which is legally required and the receiving party shall exercise its reasonable best efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information.

8.6 **DISCLOSING PARTY PROPERTY.** All Confidential Information transmitted or disclosed hereunder will be and remain the property of the disclosing party, and the receiving party shall (at the disclosing party's election) promptly destroy or return to the disclosing party any and all copies thereof upon termination or expiration of this Agreement, or upon the written request of the disclosing party. Upon the request of the disclosing party, any such destruction shall be certified in writing by the receiving party. This section shall not apply to intellectual property created from the disclosing party's Confidential Information, including, but not limited to, transcripts, metadata, reports, and software updates.

8.7 **LICENSEE TAMPERING.** Licensee shall not tamper with, compromise, or attempt to circumvent any physical or electronic security or audit measures employed by Licensor or its Affiliates in the course of Licensor's or its Affiliates' business operations. Licensee shall not, without Licensor's prior express written consent, or as otherwise provided in this Agreement, and without complying with Licensor's and its Affiliates' security policies and procedures, (i) access any Confidential Information or computer systems of Licensor its Affiliates, or (ii) remove from Licensor's premises any work product, Confidential Information, or any other property, whether tangible or intangible, of Licensor or its Affiliates.

8.8 **EQUITABLE RELIEF.** The parties acknowledge and agree that, given the unique and proprietary nature of the Confidential Information, monetary damages may not be calculable or a sufficient remedy for any breach of this Section by the receiving party, and that the disclosing party may suffer great and irreparable injury as a consequence of such breach. Accordingly, each party agrees that, in the event of such a breach or threatened breach, the disclosing party shall be entitled to seek equitable relief (including, but not limited to, injunction and specific performance) in order to remedy such breach or

threatened breach. Such remedies shall not be deemed to be exclusive remedies for a breach by the receiving party but shall be in addition to any and all other remedies provided hereunder or available at law or equity to the disclosing party and the Receiving Party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

8.9 **FAILURE TO ADDRESS COMPLIANCE.** This Section sets forth information security procedures to be established by Licensor and maintained throughout the Subscription Term. These procedures are in addition to the requirements of the Agreement and present a minimum standard only. However, it is Licensor's sole obligation to (i) implement appropriate measures to secure its systems and data, including Licensee Confidential Information, against internal and external threats and risks; and (ii) continuously review and revise those measures to address ongoing threats and risks. Failure to address compliance gaps in a mutually agreeable manner and within a mutually agreeable timeframe, as related to the minimum standards as set forth in this Section will constitute a material, non-curable breach of the Agreement by Licensor, entitling Licensee, in addition to and cumulative of all other remedies available to it at law, in equity, or under the Agreement, to immediately terminate the Agreement. In the event there is a failure to comply with the minimum standards set forth in this Section, Licensee may direct Licensor to develop a written plan of corrective action for consideration by Licensee.

8.10 **REMOVABLE MEDIA.** Except in the context of Licensor's routine back-ups or as otherwise specifically authorized by Licensee in writing, Licensor shall institute strict physical and logical security controls to prevent transfer of Licensee Confidential Information via any form of "Removable Media" (as hereinafter defined). For purposes of this Agreement, the term "Removable Media" means portable or removable hard disks, floppy disks, USB memory drives, jump drives, zip disks, optical disks, CDs, DVDs, digital film, memory cards, and all other removable data storage media. Licensor hereby agrees that in any exception situations involving Confidential Information, that are specifically approved by Licensee in writing, such data will be Advanced Encryption Standard or such other commercially recognized encryption technology as Licensee shall approve in writing from time to time, and Licensor will provide decryption keys or codes to only the authorized representatives of the third parties via secure out of band communications only.

8.11 **LICENSOR FACILITIES.** Licensor facilities that process Licensee Confidential Information will be housed and/or processed in secure areas and protected by perimeter security such as access controls that provide a physically secure environment from unauthorized access, damage, and interference.

8.12 **ONGOING EFFORTS.** Licensor shall (i) monitor and manage all of its information processing facilities, including, without limitation, implementing operational procedures, change management and incident response procedures; and (ii) deploy adequate anti-viral software and adequate back-up facilities to ensure essential business information can be promptly recovered in the event of a disaster or media failure; and (iii) ensure its operating procedures will be adequately documented and designed to protect information, computer media, and data from theft and unauthorized access.

8.13 **FORMAL PROCEDURES.** Licensor shall implement formal procedures to control access to its systems, services, and data, including, but not limited to, user account management procedures and the following controls:

(a) Network access to both internal and external networked services shall be controlled, including, but not limited to, the use of properly configured firewalls;

(b) Operating systems will be used to enforce access controls to computer resources including, but not limited to, authentication, authorization, and event logging;

(c) Applications will include access control to limit user access to information and application system functions; *and*

(d) All systems will be monitored to detect deviation from access control policies and identify suspicious activity. Licensor shall record, review and act upon all events in accordance with incident response policies set forth below.

8.14 **LICENSEE CONTACT.** Licensor will promptly notify (but in no event more than twenty-four (24) hours after confirmation of the occurrence) the designated Licensee security contact by telephone and subsequently via written letter of any suspected and potential or actual security attacks or incidents, whether directed from internally or externally. The notice shall include the approximate date and time of the occurrence and a summary of the relevant facts, including a description of measures being taken to address the occurrence. A security incident includes instances in which internal personnel access systems in excess of their authorized user rights or use the systems inappropriately for the purpose of committing theft or fraud or otherwise compromising Licensee's Confidential Information. Licensor will notify Licensee of each and every security incident involving Licensee's Confidential Information.

8.15 **SECURITY REPORTS.** Licensee reserves the right to view, upon request, any original security reports that Licensor has undertaken on its behalf to assess Licensor's own network security, assuming such reports do not compromise information of other Licensor clients not related to Licensee.

SECTION IX: PAYMENT

9.1 **BILLING AND PAYMENT.** Licensee shall pay Licensor all fees set forth in an Order. The amount per Active Agent will be paid monthly for the length of the Subscription Term ("**Subscription Fee**"). Licensor shall bill Licensee via automatic online payment beginning on the Subscription Start Date, and on or before the same day of each successive month for the Subscription Term, should the date not occur on a given month, then the closest calendar date of said month shall be used.

SECTION X: PRICING

10.1 **PRICING.** At all times during the performance of Services hereunder, Licensor shall notify Licensee of proposed changes to the Subscription Fee within thirty (30) days of the change in pricing ("**Proposed Pricing**"). Should Licensee not notify of termination or objection the change in pricing, the Subscription Term shall continue under the proposed pricing.

SECTION XI: INDEMNIFICATION

11.1 **LOSSES.** For purposes of this Agreement, "Losses" shall mean all losses, liabilities, damages and costs (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation and settlement).

11.2 **INDEMNIFICATION.** Licensors agree to indemnify, defend and hold Licensee harmless, including its Affiliates, and its and their respective officers, directors, employees, agents, successors and permitted assigns thereof from and against any and all Losses arising out of or in connection with: (i) Licensors' breach of this Agreement, and/or (ii) Licensors' willful misconduct and/or intentional or grossly negligent acts hereunder, whether in connection with their performance under this Agreement or not. Licensors may, at its option, conduct the defense in any such third party action arising as described herein and Licensee promises fully to cooperate with such defense. Licensors shall not enter into a settlement arrangement, without the prior written consent of Licensee, if such settlement arrangement would prejudice, effect, or harm Licensee's status as an indemnified party as set forth herein.

11.3 **INTELLECTUAL PROPERTY INFRINGEMENT.** If the normal operation or use of the Software by Licensee is found to infringe any third party intellectual property right, or Licensors believe that the Software is likely to do so, Licensors shall, at its option (and in addition to any other rights available to Licensee under this Agreement): (a) replace the Software, without additional charge, by a compatible, functionally equivalent and non-infringing Software; (b) modify the Software to avoid the infringement; or (c) obtain a license for Licensee to continue use of the Software for the term of this Agreement and pay for any additional fee required for such license. If none of the foregoing alternatives are possible even after Licensors' best efforts (but in no event more than ten (10) business days after receiving notice thereof), either party may terminate this Agreement in accordance with this Agreement, in which event Licensors shall promptly (but in no event more than ten (10) business days) refund to Licensee a pro rata portion of the Subscription Fee paid under this Agreement.

SECTION XII: MISCELLANEOUS

12.1 **NOTICE.** All notices required to be given under this Agreement shall be in writing, sent via electronic mail, facsimile, U.S. mail, certified mail, return receipt requested, postage prepaid, or by national overnight carrier, to the addresses set forth above for Licensee and Licensors, respectively.

12.2 **HEADINGS.** The Section headings and subheadings contained in this Agreement are embodied herein for the purpose of convenience or reference only and shall not limit or affect any terms or conditions hereof.

12.3 **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Venue for any and all proceedings which may arise herefrom shall be in a federal or state court located in Salt Lake City, Utah.

12.4 **NO WAIVER.** The waiver by either party hereto of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party hereto.

12.5 **ASSIGNMENT.** This Agreement shall be binding upon the Parties, their heirs, personal representatives, successors and assigns.

12.6 **USE OF NAME.** Unless otherwise agreed to in writing by the Parties, Licensee agrees that Licensors may, in the course of performance of this Agreement, or thereafter, use or refer to in any advertising, publicity, promotional, marketing, or other materials, media, or activities, any name, trade name, trademark, service mark, logo, or any other designation of Licensee or any of its Affiliates without the prior written consent of Licensee.

12.7 SEVERABILITY. If any provision of this Agreement or any other agreement entered into pursuant to this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of such provision shall not be invalidated and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

12.8 ENTIRE AGREEMENT. This Agreement contains the entire understanding and agreement of the Parties relating to the relationship between Licensor and Licensee and supersedes any and all other negotiations and agreements, whether written or oral, between same. This Agreement may not be changed, waived, modified or amended orally but only by an agreement in writing signed by the party against whom enforcement of any change, modification, waiver or discharge is sought.

12.9 PREVAILING PARTY. In the event of any proceeding to enforce the terms hereof or of any dispute hereunder, the prevailing party in such proceeding and/or dispute shall be entitled to recover from the non-prevailing party the prevailing party's expenses associated therewith including, without limitation, reasonable attorneys' and paralegals' fees and costs through and including all pre-trial, trial and appellate levels and post-judgment proceedings.

12.10 COUNTERPARTS. This Agreement and any amendments hereto may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

12.11 CONSTRUCTION. Each party has been independently advised by counsel (or has had the opportunity to seek the advice of legal counsel) and each has cooperated and participated in the drafting and preparation of this Agreement. Accordingly, the Parties hereto acknowledge and agree that this Agreement shall not be construed or interpreted in favor of or against any party by virtue of the identity of any alleged preparer.

12.12 AUTHORITY AND UNDERSTANDING. Each of the Parties, by signing below, represents and warrants to the other party, that it, he or she has read, understands, and has the authority to bind the named person or entity to this Agreement.

12.13 TIME IS OF THE ESSENCE. Time is of the essence for all obligations set forth in this Agreement.

12.14 SURVIVAL. Any provision of or obligation under this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any such termination or expiration, and shall continue in full force and effect. In addition, all provisions of this Agreement shall survive the termination or expiration of this Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein and of the intent contemplated in this Agreement.

The parties hereto have caused this Agreement to be executed as of the date first written above.