

MASTER SUBSCRIPTION SERVICES AGREEMENT

This **Master Subscription Services Agreement** (including the attached Subscription Services Guide) (“Agreement”) is made between 47Concepts, LLC, a Texas limited liability company (“COMPANY”), and the CUSTOMER entity (“CUSTOMER”) on the Ordering Document (as defined below) and becomes effective on the last signature date of the Ordering Document issued by COMPANY (“Effective Date”).

SCOPE OF AGREEMENT

This Agreement is deemed to include the General Terms and Conditions below, along with the following documents and any other terms expressly referenced herein or in other incorporated documents, all of which are expressly deemed incorporated in the Agreement by this reference.

- Exhibit A.1 - Subscription Services Guide
- Exhibit A.2 - CUSTOMER Support Policy
- Exhibit A.3 - Upgrades and Updates
- Exhibit A.4 - Data Processing Addendum
- Exhibit A.5 - Data Security Guide

In the event of a conflict between the terms of this Agreement and an Ordering Document, the terms in the Ordering Document shall control. The Subscription Services Guide is posted on <https://www.47Concepts.com/servicesguide> and incorporated herein by reference.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 **“Affiliates”** means any organizations, individual persons, or business concerns that are controlled by a third party or each other, where “Control” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.
- 1.2 **“Ancillary Software”** means software licensed by COMPANY to CUSTOMER that is deployed on machines operated by or for CUSTOMER to facilitate operation of the Subscription Services or interoperation of the Subscription Services with other software, hardware, or services. Ancillary Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Ancillary Software.
- 1.3 **“Claim”** means any third-party suit, claim, action, or demand.
- 1.4 **“Confidential Information”** means: (i) all information disclosed by a Disclosing party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances surrounding the disclosure, and (ii) information otherwise obtained, received, or accessed through a connection to the other party’s systems, software, or networks. The terms of this Agreement and any SOW are the Confidential Information of both parties. Confidential Information excludes information that: (i) is or becomes known to the public without breach of this Agreement by the Receiving party, (ii) was known to the Receiving party prior to its disclosure by the Disclosing party without breach of any obligation to the Disclosing party, (iii) is received from a third party without any obligation of confidentiality to the Disclosing party; or (iv) was independently developed by the Receiving party without reference to the Disclosing party’s Confidential Information
- 1.5 **“CUSTOMER Data”** means electronic data uploaded by or for CUSTOMER or CUSTOMER agents, employees, or contractors, and processed in the Subscription Services, excluding COMPANY’S Core Technology.
- 1.6 **“CUSTOMER Technology”** means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by CUSTOMER (or on CUSTOMER’S behalf, other than by COMPANY or at COMPANY’S direction) for use with the Subscription Services, excluding COMPANY’S Core Technology.

- 1.7 **“Deliverable”** means anything that is created by or on behalf of COMPANY for CUSTOMER in the performance of Professional Services.
- 1.8 **“Documentation”** means the then-current COMPANY product documentation relating to the operation and use of the Subscription Services or Ancillary Software published by COMPANY at <https://www.47Concepts.com>. Documentation includes technical program or interface documentation, user manuals, operating instructions, and release notes.
- 1.9 **“Intellectual Property Rights”** means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights.
- 1.10 **“Law”** means any applicable law, rule, statute, decree, decision, order, regulation, judgment, code, and requirement of any government authority (federal, state, local, or international) having jurisdiction.
- 1.11 **“Ordering Document”** means the Order Form, Use Authorization, SOW, or any other signed document indicating the purchase of the Subscription Services or Professional Services, as applicable, between COMPANY and CUSTOMER.
- 1.12 **“Product Overview”** means COMPANY’S published description of its products and their functionalities, solely to the extent attached to or expressly referenced in a Use Authorization.
- 1.13 **“Professional Services”** means any consulting, development, or educational services provided by or on behalf of COMPANY pursuant to an agreed SOW.
- 1.14 **“COMPANY Core Technology”** means: (a) the Subscription Services, Ancillary Software, Documentation, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software, media files, architecture, class libraries, objects, and documentation) created by or for, or licensed to, COMPANY; and (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals.
- 1.15 **“COMPANY Products”** means, collectively, the Subscription Services, Ancillary Software, Documentation, and Deliverables.
- 1.16 **“RESELLER”** means a CUSTOMER who is authorized to sell the Subscription Services to third-parties subject to the terms of a RESELLER Use Authorization Order Form and this Agreement.
- 1.17 **“SOW”** means a statement of work that describes scoped Professional Services.
- 1.18 **“Subscription Services”** means the COMPANY software-as-a-service (SaaS) offering ordered by CUSTOMER under a Use Authorization.
- 1.19 **“Subscription Term”** means the period of authorized access to and use of the Subscription Services, as set forth in a Use Authorization.
- 1.20 **“Use Authorization”** means a written ordering document provided to CUSTOMER specifying the services that CUSTOMER has licensed, along with the term and scope of the authorized use thereof.

2. ACCESS AND USE RIGHTS; RESTRICTIONS; PROVISION OF PROFESSIONAL SERVICES

- 2.1 ACCESS AND USE RIGHTS. For each Subscription Term, COMPANY grants the access and use rights set forth in this Section 2 for the COMPANY’S Core Technology described in that Use Authorization.
 - 2.1.1 SUBSCRIPTION SERVICES. Subject to the terms of this Agreement, COMPANY authorizes CUSTOMER to access and use the Subscription Services during the Subscription Term stated in the applicable Use Authorization, in accordance with the Documentation. CUSTOMER agrees that it will not access or use the

Subscription Services in a manner that exceeds CUSTOMER'S authorized access and use rights as set forth in this Agreement and the applicable Use Authorization.

2.1.2 **ANCILLARY SOFTWARE.** COMPANY grants CUSTOMER a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 12.1 (Assignment)), non-exclusive, royalty-free license during the Subscription Term to install and execute Ancillary Software on machines operated by or for CUSTOMER, solely to facilitate CUSTOMER'S authorized access to and use of the Subscription Services.

2.2 **RESTRICTIONS.** With respect to the COMPANY'S Core Technology, CUSTOMER will not (and will not permit others to): (a) use it in excess of contractual usage limits (including as set forth in a Use Authorization), or in a manner that circumvents usage limits or technological access control measures; (b) license, sub-license, sell, resell, rent, lease, transfer, distribute, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated in a Use Authorization; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the COMPANY'S Core Technology; (d) disassemble, reverse engineer, or decompile it; (e) copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in this Agreement; (f) remove or modify a copyright or other proprietary rights notice in it; (g) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (h) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (i) access or disable any COMPANY or third-party data, software, or network (other than CUSTOMER'S instance of the Subscription Services under this Agreement). Before CUSTOMER engages in any of the foregoing acts that it believes it may be entitled to, it will provide COMPANY with 30-days' prior written notice to customer@47concepts.com, along with reasonably requested information to allow COMPANY to assess CUSTOMER'S claim. COMPANY may, in its discretion, provide alternatives that reduce adverse impacts on COMPANY'S Intellectual Property Rights or other rights. CUSTOMER will not proceed with any of the acts listed in this section without having received written approval from COMPANY.

2.3 **PROVISION OF PROFESSIONAL SERVICES.** CUSTOMER and COMPANY may enter into one or more SOWs or Use Authorizations subject to this Agreement, and which may incorporate one or more SOWs for the provision of Professional Services. COMPANY will perform the Professional Services, subject to the fulfillment of any responsibilities and payments due from CUSTOMER, as stated in the SOW or the Use Authorization.

3. ORDERING

3.1 **RESELLER SUBSCRIPTION SERVICES.** If Customer executes a RESELLER Use Authorization Order Form, CUSTOMER will be a RESELLER and may access and use the Subscription Services during the Subscription Term stated in the applicable RESELLER Use Authorization Order Form, in accordance with the Documentation. CUSTOMER will not otherwise access or use the Subscription Services in a manner that exceeds CUSTOMER'S authorized access and use rights as set forth in this Agreement and the applicable RESELLER Use Authorization Order Form. A RESELLER shall order and purchase the Subscription Services and Professional Services for each of their CUSTOMER'S directly from COMPANY pursuant to a separate agreement specifying price, payment and other commercial terms stated in the applicable RESELLER Use Authorization Order Form. For each CUSTOMER the RESELLER authorizes accesses and uses the Subscription Services during the Subscription Term, RESELLER will provide COMPANY with a Use Authorization for each of their CUSTOMERS. COMPANY will have no obligation to provide services unless and until it has received and agreed to a Use Authorization signed by RESELLER for each CUSTOMER accessing and using the Subscription Service. RESELLER is not authorized to make any changes to this Agreement (including any RESELLER Use Authorizations issued hereunder) or bind COMPANY to any additional or different terms or conditions. Additional orders for COMPANY products or services may be placed through COMPANY.

3.2 **USE VERIFICATION & TRUE-UP.** COMPANY or Reseller may remotely review CUSTOMER'S use of the Subscription Services, and on COMPANY or Reseller's written request, CUSTOMER will provide reasonable assistance to verify CUSTOMER'S compliance with the Agreement, and access to and use of the Subscription Services. If COMPANY or Reseller determines that CUSTOMER has exceeded its permitted access and use rights to the Subscription Services, COMPANY will notify Reseller and CUSTOMER and within 30 days thereafter CUSTOMER shall: (a) disable any unpermitted use, or (b) authorize the purchase of additional subscriptions commensurate with CUSTOMER'S actual use dating back to the time of first use and at the current published list price.

4. INTELLECTUAL PROPERTY

4.1 **COMPANY OWNERSHIP.** As between the parties, COMPANY and its licensors exclusively own all right, title, and interest in and to all Intellectual Property Rights in the COMPANY Core Technology, proprietary information, software, methodologies, programs, processes, systems, web platforms, applications, and related materials, notwithstanding anything in this Agreement purportedly to the contrary. Except for the access and use rights, and licenses expressly granted in Section 2 (Access and Use Rights; Restrictions; Provision of Professional Services) of this Agreement, COMPANY, on behalf of itself and its licensors, reserves all rights in the COMPANY'S Core Technology and does not grant CUSTOMER any rights (express, implied, by estoppel, through exhaustion, or otherwise). Any COMPANY Core Technology delivered to CUSTOMER or to which CUSTOMER is given access shall not be deemed to have been sold, even if, for convenience, COMPANY refers to words such as "sale" or "purchase" in the applicable Use Authorization or other documents.

4.2 **CUSTOMER OWNERSHIP.** As between the parties, CUSTOMER and its licensors will retain all right, title, and interest in and to all Intellectual Property Rights in CUSTOMER Data and CUSTOMER Technology. CUSTOMER hereby grants to COMPANY a royalty-free, fully paid, non-exclusive, non-transferrable (except as set forth in Section 12.1 (Assignment)), worldwide, right to use CUSTOMER Data and CUSTOMER Technology solely to provide and support the COMPANY Products.

4.3 **FEEDBACK.** COMPANY encourages CUSTOMER to provide suggestions, proposals, ideas, recommendations, or other feedback, solicited or unsolicited, regarding improvements to the COMPANY Products (collectively, "Feedback"). If CUSTOMER provides such Feedback, CUSTOMER grants to COMPANY a royalty-free, fully paid, sublicensable, transferable (notwithstanding Section 12.1 (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into COMPANY'S Core Technology) without restriction.

4.4 **PROFESSIONAL SERVICES.** If any COMPANY Core Technology is incorporated into a Deliverable, COMPANY grants to CUSTOMER a non-exclusive, royalty-free, non-transferable (except as set forth in Section 12.1 (Assignment)), non-sublicensable worldwide license to use the COMPANY Core Technology incorporated into the Deliverable in connection with the Subscription Services as contemplated under this Agreement during the applicable Subscription Term unless otherwise explicitly specified in a separate Statement of Work (SOW). Nothing in this Agreement shall be deemed to restrict or limit COMPANY'S right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services. All rights not expressly granted to CUSTOMER are reserved by COMPANY.

5. WARRANTIES & DISCLAIMERS

5.1 **LIMITED SUBSCRIPTION SERVICES WARRANTY.** COMPANY warrants that, during the Subscription Term, CUSTOMER'S production instance of the Subscription Services will materially conform to the Product Overview. To submit a warranty claim under this Section 5.1, CUSTOMER will submit a support request to resolve the nonconformity as provided in the Subscription Services Guide. If the nonconformity persists without relief more than

30 days after notice of a warranty claim provided to COMPANY under this Section 5.1, then CUSTOMER may terminate the affected Subscription Services, and submit to COMPANY or Reseller a claim for refund to CUSTOMER for any prepaid subscription fees covering that part of the applicable Subscription Term for the affected Subscription Services remaining after the effective date of termination as per the terms in the relevant governing ordering document. Notwithstanding the foregoing, this warranty will not apply to any nonconformity due to a modification of or defect in the Subscription Services that is made or caused by any person other than COMPANY or a person acting at COMPANY'S direction. This Section 5.1 sets forth CUSTOMER'S exclusive rights and remedies (and COMPANY'S sole liability) in connection with this warranty.

5.2 LIMITED PROFESSIONAL SERVICES WARRANTY. COMPANY warrants that the Professional Services will be performed in a good and workmanlike manner, in accordance with accepted industry standards and practices and all material requirements set forth in the SOW. CUSTOMER will notify COMPANY of any breach within 30 days after performance of the non-conforming Professional Services. On receipt of such notice, COMPANY, at its option, will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services, whereupon CUSTOMER may submit a claim for a refund of any amounts paid for the nonconforming Professional Services. This Section 5.2 sets forth CUSTOMER'S exclusive rights and remedies (and COMPANY'S sole liability) in connection with this warranty.

5.3 DISCLAIMER OF WARRANTIES. Notwithstanding the foregoing, except for the warranties expressly stated in this Section 5, to the maximum extent allowed by Law, COMPANY disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, noninfringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the foregoing, COMPANY specifically does not warrant that the COMPANY Products will meet the requirements of CUSTOMER or others or will be accurate or operate without interruption or error. CUSTOMER acknowledges that in entering this Agreement, it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement.

6. CONFIDENTIAL INFORMATION

6.1 CONFIDENTIALITY OBLIGATIONS. The recipient of Confidential Information will: (a) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event use less than reasonable care; and (b) not use it except to the extent necessary to exercise rights or fulfill obligations under this Agreement. Each party will limit the disclosure of the other party's Confidential Information to those of its employees and contractors and the employees and contractors of its Affiliates with a need to access such Confidential Information for a party's exercise of its rights and obligations under this Agreement, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in this Agreement. Each party's obligations under this Section 6 will remain in effect during, and for three years after termination of, this Agreement. Receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certify destruction of the same. Provisions for return of CUSTOMER Data are set forth in Section 11.3 (Return of CUSTOMER Data).

6.2 THIRD PARTY REQUESTS. This Agreement will not be construed to prevent receiving party from disclosing the disclosing party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or regulation, provided that the receiving party: (a) gives prompt notice (or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; (b) provides reasonable assistance to disclosing party in any lawful efforts by disclosing party to resist or limit the disclosure of such Confidential Information; and (c) discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed. In addition, receiving party will cooperate and assist disclosing party, at disclosing party's cost, in relation to any such request and any response to any such communication.

7. INDEMNIFICATION

7.1 BY COMPANY

7.1.1 **COMPANY OBLIGATION.** Subject to the limitations in this Section 7, COMPANY will: (a) defend CUSTOMER, and its and their officers, directors, and employees against any Claim to the extent alleging that any COMPANY Core Technology accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; (b) pay any settlement amount or any court-ordered award of damages, under the forgoing subsections and to the extent arising from such Claim.

7.1.2 **MITIGATION.** To the extent any Claim alleges any part of the COMPANY'S Core Technology infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, COMPANY may: (a) contest the Claim; (b) obtain permission from the claimant for CUSTOMER'S continued use of its instance of the Subscription Services or any applicable COMPANY Core Technology; (c) avoid such Claim by replacing or modifying CUSTOMER'S access to and use of its instance of the Subscription Services or any applicable COMPANY Core Technology as long as COMPANY provides substantially similar Subscription Services; or, if COMPANY determines the foregoing (a), (b), and (c) are not commercially practicable, then (d) terminate CUSTOMER'S access to and use of the affected Subscription Services on 60-days' prior notice, whereupon CUSTOMER may submit to Reseller a claim for a refund of any prepaid subscription fees covering any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Services remaining after the effective date of termination.

7.1.3 **LIMITATIONS.** Notwithstanding the above, COMPANY will have no obligation or liability for any Claim under Section 7.1.1(a) to the extent arising in whole or in part from: (a) any access to or use of any COMPANY Core Technology not expressly authorized under this Agreement, to the extent the Claim would have been avoided without such unauthorized access or use; (b) CUSTOMER Data or CUSTOMER Technology; or (c) access to or use of the COMPANY'S Core Technology: (i) in violation of Law; (ii) after termination under Section 7.1.2(d); (iii) as modified to CUSTOMER'S specifications or by anyone other than COMPANY or its contractors, if the Claim would have been avoided but for such modifications; or (iv) combined with anything not provided by COMPANY, if the Claim would have been avoided but for such combination.

7.2 **CUSTOMER OBLIGATION.** CUSTOMER will: (a) defend COMPANY and COMPANY Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that CUSTOMER Data, CUSTOMER Technology, or a modification to any COMPANY Core Technology made to CUSTOMER'S specifications or otherwise made by or on behalf of CUSTOMER by any person other than COMPANY or a person acting at COMPANY'S direction (but only if the Claim would have been avoided by use of the unmodified COMPANY Core Technology), infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third party privacy rights; and (b) pay any settlement amount or any court-ordered award of damages, under the foregoing subsection (a) to the extent arising from such Claim.

7.3 **PROCESS.** The obligations of COMPANY and CUSTOMER under Sections 7.1 and 7.2 are conditioned on the indemnified party (a) notifying the indemnifying party promptly in writing of any actual or threatened Claim, (b) the indemnified party giving the indemnifying party sole control of the defense of such Claim and of any related settlement negotiations, and (c) the indemnified party cooperating and, at the indemnifying party's reasonable request and expense, assisting in such defense. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. The indemnifying party will not publicize any settlement without the indemnified party's prior, written consent. To the extent the parties perform as required, this Section 7 states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.

8. LIMITED LIABILITY

COMPANY shall have no liability for any refund that, in accordance with the terms of this Agreement, is to be paid by Reseller. To the extent permitted by Law, each party's total, cumulative liability arising out of or related to this Agreement and the products and services provided under it, whether based on contract, tort (including negligence), or any other legal or equitable theory, will be limited to the amounts paid by CUSTOMER for use of the products or provision of the services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. The existence of more than one claim will not enlarge this limit. The foregoing limitation of liability shall not apply to: (a) CUSTOMER'S obligation to pay for products, services, or taxes; (b) violations of the Confidentiality Obligations in Section 6.1 (Confidentiality Obligations), (c) a party's obligations in Section 7 (Indemnification); or (d) infringement by a party of the other party's Intellectual Property Rights.

9. EXCLUDED DAMAGES

- 9.1 To the extent permitted by Law, neither COMPANY nor CUSTOMER will be liable to the other or any third-party for lost profits (direct or indirect), loss of business or goodwill, loss of use or data, interruption of business, or for any incidental, other consequential, punitive, special, or exemplary damages (including damage to business, reputation, or goodwill), or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable. The foregoing exclusions shall not apply to: (a) payments to a third party arising from a party's obligations under Section 7 (Indemnification); and (b) infringement by a party of the other party's Intellectual Property Rights.
- 9.2 COMPANY's total aggregate liability under this Agreement, regardless of whether the claim for such damages is based in contract or tort (including negligence) or misrepresentation or breach of statutory duty or any duty under general law or any other legal theory, (except for COMPANY's duty to indemnify against infringement as provided in Section 7.1.1(a)) will not exceed the software subscription fees paid to COMPANY in the twelve (12) months preceding the claim.

10. REMOVED

11. TERM AND TERMINATION

- 11.1 **TERMINATION.** This Agreement begins on the Effective Date and continues until terminated as provided herein. Each party may terminate this Agreement in its entirety: (a) on 30 days' prior notice to the other, if at the time of notice there are no Use Authorizations in effect; (b) immediately on notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors; or (c) immediately on notice if the other party materially breaches this Agreement and does not cure such breach within 30 days after the other party's receipt of notice of the breach. Either party may terminate a Use Authorization or SOW on notice if the other party materially breaches this Agreement or the applicable Use Authorization or SOW and does not cure the breach within 30 days after receiving notice of the breach from the non-breaching party. Professional Services are separately ordered from the Subscription Services and are not required for use of the Subscription Services. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Services even if the services are enumerated in the same Use Authorization.
- 11.2 **EFFECT OF TERMINATION OF SUBSCRIPTION SERVICES.** On termination or expiration of the Subscription Services, CUSTOMER will stop accessing and using, and COMPANY may stop providing or may disable access to, the Subscription Services and all related rights granted to CUSTOMER in this Agreement will terminate immediately, automatically, and without notice. CUSTOMER, within 30 days after the effective date of termination by CUSTOMER for COMPANY'S breach, shall submit to COMPANY a claim for refund for any prepaid fees paid to

COMPANY covering that part of the Subscription Term for the affected Subscription Services, if any, remaining after the effective date of termination. Within 30 days after the effective date of termination by COMPANY for CUSTOMER'S breach, CUSTOMER shall pay all remaining amounts for the Subscription Term applicable to the Subscription Services covering the remainder of the Subscription Term regardless of the due dates specified in an applicable Ordering Document.

- 11.3 **RETURN OF CUSTOMER DATA.** After termination or expiration of this Agreement or the applicable Subscription Services, upon CUSTOMER'S written request, COMPANY will provide any CUSTOMER Data in the Subscription Services to CUSTOMER in COMPANY'S standard database export format at no additional charge. CUSTOMER must submit such request to COMPANY within 30 days after termination or expiration of this Agreement or the Subscription Services. COMPANY is not obligated to maintain or provide any CUSTOMER Data after such 30-day period and will, unless legally prohibited, deactivate, or delete all CUSTOMER Data in its systems or otherwise in its possession or under its control, and deactivate or delete CUSTOMER'S instances of the Subscription Services.
- 11.4 **SURVIVAL.** Sections 2.2 (Restrictions), 4 (Intellectual Property), 5 (Warranties; Disclaimer of Warranties) (solely in accordance with its terms), 6 (Confidential Information) through 9 (Excluded Damages), 11 (Term and Termination) (solely in accordance with its terms), and 12 (General Provisions), together with any other terms required for their construction or enforcement, will survive termination or expiration of this Agreement.

12. GENERAL PROVISIONS

- 12.1 **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement, by operation of law or otherwise (any of the foregoing, "Assign"), without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Ordering Documents), without consent of the other party, to its affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets; and (b) COMPANY may Assign this Agreement in its entirety to any COMPANY Affiliate. Any attempted or purported Assignment in violation of this Section 12.1 will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 12.2 **COMPLIANCE WITH LAWS.** COMPANY will comply with all Laws applicable to its provision under the Agreement of the COMPANY Products, including those applicable to privacy and security of personal information (including mandatory trans-border data transfers and mandatory data breach notification requirements), but excluding Laws specifically applicable to CUSTOMER and its industry not generally applicable to information technology service providers regardless of industry. CUSTOMER will comply with all Laws applicable to its use of the COMPANY Products, including those applicable to collection and processing of CUSTOMER Data in COMPANY systems through the Subscription Services. CUSTOMER agrees to provide any required disclosures to and obtain any required consents for the transfer of CUSTOMER Data to COMPANY.
- 12.3 **EXPORT COMPLIANCE.** Each party will comply with local and foreign export control Laws, including U.S. export control Laws. CUSTOMER acknowledges that the COMPANY Products are subject to U.S. Export Administration Regulations ("EAR") and that CUSTOMER will comply with EAR. Without limiting the foregoing, CUSTOMER represents and warrants that: (a) it is not located in, and will not use any COMPANY Products from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); (b) CUSTOMER will not use the COMPANY Products in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and (c) CUSTOMER is not prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, CUSTOMER is responsible for complying with any local Laws that may impact CUSTOMER'S right to import, export, or use COMPANY Products or any of them.

- 12.4 **NOTICE.** Except as otherwise provided in this Agreement, all notices will be in writing and deemed given on: (a) personal delivery; (b) when received by the addressee if sent by a recognized overnight courier (receipt requested); (c) the third business day after mailing; or (d) the first business day after sending by email with confirmation of receipt, except that email will not be sufficient for notices regarding a Claim or alleged breach. Notices will be sent as set forth on the first page of the Ordering Document or as subsequently updated in writing.
- 12.5 **FORCE MAJEURE.** COMPANY is not, and may not be construed to be, in breach of this Agreement for any failure or delay in fulfilling or performing the Subscription Services or any Professional Services, when and to the extent such failure or delay is caused by or results from acts beyond COMPANY'S reasonable control, including: strikes, lock-outs, or other industrial disputes; trespass, sabotage, theft or other criminal acts, export bans, sanctions, war, terrorism, riot, civil unrest, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of COMPANY'S local network; power failure; breakdown of plant or machinery; nuclear, chemical, or biological contamination; epidemics, fire, flood, natural disaster, extreme adverse weather, or other acts of God (each a "Force Majeure Event"). COMPANY will use reasonable efforts to mitigate the effects of such Force Majeure Event.
- 12.6 **HIGH RISK ACTIVITY.** The COMPANY Products are not designed for any purpose requiring fail-safe performance, including stock trading, operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, weapons systems, or other management or operation of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical, property, or environmental damage (each, a "High Risk Activity"). COMPANY, its licensors, and suppliers expressly disclaim all warranties of fitness for any such use.
- 12.7 **EXECUTION.** This Agreement may be executed in counterparts, by electronic means to accurately send images, such as via email, or by electronic signature service. Neither party will contest the Agreement's validity solely because a signature was faxed or sent through other permitted electronic means. Each party will deliver to the other an original executed copy of the Agreement promptly after execution.
- 12.8 **WAIVER AND AMENDMENT.** Failure by a party to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party. Any modification of this Agreement must be in writing and signed by authorized representatives of both parties.
- 12.9 **SEVERABILITY.** If any term of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, such term will be enforced to the maximum extent permissible, such holding will not affect the remaining terms, and the invalid, unenforceable, or void term will be deemed amended or replaced by a valid, legal, and enforceable term that matches the intent of the original language as closely as possible.
- 12.10 **RELATIONSHIP.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. No third-party is a third-party beneficiary of, or liable under, this Agreement, and no third-party is responsible for any obligations or liability arising out of CUSTOMER'S use of the COMPANY'S Core Technology.
- 12.11 **NON-SOLICITATION.** During the Term of this Agreement and for a period of two (2) year thereafter, CUSTOMER will not solicit, recruit, or attempt to solicit or recruit any employee or consultant of the COMPANY under this Agreement without prior written approval from the COMPANY. CUSTOMER acknowledges and agrees that no remedy at law for damages would be adequate to compensate the injury to the COMPANY as a result of a breach

of this section, and therefore CUSTOMER agrees that the COMPANY will be entitled to injunctive relief against the CUSTOMER without having to post a bond or other security. CUSTOMER also agrees they will not raise as a defense that COMPANY has an adequate remedy at law. Injunctive relief will not limit any other remedies, including a suit for money damages, that the COMPANY may have as a result of the CUSTOMER'S failure to strictly comply with the provisions within the section.

GOVERNING LAW; JURISDICTION AND VENUE. This Agreement will be governed by the Laws of the State of Texas, without regard to its conflict of laws principles. Other than claims to collect an amount due from CUSTOMER for providing the services under this Agreement and/or an Ordering Document, any dispute, controversy, or claim arising out of or related in any manner to this Agreement and/or an Ordering Document which cannot be amicably resolved by the Parties, shall be solely and finally settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof in Harris County, Texas. The arbitration shall take place before a panel of one (1) arbitrator sitting in Harris County, Texas. The arbitrator shall be jointly selected by the parties within two (2) weeks of submitting a dispute to arbitration or, if no arbitrator is selected by that time, an arbitrator shall be appointed in accordance with the rules of AAA. The language of the arbitration shall be English. The arbitrator will be bound to adjudicate all disputes in accordance with the laws of the State of Texas. The decision of the arbitrator shall be in writing with written findings of fact and shall be final and binding on the Parties. Each Party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement and/or an Ordering Document, except that a Party may seek a preliminary injunction or other injunctive relief in any court of competent jurisdiction in Harris County, Texas if in its reasonable judgment such action is necessary to avoid irreparable harm. The arbitrator will make the initial determination as to whether any claim is subject to arbitration. Each party expressly consents to service of process by registered mail. To the extent permitted by Law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply.

- 12.12 **EQUITABLE REMEDIES.** The receiving party's disclosure of Confidential Information except as provided in this Agreement, or a party's infringement or misappropriation of the other party's Intellectual Property Rights may result in irreparable injury for which a remedy in money damages may be inadequate. In the event of such actual or threatened disclosure, infringement, or misappropriation, disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to disclosing party at law or in equity.
- 12.13 **CONSTRUCTION.** COMPANY is obligated to provide COMPANY Products only in the English language, unless otherwise agreed in writing. Section headings are for convenience only and are not to be used in interpreting this Agreement. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Lists of examples following "including", "e.g.", "such as", or "for example" are interpreted to include "without limitation", unless qualified by words such as "only" or "solely." Unless stated or context requires otherwise: (a) all internal references are to this Agreement, its parties, and its Exhibits; (b) "days" means calendar days; (c) "may" means that the applicable party has a right, but not a concomitant duty; (d) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (e) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; (f) the word "or" will be deemed to be an inclusive "or"; (g) URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at such URLs; (h) a writing is "signed" when it has been hand-signed (i.e., with a pen) or electronically signed using an electronic signature service by duly authorized representatives of both parties; (i) a party's choices, elections, and determinations under this Agreement are in its sole discretion; (j) the singular includes the plural

and vice versa; (k) a reference to a document includes any amendment, replacement, or novation of it; and (m) a reference to a thing includes a part of that thing (i.e., is interpreted to include “in whole or in part”).

12.14 **ENTIRETY.** This Agreement (together with the Ordering Document, Use Authorizations, Product Overviews, and SOWs, all of which are also deemed incorporated by this reference) is the parties’ entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to such subjects. The terms of this Agreement apply to the exclusion of any other terms CUSTOMER seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing. CUSTOMER acknowledges it has not relied on any statement, promise, or representation made or given by or on behalf of COMPANY that is not expressly stated in this Agreement. CUSTOMER orders are not contingent, and CUSTOMER has not relied, on the delivery of any future functionality regardless of any verbal or written communication about COMPANY’S possible future plans.

IN WITNESS WHEREOF, the Parties execute this Agreement on the dates set forth below.

‘47Concepts, LLC

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A.1 - SUBSCRIPTION SERVICES GUIDE

1. SUPPORT

COMPANY will provide support for the Subscription Services as set forth in the CUSTOMER Support Policy attached to this Subscription Services Guide as Exhibit A.2 and incorporated herein by reference. The CUSTOMER Support Policy may be updated periodically.

2. UPGRADES AND UPDATES

COMPANY will provide upgrades and updates to the Subscription Services as described in Exhibit A.3 Upgrades and Updates attached to this Subscription Services Guide and incorporated herein by reference. The Upgrade and Update exhibit may be updated periodically.

3. DATA PROCESSING ADDENDUM

The parties' agreement with respect to the processing of personal information submitted to the Subscription Services is described in the Data Processing Addendum attached to this Subscription Services Guide as Exhibit A.4 and incorporated herein by reference. The Data Processing Addendum may be updated periodically.

4. DATA SECURITY GUIDE

COMPANY will implement and maintain security procedures and practices appropriate to information technology service providers designed to protect CUSTOMER Data from unauthorized access, destruction, use, modification, or disclosure, as described in the Data Security Guide attached to this Subscription Services Guide as Exhibit A.5 and incorporated herein by reference. The Data Security Guide may be updated periodically.

5. INSURANCE

COMPANY agrees to maintain in effect during the Subscription Term, at COMPANY'S expense, the following minimum insurance coverage:

- 5.1 **Workers' Compensation Insurance /Employers' Liability Insurance**, including coverage for occupational injury, illness and disease, and other similar social insurance as prescribed by law with minimum limits per employee and per event as required by law or \$1,000,000, whichever limit is greater;
- 5.2 **Commercial General Liability Insurance** including Products, Completed Operations, Premises Operations, Personal and Advertising Injury, Contractual and Property Damage liability coverage, on an occurrence basis, with a minimum combined single limit of \$1,000,000 per occurrence;
- 5.3 **Automobile Liability Insurance** covering use of all owned, non-owned and hired automobiles for bodily injury, property damage, uninsured and underinsured motorist liability with a minimum combined single limit per accident of \$1,000,000 USD or the minimum limit required by law, whichever limit is greater;
- 5.4 **Cyber Insurance Cyber Insurance** with a \$1,000,000 per claim limit, including coverage for: (a) liability arising from theft, dissemination and/or use of Confidential Information stored or transmitted in electronic form; and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software and programs stored thereon and;

For the purpose of this Section 5, a "claim" means a written demand for money or a civil proceeding which is commenced by service of a complaint or similar pleading.

6. AVAILABILITY SERVICE LEVEL

6.1 DEFINITIONS.

- 6.1.1 “Available” means that the Subscription Services can be accessed by authorized users.
- 6.1.2 “Excused Downtime” means: (a) Maintenance Time of up to four hours per month; and (b) any time the Subscription Services are not Available due to circumstances beyond COMPANY’S control, including modifications of the Subscription Services by any person other than COMPANY or a person acting at COMPANY’S direction, a Force Majeure Event, general Internet outages, failure of CUSTOMER’S infrastructure or connectivity (including direct connectivity and virtual private network (“VPN”) connectivity to the Subscription Services), computer and telecommunications failures and delays, and network intrusions or denial-of-service or other criminal attacks.
- 6.1.3 “Infrastructure Modification” means any repairs, maintenance, improvements, or changes to the cloud infrastructure used by COMPANY to operate and deliver the Subscription Services.
- 6.1.4 “Maintenance Time” means the time the Subscription Services are not Available due to an Infrastructure Modification, Upgrade, and Update.
- 6.1.5 “Availability SLA” means that the production instances of the Subscription Services will be Available at least 99.8% of the time during a calendar month, excluding Excused Downtime.

6.2 AVAILABILITY.

COMPANY will use commercially reasonable efforts to make Subscription Services Available 99.8% of the time during each monthly billing cycle, excluding Excused Downtime. Availability means that Subscription Services can be accessed by authorized users.

6.3 SERVICE CREDITS.

- 6.3.1 CUSTOMER must request any Service Credits or extensions in writing to their assigned account representative at customer@47Concepts.com within 30 days of the end of the month in which the Availability SLA was not met, identifying the support requests relating to the period CUSTOMER’S production instances of the Subscription Services were not Available. If it is determined that COMPANY failed to meet the Subscription Services Availability requirements as defined in section 6.2 Availability, CUSTOMER is entitled to a credit of 1% per day of non-compliance during each calendar month period.
- 6.3.2 Service Credits shall be calculated by multiplying the percentage credit allocation by the total subscription fees charged to CUSTOMER by COMPANY during the applicable month. The total amount of service credits for any month shall not exceed twenty percent (20%) of the total subscription fee for the affected Subscription Services for that month and has no cash value. COMPANY may delay issuing service credits until such amounts reach \$1,000 USD or equivalent currency specified in the applicable Ordering Document.
- 6.3.3 Notwithstanding anything herein to the contrary, COMPANY shall not be responsible or liable for and the SLAs set forth in this Subscription Services Guide shall not apply in the event COMPANY’S failure to meet any SLA is due, in whole or in part, to any: (i) CUSTOMER or its authorized users’ internet connectivity; (ii) a Force Majeure Event as defined in Section 12.5 of the Agreement; or (iii) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by COMPANY or COMPANY’S subcontractors pursuant to the Agreement.

6.4 **NOTICE.**

COMPANY will give CUSTOMER 7 days' prior notice of an Infrastructure Modification if COMPANY, in its reasonable judgment, believes that the Infrastructure Modification will impact CUSTOMER'S use of its production instances of the Subscription Services, unless, in the reasonable judgment of COMPANY, the Infrastructure Modification is necessary to: (a) maintain the availability, security, or performance of the Subscription Services; (b) comply with Law; or (c) avoid infringement or misappropriation of third-party Intellectual Property Rights.

EXHIBIT A.2 - CUSTOMER SUPPORT POLICY

This CUSTOMER Support Policy governs the support that COMPANY will provide for its Subscription Services (“CUSTOMER Support”).

1. SCOPE

The purpose of CUSTOMER Support is to resolve defects that cause the CUSTOMER the inability to perform functions listed in the Product Overview. A resolution to a defect may consist of a fix, workaround, or other relief, as COMPANY deems reasonable. CUSTOMER Support does not include performing the following services:

- a) implementation services;
- b) configuration services;
- c) integration services;
- d) customization services or other custom software development;
- e) training; or
- f) assistance with administrative functions.

CUSTOMER Support is not required to provide resolutions for immaterial defects or defects due to modifications of the Subscription Services made by any person other than COMPANY or a person acting at COMPANY’S direction, or defects on any instance of the Subscription Services not in conformance with Exhibit A.3 - Upgrades and Updates.

2. BUSINESS HOURS

CUSTOMER Support is available during regular business hours (8:00am CT – 5:00pm CT, Monday-Friday), excluding state, national and COMPANY holidays. Any services required outside of those hours is based on the availability of COMPANY support personnel.

3. ACCESS CONTACTS

Customer Care portal (“Support Portal”) is located at <https://47Concepts.com>. CUSTOMER may get login access to the Support Portal by contacting its COMPANY administrator.

4. INCIDENT PRIORITY

Incident priority for a defect is determined using the guidelines below.

Level	Description
p1 Critical	Any defect that causes an instance not to be Available. <i>The ability to conduct business or service the user has stopped.</i>
p2 Major	Any defect that causes a critical function to fail. <i>Service is seriously degraded but can continue its operation via a work-around or incremental resource for a short period of time before business stops.</i>
p3 Minor	Any defect that impedes work or progress. <i>Service is lost by a single or small number of users, affecting business functionality.</i>
p4 Request	A request for training or configuration change. <i>Any call from individual users requesting a new service or clarification on an existing service.</i>

5. RESPONSE TIMES AND LEVEL OF EFFORT

CUSTOMER may submit an incident with COMPANY via the Support Portal as described in section 3 above. COMPANY will use reasonable efforts to meet the target response times and target level of effort stated in the table below.

Incident Level	Example of Incident	Recognition of Incident	Resolution Time	Status Update
P1 Critical	Server down, network down, database down or application down affecting all users	3 Hours	24 Hours	Every 2 Hours until resolved
P2 Major	Extremely slow system performance, a portion of application functionality is down, or there is nonconformity with a section of the Subscription Services Guide	6 Hours	1-2 Business Days	Every 4 Hours until resolved
P3 Minor	Problems or incidents where a work-around exists or can be developed with a small number of incremental resources. Single users can operate some of the system activities normally, but there is a definite problem identified.	24 Hours	1-10 Business Days	Upon Closure
P4 Request	Request for a new user login, clarity on the meaning of a system message, training, or guidance.	48 Hours	As agreed in SOW or Quote	As agreed in SOW or Quote

6. CUSTOMER RESPONSIBILITIES

CUSTOMER’S obligations with respect to CUSTOMER Support are as follows:

- 6.1 CUSTOMER will take all reasonable steps to troubleshoot and eliminate on-premises network performance degradations or failures as the source of Subscription Services interruption prior to escalating issues to COMPANY.
- 6.2 CUSTOMER will appoint no more than 3 contacts (“CUSTOMER Authorized Contacts”) to engage CUSTOMER Support for questions and technical issues.
 - 6.2.1 CUSTOMER must maintain the following CUSTOMER Authorized Contacts (including valid email addresses for account and maintenance notifications):
 - Primary Business Contact;
 - Technical Contact;
 - Primary CUSTOMER Administrator;
 - 6.2.2 Only CUSTOMER Authorized Contacts will contact CUSTOMER Support.
 - 6.2.3 CUSTOMER will train all CUSTOMER Authorized Contacts on the use and administration of the Subscription Services.
- 6.3 CUSTOMER will cooperate to enable COMPANY to deliver the Subscription Services and CUSTOMER Support.
- 6.4 CUSTOMER is solely responsible for the use of the Subscription Services by its authorized users.

EXHIBIT A.3 – UPGRADES AND UPDATES

1. DEFINITIONS

- 1.1 **“Upgrades”** are COMPANY’S releases of the Subscription Services for enhancements or new features (including a new Release Pack) applied by COMPANY to CUSTOMER’S instances of the Subscription Services at no additional fee during the Subscription Term.
- 1.2 **“Updates”** are COMPANY’S releases (including patches and hotfixes) of the Subscription Services applied by COMPANY to CUSTOMER’S instances of the Subscription Services at no additional fee during the Subscription Term that provide problem fixes, but do not generally include new functionality, and are released as needed.
- 1.3 **“Release Pack”** is an Upgrade that is a complete solution with new features or enhancements, including previously released Updates if applicable to the features included in the Upgrade.
- 1.4 **“Critical Upgrade”** is an Upgrade that in COMPANY’S reasonable judgment is critical to maintaining the availability, security or performance of the Subscription Services; comply with applicable laws or to avoid infringement or misappropriation of a third-party Intellectual Property Right.
- 1.5 **“Critical Update”** is an Update that in COMPANY’S reasonable judgment is critical to maintaining the availability, security or performance of the Subscription Services; comply with applicable laws or to avoid infringement or misappropriation of a third-party Intellectual Property Right.
- 1.6 **“Supported Release Pack”** at a particular time means the then-current Release Pack and the prior 2 Release Packs.

2. UPGRADES AND UPDATES

COMPANY shall determine, in its sole discretion: (a) whether and when to develop, release and apply any Update or Upgrade to CUSTOMER’S instances of the Subscription Services; and (b) whether a particular release is an Update, Upgrade or new service offering that is available separately for purchase.

3. NOTICE

COMPANY shall endeavor to: (a) give CUSTOMER 30 days’ notice of any Upgrade to the Subscription Services; and (b) use reasonable efforts to give CUSTOMER 7 days’ notice of any Update to the Subscription Services. Notwithstanding the foregoing, COMPANY may provide CUSTOMER with shorter notice or no notice from time to time, when necessary, before the application of a Upgrade or a Update.

4. SUPPORTED AND NON-SUPPORTED RELEASE FAMILIES

CUSTOMER acknowledges that the current Release Pack is the version of the Subscription Services containing the most current features, availability, performance, and security. Within a Supported Release Pack, the most recent Update is the version of the Subscription Services for that Release Pack that contains the most current problem fixes, availability, performance, and security. A CUSTOMER using a Supported Release Pack may be required to apply a Critical Update within the Supported Release Pack. A CUSTOMER that has not Upgraded to a Supported Release Pack may experience defects, for which CUSTOMER hereby agrees that COMPANY is not responsible, including without limitation those that affect the features, availability, performance and security of the Subscription Services, that are fixed in the most current version of the Subscription Services. A CUSTOMER who is not using a Supported Release Pack may be required to apply an Upgrade to a Supported Release Pack.

EXHIBIT A.4 - DATA PROCESSING ADDENDUM

This Data Processing Addendum (“DPA”) is deemed to include Sections 1 through 7 below, including the attached Appendix 1, and the Data Security Guide, all of which are expressly deemed incorporated in the Agreement by this reference.

In the event of any conflict between the terms of this DPA and the terms of the Agreement with respect to the subject matter herein, this DPA shall control. Any data processing agreements that may already exist between parties as well as any earlier version of the Data Security Guide to which the parties may have agreed are superseded and replaced by this DPA in their entirety. All capitalized terms not defined in this DPA will have the meaning given to them in other parts of the Agreement.

1. DEFINITIONS

- 1.1 **“Affiliates”** means any person or entity directly or indirectly Controlling, Controlled by or under common Control with a party to the Agreement, where “Control” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.
- 1.2 **“Agreement”** means the Order Form or Use Authorization or other signed ordering document, as applicable, between COMPANY and CUSTOMER and the signed master agreement (if any) for the purchase of the Subscription Services.
- 1.3 **“Data Controller”** means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing of Personal Data. For purposes of this DPA, Data Controller is CUSTOMER and, where applicable, its Affiliates either permitted by CUSTOMER to submit Personal Data to the Subscription Services or whose Personal Data is Processed in the Subscription Services.
- 1.4 **“Data Processor”** means the natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Data Controller. For purposes of this DPA, Data Processor is the COMPANY entity that is a party to the Agreement.
- 1.5 **“Data Protection Laws”** means all applicable laws and regulations regarding the Processing of Personal Data and includes GDPR.
- 1.6 **“Data Subject”** means an identified or identifiable natural person.
- 1.7 **“GDPR”** means the European Union’s General Data Protection Regulation (2016/679).
- 1.8 **“Instructions”** means Data Controller’s documented data Processing instructions issued to Data Processor in compliance with this DPA.
- 1.9 **“Personal Data”** means any information relating to a Data Subject uploaded by or for CUSTOMER or CUSTOMER’S agents, employees, or contractors to the Subscription Services as CUSTOMER Data.
- 1.10 **“Process” or “Processing”** means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.11 **“Professional Services”** means any consulting or development services provided by or on behalf of COMPANY pursuant to an agreed Statement of Work described or referenced in a signed ordering document.

- 1.12 **“Subscription Services”** means the COMPANY software-as-a-service (SaaS) offering ordered by CUSTOMER under a Use Authorization, Use Authorization or other signed ordering document between COMPANY and CUSTOMER.
- 1.13 **“Subscription Term”** means the term of authorized use of the Subscription Services as set forth in the Order Form, Use Authorization, or other ordering document signed by CUSTOMER and COMPANY.

2. SCOPE OF THE PROCESSING

- 2.1 **COMMISSIONED PROCESSOR.** Data Controller appoints Data Processor to Process Personal Data on behalf of Data Controller to the extent necessary to provide the Subscription Services described in the Agreement and in accordance with the Instructions.
- 2.2 **INSTRUCTIONS.** The Agreement constitutes Data Controller’s written Instructions to Data Processor for Processing of Personal Data. Data Controller may issue additional or alternate Instructions provided that such Instructions are: (a) consistent with the purpose and the scope of the Agreement; and (b) confirmed in writing by Data Controller. For the avoidance of doubt, Data Controller shall not use additional or alternate Instructions to alter the scope of the Agreement. Data Controller is responsible for ensuring its Instructions to Data Processor comply with Data Protection Laws.
- 2.3 **NATURE, SCOPE AND PURPOSE OF THE PROCESSING.** Data Processor shall only Process Personal Data in accordance with Data Controller’s Instructions and to the extent necessary for providing the Subscription Services and the Professional Services, each as described in the Agreement. Data Controller acknowledges that all Personal Data it instructs Data Processor to Process for the purpose of providing the Professional Services must be limited to the CUSTOMER Data Processed within the Subscription Services.
- 2.4 **CATEGORIES OF PERSONAL DATA AND CATEGORIES OF DATA SUBJECTS.** Data Controller may submit Personal Data to the Subscription Services as CUSTOMER Data, the extent of which is determined and controlled by Data Controller in its sole discretion and is further described in Appendix 1.

3. DATA CONTROLLER

- 3.1 **COMPLIANCE WITH DATA PROTECTION LAWS.** Data Controller shall comply with all of its obligations under Data Protection Laws when Processing Personal Data.
- 3.2 **SECURITY RISK ASSESSMENT.** Data Controller agrees that in accordance with Data Protection Laws and before submitting any Personal Data to the Subscription Services, Data Controller will perform an appropriate risk assessment to determine whether the security measures within the Subscription Services provide an adequate level of security, considering the nature, scope, context and purposes of the processing, the risks associated with the Personal Data and the applicable Data Protection Laws. Data Processor shall provide Data Controller reasonable assistance by providing Data Controller with information requested by Data Controller to conduct Data Controller’s security risk assessment. Data Controller is solely responsible for determining the adequacy of the security measures within the Subscription Services in relation to the Personal Data Processed. As further described in Section 7.1 (Product Capabilities) of Exhibit A.5 Data Security Guide, the Subscription Services includes, without limitation, role-based access control, which Data Controller may use in its sole discretion to ensure a level of security appropriate to the risk of the Personal Data.
- 3.3 **CUSTOMER’S AFFILIATES.** The obligations of Data Processor set forth herein will extend to CUSTOMER’S Data Controller Affiliates to which CUSTOMER provides access to the Subscription Services or whose Personal Data is Processed within the Subscription Services, subject to the following conditions:

- 3.3.1 **COMPLIANCE.** CUSTOMER shall at all times be liable for its Affiliates' compliance with this DPA and all acts and omissions by a Data Controller Affiliate are considered acts and omissions of CUSTOMER; and
- 3.3.2 **CLAIMS.** CUSTOMER'S Data Controller Affiliates will not bring a claim directly against Data Processor. In the event a Data Controller Affiliate wishes to assert a valid legal action, suit, claim or proceeding against Data Processor (a "*Data Controller Affiliate Claim*"): (i) CUSTOMER must bring such Data Controller Affiliate Claim directly against Data Processor on behalf of such Data Controller Affiliate, unless Data Protection Laws require that Data Controller Affiliate be party to such Data Controller Affiliate Claim; and (ii) all Data Controller Affiliate Claims will be considered claims made by CUSTOMER and are at all times subject to any aggregate limitation of liability set forth in the Agreement.
- 3.3.3 **DATA CONTROLLER AFFILIATE ORDERING.** If a Data Controller Affiliate purchased a separate instance of the Subscription Services under the terms of the signed master agreement between COMPANY and CUSTOMER, then such Data Controller Affiliate will be deemed a party to this DPA and shall be treated as CUSTOMER under the terms of this DPA.
- 3.4 **COMMUNICATION.** Unless otherwise provided in this DPA, all requests, notices, cooperation, and communication, including Instructions issued or required under this DPA (collectively, "Communication"), must be in writing and between CUSTOMER and COMPANY only and CUSTOMER shall inform the applicable Data Controller Affiliate of any Communication from COMPANY pursuant to this DPA. CUSTOMER shall be solely responsible for ensuring that any Communications (including Instructions) it provides to COMPANY relating to Personal Data for which a CUSTOMER Affiliate is Data Controller reflect the relevant CUSTOMER Affiliate's intentions.

4. DATA PROCESSOR

4.1 DATA CONTROLLER'S INSTRUCTIONS.

Data Processor will have no liability for any harm or damages resulting from Data Processor's compliance with Instructions received from Data Controller. Where Data Processor believes that compliance with Data Controller's Instructions could result in a violation of Data Protection Laws or is not in the ordinary course of Data Processor's obligations in operating the Subscription Services or delivering Professional Services, Data Processor shall promptly notify Data Controller thereof. Data Controller acknowledges that Data Processor is reliant on Data Controller's representations regarding the extent to which Data Controller is entitled to Process Personal Data.

- 4.2 **DATA PROCESSOR PERSONNEL.** Access to Personal Data by Data Processor will be limited to personnel who require such access to perform Data Processor's obligations under the Agreement and who are bound by obligations to maintain the confidentiality of such Personal Data at least as protective as those set forth herein and in the Agreement.

- 4.3 **DATA SECURITY MEASURES.** Without prejudice to Data Controller's security risk assessment obligations under Section 3.2 (Security Risk Assessment) above, Data Processor shall maintain appropriate technical and organizational safeguards to protect the security, confidentiality, and integrity of CUSTOMER Data, including any Personal Data contained therein, as described in Section 2 (Physical, Technical, and Administrative Security Measures) of the Data Security Guide. Such measures are designed to protect CUSTOMER Data from loss, alteration, unauthorized access, acquisition, use, disclosure, or accidental or unlawful destruction, and include:

- 4.3.1 **SERVICE ACCESS CONTROL.** The Subscription Services provides user and role-based access controls. Data Controller is responsible for configuring such access controls within its instance.
- 4.3.2 **LOGGING AND MONITORING.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies.
- 4.3.3 **DATA SEPARATION.** CUSTOMER Data shall be maintained within a multi-tenant architecture and cloud infrastructure that is logically and physically separate from COMPANY'S corporate infrastructure.

- 4.3.4 **SERVICE CONTINUITY.** The production database servers can be replicated in near real time to a mirrored data center in a different geographic region.
- 4.3.5 **TESTING.** Data Processor regularly tests, assess, and evaluates the effectiveness of its information security program and may periodically review and update such program to address new and evolving security technologies, changes to industry standard practices, and changing security threats.
- 4.3.6 **SUB PROCESSORS.** Data Processor will ensure that Sub-Processors will be contractually bound to the same obligations with respect to the processing of personal data as to which the Data Processor is bound by this Data Processing Addendum and the Agreement.

- 4.4 **DELETION OF PERSONAL DATA.** Upon termination or expiration of the Agreement, Data Processor shall return and delete CUSTOMER Data, including Personal Data contained therein, as described in the Agreement.
- 4.5 **DATA CENTERS.** Data Processor will host Data Controller's instances of the Subscription Services in a secure 3rd party data center.
- 4.6 **DATA PROTECTION IMPACT ASSESSMENTS (DPIA).** Data Processor will, on request, provide Data Controller with reasonable information required to fulfill Data Controller's obligations under GDPR to carry out data protection impact assessments, if any, for Processing of Personal Data within the Subscription Services.
- 4.7 **PRIOR CONSULTATION.** Data Processor shall provide reasonable assistance (at Data Controller's expense) in connection with any prior consultation Data Controller is required to undertake with a supervisory authority under Data Protection Laws with respect to Processing of Personal Data in the Subscription Services.
- 4.8 **DATA PROCESSOR ASSISTANCE.** Data Processor will assist Data Controller in ensuring compliance with Data Controller's obligations pursuant to Articles 32 to 36 of GDPR considering the nature of Processing by providing Data Controller with reasonable information requested pursuant to the terms of this DPA, including information required to conduct Data Controller's security risk assessment and respond to Data Subject Requests (defined below). For clarity, Data Controller is solely responsible for carrying out its obligations under GDPR and this DPA. Data Processor shall not undertake any task that can be performed by Data Controller.

5. REQUESTS MADE FROM DATA SUBJECTS AND AUTHORITIES

- 5.1 **REQUESTS FROM DATA SUBJECTS.** During the Subscription Term, Data Processor shall provide Data Controller with the ability to access, correct, rectify, erase, or block Personal Data, or to transfer or port such Personal Data, within the Subscription Services, as consistent with and subject to any applicable Data Protection Laws (collectively, "Data Subject Requests").
- 5.2 **RESPONSES.** Data Controller will be solely responsible for responding to any Data Subject Requests, provided that Data Processor shall reasonably cooperate with the Data Controller to respond to Data Subject Requests to the extent Data Controller is unable to fulfill such Data Subject Requests using the functionality in the Subscription Services. Data Processor will instruct the Data Subject to contact the CUSTOMER in the event Data Processor receives a Data Subject Request directly.
- 5.3 **REQUESTS FROM AUTHORITIES.** In the case of a notice, audit, inquiry, or investigation by a government body, data protection authority, or law enforcement agency regarding the Processing of Personal Data, Data Processor shall promptly notify Data Controller unless prohibited by applicable law. Data Controller shall keep records of the Personal Data Processed by Data Processor and shall cooperate and provide all necessary information to Data Processor in the event Data Processor is required to produce such information to a data protection authority.

5.4 **COOPERATION WITH SUPERVISORY AUTHORITIES.** In accordance with Data Protection Laws, Data Controller and Data Processor shall cooperate, on request, with a supervisory authority in the performance of such supervisory authority's task.

6. BREACH NOTIFICATION

6.1 **NOTIFICATION.** Data Processor will report to Data Controller any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to CUSTOMER Data ("Breach") that it becomes aware of without undue delay following determination by COMPANY that a Breach has occurred.

6.2 **REPORT.** The initial report will be made to Data Controller's security or privacy contact(s) designated in COMPANY'S customer support portal (or if no such contact(s) are designated, to the primary contact designated by CUSTOMER). As information is collected or otherwise becomes available, Data Processor shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Data Controller to notify relevant parties, including affected Data Subjects, government agencies and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the Data Processor contact from whom additional information may be obtained. Data Processor shall inform CUSTOMER of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

6.3 **DATA CONTROLLER OBLIGATIONS.** Data Controller will cooperate with Data Processor in maintaining accurate contact information by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence.

7. CUSTOMER MONITORING RIGHTS

7.1 **REMOTE SELF-ASSESSMENTS.** Data Processor shall provide documentation evidencing Data Processor's policies, procedures, and security measures, as well as copies of relevant certifications and attestations listed in Section 7.2 (Audit) below upon request by Data Controller.

7.2 **OUTPUT.** Upon completion of the Audit, Data Processor and CUSTOMER may schedule a mutually convenient time to discuss the output of the Audit. Data Processor may in its sole discretion, consistent with industry and Data Processor's standards and practices, make commercially reasonable efforts to implement CUSTOMER'S suggested improvements noted in the Audit to improve Data Processor's Security Program. The Audit and the results derived therefrom are Confidential Information of Data Processor.

7.3 **DATA CONTROLLER EXPENSES.** Any expenses incurred by Data Controller in connection with the Audit shall be borne exclusively by Data Controller.

APPENDIX 1 DETAILS OF PROCESSING

Nature and Purpose of Processing

Data Processor will Process Personal Data as required to provide the Subscription Services and Professional Services and in accordance with the Agreement.

Duration of Processing

Data Processor will Process Personal Data for the duration of the Agreement and in accordance with Section 4 (Data Processor) of this DPA.

Data Subjects Data

Data Controller may submit Personal Data to the Subscription Services, the extent of which is solely determined by Data Controller, and may include Personal Data relating to the following categories of Data Subjects:

- clients and other business contacts;
- employees and contractors; and
- subcontractors and agents.

Categories of Personal Data

Data Controller may submit Personal Data to the Subscription Services, the extent of which is solely determined by Data Controller, and may include the following categories:

- communication data (e.g. telephone, email);
- business and personal contact details; and
- other Personal Data submitted to the Subscription Services.

Processing Operations

The personal data transferred will be subject to the following basic processing activities:

- All activities necessary for the performance of the Agreement.

EXHIBIT A.5 - DATA SECURITY GUIDE

This Data Security Guide forms a part of the Agreement and describes the measures COMPANY takes to protect CUSTOMER Data.

In the event of any conflict between the terms of this Data Security Guide and the terms of the Agreement with respect to the subject matter herein, this Data Security Guide shall control. All capitalized terms not defined in this Data Security Guide will have the meaning given to them in other parts of the Agreement.

1. SECURITY PROGRAM

While providing the Subscription Services, COMPANY will maintain a written information security program of policies, procedures and controls governing the processing, storage, transmission and security of CUSTOMER Data (the "Security Program"). The Security Program includes industry-standard practices designed to protect CUSTOMER Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. COMPANY regularly tests, assesses, and evaluates the effectiveness of the Security Program and may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, although no such update will materially reduce the commitments, protections or overall level of services provided to CUSTOMER as described herein.

2. PHYSICAL, TECHNICAL, AND ADMINISTRATIVE SECURITY MEASURES

2.1 PHYSICAL SECURITY MEASURES.

- 2.1.1. **3rd PARTY DATA CENTER FACILITIES.** (a) Physical access restrictions and monitoring that may include a combination of any of the following: multi-zone security, appropriate perimeter deterrents (e.g. fencing, berms, guarded gates), on-site guards, CCTV, and secure cages; and (b) fire detection and fire suppression systems both localized and throughout the data center floor.
- 2.1.2. **SYSTEMS, MACHINES AND DEVICES.** (a) Physical protection mechanisms; and (b) entry controls to limit physical access.
- 2.1.3. **MEDIA.** (a) Industry standard destruction of sensitive materials before disposition of media; (b) secure safe for storing damaged hard disks prior to physical destruction; and (c) physical destruction of all decommissioned hard disks storing CUSTOMER Data.

2.2 TECHNICAL SECURITY MEASURES.

- 2.2.1 **ACCESS ADMINISTRATION.** Access to the Subscription Services by COMPANY employees and contractors is protected by authentication and authorization mechanisms. User authentication is required to gain access to production and sub-production instances. Access privileges are based on job requirements and are revoked upon termination of employment or consulting relationships. Production infrastructure includes appropriate user account and password controls (e.g., the required use of VPN connections, complex passwords with expiration dates, and a two-factored authenticated connection) and is accessible for administration.
- 2.2.2 **SERVICE ACCESS CONTROL.** The Subscription Services provide user and role-based access controls. CUSTOMER is responsible for configuring such access controls within its instance.
- 2.2.3 **LOGGING AND MONITORING.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies.
- 2.2.4 **FIREWALL SYSTEM.** An industry-standard firewall is installed and managed to protect COMPANY systems by residing on the network to inspect all ingress connections routed to the COMPANY environment.

- 2.2.5 **VULNERABILITY MANAGEMENT.** COMPANY conducts periodic independent security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, COMPANY will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with COMPANY'S then-current vulnerability management and security patch management standard operating procedure and only after such patch is tested and determined to be safe for installation in all production systems.
- 2.2.6 **ANTIVIRUS.** COMPANY updates antivirus, anti-malware, and anti-spyware software on regular intervals and centrally logs events for effectiveness of such software.
- 2.2.7 **CHANGE CONTROL.** COMPANY ensures that changes to platform, applications, and production infrastructure are evaluated to minimize risk and are implemented following COMPANY'S standard operating procedure.
- 2.2.8 **DATA SEPARATION.** CUSTOMER Data shall be maintained within a multi-tenant architecture and cloud infrastructure that is logically separate from COMPANY'S corporate infrastructure.

2.3 ADMINISTRATIVE SECURITY MEASURES.

- 2.3.1 **DATA CENTER SECURITY.** COMPANYS third-party data center requires key card and secure cage access to maintain the security controls necessary to comply with the Security Program.
- 2.3.2 **PERSONNEL SECURITY.** COMPANY performs background screening on all employees and all contractors who have access to CUSTOMER Data in accordance with COMPANY'S then-current applicable standard operating procedure and subject to Law.
- 2.3.3 **SECURITY AWARENESS AND TRAINING.** COMPANY maintains a security awareness program that includes appropriate training of COMPANY personnel on the Security Program. Training is conducted at time of hire and periodically throughout employment at COMPANY.

3. SERVICE CONTINUITY

- 3.1 **DATA MANAGEMENT; DATA BACKUP.** COMPANY production database servers can be replicated in near real time to a mirrored data center in a different geographic region. Each CUSTOMER instance is supported by a network configuration with multiple connections to the Internet. COMPANY backs up all CUSTOMER Data in accordance with COMPANY'S standard operating procedure.
- 3.2 **PERSONNEL.** In the event of an emergency that renders the CUSTOMER support telephone system unavailable, all calls can be routed to an answering service that will transfer to a COMPANY telephone support representative to ensure business continuity for support operations.

4. CERTIFICATIONS AND AUDITS

- 4.1 **CERTIFICATIONS AND ATTESTATIONS.** COMPANY shall establish and maintain sufficient controls to meet the objectives stated in SOC 2 Type 2 (or equivalent standards) (collectively, the "Standards") for the information security management system supporting the Subscription Services.

5. USE OF DATA

- 5.1 **USE OF AGGREGATE DATA.** COMPANY may collect, use, and disclose quantitative data derived from CUSTOMER'S use of the Subscription Services for industry analysis, benchmarking, analytics, marketing, and other business purposes in support of the provision of the Subscription Services. Any such data will be in aggregate form only and will not contain CUSTOMER Data.

5.2 **COOKIES.** When providing the Subscription Services, COMPANY uses cookies to: (a) store session data; (b) handle security authorization; (c) recognize a user and related preferences upon returning to the Subscription Services; (d) collect analytical, targeting & usage data; (e) facilitate application functionality – such as file downloads; and (f) boost system performance – such as image caching.

6. PENETRATION TESTS

6.1 **BY A THIRD-PARTY.** COMPANY may contract with third-party vendors to perform a penetration test on the COMPANY application per family release to identify risks and remediation that help increase security.

7. SHARING THE SECURITY RESPONSIBILITY

7.1 **PRODUCT CAPABILITIES.** The Subscription Services have the capabilities to: (a) authenticate users before access; (b) encrypt passwords; (c) allow users to manage passwords; and (d) prevent access by users with an inactive account. CUSTOMER manages each user's access to and use of the Subscription Services by assigning to each user a credential and user type that controls the level of access to the Subscription Services. CUSTOMER is responsible for protecting the confidentiality of each user's login and password and managing each user's access to the Subscription Services.

7.2 **CUSTOMER COOPERATION.** CUSTOMER shall promptly apply any Upgrade or Update that COMPANY determines is necessary to maintain the security, performance, or availability of the Subscription Services.

7.3 **LIMITATIONS.** Notwithstanding anything to the contrary in this Data Security Guide or other parts of the Agreement, COMPANY'S obligations extend only to those systems, networks, network devices, facilities, and components over which COMPANY exercises control. This Data Security Guide does not apply to: (a) information shared with COMPANY that is not CUSTOMER Data; (b) data in CUSTOMER'S VPN or a third-party network; (c) any data processed by CUSTOMER or its users in violation of the Agreement or this Data Security Guide; or (d) Integrated Products. For the purposes of this Data Security Guide, "Integrated Products" shall mean COMPANY-provided integrations to third-party products or any other third-party products that are used by CUSTOMER in connection with the Subscription Services. CUSTOMER agrees that its use of such Integrated Products will be: (i) in compliance with all Laws, including but not limited to, Data Protection Laws; and (ii) in accordance with its contractual agreement with the provider of such Integrated Products. Any Personal Data populated from the Integrated Products to the Subscription Services must be collected, used, disclosed and, if applicable, internationally transferred in accordance with CUSTOMER'S privacy policy, which will adhere to Data Protection Laws.