

Terms and Conditions

Each Operation Agreement, Proposal and and/or quotation issued by Tech Heads is an offer to sell Products and/or Services (herein defined) to purchaser ("Customer") and includes, is governed by, and Customer agrees to be bound by, these Terms and Conditions. Tech Heads' Operating Agreement, Proposal and or quotation and these Terms and Conditions shall be deemed accepted by Customer upon Tech Heads' receipt of a purchase order, a signed Proposal, or acknowledgement of acceptance of a quotation. Acceptance of Tech Heads' Operating Agreement, Proposal and or quotation and these Terms and Conditions is expressly limited to the terms contained in Tech Heads' Operating Agreement, Proposal and or quotation and these Terms and Conditions. Tech Heads rejects any terms and conditions contained in Customer's forms that are additional to or different from those set forth in Tech Heads' Operating Agreement, Proposal and or quotation or in these Terms and Conditions. Customer and Tech Heads are sometimes referred to individually in this Agreement as a "Party" and collectively as the "Parties."

AGREEMENT:

1. DEFINITIONS

As used in this Agreement:

"Agreement" means these Terms and Conditions and all Operating Agreements, schedules and attachments attached hereto or to or otherwise made a part of this Agreement.

"Content" means information, software, Customer Data, and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Customer or any of its Users create, install, upload or transfer to Tech Heads.

"Customer Components" means the hardware, software, other products, and other Content including, without limitation, those specified in an OA as being provided by Customer.

"Customer Data" means all data and information about Customer's business(es), customer's employees, operations, facilities, products, markets, assets, or finances that Tech Heads obtains, creates, generates, collects or processes in connection with its performance of Services.

"Disclosure" means the release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

"Operating Agreement" or "OA" shall have the meaning ascribed to it in Section 2.

"PCO" means a project change order signed by both Parties authorizing a change in the scope of the Services.

"Required Consents" means any consents, licenses, or approvals required to give Tech Heads, or any person or entity acting for Tech Heads under this Agreement, the right or license to access, use and/or



modify in electronic form and in other forms, including, without limitation, derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Tech Heads, or owners of such Customer Components and Content.

“Services” means the information technology services to be delivered by Tech Heads under this Agreement as specified in any Operating Agreement and does not include Third Party Services.

“Third Party Services” means the information technology services to be delivered by a third party under this Agreement as specified in any Operating Agreement.

“User” means any entity or individual that receives or uses the Services, or the results or products of the Services, through Customer.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Operating Agreement, unless the language or context requires otherwise. OA-specific definitions, if any, shall be included in the applicable OA, and shall apply only with respect to such OA.

2. SERVICES

This Agreement contains general contractual terms for all Services. The specific Services, applicable pricing and payment terms, service level agreement, if any, and other transaction-specific provisions will be agreed upon through Operating Agreements (each an “Operating Agreement” or “OA”). Each Operating Agreement has a corresponding proposal (the “Proposal”) that sets forth the Customer’s acceptance of the length of contract, price, and other terms for each OA. Each Proposal shall be signed by both Parties and will be deemed to incorporate all the provisions of this Agreement and the corresponding OA by reference. Tech Heads may provide services under any T&M engagement as defined on the Services Rate Sheet, and/or as specifically described in any relevant estimate or proposal. Tech Heads may revise the Services Rate Sheet from time to time in its sole discretion.

In the event of any inconsistencies between the terms of this Agreement and the terms of any Proposal, the terms of this Agreement shall control. The Parties may specify in the applicable Proposal that a particular provision of the Proposal is to supersede a provision of this Agreement, in which case the superseding Proposal provisions shall be applicable only to such Proposal and shall be effective for such Proposal only if such provision expressly references the applicable section of this Agreement that is to be modified and clearly states that such provision supersedes the conflicting or inconsistent provision in this Agreement.

3. PERFORMANCE

Subject to the terms and conditions in this Agreement, the applicable OA, and the applicable Proposal, Tech Heads will use commercially reasonable efforts to perform the Services described in the applicable OA.

Customer shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by Tech Heads.

In the event Customer wishes to add additional programs, applications or data sources, systems servers, network devices of any kind, requests an expansion in the scope of the Services, then Customer shall



present its request for such alterations of its network to Tech Heads for scoping. No alterations will be permitted under this Agreement without a signed PCO.

The sale of Products (as defined in Exhibit A) is governed by the terms and conditions in Exhibit A.

4. COMPENSATION

In exchange for the Services, Customer agrees to pay Tech Heads the hourly rates, fees and costs set forth in the OA, Services Rate Sheet, estimate, quote or proposal. In addition, Customer shall reimburse Tech Heads for the following expenses:

- a) For locations outside of the Portland metro area, overnight accommodations, transportation, and meal per diem may apply.
- b) Parking, long distance telephone charges, shipping services, and messenger services that result from the Services.
- c) All other reasonably incurred expenses.

5. BILLING AND PAYMENT

Tech Heads will submit invoices to Customer on a weekly basis. Invoices for all Services, parts, supplies, or equipment (software or hardware) purchased by Tech Heads on Customer's behalf (collectively, the "Equipment") in furtherance of the Services, are due upon receipt. Claims arising from invoices must be made within ten (10) days from the invoice date. Tech Heads will assess a monthly late fee of 1.5 percent, or the maximum late payment charge permitted by applicable law, whichever is lower, on any unpaid balance remaining after 30 days. Tech Heads reserves the right to modify payment terms, including requiring advance payment of all outstanding invoices and future fees. Should collection action become necessary, Customer shall reimburse Tech Heads for all fees and expenses associated with the collection action.

In the event Customer purchases recurring services on a subscription basis (e.g. monthly or annually), Customer agrees to authorize recurring payments until the recurring service is terminated by Customer or by Tech Heads. The recurring agreement must be cancelled within the predetermined timeframe (varies per agreement) to stop incurring further billing. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Tech Heads reserves the right to collect any applicable fees for return, rejection, or insufficient funds.

The amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Customer shall pay all taxes levied and duties assessed by any authority based upon this Agreement, excluding any taxes based upon Tech Heads' income. This provision shall not apply to any taxes for which Customer is exempt and for which Customer has furnished Tech Heads with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. TERM; TERMINATION

Termination for Convenience. Either Party may terminate this Agreement for convenience at any time upon written notice to the other Party. If there are any Proposals in effect at the time of the notice of



termination, termination shall be effective upon the expiration or termination of the last Proposal. If there are no Proposals in effect at the time of notice of termination, termination shall be effective upon receipt of the written notice.

Termination for Breach. Either Party may terminate this Agreement or any individual Proposal in accordance with the language below:

Cure. If the other Party breaches any material provision of this Agreement or any Proposal and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"). The notice from the non-breaching Party shall specify the basis on which the Agreement or Proposal is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.

No Opportunity to Cure. If: (a) the other Party breaches any representation or warranty in this Agreement; (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information). The notice from the non-breaching Party shall specify the basis on which the Agreement or Proposal is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.

Termination for Financial Insecurity. Either Party may terminate this Agreement and all Proposals upon written notice if the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization. Termination shall be effective upon receipt of the written notice.

Final Payment. Within thirty (30) days after any termination of this Agreement or individual Proposal, Tech Heads will submit to Customer a final itemized invoice for all fees and expense due and owing by Customer. Customer shall pay the invoice in accordance with the terms of this Agreement.

Effects of Termination. Upon termination of this Agreement or an individual Proposal and payment by Customer of all invoices including the final invoice described in this Section, Tech Heads will, to the extent applicable, and within a reasonable amount of time:

- (a) Exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Customer;
- (b) Disclose to Customer all relevant information regarding the equipment, software and third-party vendor services required to perform the Services;
- (c) Make reasonable efforts to effect a transfer or assignment of relevant licenses or agreement(s) for software or any third-party services utilized exclusively to provide the Services to Customer;
- (d) At Customer's option, either provide Customer with a full backup of the Customer Data



(including the encryption keys necessary to decrypt such media if such media is encrypted) or destroy such full backup; and

- (e) Remove all Customer Data from all relevant SaaS applications, to the extent that such removal complies with Tech Heads' data retention policies.

Any additional transition services requested by Customer shall be provided by Tech Heads on a time and material basis.

Survival. Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement Ownership Rights; Representations and Warranties; Indemnification; Limitation of Liability; and Non-Solicitation provisions shall survive any termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

By Each Party. Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Customer Data and its provision or use of the Services; and c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

By Customer. Customer represents and warrants to Tech Heads that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Tech Heads the rights that Customer purports to grant in this Agreement; (b) Tech Heads' possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (c) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

By Tech Heads. Tech Heads represents and warrants to Customer that:

Industry Standards. The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Tech Heads according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Customer if not rejected in a reasonably detailed writing within five (5) days of submission to Customer, or as otherwise identified in the applicable Operating Agreement. In the event the Services provided by Tech Heads are not in conformance with this warranty, Customer must provide written notice to Tech Heads within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, Tech Heads will use commercially reasonable efforts to take the steps necessary to correct the deficiency at no charge to Customer. This is Customer's sole and exclusive remedy for breach of this warranty.

Service Levels. The Services will meet the technical standards of performance or service levels, if



any, set forth in the applicable OA. Customer's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable OA.

Customer shall not make any representations or warranties on behalf of Tech Heads to any third party. Customer shall be solely responsible and liable for any representations or warranties that Customer makes to any third party regarding Tech Heads, the Services, or any other aspect of this Agreement. Tech Heads makes no representations or warranties regarding the Third Party Services and passes through to Customer the terms and conditions for the services delivered by a third party.

DISCLAIMER: EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF TECH HEADS IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF TECH HEADS. CUSTOMER IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH TECH HEADS SHALL NOT BE HELD LIABLE.

8. CONFIDENTIALITY

Customer and Tech Heads further acknowledge and agree that in connection with the Services provided, Customer and Tech Heads will have access to certain confidential and proprietary information owned by, and related to, each other. For purposes of this Agreement, "Confidential Information" means any information concerning the businesses and affairs of Customer and Tech Heads that is not already generally available to the public, including, but not limited to: financial data and information; past, present, active, or prospective clients and customers; business plans and strategies; pricing rates, lists, guidelines, or policies; operations and procedures manuals; and any other intellectual property owned by the parties.

Customer and Tech Heads shall not at any time during the term of this Agreement and for two (2) years following its termination, use or disclose any Confidential Information of the other to any person, firm, or corporation, except (i) with the prior written and express consent of Customer or Tech Heads; (ii) to its employees, directors, officers, agents and consultants who have a need to know to further the purpose of this Agreement; and are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement; or (iii) to the extent necessary to comply with law or the valid order of a court of competent jurisdiction, in which event Customer or Tech Heads shall provide the other with advanced notice as soon as practicable to allow the owner of the Confidential Information to contest it.

Upon termination of this Agreement, each party agrees to promptly return to the other party all such Confidential Information, including all copies thereof, or certify that all such Confidential Information has been totally and permanently destroyed. Tech Heads will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-



supplied media, however, Tech Heads may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Tech Heads in order to discharge its obligations under this Section shall be at Customer's expense.

9. OWNERSHIP OF WORK

Services. Tech Heads retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Customer agrees not to disclose such information to any third party without Tech Heads' prior permission. The above notwithstanding, to the extent the Services contain custom software code developed by Tech Heads, the Parties agree that any such software or modifications to software written, created, or modified by Tech Heads shall be the property of Customer, and that Tech Heads shall have a paid up, perpetual, transferable right to use the intellectual property for any other purpose but only to the extent that such intellectual property (i) is of a generalized nature applicable to other Tech Heads clients and not specific to Customer, and (ii) does not contain any Customer Confidential Information.

Content. Tech Heads acknowledges and agrees that all Content, including copyrights, trademarks, database rights and other intellectual property contained in such Content are owned or licensed by Customer. Customer grants Tech Heads a license to store, record, transmit and display the Content solely to perform Tech Heads' obligations under this Agreement

10. INSURANCE

Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability insurance, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located, and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

11. INDEMNIFICATION

Indemnification by Tech Heads. Subject to the terms and conditions in this Agreement, Tech Heads will, at its cost, (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Tech Heads of any of its representations and warranties in Section 7; (b) real property damage or personal injury, including death, solely and directly caused by Tech Heads' employees or contractors in the course of performance under this Agreement; (c) any breach by Tech Heads of Section 8 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Tech Heads; and (d) any allegation that Customer's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents issued in the United States, or misappropriates any of such third party's trade secrets (each an "IP Claim"); and (ii) Tech Heads shall pay any final award of damages (or settlement amount approved by

Tech Heads in writing and) paid to the third party that brought any such IP Claim.

10.2. Indemnification by Customer. Customer will indemnify, defend and hold harmless Tech Heads and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Tech Heads or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of its representations and warranties under Section 7; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 8 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; (d) any breach by Customer of its obligations under "Other Customer Responsibilities; (e) any breach by Customer of its encryption obligations; (f) any data breach caused by Customer; and (g) any claim that Tech Heads' possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

10.3. Procedure. A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 10. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including without limitation, any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

10.4. Mitigation for IP Claims. At any time after notice of an IP Claim, or if Tech Heads believes there is a basis for an IP Claim, Tech Heads has the right, at Tech Heads' sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Tech Heads believes would not be subject to the IP Claim. If Tech Heads deems (a) or (b) not feasible or not commercially reasonable, Tech Heads has the right to terminate the applicable OA. In the event of any such termination, Tech Heads will refund to Customer the unused portion of any amounts paid by Customer for the affected Service. In addition, upon any such termination, Customer shall cease the use of the applicable Service.

10.5. Limitations as to IP Claims. Notwithstanding anything to the contrary, Tech Heads shall have no obligations or liability under Section 10.1 if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Tech Heads, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to



comply with Tech Heads' direction to cease any activity that in Tech Heads' reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Tech Heads Service, or that does not reference a feature of function of a Tech Heads Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Tech Heads.

10.6. Sole Remedy. THE TERMS IN THIS SECTION 10 (INDEMNIFICATION) SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND TECH HEADS' SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, TECH HEADS SHALL NOT HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FOR THIRD PARTY CLAIMS.

Customer represents and warrants to Tech Heads that it is the owner or licensee of, and/or has the right to be in possession of, all data, technology, and equipment furnished to Tech Heads under this Agreement, and has the right to modify any software to be modified as contemplated in any work order.

12. NON-SOLICITATION / NON-HIRE

Customer recognizes that Tech Heads has spent considerable time and money hiring and training its employees and other contractors with whom Tech Heads does business ("Workers"). Customer recognizes that in entering into this relationship with Tech Heads that Customer will have access to such Workers and could hire them away from Tech Heads. Customer recognizes that but for its agreement not to solicit or hire Tech Heads' Workers, Tech Heads would not enter into this Agreement.

Customer agrees that during the term of this Agreement and for a period of one (1) year after Services are last provided hereunder for any reason, Customer (i) will not, for itself or for or with others, directly or indirectly, solicit or induce any Worker of Tech Heads to cease working with Tech Heads or reduce the Worker's involvement with Tech Heads; and (ii) will not, directly or indirectly, hire any Worker in any capacity, whether as an employee, independent contractor, or otherwise, even if the Worker no longer works for Tech Heads and regardless of the circumstances behind the termination of the Worker's relationship with Tech Heads.

Customer further agrees and covenants that if it enters into any agreement with a third party that allows the third party to have access to the Workers, then Customer will ensure the third party signs a similar agreement prohibiting the third party from soliciting or hiring the Workers just as Customer is obligated under this Agreement.

Customer acknowledges that both the time period and the scope of these provisions are fair and reasonable and only designed to allow Tech Heads to maintain its relationships with its Workers after termination of this Agreement. In the event a court of competent jurisdiction determines that the time or scope of this section is excessive in any way or is unenforceable for any reason, then the parties agree that such court shall have the authority to modify the provisions to the maximum permissible time and scope, and as so modified, enforce the same against Customer.

Customer agrees that monetary damages may not be adequate in the event of any breach or threatened breach, and therefore stipulates that in either such event, Tech Heads shall have the right to obtain injunctive relief in addition to damages, and not as an election of remedies.

The Parties agree that in the event Tech Heads loses its relationship with any Worker as a result of Customer's breach of its obligations herein, Customer will owe Tech Heads a sum equal to twelve (12) months' gross pay of the departed Worker at the Worker's hourly wage at the time the relationship terminated, based upon a 40-hour work week. Tech Heads and Customer acknowledge and agree that such sum shall constitute liquidated damages and not a penalty. The parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate; (ii) the amounts specified in this subsection bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any breach by Customer; (iii) one of the reasons for Tech Heads and Customer reaching an agreement as to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iv) Tech Heads and Customer are sophisticated business parties and negotiated this Agreement at arm's length.

13. LIMITATION OF DAMAGES

TECH HEADS, ITS EMPLOYEES, SUPPLIERS, AND CONTRACTORS AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR THE PERFORMANCE OF THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION OR THEORY OF LIABILITY (WHETHER ARISING FROM CONTRACT, TORT, OR OTHERWISE) SHALL BE IN ALL CASES LIMITED TO AN ACTION FOR MONEY DAMAGES NOT TO EXCEED, IN THE AGGREGATE, FEES PAID BY CUSTOMER TO TECH HEADS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE OPERATING AGREEMENT AND PROPOSAL.

TECH HEADS, ITS EMPLOYEES, SUPPLIERS AND CONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXTRAORDINARY DAMAGES (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS PROFITS, LOSS OF REVENUE, LOSS OF GOODWILL, OR BUSINESS OPPORTUNITY OR INTERRUPTION THAT ARISE FROM OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY OA FAILS OF ITS ESSENTIAL PURPOSE.

EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CUSTOMER FOR THE SERVICES WOULD HAVE BEEN HIGHER.

Non-Managed Systems. Tech Heads shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement. Tech Heads shall not be liable for the actions or inactions of Customer's employees, agents or contractors.

14. OTHER CUSTOMER RESPONSIBILITIES

Acceptable Use. Customer is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Customer agrees, and will ensure its Users agree, to act responsibly and not use the Tech Heads Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. Tech Heads has the right to investigate potential violations of this Section. If Tech Heads determines that a breach has occurred, then Tech Heads may, in its sole discretion: (a) restrict Customer's and Users' access to the Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, Tech Heads will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Tech Heads of any event or circumstance related to this Agreement, Customer's or any User's use of the Services, or Content of which Customer becomes aware, that could lead to a claim or demand against Tech Heads, and Customer will provide all relevant information relating to such event or circumstance to Tech Heads at Tech Heads' request. Tech Heads agrees to always allow Customer complete and unrestricted access to Customer's software applications, devices, equipment, hardware, and all Services-related license files so that Customer can audit its Users' compliance with the terms of this Agreement.

Content. Customer is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services.

Required Consents. Customer shall obtain and keep in effect all Required Consents necessary for Tech Heads to perform all its obligations as set forth in this Agreement. Upon request, Customer will provide to Tech Heads evidence of any Required Consent. Tech Heads will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Tech Heads any Required Consents. Tech Heads will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Tech Heads. Tech Heads agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.

Software. Customer authorizes Tech Heads to determine whether or not software specified in any OA is currently in place, operational and maintained and supported at the level required for Tech Heads to perform the Services required under this Agreement. Customer grants Tech Heads, at no charge, the right to use any Customer-owned or developed application software systems required by Tech Heads to provide the Services specified in any OA to Customer.

Capacity Planning. Customer is solely responsible for determining whether the Services meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Services.

Customer Components. Customer is solely responsible for the selection, operation and maintenance of all Customer Components.



Security. Unless Customer contracts with Tech Heads to do so, Customer shall (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Tech Heads' ability to access or administer its network or provide the Services.

15. ENCRYPTION

Customer shall encrypt at the application level Confidential Information, Customer Data, and all data that is considered sensitive data or that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

16. RELATIONSHIP OF THE PARTIES

The Parties hereto are independent contractors, and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, Tech Heads may, from time to time, request that the Customer execute such instruments and documents appointing Tech Heads an agent of the Customer for a specific limited purpose. An officer of Customer shall, in a timely manner, execute and deliver to Tech Heads or the third party requiring the same, such instruments designating Tech Heads as Customer's agent to the extent required by Tech Heads to manage and perform to Services provided by it under this Agreement.

17. ERRORS

Neither Party shall be held accountable nor incur any additional costs due to discrepancies, errors, omissions in documentation or other information supplied by the other Party.

18. PERFORMANCE OF WORK AND SUBCONTRACTORS

Tech Heads reserves the right to hire and determine which of its employees or contractors will perform the Services, as well as the right to reassign or replace them. Tech Heads may subcontract any part of the Services.

19. ACTIVE NEGOTIATIONS

Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

20. EXPORT RESTRICTIONS

Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Tech Heads.

21. NON-ASSIGNABILITY

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Customer (whether by operation of law or otherwise) without the prior written consent of Tech Heads. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

22. NON-WAIVER

Failure of either party to enforce any of the provisions of this Agreement or any rights with respect thereto shall in no way be considered to be a waiver of such provisions or rights, or in any way affect the validity of this Agreement.

23. NO THIRD-PARTY BENEFICIARIES

Except as provided in Section 11 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

24. SEVERABILITY

If a court deems any provision of this Agreement illegal, invalid or otherwise unenforceable, such provision is severed from this Agreement and shall not affect the legality, validity or enforceability of any other provision. The parties shall change or interpret the severed provision so as to best accomplish its intended objective(s), if possible, under applicable law.

25. FORCE MAJEURE

Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

26. ATTORNEY FEES



If any legal action or other proceeding is brought arising out of this Agreement or for the enforcement thereof, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, court costs and expenses incurred at trial and on any appeal therefrom, in addition to any other relief to which such party may be entitled.

27. GOVERNING LAW

Oregon law governs this Agreement, excluding its conflict of laws principles. The parties irrevocably consent that exclusive venue for any state or federal lawsuit involving this Agreement will be Washington County, Oregon. The parties further agree that, except where immediate injunctive relief is needed, before any lawsuit is filed in federal or state court, the parties will engage in a cooperative, good faith discussions to resolve any dispute.

28. ENTIRE AGREEMENT

This Agreement, including all OAs and all schedules, attachments and/or other documents attached hereto or incorporated by reference states the complete and exclusive understanding of the parties regarding its subject matter and supersedes any prior oral or written discussions, negotiations or agreements. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement. No waiver or alteration of the provisions of this Agreement shall be binding on a party unless signed by that party's duly authorized representative. Tech Heads specifically rejects any additional or conflicting terms and conditions that are contained in any purchase order or similar document provided by Customer.

EXHIBIT A

TERMS SPECIFIC TO PRODUCT SALES ONLY

This Exhibit A: Terms Specific to Product Sales Only (“Exhibit A”) applies to any order for software, hardware, or Services Sold by Part Number (“Products”) made by Customer, for its own internal use and not for resale, pursuant to a quotation issued by Tech Heads (“Quotation”). As used in this Exhibit A, the term “Services Sold by Part Number” refers to services, which although ordered from Tech Heads, are procured from and supplied by a third party (i.e., Tech Heads does not directly perform or control the work) and are therefore considered Product. Any such orders shall be subject to the terms and conditions of this Exhibit A.

1. **Product Returns and Warranty Assistance.**

- (a) Customer acknowledges that Tech Heads is reselling all Products purchased by Customer and that Products are manufactured and/or delivered by a third party.
- (b) To the extent available, Tech Heads shall pass through to Customer the manufacturer’s warranties for each Product and agrees to facilitate the manufacturer’s return policies. In no event will Tech Heads provide return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer’s applicable restocking fee(s).
- (c) Customer acknowledges that the terms and conditions governing the use of Products shall be solely between Customer and the manufacturer of such Products.

2. **Product Use and Product Warranty Disclaimer.** Customer will not use the Products for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Customer agrees that Tech Heads is not liable for any claim or damage arising from such use.

TECH HEADS MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PRODUCTS. TECH HEADS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

3. **Shipment and Risk of Loss for Product Sales.** All shipments of Products to Customer will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Customer’s identified point of delivery will be the responsibility of Customer. Risk of loss will pass to Customer upon delivery of the Products to the common carrier (regardless of who pays such common carrier).
4. **Permitting Compliance for Product Sales.** Customer will obtain all licenses, permits, and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

5. **Price and Payment.** The prices set forth in any Quotation are exclusive of all taxes, duties, licenses, and tariffs, payment of which shall be Customer's obligation. Prices quoted are firm for thirty (30) days unless otherwise specified in the Quotation. Payment is due upon receipt of the invoice. In the event Customer chooses to finance its purchase using a third party, Customer remains liable for payment to Tech Heads until Tech Heads receives complete payment from such third party.
6. **Export.** Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer covenants that it will not, either directly or indirectly, sell, (re)export (including, without limitation, any deemed (re)export as defined by applicable law), transfer, divert, or otherwise dispose of any Product, or related software or technology, to: (i) any country or region of a country (or nationals thereof) subject to antiterrorism controls, or a U.S. embargo, (ii) any destination prohibited (without a valid export license or other authorization) by the laws or regulations of the United States, or (iii) any person, entity, vessel, or aircraft identified on the Consolidated Screening List, a downloadable file of which is accessible at http://export.gov/ecr/eg_main_023148.asp (or utilize any such person, entity, vessel, or aircraft in connection with the activities listed above), without obtaining prior authorization from the competent government authorities, as required by the above-mentioned laws and regulations. Customer certifies, represents and warrants that no Product shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. Notwithstanding any sale of Products by Tech Heads, Customer acknowledges that it is not relying on Tech Heads for any advice or counseling on export control requirements. Customer agrees to indemnify, to the fullest extent permitted by law, Tech Heads from and against any fines, penalties and reasonable attorney fees that may arise as a result of Customer's breach of this Section.
7. **Cancellation.** The purchase of Products may be canceled by Customer only upon written approval of Tech Heads and upon terms that indemnify Tech Heads against all losses related to such cancellation.
8. **Limitation of Liability. NO MONETARY RECOVERY IS AVAILABLE FROM TECH HEADS FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL TECH HEADS' LIABILITY TO CUSTOMER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. TECH HEADS WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, OR IN ANY WAY CONNECTED TO THIS EXHIBIT A, EVEN IF TECH HEADS HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.**