

Terms of Service

(Last Updated: July 23, 2021)

PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCEPTING THEM AND ACCESSING OR USING THIS PROGRAM:

These **Terms of Service** are presented by AiBUY, Inc. ("**AiBUY**") and may be accepted by the entity or person to whom these Terms of Service are presented by AiBUY for acceptance ("**Customer**") by (i) Customer upon entering into an agreement (e.g., a services agreement, subscription agreement, order form, statement of work, or otherwise) with AiBUY that incorporates these Terms of Service literally or by reference (the "**Master Agreement**"), or (ii) Customer, when presented by AiBUY with these Terms of Service virtually (e.g., on an internet page, in an e-mail, or by text message, whether literally or by reference), by indicating acceptance as directed when presented with these Terms of Service (e.g., by response e-mail or message or in the form of a click) ("**Acceptance**"). In any event, access to and use of the Licensed Application shall be deemed to be an Acceptance if no earlier Acceptance occurred.

Upon Acceptance, a binding contract is concluded between Customer and AiBUY that is comprised of (i) these Terms of Service and (ii) such other terms, conditions, and provisions setting forth the details of the services AiBUY is willing to provide to Customer under these Terms of Services as set forth in the Master Agreement (if applicable) or in any offer or other document setting forth such service details (the "**Service Description**") (these Terms of Service and the Service Description collectively, this "**Agreement**").

The individual indicating the Acceptance hereby represents and warrants to be fully authorized, and has the legal capacity, to act as an agent of Customer with the legal power to bind Customer to this Agreement and, when indicating the Acceptance, actually acts as an agent of Customer with the intent to bind Customer to this Agreement.

1. Entire Agreement; Definitions

1.1 Entire Agreement; Conflicts. This Agreement constitutes the entire understanding and agreement between the Parties hereto related to the subject matter hereof. In the event of any conflict, variation, or disparity between a term, condition, or provision of these Terms of Service and a term, condition, or provision in the Service Description, the term, condition, or provision of these Terms of Service shall prevail, except solely if and to the extent these Terms of Service expressly provide for or permit such conflict, variation, or disparity, in which case the term, condition, or provision of the Service Description shall prevail with regard to such permitted conflict, variation, or disparity.

1.2 Definitions. In addition to any other definitions in or pursuant to this Agreement, the following capitalized terms shall have the following meanings, unless expressly provided otherwise in this Agreement:

"**Affiliate**" of a person means any other person that directly or indirectly controls, is controlled by, or is under common control with, such person. For the purpose of this definition of "Affiliate," (i) "control" means owning, directly or indirectly, fifty percent (50%) or more of the beneficial or record ownership of the outstanding shares or other ownership interests of an entity, or having, directly or indirectly, the power to designate fifty percent (50%) or more of such entity's directors, managers, or individuals exercising authority in the governance of such entity, and (ii) "entity" means any, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or any other entity.

"**AiBUY Personnel**" means any officer, director, manager, employee, contractor, distributor, representative, or agent of AiBUY and/or any AiBUY Affiliate.

"**Customer Computer**" means solely a computer or the computers in the possession and control of Customer at all times when the Licensed Application is accessed or used from such computer(s).

"**Customer Content**" has the meaning set forth in Section 3.5.

"**Documentation**" means any documentation, guides, or manuals, or documentation, guides, or manuals may be made available by AiBUY to Customer for the Licensed Application or the Licensed Application.

"**Fee**" means any, and "**Fees**" means collectively some or all, of the License Fees, the Services Fees, and any other fees, charges, and compensation due or agreed to be paid to AiBUY under this Agreement.

“**Licensed Application**” means the software application, program, and/or system identified in the Service Description as the software application, program, and/or system to which Customer shall be given access and the right to use under these Terms of Service, and the documentation related thereto, all as provided and made available by AiBUY to Customer.

“**License Fee**” has the meaning set forth in Section 5.1.

“**Modification**” means any modification, error correction, update, upgrade, alteration, enhancement, translation, transliteration or change of or to, or any derivative work, derivation, and improvement to, any Licensed Application, any Documentation, or any part thereof.

“**Month**” means each one of the following periods: (i) the period from the Acceptance until the next following end of a calendar month, and (ii) any subsequent calendar month, or if only part of a subsequent calendar month falls into the Term, such part of such subsequent calendar month.

“**Party**” means individually either of Customer or AiBUY; “**Parties**” means collectively both Customer and AiBUY.

“**Proprietary Rights**” means any and all rights of any kind or nature, existing anywhere in or throughout the world and existing under, recognized by or arising from any law or legal system anywhere in the world, in or to or comprised by or arising from any: (i) patent (whether utility, design, or other patent), patent application, utility model, invention disclosure, patent disclosure, and invention (whether or not patentable), including all continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, and extensions, and all foreign, international and other counterparts and equivalents thereof, and all priority rights related to the foregoing, (ii) trademark, service mark, trade name, corporate name, business name, domain name, logos, slogans, trade dress, packaging, product and other design, and other designations of source or origin, and any translation, transliteration, adaptation, derivation and combination thereof, and any registration, application for registration, extension, and renewal thereof or related thereto, and all goodwill symbolized by any of the foregoing or associated therewith, (iii) copyright and any right similar thereto, whether arising from statute, regulation, common or judicial law, treaty or otherwise, and any registration, application for registration, and renewal thereof or related thereto, (iv) mask work, and any registration, application for registration, and renewal thereof or related thereto, (v) computer program (whether in source code, object code, or other form), algorithm, database, compilation, website, webpage, web address, web presence, uniform resource locator, and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing, (vi) trade secret, know-how, and confidential or proprietary or other information, material, items or things, (vii) personality, likeness, publicity, privacy, and personal information, (viii) moral right, attribution and integrity, and (ix) other intellectual or industrial property, whether existing now or being recognized or created in the future.

“**Section**” means any of the numbered articles and sections set forth in these Terms of Service.

“**Service Fees**” has the meaning set forth in Section 5.2.

“**Services**” means such AiBUY Services that are expressly set forth in the Services Description as being provided by AiBUY to Customer.

“**Term**” means the duration of this Agreement commencing on the Acceptance and ending upon the termination or expiration of this Agreement.

2. Term

Unless terminated earlier in accordance with Section 12, this Agreement shall commence upon the Acceptance and continue for such term or duration as set forth in the Service Description. If no term or duration is set forth in the Service Description, this Agreement shall commence upon the Acceptance and continue, unless terminated earlier in accordance with Section 12, for a period of one (1) year (the “**Initial Period**”) and continue for subsequent consecutive one (1) year terms (each, a “**Renewal Period**”) unless a Party terminates this Agreement by written notice of termination to the other Party effective at the end of the Initial Period or a Renewal Period (as stated in such written notice, or if none is stated, the next following end of the Initial Period or the Renewal Period for which such written notice of termination is timely under this Section 2) delivered to the other Party at least ninety (90) days prior to the end of the Initial Period or such Renewal Period, as applicable.

3. License; Services

- 3.1. Software. AiBUY grants Customer a non-transferable, non-sublicensable, non-assignable, terminable, limited, and non-exclusive license to access and use the Licensed Application and any Documentation solely remotely on a

software-as-a-service (SaaS) basis solely at the online domain identified by AiBUY to Customer for such access and use (the "**Designated Domain**") from a Customer Computer solely for its internal use solely for advertising, promoting, offering, marketing, and selling Customer Products, and not for any use or purpose that is, wholly or partially, a Prohibited Use (as defined Section 3.2), in accordance with the terms and conditions of this Agreement in consideration for the License Fees. AiBUY does not make the Licensed Application or any part thereof available for downloading or installation and does not make available any source code of the Licensed Application, and Customer does not have any right or license to download or install the Licensed Application or any part thereof or receive any source code. Any access, execution, or use of the Licensed Application, or any part thereof, other than as expressly permitted under this Section 3 or in violation of this Agreement shall be deemed to be an infringement of AiBUY's Proprietary Rights in the Licensed Application and/or the Documentation and subject to all rights and remedies of AiBUY arising from or in connection with such an infringement. Any access to an use of the Licensed Application is based on a license and service hereunder; the Licensed Application is not sold.

3.2. Prohibited Use. The term "**Prohibited Use**" means each and all of the following:

- (a) any access to or use of the Licensed Application or any Documentation for or in connection with: (i) any product, service, message, or purpose that violates any applicable law or right of any person or entity or is threatening, libelous, slanderous, defamatory, or pornographic, or (ii) any violation, infringement, or misappropriation of any copyright, patent, trademark, trade secret, or other intellectual property right of any kind, or any personality right (e.g., right to likeness, name, or voice) or circumventing technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction, or (iii) any financial, insurance, legal, medical, securities, and other products and/or services subject to any federal, state, local, foreign, and/or international law, rules, or regulations, now or in the future, or any advertising, offering, sale, supply, and/or provision thereof, except solely if Customer complies with all such applicable law, rules, and regulations;
- (b) accessing or using, or making available for access or use, the Licensed Application to advertise, promote, offer, market, and sell any products or services of or on behalf of a third party (e.g., as a service bureau);
- (c) selling, reselling, distributing, pledging, granting a security interest or lien, renting, leasing, lending, sublicensing, or transferring the Licensed Application, any Documentation, or any rights hereunder;
- (d) taking any action to circumvent, manipulate, change or defeat any download or copy protections, firewalls, virus, spam or similar screening, or security or content usage rules, programs or features in connection with the Licensed Application or any Documentation and/or any access to or use of the Licensed Application or any Documentation;
- (e) removing, modifying, changing, altering, obscuring or covering up any copyright or trademark notice from any part of the Licensed Application, including but not limited to any such notices contained in the physical and/or electronic media or Documentation; and/or
- (f) agreeing with, or causing or assisting, without AiBUY's express prior written consent, anybody to do or have done, directly or indirectly, any of the foregoing.

3.3. Further Limitations. Customer does not have any right or license to, directly or indirectly, in any manner whatsoever: (i) attempt to download or install, or download or install, or use any downloaded or installed version or copy of, the Licensed Application, or any part thereof; (ii) copy or reproduce the Licensed Application or the Documentation or any part thereof for any purpose (except solely any copying that is necessarily incidental to any permitted access to or use of the Licensed Application under the license grant in Section 3.1); (iii) modify, change, create any Modification, reverse engineer, decompile, or disassemble the Licensed Application or any part, process, or method thereof or used thereby, or otherwise reduce it to a human perceivable form, or attempt to do so; (iv) use any information gathered or learned from any access or use of the Licensed Application to create any competitive application, system, product, or service; (v) access the Licensed Application other than through use of the Log-In Information (as defined in Section 8.1); (vi) assign, transfer, sell, or encumber the Licensed Application, any part thereof, or grant any sublicense or the direct or indirect right of granting any sublicense, or any right or obligation hereunder or regarding the Licensed Application or the Documentation or any part thereof; (vii) use or utilize the Licensed Application, or any part thereof, for any purpose or in any manner that is illegal or in violation of any applicable law or rights of any third party; (viii) remove, modify, change, alter, obscure, or cover any copyright, trademark, patent, or other proprietary notice or marking in or on the Licensed Application or any part thereof; or (ix) or cause, induce, request, or permit any third party to do or engage in any of the foregoing.

3.4. Services. AiBUY agrees to provide Customer with the Services under the terms of this Agreement. Customer agrees to cooperate with AiBUY and provide reasonable assistance in connection with AiBUY's performance of its obligations. Customer acknowledges and agrees that AiBUY may, in performing its obligations pursuant to this Agreement, be dependent upon or use data, material, and other information furnished by Customer without any independent investigation or verification thereof, and that AiBUY shall be entitled to rely upon the accuracy and completeness of such information in performing the Services.

- 3.5. Customer Content. As part of the licensed use of the Licensed Application under the license grant set forth in Section 3.1, Customer may upload to or through or use with the Licensed Application any Video or other content of Customer (the “**Customer Content**”). If and to the extent that AiBUY requires any license in connection with any Customer Content uploaded to or used in connection with making available the Licensed Application, such license is granted as part of Section 6.2. Customer is solely responsible and liable for any Customer Content, including, without limitation, obtaining all necessary rights and licenses to upload and use any Customer Content. **Customer agrees that AiBUY will have no right or ability to control any Customer Content and will not, and AiBUY has no obligation to, review, preview, monitor, select, or otherwise control any Customer Content**, provided that AiBUY has the right to remove or disable access to any Customer Content, temporarily or permanently, in any of the following events, and AiBUY shall have no liability to Customer for or in connection with such removal or disabling of access, including, without limitation, for any lost profits, lost revenue, or other damages:
- (a) upon actual notice, belief, or knowledge that such Customer Content infringes any copyright or other Proprietary Right, violates, breaches, misappropriates, or uses without authorization any name, likeness, or personality right, misappropriates any trade secret or other property, or violates any applicable data privacy law or obligation;
 - (b) upon receipt of any take down notice regarding such Customer Content in accordance with 17 U.S.C. § 512 or any other law or successor provision thereof;
 - (c) upon actual notice, belief, or knowledge that such Customer Content gives rise to label, slander, or defamation or violates any right or property of any third party, is fraudulent, unlawful, defamatory, obscene, pornographic, vulgar, offensive, profane, sexually explicit, indecent, threatening, abusive, violent, illegal, rude, harassing, or otherwise improper, and/or is damaging to the reputation of AiBUY or any of its officers, directors, managers, or employees;
 - (d) upon actual notice, belief, or knowledge that such Customer Content, or any part thereof, or its posting or use, violates any applicable law;
 - (e) if such Customer Content, or its posting or use, is or is involved in any Prohibited Use or otherwise breaches any of the provisions of this Agreement; or
 - (f) if AiBUY is legally required or believes to be legally required, or receives any court or governmental order, to remove or disable access to such Customer Content; and/or
 - (g) upon or after the termination or expiration of this Agreement, or if such removal or disabling of access is commensurate with any modification, alteration, change, termination, or discontinuance of the Services or any of the Services.
- 3.6. Relationship of the Parties. AiBUY and Customer acknowledge and agree that they are independent contractors, each without the power or authority to bind, contract or commit the other, and will always represent themselves to any third parties only as an independent contractor without such power or authority. The Parties are not, and nothing in this Agreement shall be interpreted that the Parties are, partners, joint venturers, co-owners or otherwise participants in a joint or common undertaking. Customer shall take steps necessary to avoid the appearance or belief by a customer that Customer is an agent with the authority to bind AiBUY or an employee, partner, joint venturer, co-owner or Affiliate of AiBUY. The employees or agents of one Party are not, and shall not be construed to be, employees or agents of the other Party, and such other Party shall not be liable for, have any obligations to, and may not be bound by such employees and agents of the first Party. Neither Party shall have any authority (express, implied or otherwise) to enter into any contracts or commitments in the name of, or on the behalf of, the other Party or bind the other Party in any respect whatsoever. Customer agrees and acknowledges that, regardless of whether Customer is doing business as a sole proprietorship, partnership, individual, corporation or otherwise, Customer is solely responsible for any and all employment/contractual issues, payment of any wages and benefits, and for the collection and remittance of required withholding taxes or other taxes concerning its own employees and/or contractors.
- 3.7. Modification. AiBUY may (if, as, and when it decides to do so in its sole discretion and without any obligation) develop or implement any Modification of the Licensed Application or any Documentation. AiBUY has the right to make any Modification at any time, without obligation by AiBUY to provide any notice or obtain any consent or agreement from Customer or any third party, and without any right by Customer or any third party to receive any notice or provide any consent or agreement thereto, provided that AiBUY will give Customer prior notice of any Modification to the Licensed Application that causes a material change in the functionality of the Licensed Application and materially affects the general use of the Licensed Application.
- 3.8. Downtime; Service Levels.
- a. Each Month after the first Month, AiBUY will provide at least 99.0% uptime (other than any Downtime) for access to or use of the Licensed Application. 99.0% uptime to be measured against the total hours in such Month at twenty-four (24) hours per day. Failure to provide at least 99.0% uptime (other than any Downtime) will result in a pro-rata reduction in the License Fee for such Month as determined under Paragraph 3 of the Service Description, which shall be the sole and exclusive right and remedy in connection with any uptime failure.

- b. AiBUY may, from time to time, take down or shut down access to the Licensed Application, or parts thereof, for maintenance, repair, or service. (“**Downtime**”). Customer acknowledges that, during any Downtime, Customer may not be able to access and use some or all parts of the Licensed Application. AiBUY agrees to make commercially reasonable efforts to notify Customer in advance of such Downtime, for example by displaying a notice during access of the Licensed Application or by posting a notice on the website of the Designated Domain.

4. Error Corrections and Technical Support

4.1. Technical Account Manager (“TAM”). AiBUY will designate a TAM to respond to Customer’s support questions and escalations. Customer shall select up to five employees (“**Support Contacts**”) who will be authorized to contact the TAM for Technical Support. The TAM will provide Customer with a telephone number, e-mail address, and a cell phone number. The TAM response time will be based on severity levels as set forth below.

4.2. AiBUY Support Response. AiBUY agrees to provide support response during standard business hours (as determined by AiBUY) to correct Severity 1 or Severity 2 Errors set forth in a Support Request. For a Severity 1 Error, AiBUY will respond, for both the initial response and ongoing responses, to such Support Request within four (4) hours after receipt of the Support Request. For Severity 2 Errors, AiBUY will respond, for both the initial response and ongoing responses, to such Support Request within eight (8) hours after receipt of the Support Request. AiBUY agrees to provide support response during normal business hours to correct High Errors or Medium Errors set forth in a Support Request. For High Errors AiBUY will respond, for both the initial response and ongoing responses, to such Support Request within twelve (12) business hours after receipt of the Support Request. For Medium Errors, AiBUY will respond, for both the initial response and ongoing responses, to such Support Request within twenty-four (24) hours after receipt of the Support Request.

4.3. Definitions. The following definitions shall apply to this Section 4:

- a. “**Error**” means any of the following: an alleged Medium Error, a High Error, a Severity 2 Error, or a Severity 1 Error.
- b. “**Medium Error**” means a reproducible error in the Licensed Application that relates to general usage of the Licensed Application and that causes a low-to-no impact on Customer’s business as it relates to the Licensed Application or on the performance or functionality of Customer’s system using the Licensed Application.
- c. “**High Error**” means a reproducible error in the Licensed Application that involves partial, non-critical loss of use of the Licensed Application that causes a medium-to-low impact on Customer’s business, but Customer’s business as it relates to the Licensed Application continues to function, including by using a procedural work around.
- d. “**Maintenance**” means registered access to modifications, corrections, and/ or updates to the Licensed Application; patches, hotfixes, and/ or major upgrades implemented in the Licensed Application by AiBUY.
- e. “**Severity 1 Error**” means a reproducible error in the Licensed Application that severely impacts Customer’s use of the Licensed Application (such as loss of production data or in which Customer’s production systems are not functioning) and that causes Customer’s business operations as it relates to the Licensed Application to cease and no procedural workaround exists.
- f. “**Severity 2 Error**” means a reproducible error in the Licensed Application where the Licensed Application is functioning but Customer’s use of the Licensed Application is severely reduced and that causes a high impact to portions of Customer’s business operations as it relates to the Licensed Application and no procedural workaround exists.
- g. “**Support Request**” means a request by Customer for Technical Support, identified by a unique identifier or number for tracking purposes.
- h. “**Technical Support**” means making commercially reasonable efforts to correct an Error in response to a Support Request under the terms and conditions of this Section 4.

5. Fees and Payment

- 5.1. License Fees. In consideration for the License, Customer agrees to pay to AiBUY such fees in such amounts or at such rates as set forth in the Service Description (each such fee, a “**License Fee**,” collectively, the “**License Fees**”). Customer shall deliver to AiBUY such reports at such times as set forth in the Service Description.
- 5.2. Service Fees. In consideration for any Services, Customer agrees to pay to AiBUY the fees for such Services as set forth in the Service Description (the “**Services Fees**”).
- 5.3. Payment. All Fees shall be due from Customer to AiBUY within thirty (30) days of receipt of AiBUY’s invoice of such Fees. Customer shall pay all Fees in immediately available indefeasible unconditional funds in U.S. dollar currency without any set-off or deduction, wiring instructions available upon request. Any amount of any Fee that is unpaid when it is due shall accrue interest from the date it is due until AiBUY’s receipt of the payment of such amount at the rate of the lower of (i) one and one-half percent (1.5%) per full or partial calendar month or (ii) the highest enforceable rate of interest under applicable law. All such interest shall be paid simultaneously with the payment of the unpaid amount on which such interest accrued. Without limiting its rights or remedies under this Agreement, AiBUY may immediately suspend the license of Customer or any Services in the event of Customer’s failure to make timely payment of any License Fee or any Services Fees owed and due under this Section 5.
- 5.4. Taxes. All Fees payable to AiBUY hereunder do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be the sole responsibility of Customer (excluding any applicable taxes based on AiBUY’s net income or taxes arising from the employment or independent contractor relationship between AiBUY and its personnel). In the event that such taxes, tariffs or duties are assessed against AiBUY, Customer shall reimburse AiBUY for any such amounts paid by AiBUY or, prior to the payment of such amounts by AiBUY, provide AiBUY with valid tax exemption certificates with respect thereto.
- 5.5. No Precedence. The Parties agree that the rate, value, or amount of any Fee is based on the particular circumstances of this transaction, shall not be deemed to be a precedent for any maximum payment under any other transaction, whether between the Parties or of any third party, or in connection with any rights or remedies asserted by AiBUY, and shall not be deemed to be an indication of what constitutes or may constitute, or be used in the determination of, a maximum reasonable royalty regarding any AiBUY Property.

6. Intellectual Property; Customer Data

- 6.1. AiBUY Property. AiBUY and/or its licensor(s), if any, own and shall retain all rights, title and interest in and to the Licensed Application, the Documentation, any Modification, any AiBUY Services, any other software, documentation, code, material, information, and data provided or made available by AiBUY or any Affiliate of AiBUY to Customer, or obtained by Customer from AiBUY or any Affiliate of AiBUY, under or in connection with this Agreement, the Services, and any and all parts thereof, AiBUY’s Confidential Information, and any and all technology and works therein or thereof or created, developed, designed, authored, invented, or discovered by or for AiBUY, and all modifications, alterations, improvements, derivative works, and derivations of any of the foregoing created, conceived, developed, or discovered by whomever, and all Proprietary Rights of any kind, existing wherever or under whatever law, in and to and related to and covering any of the foregoing (collectively, “**AiBUY Property**”). Except as specifically set forth herein, nothing in this Agreement, or any performance of or under this Agreement, constitutes, or shall be interpreted or construed to constitute, any assignment, transfer, conveyance, or grant of any right, title, interest, license, lien, or expectation, or any right to grant any license or use right whatsoever, in or to any AiBUY Property, whether expressly, implicitly, or otherwise. Customer agrees that Customer will not acquire, by use or otherwise, and will not claim, any ownership, license, or other rights (other than the limited express license granted hereunder during the term of this Agreement) in, or take any action that in any way may jeopardize or jeopardize AiBUY’s ownership or rights in or to, any AiBUY Property. If Customer or any affiliate, employee, or contractor of Customer owns or acquires any rights, title, or interest in or to any AiBUY Property in connection with this Agreement, Customer agrees to assign and hereby assigns, and agrees to cause such affiliate, employee, and contractor to assign, all such rights, title, and interest to AiBUY, without payment. Customer shall, and shall cause such affiliate, employee, and contractor to, execute any document or take any reasonable action as requested by AiBUY to effect any such assignment.
- 6.2. Customer Property. Customer shall retain all rights, title and interest in and to any Customer Data, Customer Content, and any Confidential Information of Customer, and all Proprietary Rights of any kind, existing wherever or under whatever law, in and to and related to and covering any of the foregoing, excluding any AiBUY Property (collectively, “**Customer Property**”). Customer hereby grants AiBUY a non-exclusive, sublicensable, transferable, worldwide right and license to use, reproduce, distribute, modify and create derivations from, publish, and display any Customer Data and Customer Content, and otherwise use, exercise, and exploit any Customer Property as necessary or useful in

connection with the performance or provision of any Services, and AiBUY may transfer or sublicense such right and license to any contractor or vendor used in connection with any Services, and as set forth in Section 10.3. Otherwise, Customer does not grant any right, title, interest, license, lien, or expectation, or any right to grant any license or use right whatsoever, in or to any Customer Property, whether expressly, implicitly, or otherwise.

- 6.3. Customer Data: Customer expressly assumes all risks of error, corruption, loss or damage to any data, text, images, videos, documentation, material, or information entered by Customer in connection with the access or use of the Licensed Application (“**Customer Data**”). Customer is solely responsible for management of Customer Data, including but not limited to back-up and restoration of Customer Data. CUSTOMER AGREES THAT AIBUY IS NOT RESPONSIBLE FOR THE LOSS OF ANY CUSTOMER DATA OR FOR THE BACK-UP OR RESTORATION OF ANY CUSTOMER DATA, REGARDLESS OF WHETHER SUCH CUSTOMER DATA ARE MAINTAINED ON AIBUY’S SERVERS OR CUSTOMER’S EQUIPMENT. Customer may delete or modify any Customer Data. AiBUY has no obligation to archive any Customer Data. Customer recognizes and acknowledges that any deleted Customer Data or any Customer Data prior to any modification will be erased from the database and will not be available or recoverable thereafter, and that any erasure may be delayed until the next generally scheduled database update, which may be conducted within days, weeks, longer or shorter time from each other.

7. Confidentiality

- 7.1. Confidential Information. Each Party (the “**Disclosing Party**”) may disclose to the other Party (the “**Receiving Party**”), or the Receiving Party may obtain, in connection with this Agreement any confidential or proprietary documents, materials, or information of the Disclosing Party that the Receiving Party knows or should know is confidential and proprietary for the Disclosing Party, whether or not such documents, material, or information is designated, labeled or identified as confidential or proprietary, other than Non-Confidential Information (collectively, “**Confidential Information**”). “**Non-Confidential Information**” means any document, material, or information that, and to the extent it, (i) was already a part of the public domain at the time it was disclosed to or obtained by the Receiving Party; (ii) was already known to the Receiving Party other than under an obligation of confidentiality at the time at the time it was disclosed to or obtained by the Receiving Party; (iii) and after it becomes known to the public through no fault of the Receiving Party or any person acting for or on its behalf; or (iv) is developed by or for the Receiving Party independently without use or knowledge of Confidential Information of any kind of the Disclosing Party. The Licensed Application, any Documentation, and all Modifications shall be deemed to be Confidential Information of AiBUY.
- 7.2. Confidentiality. The Receiving Party shall keep in confidence and not disclose or disseminate to any third party and not use any Confidential Information of the Disclosing Party, except solely as permitted under Section 7.3. The Receiving Party shall protect the confidentiality of all Confidential Information of the Disclosing Party to the same degree as it protects the confidentiality of its own Confidential Information.
- 7.3. Permitted Use and Disclosure. Subject to Sections 7.2, 7.4, and 7.5, the Receiving Party may (i) use during the Term any Confidential Information provided by the Disclosing Party to it under this Agreement solely for the purposes for which it was provided and under the terms, if any, under which it was provided; (ii) disclose during the Term any Confidential Information to any employee or contractor (provided that such employee or contractor is then and continues to be subject to a non-disclosure agreement or confidentiality obligation at least as stringent as the terms set forth in this Section 7) solely for the purpose of, and only as necessary for, any use of such Confidential Information under the foregoing clause (i) of this Section 7.3; and (iii) use and disclose any Confidential Information of the Disclosing Party solely for the purpose of, and only as necessary for, any use of such Confidential Information to enforce any right of the Receiving Party under this Agreement.
- 7.4. Disclosure Obligation. If the Receiving Party is required to disclose any Confidential Information of the Disclosing Party in an administrative or judicial proceeding, the Receiving Party may so disclose such Confidential Information only (i) if the Receiving Party promptly notifies the Disclosing Party of such requirement (unless applicable law prohibits such notice), (ii) reasonably assists the Disclosing Party, at the Disclosing Party’s expense and reasonable request, with exercising or asserting legal rights or remedies to prevent such disclosure and/or to obtain a protective order against such disclosure, and (iii) limits the disclosure to such Confidential Information that the Receiving Party is required to disclose in accordance with applicable law.
- 7.5. Public Disclosure of Relationship. Customer agrees to allow AiBUY to identify Customer, and to use Customer’s name and marks to identify Customer, as a customer and to disclose the relationship described herein and as defined by any subsequent Service Order for purposes of promotion, marketing, and client reference. The Parties agree that such disclosures may include use of screenshots, screen-casts, audio and video, and similar materials so long as such disclosures do not violate the confidentiality terms set forth in this Section 7.

8. Access and Use

- 8.1. Log-In Information. Customer will receive a unique login identity(ies) or username(s) and password(s) for accessing the Licensed Application through the internet at the Designated Domain (collectively, "**Log-In Information**"). Logging in at the Designated Domain using the Log-In Information is a condition precedent for Customer's access to and use of the Licensed Application or any part thereof. If Customer is permitted or required by AiBUY, or prompted by the Licensed Application, to change the Log-In Information, Customer shall do so until new identity or username and/or password is accepted by AiBUY at the Designated Domain, and the prior identity or username and/or password shall cease being, and the new identity or username and/or password shall constitute, the Log-In Information. Customer may access and use the Licensed Application solely with the Log-In Information. Customer agrees not to share any of the Log-In Information with any other person or permit any other person to access, know and/or use any of the Log-In Information, except solely for any employee or authorized person of Customer, if any, who is authorized by Customer to access and use the Licensed Application in accordance with this Agreement, *provided, however*, that Customer shall require each such employee or authorized person to comply fully with the confidentiality and secrecy obligation and use restrictions that Customer has with regard to the Log-In Information. Once a person ceases to be an employee or a person otherwise authorized to access and use the Licensed Application, Customer shall ensure that such employee or authorized person has no further access to the Licensed Application, if necessary, by changing the Log-In Information. All Log-In Information shall be deemed to be property of AiBUY. Customer is responsible and liable for loss, misappropriation, or misuse of any Log-In Information in the possession or control of Customer or any of its employees or persons authorized by Customer to have or use the Log-In Information. Customer shall notify AiBUY immediately in writing of any loss, misappropriation, or misuse of any Log-In Information. AiBUY may then require a change in the Log-In Information.
- 8.2. Access Requirements. Customer is solely responsible, throughout the duration of this Agreement and Customer's access and use of the Licensed Application at the Designated Domain, for obtaining, providing, establishing and maintaining, at Customer's sole cost, all software (including, without limitation, any and all licenses or other rights necessary for using such software), hardware, communication, internet access and connection (whether through telephone, cable, DSL, T1, ISDN, wireless, mobile, or any other form or type of access, connection or connectivity), electricity, and any other prerequisites that are or may be necessary for the access to and use of the Licensed Application (collectively, "**Access Requirements**"), and neither AiBUY nor any Affiliate nor any AiBUY Personnel shall be liable for any Access Requirements, or the provision thereof, or any costs, charges, fees, taxes, rates, or other payments incurred or made in connection therewith.
- 8.3. Submissions. If Customer uses the Licensed Application to submit, post, or add, or have a third party submit, post, or add, any text, testimonial, story, photograph, other image, video, or other material or content of any kind, including of any other person (collectively, "**Submissions**"), Customer shall be solely responsible and liable for all Submissions, including the information, statements, facts, and material contained in any form or medium (e.g., text, audio, video, and photographic) therein and any violation of any law or any third party's rights thereby.
- 8.4. Use of Submissions. If Customer provides, submits, or makes available any Submission to AiBUY, Customer hereby grants AiBUY the unrestricted, unlimited, perpetual, transferable, sublicensable, worldwide right and license to use such Submission for any purpose, including, without limitation, to use, reproduce, modify, copy, distribute, display, perform, modify, edit, create derivative works from, and publish such Submission or any part thereof. AiBUY shall not be liable to Customer, and Customer shall have no claim against AiBUY, for any royalty, fee, or payment of any kind in connection with any use of a Submission or for the compensation or reimbursement of any cost, expense or liability incurred by Customer. AiBUY has no obligation or responsibility regarding any Submission. Any Submission submitted by Customer is submitted at Customer's own risk.
- 8.5. Linked Sites. The Designated Domain may contain links to independent third-party web sites ("**Linked Sites**"). The Linked Sites are not reviewed, controlled, or examined by AiBUY. Customer acknowledges and agrees that AiBUY is not responsible for any losses incurred or claims against the owner of Linked Sites or other third party web sites. The inclusion of any link to any Linked Site does not imply endorsement, implied or expressed, by AiBUY. Customer will need to make its own independent judgment regarding any interaction with Linked Sites.

9. Legal Requirements

- 9.1. Lawful Use. Customer agrees to use the Licensed Application in accordance with any and all law, statutes, regulations, rules, ordinances, directives, and court and governmental orders applicable to Customer, including, without limitation, all law, statutes, regulations, rules, ordinances, directives, and court and governmental orders related to the products and/or services advertised, offered, and/or provided through use of the Licensed Application and/or any data privacy, data security, and confidentiality of data and information regarding any data collected, received, shared, or accessed

by Customer in connection with the use of the Licensed Application and/or the products and/or services advertised, offered, and/or provided through use of the Licensed Application (“**Legal Requirements**”). Customer shall ensure at all times that Customer has all rights and/or licenses to any technology, software, hardware, work, material, data, and/or information that Customer uses in connection with the Licensed Application. Customer is solely responsible for lawfully procuring any and all such rights and/or licenses at Customer’s sole cost.

- 9.2. Designated Domain. Although the Licensed Application and the Designated Domain may be accessible worldwide, not all features, products or services discussed, referenced, provided or offered through or on the Designated Domain or under this Agreement are available to all persons or in all geographic locations, or appropriate or available for use outside the United States. AiBUY reserves the right to limit, in its sole discretion, the provision and quantity of any feature, product or service to any person or geographic area. Any offer for any feature, product or service made on the Designated Domain or under this Agreement is void where prohibited. If Customer chooses to access the Designated Domain or the Licensed Application from outside the United States, Customer does so on its own initiative and is solely responsible for complying with applicable local laws. The Licensed Application shall be provided in English and any development of the Licensed Application for use in an additional language shall require a separate service engagement.
- 9.3. Taxes. Customer is solely responsible for determining whether or what sales tax, use tax, value added tax, or other tax, charges, duties, or imposts will be due or owed in connection with any use of Customer of the Licensed Application, or any transaction through or related to the Customer Application (“**Taxes**”), and if so, at what rate or amount any Tax is owed. Customer is solely responsible and liable for any Taxes and the withholding and payment thereof.

10. **Data Privacy**

- 10.1. AiBUY Data Privacy Policy. Customer may provide certain data, including data of Customer. All collection, processing, and use of such data shall be in accordance with AiBUY’s Data Privacy Policy (as posted on AiBUY’s website and modified from time to time).
- 10.2. Monitoring. AiBUY automatically measures and monitors network performance and the performance of the Licensed Application and access and use of the Licensed Application and connection to Customer’s network. AiBUY also will access and record information about Customer’s profile and settings. Customer consents to AiBUY’s monitoring of Customer’s connection to the Licensed Application and network performance as they relate to the Licensed Application or any services of AiBUY. AiBUY shares information collected for the purpose of network or computer performance monitoring and for providing customized technical support outside of AiBUY or its authorized vendors, contractors and agents.
- 10.3. Use of Generated Data. Other than data generated by Customer’s use identifying specific individuals or customers of Customer or the content of specific transactions of a customer with Customer, Customer agrees that AiBUY may collect, process, store, distribute, disclose, use, and utilize any and all data generated by, or by Customer’s use of, the AiBUY Services or the Licensed Application, including related to data traffic, pull-through and conversion rates, transaction volumes, user behavior, and resource consumption.

11. **Warranties; Liability**

- 11.1. Warranties.
- a. Each Party warrants and represents that it has the right and authority to enter into this Agreement, and that it is not party to any agreement of any kind that will or may prevent such Party from, or that would be or may be breached by such Party’s, entering into this Agreement, performing any of its obligations under this Agreement and/or making any of the assignments, transfers, conveyances, grants, covenants, warranties, or representations therein or thereunder.
 - b. AiBUY warrants and represents that it will perform any Services under this Agreement consistent with professional standards and in compliance with the terms hereof and thereof.
 - c. Customer warrants and represents that it will access, use, and utilize the Licensed Application, any Documentation, and all Services solely in accordance and compliance with the terms and conditions of the Agreements.
- 11.2. SOLE AND EXCLUSIVE REMEDIES. THE EXCLUSIVE REMEDY FOR ANY BREACH OF AIBUY OF THE WARRANTY AND REPRESENTATION SET FORTH IN SECTION 11.1(b) SHALL BE THE REPERFORMANCE OF THE NONCONFORMING SERVICES OR TERMINATION OF THE SOW UNDER WHICH THE NONCONFORMING SERVICES WERE TO BE PROVIDED. CUSTOMER SHALL HAVE NO RIGHTS TO ANY DAMAGES OR TO

WITHHOLD PAYMENT OR MAKE SET OFFS OR DEDUCTIONS FROM ANY PAYMENT DUE BY CUSTOMER AS A RESULT OF ANY CLAIMS CUSTOMER MAY HAVE OR ALLEGE TO HAVE FOR ANY SUCH BREACH OR OTHERWISE AGAINST AIBUY UNDER THIS AGREEMENT.

- 11.3. DISCLAIMER. THE LICENSED APPLICATION, ALL DOCUMENTATION, ALL SERVICES (OTHER THAN THE LIMITED WARRANTY IN SECTION 11.1), ALL SUPPORT, AND ALL ERROR CORRECTION, AND ANY PART THEREOF (INCLUDING, WITHOUT LIMITATION, ANY MODIFICATION), ARE PROVIDED "AS IS" AND "WHERE IS," AND AIBUY MAKES NO REPRESENTATION, WARRANTY, COVENANT, OR CONDITION OF ANY KIND TO CUSTOMER, ANY USER, OR ANY OTHER THIRD PARTY, WHETHER VERBAL, WRITTEN, EXPRESSLY, OR IMPLICITLY, AND AIBUY HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, AND STATUTORY, OF ANY KIND FOR OR RELATED TO OR REGARDING THE LICENSED APPLICATION, ALL DOCUMENTATION, ALL SERVICES (OTHER THAN THE LIMITED WARRANTY IN SECTION 10.1(b)), ALL SUPPORT, AND ALL ERROR CORRECTION, AND ANY PART THEREOF (INCLUDING, WITHOUT LIMITATION, ANY MODIFICATION), AND OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE, WORKMANSHIP, ACCURACY, RELIABILITY, INTEROPERABILITY WITH SOFTWARE OR HARDWARE, SECURITY, AND HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS ARISING AS A RESULT OF CUSTOM, USAGE OR TRADE AND THOSE ARISING UNDER STATUTE. AIBUY MAKES NO, AND DISCLAIMS ALL, WARRANTIES AND REPRESENTATIONS REGARDING UTILITY, USEFULNESS, COMMERCIAL BENEFITS, OR OTHER RESULTS, EFFECTS, OR USE OF THE LICENSED APPLICATION.
- 11.4. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ANY AFFILIATE OF SUCH PARTY, OR ANY AIBUY PERSONNEL, BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, LIQUIDATED, EXEMPLARY, OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, AND DISCLOSURE OR LOSS OF INFORMATION, DATA, INCOME, REVENUE, GOODWILL OR ANTICIPATED SAVINGS) EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE (INCLUDING, WITHOUT LIMITATION, FOR OR RELATED TO OR REGARDING THE LICENSED APPLICATION, ANY PART THEREOF, ANY MODIFICATION AND DOCUMENTATION, THE DESIGNATED DOMAIN, SUPPORT, MAINTENANCE, AND OTHER SERVICES, IF ANY, AND OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT). FURTHER, IN NO EVENT WILL A PARTY'S TOTAL CUMULATIVE LIABILITY NOT EXCLUDED HEREUNDER (WHETHER SUCH LIABILITY IS NOT EXCLUDED UNDER THE IMMEDIATELY PRECEDING PROVISIONS OF THIS SECTION 11.4 OR BECAUSE SUCH LIABILITY IS NOT EXCLUDABLE UNDER APPLICABLE LAW OR FOR ANY OTHER REASON), FROM ALL CAUSES OF ACTION OF ANY KIND, EXCEED THE TOTAL AMOUNT OF THE LICENSE FEE OR LICENSE FEES PAID BY CUSTOMER TO AIBUY IN CONSIDERATION FOR THE LICENSE TO THE LICENSED APPLICATION. THE FOREGOING EXCLUSIONS AND LIMITATIONS APPLY IRRESPECTIVE OF THE CAUSE OF ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF WARRANTY, MISREPRESENTATION OR ANY OTHER LEGAL THEORY AND WILL SURVIVE A FUNDAMENTAL BREACH; PROVIDED, HOWEVER, THAT, NOTWITHSTANDING THE FOREGOING PROVISIONS IN THIS SECTION 11.4, THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY OF A PARTY OR SUCH PARTY'S AFFILIATES SHALL NOT APPLY TO OR COVER: (I) ANY LIABILITY OF SUCH PARTY IN CONNECTION WITH ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THE OTHER PARTY, OR (II) IF SUCH PARTY IS CUSTOMER, ANY OBLIGATION OR LIABILITY UNDER, OR FOR BREACH OF, SECTION 3, SECTION 6, SECTION 7, OR SECTION 13.1, OR (III) IF SUCH PARTY IS AIBUY, ANY OBLIGATION OR LIABILITY UNDER, OR FOR BREACH OF, SECTION 13.2.
- 11.5. Basis of Bargain. Customer agrees and acknowledges that AiBUY has set its License Fees and Services Fees, and the Parties have entered into this Agreement, in reliance on the limited warranties, warranty disclaimers, exclusions and limitations of liability, and Customer's indemnity set forth in this Agreement, that the same reflect an agreed-to allocation of risk between the Parties (including the risk that a remedy may fail of its essential purpose and cause consequential loss), and that the same forms an essential basis of the bargain between the Parties. Customer agrees and acknowledges that AiBUY would not have been able to license the Licensed Application or provide the Services to Customer under this Agreement at the amount of the License Fees and Services Fees charged on an economic basis without such limitations, disclaimers, exclusions, and indemnity.
- 11.6. Blue Pencil. Some countries and jurisdictions do not allow the disclaimers, exclusions, limitations, or indemnity set forth in this Section 11 and Section 13, in which case, to the extent of such disallowance, (i) such disclaimers, exclusions, limitations, or indemnity, as applicable, shall not be invalidated or nullified but be revised and remain valid and enforceable such that they are effective to the greatest extent as permitted under applicable law, and (ii) if any implied warranties or conditions would then otherwise arise with regard to the Licensed Application or the Services, such implied warranties and conditions will be limited in duration to ninety (90) days from first access to the Licensed

Application or provision of the Services, as applicable, or if applicable law requires a longer time period, the shortest legally required time period, from the date of such delivery or first access or performance, as applicable. The warranties given herein give Customer specific legal rights and Customer may have other rights, which may vary from jurisdiction to jurisdiction.

12. Termination; Effect of Termination or Expiration

12.1. Termination.

- a. Either Party may terminate this Agreement by providing the other Party with written notice of termination in the event of a material breach of this Agreement by such other Party, which material breach shall be identified in such written notice, and which termination shall become effective at the end of thirty (30) days of such written notice of termination unless such other Party fully cured such material breach within such thirty (30) day period.
- b. AiBUY may terminate this Agreement by written notice of termination effective immediately if (i) Customer discontinues its business operations, takes steps to dissolve or cease to exist, admits its inability to pay its debts as they become due, files or is or becomes subject to a petition in bankruptcy (or similar reorganization proceeding) or makes a general assignment for the benefit of its creditors, or becomes subject to the appointment of a receiver; or (ii) AiBUY has objective evidence showing a breach by Customer of Sections 6, 7, 14.3, 14.4, or 14.6; or (iii) Customer did not accept any modification, amendment, supplement, or elimination of this Agreement as notified by AiBUY to Customer pursuant to Section 14.8; or (iv) Customer materially breached this Agreement after AiBUY had previously issued a notice of termination under Section 11.2(a) that became ineffective as a result of a cure by Customer.
- c. Customer may terminate this Agreement by written notice of termination effective immediately if (i) AiBUY discontinues its business operations, takes steps to dissolve or cease to exist, admits its inability to pay its debts as they become due, files or is or becomes subject to a petition in bankruptcy (or similar reorganization proceeding) or makes a general assignment for the benefit of its creditors, or becomes subject to the appointment of a receiver; or (ii) AiBUY materially breached this Agreement after Customer had previously issued a notice of termination under Section 12.2(a) that became ineffective as a result of a cure by Customer.

12.2. Effect of Termination or Expiration. Upon the expiration or termination of this Agreement, Customer shall (i) cease accessing or using the Licensed Application or any part thereof and otherwise engaging in any activity under any license in this Agreement in any form, (ii) pay all Fees that are then due and unpaid, and pay any other Fees immediately when due, (iii) return, or make arrangements to return, to AiBUY (or, if and to the extent expressly requested by AiBUY to Customer, irretrievably destroy or dispose of as directed by AiBUY) all AiBUY Property and Confidential Information of AiBUY in the direct or indirect possession or control of Customer, and (iv) irretrievably delete any electronic copy of any of the foregoing that may remain in the possession or control of Customer after such return, destruction, or disposal. Upon AiBUY's request, Customer shall certify to AiBUY Customer's full compliance with the terms of this Section 12.2.

12.3. Survival. All provisions in Sections 5 (regarding any amounts owed and unpaid), 6, 7, 9.3, 10, 11.2, 11.3, 11.4, 11.5, 11.6, 12.4, 13, and 14, and this Section 12.3, shall survive the termination or expiration of this Agreement.

13. Indemnities

13.1. Customer Indemnification Obligations. Customer hereby agrees to defend, indemnify, and hold harmless AiBUY, all of AiBUY's Affiliates, and all AiBUY Personnel (collectively, the "**AiBUY Indemnitees**," each, an "**AiBUY Indemnitee**") from and against any claim, action, suit, litigation, demand, allegation, arbitration, proceeding, judgment, order, damages, loss, liability, injury, costs, expenses (including, without limitation, reasonable attorneys' fees and witness and other defense costs), settlement, and other payment obligation of any AiBUY Indemnitee arising from or in connection with or related to: (i) any breach of this Agreement by Customer or any employee, authorized person, or agent of Customer, (ii) any use or application of the Licensed Application or any equipment or product used by Customer, or any Customer Property, Customer Content, or Submissions, or any information or results derived from any use or application of the Licensed Application or any part thereof, or any reliance on any such information or results or the Licensed Application by Customer or any customer of Customer (including, without limitation, any personal injury, death, or property damage resulting therefrom), (iii) any direct or indirect infringement or violation of any Proprietary Rights, or any misappropriation of any property, of any third party resulting from, in connection with, or related to any Customer Property, any Customer Content, or any Submissions, or any use or application by or for Customer of the Licensed Application, the Documentation, or any part thereof (except solely for such infringement that is solely an infringement for which AiBUY is obligated to defend and indemnify Customer under Section 13.2), or any allegation of any such infringement, violation, or misappropriation, (iv) any violation of any obligation regarding data privacy or

protection of personally identifiable or other data (including, without limitation, those of Customer or any customer of Customer), (v) any negligence or willful misconduct of Customer or any employee, authorized person or agent of Customer (regardless of any contributory or comparative negligence of any AiBUY Indemnitee), (vi) any loss or misappropriation of any Log-In Information in the possession or under the control of Customer, and/or (vii) any violation of any Legal Requirements or right or property of any third party by Customer or any employee, authorized person or agent of Customer. Customer's obligations under this Section 13.1 regarding any third party's claim or action are conditioned on: (i) AiBUY's providing Customer with prompt written notice of such claim or action upon its receipt thereof; (ii) AiBUY's allowing Customer the right to have sole control of the investigation, defense and settlement of such claim or action; (iii) AiBUY's cooperation with Customer in the investigation, defense and settlement of such claim or action; and (iv) AiBUY's not making any admission of liability or fault on behalf of Customer or any admission or statement of fact that may impair the defense or settlement of such claim or action.

13.2. AiBUY Indemnification Obligations. AiBUY hereby agrees to defend Customer from and against any claim or suit, or threatened claim or suit, brought by a third party (other than any Affiliate or successor or predecessor-in-interest of any Party) against Customer if and to the extent that such claim or suit, or threatened claim or suit, is based on the allegation that the Licensed Application licensed by AiBUY to Customer under Section 2, if and to the extent accessed and used by the Customer Indemnitees in accordance with such license under the terms of this Agreement, infringes any patent, copyright, trade secret right or other intellectual property right of such third party ("**Indemnified Claim**"), and AiBUY will indemnify and hold harmless the Customer Indemnitees from any damages that are either finally awarded by a court of competent jurisdiction against Customer or agreed to be paid by the Customer Indemnitees in a settlement agreed to in writing by AiBUY if and to the extent such damages awarded or agreed to be paid in satisfaction of such Indemnified Claim, provided that AiBUY shall have no defense, payment, and indemnity obligation to the extent that the Indemnified Claim or such damages are based on or the result of (i) any breach of this Agreement or any act, activities, or omission by or for Customer giving rise to or constituting a breach of this Agreement, or (ii) any combination of any of the Licensed Application with any other software, hardware, technology, work, or content, or (iii) any use of, or any modification or changes to the Licensed Application by anybody other than AiBUY or any of its Affiliates, or use of any but the latest updated version of the Licensed Application made available to Customer. AiBUY's obligations under this Section 13.2 are conditioned on: (i) Customer's providing AiBUY with prompt written notice of the Indemnified Claim upon its receipt thereof; (ii) Customer's allowing AiBUY the right to have sole control of the investigation, defense and settlement of the Indemnified Claim; (iii) Customer's cooperation with AiBUY in the investigation, defense and settlement of the Indemnified Claim; and (iv) Customer's not making any admission of liability or fault on behalf of Customer or AiBUY or any admission or statement of fact that may impair the defense or settlement of the Indemnified Claim. Any obligations and liability set forth in this Section 13.2 shall be the sole and only obligation and liability of AiBUY in connection with any infringement, misappropriation, or claim, suit, allegation or assertion thereof. In no event shall AiBUY be responsible or liable for or in connection with any Indemnified Claim that arises from events from the termination or expiration of this Agreement or that is asserted after six (6) months immediately after the termination or expiration of this Agreement. **[Notwithstanding and without limiting Section 11.4, in no event shall AiBUY's aggregate and total liability and obligations under this Section 13.2 exceed, in the aggregate, a total amount that is equal to the sum of the Fees that Customer to AiBUY under this Agreement during the twelve (12) month period immediately preceding the date on which Customer was notified of an Indemnified Claim.]**

13.3. Infringement Claim. If use of the Licensed Application and/or the Documentation may be enjoined due to a claim of infringement or misappropriation by a third party, or if AiBUY deems the possibility of any such claim, then, at its sole discretion and expense, AiBUY may do one of the following: (a) negotiate a license or other agreement so that the Licensed Application or the Documentation is no longer subject to such a potential claim, (b) modify the Licensed Application or the Documentation so that it becomes non-infringing, provided such modification can be accomplished without materially affecting the performance and functionality of the Licensed Application, (c) replace the Licensed Application or the Documentation with non-infringing software, documentation, or service, or (d) terminate this Agreement and the license herein and Customer shall stop using the Licensed Application and/or the Documentation. The foregoing sets out the entire liability of AiBUY and the sole obligations of AiBUY to Customer in respect of any claim that the Licensed Application or its use infringes any third party rights or misappropriates any third party's property.

14. **Miscellaneous**

14.1. Remedies: Injunctive Relief. Customer recognizes that any actual or potential violation, breach, or non-performance of, or default under, any provision in Sections 3, 6, and/or 7 may cause irreparable injury to AiBUY for which AiBUY may have no adequate remedy at law. Therefore, Customer agrees that AiBUY shall be entitled to seek injunctive relief or specific performance, without need or obligation to post any bond, to enforce any obligation, agreement, covenant, term and condition under such Sections 3, 6, and/or 7, in addition to any other rights and remedies available to AiBUY, all as AiBUY elects in its sole discretion.

- 14.2. Relationship of the Parties. AiBUY and Customer agree that they are independent contractors, each without the power or authority to bind, contract or commit the other, and will always represent themselves to any third parties only as an independent contractor without such power or authority. The Parties are not, and nothing in this Agreement shall be interpreted that the Parties are, partners, joint venturers, co-owners or otherwise participants in a joint or common undertaking. Neither Party shall have any right to obligate or bind the other Party in any manner whatsoever, and nothing herein contained shall give or is intended to give any rights of any kind to any third persons. The employees or agents of one Party are not, and shall not be construed to be, employees or agents of the other Party, and such other Party shall not be liable for, have any obligations to, and may not be bound by such employees and agents of the first Party. Customer shall take steps necessary to avoid the appearance or belief by a Customer Client that Customer is an agent with the authority to bind AiBUY or an employee, partner, joint venturer, co-owner or Affiliate of AiBUY.
- 14.3. Export Control and Legal Compliance. Customer shall comply with all applicable import and export laws, rules and regulations with respect to use of any AiBUY Property under this Agreement, including, without limitation, export controls under the laws and regulations of the United States, including the Export Administration Regulations, 15 C.F.R. Parts 730-774. Customer will comply strictly with all such United States export controls, and shall not export, re-export, transfer, divert or disclose any AiBUY Property to any destination, end-use or end-user that is prohibited or restricted under such United States export control laws and regulations, except as specifically authorized by the Department of Commerce. If requested by AiBUY, Customer agrees to sign written assurances and other export-related documents as may be required to comply with U.S. export regulations. Customer shall at all times strictly comply with all applicable laws, regulations, and governmental orders, now or hereafter in effect, relating to the performance of its activities under this Agreement, and not engage in any practices or activities that is prohibited or in violation of any such law, regulation or governmental order, including, without limitation, the United States Foreign Corrupt Practices Act and all other applicable anti-corruption and anti-bribery laws.
- 14.4. United States Foreign Corrupt Practices Act; The Bribery Act 2010. Each of AiBUY and Customer makes the following representations and warranties:
- a. *Acknowledgment of Applicability of FCPA.* Each Party is aware that the United States Foreign Corrupt Practices Act, as amended (the “**FCPA**”), the Bribery Act 2010 of the United Kingdom (the “**Bribery Act**”), and the anti-bribery laws and regulations of other countries, apply to each Party in the course of its performance under this Agreement.
 - b. *Compliance with FCPA and the Bribery Act.* Neither Party nor any of its affiliates or subsidiaries, nor any of their respective shareholders, directors, officers, employees, agents, consultants or other representatives have performed or will perform, in connection with this Agreement, directly or indirectly, any act constituting a violation of the FCPA, the Bribery Act or the anti-bribery laws of any other countries, or any regulations promulgated thereunder, including, without limitation, making, promising to make or offering to make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to anyone, including any “foreign official” (as defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, whether in money, property, services or anything else of value, in violation of any laws or for the purpose of (i) obtaining favorable treatment in securing business, (ii) paying for favorable treatment for business secured, (iii) obtaining special concessions or for special concessions already obtained, (iv) otherwise influencing the acts of such foreign official, political party or official thereof or candidate for foreign political office in their official capacity, or (v) otherwise obtaining an improper advantage in securing or retaining business.
 - c. *No Foreign Official Agents.* No director, officer, employee, agent, consultant or other representative of either Party is a “foreign official” (as defined in the FCPA).
 - d. *Cooperation with Investigations.* Each Party will fully cooperate with any ethics or compliance investigations into possible FCPA violations of the FCPA, the Bribery Act or the anti-bribery laws and regulations of other countries that arise in connection with this Agreement.
 - e. *Complete and Accurate Books and Records.* Each Party will keep accurate financial books and records in connection with its performance under this Agreement.
- 14.5. Force Majeure. Neither Party will have the right to claim damages or another remedy against the other Party as a result of such other Party's inability to perform, or any delay in such other Party's performance of, an obligation under this Agreement (other than any payment obligations, or performance of any payment obligation, of such other party) due to unforeseeable circumstances beyond its reasonable control, such as labor disputes, strikes, lockouts, war, riot, insurrection, epidemic, Internet virus attack, Internet failure, supplier failure, act of God, or governmental action not the fault of such other Party.

- 14.6. Assignment. Neither Party may assign this Agreement in whole or in part, or delegate its rights or obligations hereunder, without the prior written consent of the other Party; *provided, however*, that no consent shall be required in connection with any transfer of this Agreement by AiBUY to any of its Affiliates or in connection with any merger, reorganization, or consolidation of, or the sale or transfer of all or substantially all of the assets or business of, AiBUY or such Affiliate. Any attempted assignment or delegation in contravention of the foregoing shall be null and void. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties.
- 14.7. Interpretation. In this Agreement, (i) any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; (ii) where this Agreement states that a Party “shall” or “will” perform in some manner or otherwise act or omit to act, it means that such Party is legally obligated to do so in accordance with this Agreement; (iii) the term “including” shall mean “including, without limitation” or “including, but not limited to”; and the principle *ejusdem generis* shall not apply to any provision in this Agreement or any schedule or any exhibit attached hereto; (iv) the provisions of this Agreement shall not be interpreted against the drafter, and for purposes of any interpretation, both Parties shall be deemed to be drafters of this Agreement; (v) all article and section headings are intended solely for the convenience of the Parties, and none will be deemed to affect the meaning or construction of any provision hereof; and (vi) words of any gender used in this Agreement are intended to include any other gender, and words in the singular number include the plural, and vice versa, unless the context clearly indicates otherwise. This Agreement may be translated into a language other than English, which translation, whether or not signed, shall not be a separate or additional agreement but shall be only for informational purposes, and the English version shall control.
- 14.8. Amendment; Waiver. Neither this Agreement nor any term or provision hereof may be waived, changed, discharged or terminated except by an instrument in writing signed by the person against whom the enforcement of any waiver, change, discharge or termination is sought. No modification, amendment, supplement to, or elimination of any term, condition, or provision of this Agreement will be binding upon the Parties unless (i) made in a writing identifying the relevant provisions and signed by each Party through its authorized representative or (ii) notified by AiBUY to Customer electronically or otherwise and Customer accepts such modification, amendment, supplement, or elimination expressly or implicitly (including by continuing to access and use the Licensed Application after such notification). A failure of either Party to exercise any right provided for herein shall not be deemed to be a waiver of any right hereunder. An assignment permitted under Section 14.6 shall not constitute any modification, amendment, variation, or extension under the immediately preceding sentence if this Agreement does not change as a result of such assignment (other than the identity and contact information of the assignor to the assignee). In the event that this Agreement or any part of this Agreement is translated, the English version signed by the Parties shall be the only controlling and legal version.
- 14.9. Governing Law; Forum. The validity, enforceability and performance of this Agreement, the interpretation or construction of any term, condition, or provision of this Agreement, and any dispute, and the resolution of any dispute, under or related to this Agreement shall be governed by the laws of the State of Texas, United States of America, and United States federal law as applicable, without regard of any conflict of laws or international private law provision that would result in the application of the law of any other jurisdiction. The parties hereby exclude the application of the U.N. Convention for the International Sale of Goods to the extent it may have any application to this Agreement or any transaction or performance hereunder.
- 14.10. Disputes. The resolution of disputes, and the forum and location for such resolution, is set forth in the following Sections 14.10.1 if Customer is located with a physical residence or domicile in the United States of America or otherwise in the following Section 14.10.2. Sections 14.10.1 and 14.10.2 are mutually exclusive.

14.10.1 THIS SECTION 14.10.1. APPLIES ONLY, AND IS PART OF THIS AGREEMENT ONLY, IF CUSTOMER, BASED ON ITS ADDRESS ON THE SIGNATURE PAGE, IS LOCATED IN THE UNITED STATES OF AMERICA:

Each Party consents and submits to the non-exclusive jurisdiction of, waiving any objections to personal jurisdiction in, competent state and federal courts in the State of Texas for any litigation or proceeding, and to the venue of such litigation or proceeding in the County of Dallas, Texas, United States of America. Except where clearly prevented by the area in dispute, the Parties agree to continue to perform their obligations under this Agreement while the dispute is being resolved unless and until this Agreement expires or its terminated in accordance with its terms.

14.10.2 THIS SECTION 14.10.2. APPLIES ONLY, AND IS PART OF THIS AGREEMENT ONLY, IF CUSTOMER, BASED ON ITS ADDRESS ON THE SIGNATURE PAGE, IS LOCATED OUTSIDE THE UNITED STATES OF AMERICA:

- a. Subject to the following provisions of this Section 14.10.2, including, without limitation, Section 14.10.2(c), any claim, dispute, or controversy under or in relation to this Agreement, including, without limitation, any disputes

relating to termination or invalidity of this Agreement, or invalidity of this arbitration clause, shall be solely and finally settled by binding international arbitration by the International Centre for Dispute Resolution (the "ICDR") in accordance with the ICDR's rules governing international arbitration (the "Rules") by an arbitrator appointed in accordance with the Rules; *provided, however*, that in the event of conflict between the Rules and the terms of this Agreement, the terms of this Agreement shall govern.

- b. The arbitration shall be conducted in Dallas, Texas, United States of America. The arbitration shall be conducted by a single arbitrator in English, and all documents and agreements shall be read, interpreted and construed from the English versions thereof. The arbitrator shall apply the law chosen as the governing law in Section 14.9. The Parties agree that the award of the arbitrator shall be final and binding against the Parties and the sole and exclusive remedy between them regarding all claims, disputes and controversies presented or plead to the arbitrator. Each Party shall be responsible for payment of its own attorneys' fees and costs in connection with such arbitration, provided that any costs, fees or taxes incident to enforcing an award shall be charged against the Party resisting such enforcement to the maximum extent permitted by applicable law.
- c. Notwithstanding Sections 14.10.2(a) and 14.10.2(b), a Party may, but shall not be obligated to, proceed under Sections 14.10.2(a) and 14.10.2(b) with regard to: (i) any claim, dispute or controversy brought or initiated by such Party involving any infringement, threatened or alleged infringement, enforcement of, right to, title to or ownership of, or provision in this Agreement relating to, any intellectual property rights of such Party or any of its Affiliates, or (ii) any injunctive relief of such Party for violation or threatened or alleged violation of Sections 3, 6, or 7, or (iii) any cross-claim or third-party claim or other assertion of a claim by such Party in a third party's legal proceeding against such Party, the other Party, or both Parties. With respect to any of the foregoing in this Section 14.10.2(c) and with regard to the enforcement of any arbitration award rendered pursuant to Sections 14.10.2(a) and 14.10.2(b), each Party consents and submits to the non-exclusive jurisdiction of, waiving any objections to personal jurisdiction in, competent state and federal courts in the State of Texas for any litigation or proceeding, and to the venue of such litigation or proceeding in the County of Dallas, Texas, United States of America.
- d. Except where clearly prevented by the area in dispute, the Parties agree to continue to perform their obligations under this Agreement while the dispute is being resolved unless and until this Agreement expires or its terminated in accordance with its terms.

14.11. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation shall save such provision, it will be severed from the remainder of this Agreement, as appropriate. The remainder of this Agreement shall remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by either Party. In such event, the Parties will use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement, which most nearly effects the Parties' intent in entering into this Agreement, as appropriate.

14.12. No Third Party Beneficiaries. Nothing in this Agreement gives or is intended to give, and shall not be construed to give or be intended to give, any third party of any kind any rights, and there are no third party beneficiaries under this Agreement, except as set forth in Section 13.1 and Section 13.2.

14.13. Notices. All notices and demands to be given or delivered by AiBUY to Customer shall be in writing and shall be deemed to have been given when delivered to any physical or e-mail address of Customer set forth in the Master Agreement (if applicable) or otherwise provided by Customer in connection with the Acceptance. All notices and demands to be given or delivered by Customer to AiBUY shall be in writing and shall be sent by reputable express courier service (charges prepaid) or by certified or registered mail, return receipt requested and postage prepaid to the following address (or such other address as AiBUY may notify to Customer from time to time): AiBUY, Inc., Attn.: Chief Financial Officer, 13455 Noel Road, Suite 1250, Dallas, Texas 75240, United States of America.

14.14. Electronic Signatures. The Parties agree that these Terms of Service may be accepted and this Agreement concluded and entered into by electronic signature.