



Loftware Master Software and Services Agreement

This Loftware Master Software and Services Agreement (the “**Agreement**”) is made between Loftware, Inc. and its subsidiaries and Affiliates (herein, “**Loftware**”), a Maine corporation with offices located at 249 Corporate Drive, Portsmouth, New Hampshire 03801, and the Company entity (“**Company**”), each as set forth on the Ordering Document, and becomes effective on the last signature date of the Ordering Document issued by Loftware (the “**Effective Date**”).

Loftware Software products may be deployed through a SaaS offering or On-Premise Subscription in a Customer Cloud, each as described in an Ordering Document to this Agreement. Definitions are set forth in **Exhibit A** or elsewhere in this Agreement. Company and its Affiliates may access and use the SaaS offerings described herein through internet access to application software hosted by or on behalf of Loftware or the On Premise Subscription described herein in a Customer Cloud.

1. Scope of Agreement.

1.1 Scope of Agreement. The access and use rights granted to Company in respect of the SaaS offering or the Software through an On-Premise Subscription Software license may be exercised by both Company and its Affiliates (collectively, “**Customer**”). Company acknowledges and agrees that it is responsible and liable for compliance by its Affiliates and their Authorized Users with all of the terms and conditions set forth in this Agreement.

1.2 Initial Purchase; Purchase Orders. Customer’s initial purchase of SaaS offering or the Software through the On-Premise Subscription Software license is set forth in an applicable Ordering Document between the parties. At any time after the Effective Date, Customer may purchase additional (i) SaaS offerings, data storage or other available components for use with the SaaS offering or (ii) On-Premise Subscription Software licenses, by submitting to Loftware a written, electronic purchase order containing the information necessary to identify the SaaS offerings, other SaaS offering components, or On-Premise Subscription Software licenses Customer intends to purchase (each, a “**Purchase Order**”). All SaaS offerings, other SaaS offering components, or On-Premise Subscription Software licenses ordered via Purchase Orders are and will be subject to the terms and conditions of this Agreement. In no event shall Loftware’s acceptance of a Purchase Order modify or supplement the terms of this Agreement nor shall Loftware’s invoice terms modify or replace the terms of this Agreement.

1.3 Professional Services. Company and its Affiliates may purchase Professional Services from Loftware pursuant to statements of work or functional equivalents as directed by Loftware (“**SOWs**” or “**Statement(s) of Work**”) entered into under this Agreement. To be effective, each SOW must be signed by Loftware and Company or the applicable Affiliate. An Affiliate that executes a SOW shall be considered “Customer” for all purposes of the SOW; provided, however, that Company and such Affiliate shall remain jointly and severally liable and responsible for such Affiliate’s compliance with the terms of this Agreement and the SOW. Each SOW shall be deemed to incorporate the provisions of this Agreement as though such provisions were set forth therein in their entirety, and shall set forth: (i) a project overview; (ii) a description of the Professional Services to be performed by Loftware; (iii) the fees to be paid by Company or an Affiliate for the Professional Services; (iv) any general or project-specific assumptions; and (v) such additional terms and conditions as may be mutually agreed upon by Loftware and Company or the applicable Affiliate. In the event of any conflict between the provisions of this Agreement and the provisions of a SOW, the provisions of this Agreement will control, unless the SOW states that certain of its provisions will supersede specific provisions of this Agreement for purposes of the Professional Services set forth in such SOW.

2. SaaS offerings; On-Premise Subscription Software licenses.

2.1 SaaS Offering Access and Use. If designated in an applicable Ordering Document, and subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, Loftware hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 15.7) right to access and use the SaaS offering during the Term, solely by Authorized Users for the Permitted Use in accordance with the terms and conditions herein. Loftware shall provide Customer with access to the SaaS offering on the Access Date.

2.2 Installed Applications. To the extent applicable, Loftware will electronically deliver the Installed Applications by making the Installed Applications available for downloading by Customer and by



providing any necessary Access Credentials. Unless otherwise provided in a SOW, Customer is solely responsible for installing any Installed Applications on Customer Systems.

2.3 On-Premise Subscription Software Access and Use. If designated in an applicable Ordering Document, Loftware will grant Customer a limited, non-transferable, non-exclusive license to install, run and use the Software for the On-Premise Subscription in a Customer Cloud solely for Customer's internal business purposes in conjunction with Customer's authorized use of the Software and in accordance with the On-Premise Subscription Software Documentation for Customer's access to and use in accordance with the terms of this Agreement. On-Premise Subscription Software licenses for use in a Customer Cloud will not include the SaaS offerings.

2.4 Documentation License. Loftware hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable (except in compliance with Section 15.7) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the SaaS offerings or On-Premise Subscription Software license.

2.5 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (a) Loftware has and will retain sole control over the operation, provision, maintenance, and management of the SaaS offerings and Loftware Materials; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, Customer Cloud, and sole responsibility for all access to and use of the SaaS offerings and On-Premise Subscription Software licenses and Loftware Materials by any Person by or through the Customer Systems, Customer Cloud or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the SaaS offerings, On-Premise Subscription Software licenses, or Loftware; (ii) results obtained from any use of the SaaS offerings, On-Premise Subscription Software licenses or Loftware Materials; and (iii) conclusions, decisions, or actions based on such use.

2.6 Subcontractors. Loftware may from time to time in its discretion engage third parties (each, a "Subcontractor"). For the avoidance of doubt, Loftware will be responsible for any Subcontractors' performance of Loftware's obligations under this Agreement.

2.7 Suspension or Termination of SaaS offerings or On-Premise Subscription Software licenses. Loftware may, directly or indirectly, and by use of a Loftware Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the SaaS offerings, Software, or Loftware Materials, without incurring any resulting obligation or liability, if: (a) Loftware receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Loftware to do so; or (b) Loftware believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the SaaS offerings or Software beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the SaaS offerings or Software; or (iii) this Agreement expires or is terminated. This Section 2.7 does not limit any of Loftware's other rights or remedies, whether at law, in equity, or under this Agreement.

2.8 Customer will receive either SaaS Support Services or On-Premise Support Services, as applicable, during the Term, in accordance with the terms of the applicable Ordering Document and the Support Services Appendix available <https://www.loftware.com/siteassets/docs/legal/loftware-support-services.pdf>.

3. Use Restrictions. Customer's use of the SaaS offerings, On-Premise Subscription Software licenses, and Licensed Materials will comply with the terms of this Agreement. Customer shall not, and shall not permit any other Person to, access or use the SaaS offerings, On-Premise Subscription Software licenses, or Loftware Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of the SaaS offerings, Software or Loftware Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any SaaS offerings, Software, or Loftware Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the SaaS offerings, Software, or Loftware Materials, in whole or in part; (d) bypass or breach any security device or protection used by the SaaS offerings, Software, or Loftware Materials or access or use the SaaS offerings, Software, or Loftware Materials other than by an Authorized User through the use of his or her own then valid Access Credentials or otherwise allow access to the Software or Documentation by unauthorized third parties (provided that Customer may authorize its third-party service providers and suppliers to access and use the Software solely to provide

services to, or in connection with the internal business operations of, Customer, and provided further that Licensee shall be responsible and liable for each such third party service provider's or supplier's compliance with the terms and conditions of this Agreement); (e) input, upload, transmit, or otherwise provide to or through the SaaS offerings, Software, or Loftware Systems, any information or materials that (i) are unlawful or facilitate illegal activity or (ii) promote or contain, transmit, or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the SaaS offerings, Software, Loftware Systems, or Loftware's provision of services to any third party, in whole or in part, or otherwise attempt to circumvent any security device or licensing restriction contained in the Software; (g) remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any SaaS offerings, Software, or Loftware Materials, including any copy thereof; (h) access or use the SaaS offerings, Software, or Loftware Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; (i) access or use the SaaS offerings, Software, or Loftware Materials for purposes of competitive analysis of the SaaS offerings, Software, or Loftware Materials, or the development, provision, or use of a competing software service or product; (j) otherwise access or use the SaaS offerings, Software, or Loftware Materials beyond the scope of the authorization granted under Section 2; or (k) use any Non-Production SaaS offerings or Software licenses in a Production environment or for Production Purposes.

4. Customer Obligations: Data Storage.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the SaaS Specifications or Software Specifications, as applicable, all Customer Systems on or through which the SaaS offerings or Software are accessed or used; (b) provide Loftware Personnel with such access to Customer's premises and Customer Systems as is necessary for Loftware to perform the SaaS offerings or provide the On Premise Subscription in accordance with the Availability Requirement, SaaS Specifications, or Software Specifications, as applicable; (c) provide all cooperation and assistance as Loftware may reasonably request to enable Loftware to exercise its rights and perform its obligations under and in connection with this Agreement (d) comply with all applicable data privacy laws and regulations related to the Customer Data.

4.2 Effect of Customer Failure or Delay. Loftware is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the SaaS offerings, Software, and Loftware Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Loftware of any such actual or threatened activity.

4.4 Data Storage for SaaS Offerings. If a SaaS offering is designated in an applicable Ordering Document, Loftware will provide Customer with storage for Customer files and data in the data storage amount(s) set forth in the applicable Ordering Document (the "**Data Storage Allocation**"). Additional storage space is available for purchase at Customer's request at Loftware's then-current data storage rates. Customer acknowledges that exceeding its then-current Data Storage Allocation may result in service degradation for Customer and other Loftware customers and agrees that Loftware has no obligation to permit Customer to exceed its then-current Data Storage Allocation.

5. SaaS Service Levels.

5.1 SaaS Availability Requirement. If a SaaS offering is designated in an applicable Ordering Document, subject to the terms and conditions of this Agreement, Loftware will use commercially reasonable efforts to make the SaaS offering Available at least ninety-nine and eight-tenths percent (99.8%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the SaaS offerings will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the SaaS offerings that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, in any manner that does not comply with this Agreement and the Specifications; (b)



Customer Failure; (c) Customer's or its Authorized User's internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Loftware pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the SaaS offerings pursuant to Section 2.7.

5.2 Scheduled Downtime. Loftware will use commercially reasonable efforts to give Customer at least five (5) days' prior notice of all scheduled outages of the SaaS offerings ("**Scheduled Downtime**").

6. Backups and Business Continuity.

6.1 Data Backups. In the event of any loss, destruction, damage, or corruption of Customer Data caused by the Loftware Systems or SaaS offerings, Loftware will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Loftware's then most current backup of such Customer Data.

6.2 Disaster Recovery. Loftware will maintain disaster recovery and business continuity plans ("**DR Plans**") that are in place on the Go-Live Date and updated from time-to-time as deemed necessary by Loftware.

7. Security.

7.1 Security Obligations. Loftware or its third-party hosting Subcontractor will employ security measures in accordance with applicable industry practice.

7.2 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the SaaS offerings or Software; (c) the Customer Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; (e) the Customer Cloud; and (f) all access to and use of the SaaS offerings, Software, and Loftware Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

7.3 Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the SaaS offerings and Software; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the SaaS offerings.

As a part of the SaaS offerings, Loftware shall maintain appropriate administrative, physical, and technical safeguards for the security, confidentiality and integrity of any Customer Data. Such measures and safeguards include, but shall not be limited to, measures for preventing access, use, modification or disclosure of personal and confidential data by Loftware or its employees or agents except (a) for providing the SaaS offerings and to prevent or address service or technical problems, (b) to abide by the applicable law or (c) on the basis of Customer's express permission.

7.4 Log-Ins and Passwords. In addition to the foregoing obligations, Customer agrees to hold the SaaS offerings, Software and all associated log-ins and passwords in confidence, and to protect the confidential nature thereof, and shall not disclose any trade secrets contained, embodied, or utilized therein, to anyone other than an Authorized User having a need for such disclosure, and then only to allow use of the SaaS Offering or Software as authorized herein. Customer shall take all reasonable steps to ensure that the provisions of this section are not violated by any employee, Authorized Users, or any other person under Customer's control or in its service.

8. Fees and Payment.

8.1 Fees. Customer shall pay Loftware the fees set forth in the Ordering Document in accordance with this Section 8.

8.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, provincial, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Loftware's income.



8.3 Payment. Customer shall pay all Fees and Reimbursable Expenses within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in U.S. dollars, unless otherwise set-forth in an applicable Ordering Document. Customer shall make payments to the address or account specified by Loftware in writing from time to time.

8.4 Late Payment. If Customer fails to make any payment when and as due then, in addition to all other remedies that may be available: (a) Loftware may charge interest on the past due amount at the rate of one and one-half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) Customer shall reimburse Loftware for all costs incurred by Loftware in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (c) if such failure continues for ten (10) days following written notice thereof, Loftware may suspend performance of any Professional Services and/or access to the SaaS offerings or Software until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

8.5 No Deductions or Setoffs. All amounts payable to Loftware under this Agreement shall be paid by Customer to Loftware in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

8.6 Fee Increases. Loftware may increase Fees no more than once for any Renewal Term, by providing written notice to Customer at least forty-five (45) calendar days prior to the commencement of such Renewal Term, and Customer's Fee obligations will be deemed amended accordingly.

8.7 Reimbursable Expenses. Customer shall reimburse Loftware for out-of-pocket expenses incurred by Loftware in connection with performing any Professional Services under an applicable SOW pursuant to this Agreement ("**Reimbursable Expenses**").

9. Confidentiality and Data Protection.

9.1 Confidential Information. In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 9.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or otherwise) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential." Without limiting the generality of the foregoing, the SaaS offerings, Software, and all Loftware Materials are the Confidential Information of Loftware.

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

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9; (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information of which the Receiving Party becomes aware and reasonably cooperate with the Disclosing Party to prevent further unauthorized use or disclosure.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

9.5 Data Processing. Loftware shall process all personal data, if applicable, in accordance with this Section 9 and its Privacy Policy, which is hereby incorporated by reference and at all times in compliance with the data protection laws and/or other laws of any jurisdiction that may apply to the processing of such personal data ("Applicable Data Protection Laws"). By entering into this Agreement, Customer agrees to be bound by all of the terms and conditions contained in the Privacy Policy. Should any Customer Data include personal data (as defined in the EU Data Protection Directive 95/46/EC until 25 May 2018 and the General Data Protection Regulation (EU) 2016/679 on and from 25 May 2018 - GDPR) that is sourced from the European Economic Area (EEA) of which the Customer will inform Loftware, the parties will immediately enter into a separate Data Privacy Agreement ("DPA").

10. Intellectual Property Rights.

10.1 SaaS Offerings, Software and Loftware Materials. All right, title, and interest in and to the SaaS offerings, Software, and Loftware Materials, including all Intellectual Property Rights therein, are and will remain with Loftware. Customer has no right, license, or authorization with respect to the SaaS offerings, Software, or any of the Loftware Materials except as expressly set forth in Sections 2.1, 2.2 and 2.3, in each case subject to Section 3. All other rights in and to the SaaS offerings, Software, and Loftware Materials are expressly reserved by Loftware.

10.2 Customer Data. As between Customer and Loftware, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 10.3.

10.3 Consent to Use Customer Data and Usage of SaaS Offerings, Software and Loftware Materials. Customer hereby grants all such rights and permissions in or relating to Customer Data as are necessary for Loftware, its Subcontractors, and the Loftware Personnel to perform Loftware's, its Subcontractors', and the Loftware Personnel's obligations hereunder. Furthermore, subject to the terms and conditions of this Agreement Customer grants Loftware permission to monitor Customer's usage of the SaaS Offerings, Software and Loftware Materials in order to maintain and improve the SaaS Offerings, Software and Loftware Materials.

10.4 In the course of performing Professional Services, Loftware may create or develop concepts, inventions, designs, reports, documentation, deliverables and other works of authorship (collectively "**Work Product**"). Subject to Customer's ownership interest in, and Loftware's obligations with respect to, Customer's Confidential Information (which will not under any circumstances be deemed to constitute Work Product), Loftware shall own all right, title and interest in and to all Work Product, including all Intellectual Property Rights therein and thereto. If any Work Product is delivered to Customer pursuant to or in connection with the performance of Professional Services ("**Work Product Deliverable**"), Subject to Section 3 and the terms and conditions of this Agreement, Loftware hereby grants to Customer a royalty-free, revocable, perpetual, worldwide license to use such Work Product Deliverable solely for Customer's own internal business purposes. Customer may allow its third-party service providers to exercise the foregoing rights on Customer's behalf.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party the following: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) entering into and carrying out the terms and conditions of this Agreement will not violate any obligation binding upon it; (d) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; (e) it will comply with all laws applicable to it in connection with its performance obligations under this Agreement; and (f) when executed and delivered by both parties, this



Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and secured parties.

11.2 Additional Loftware Representations, Warranties, and Covenants.

(a) The SaaS offerings, when accessed and used by Customer and its Authorized Users in accordance with this Agreement, will conform to the SaaS Documentation in all material respects (the “**SaaS Warranty**”). If the SaaS offerings do not comply with the SaaS Warranty and such non-compliance is reported by Customer to Loftware during the Term, Loftware will use commercially reasonable efforts to repair the SaaS offerings in accordance with Loftware’s SaaS Support Services obligations. This remedy will be Customer’s exclusive remedies for any failures of the warranty in this Section 11.2(a). Notwithstanding the foregoing, nothing in this Section 11.2 will affect Customer’s rights under Section 14.3 of this Agreement;

(b) The On-Premise Subscription Software provided under a Customer Cloud will operate substantially in accordance with the Software Documentation for a period of ninety (90) days from initial delivery (the “**Software Warranty**”). If there is any failure of this warranty which can be replicated or verified, Loftware will promptly repair the Software to resolve such failure. This remedy will be Customer’s exclusive remedy for any failures of the warranty in this Section 11.2(b);

(c) No Harmful Code that could disable or compromise the security of Customer’s systems will be intentionally or knowingly introduced into the SaaS offerings and/or Software by Loftware or its employees. Loftware warrants as of the Effective Date: (i) that the Software by Loftware is currently free from any known virus, trojan horse, worm, trapdoor, Harmful Code, or similar software; (ii) that Loftware will not knowingly introduce any Harmful Code; and (iii) that Loftware will continue to use prudent industry standard methods, processes and applications (including the use and maintenance of up-to-date reputable industry standard anti-virus software) to minimize the risk that any such virus or similar will infect or affect any of the hardware or software systems belonging to or used by the Customer; and

(d) All Professional Services and Support Services provided under this Agreement will be performed using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services (the “**Professional and Support Services Warranty**”). If the Professional Services or Support Services do not comply with the Professional and Support Services Warranty and such non-compliance is reported by Customer to Loftware within ten (10) days of completion of the applicable Professional Services or Support Services, Loftware will re-perform the defective Professional Services or Support Services at no additional cost to Customer.

11.3 To invoke the remedies described in Section 11.2(a) or 11.2(b), Customer must provide written notice to Loftware within the applicable warranty period, expressly outlining the nature of the alleged failure or breach.

11.4 The foregoing warranties will be void to the extent that any breach of such warranties is caused by: (i) anyone other than a Loftware employee modifying the SaaS offerings or Software (unless Loftware authorizes the specific change in writing); or (ii) any non-Loftware service, software, or hardware; or (iii) defects in the SaaS offerings or Software resulting from Customer abuse or unauthorized repair by Customer; or (iv) any use of the SaaS offerings or Software by Customer in violation of this Agreement or the Documentation.

11.5 Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Loftware that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Loftware and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.6 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 11.1 AND SECTION 11.2, LOFTWARE DISCLAIMS AND REJECTS ALL REPRESENTATIONS AND WARRANTIES, AND ALL PROFESSIONAL SERVICES, SUPPORT SERVICES, SAAS OFFERINGS, SOFTWARE AND LOFTWARE MATERIALS ARE PROVIDED “AS IS.” LOFTWARE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LOFTWARE MAKES NO WARRANTY OF ANY KIND THAT THE PROFESSIONAL SERVICES, SUPPORT SERVICES, SAAS OFFERINGS, SOFTWARE OR LOFTWARE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION,



ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. FOR THE AVOIDANCE OF DOUBT, THE REMEDIES SET FORTH IN THIS SECTION 11.2 ARE CUSTOMER'S EXCLUSIVE REMEDIES, AND LOFTWARE'S SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITY, FOR ANY BREACH BY LOFTWARE OF THE SAAS WARRANTY, SOFTWARE WARRANTY OR PROFESSIONAL AND SUPPORT SERVICES WARRANTY (AS APPLICABLE).

12. Indemnification.

12.1 Loftware Indemnification. Loftware shall indemnify, defend, and hold harmless Company, its Affiliates, and its and their respective officers, directors, employees, and agents (each, a "**Company Indemnitee**") from and against any and all Losses incurred by Company Indemnitees resulting from any Action by a third party alleging that Company's or any Company Affiliate's use of (i) the SaaS offerings (excluding Customer Data) or (ii) the Software, in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement or misappropriation arises from: (a) Customer Data; (b) access to or use of the SaaS offerings, Software or Loftware Materials in combination with any hardware, system, software, network, or other materials or service not provided by Loftware; (c) modification of the SaaS offerings, Software, or Loftware Materials other than by or on behalf of Loftware; or (d) any act, omission, or other matter described in Section 12.2(a) or Section 12.2 (b).

12.2 Customer Indemnification. Company shall indemnify, defend, and hold harmless Loftware and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, and agents (each, a "**Loftware Indemnitee**") from and against any and all Losses incurred by such Loftware Indemnitees resulting from any Action by a third party arising out of or relating to: (a) Customer Data, including any Processing of Customer Data by or on behalf of Loftware in accordance with this Agreement; or (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Company, its Affiliates or any of their respective Authorized Users, including Loftware's compliance with any specifications or directions provided by or on behalf of Company, its Affiliates or any of their respective Authorized Users to the extent prepared without any contribution by Loftware.

12.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of the Indemnitee without the Indemnitee's prior written consent. The Indemnitee's failure to perform or delay in performing any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure or delay.

12.4 Mitigation. If any of the SaaS offerings, Software, or Loftware Materials are, or in Loftware's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Company's, its Affiliates' or any of their respective Authorized Users' use of the SaaS offerings, Software, or Loftware Materials is enjoined or threatened to be enjoined, Loftware may, at its option and sole cost and expense: (a) obtain the right for Company and its Affiliates to continue to use the SaaS offerings, Software, and Loftware Materials materially as contemplated by this Agreement; (b) modify or replace the SaaS offerings, Software, and Loftware Materials, in whole or in part, to seek to make the SaaS offerings, Software, and Loftware Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute SaaS offerings, Software and Loftware Materials, as applicable, under this Agreement; or (c) by written notice to Company, terminate this Agreement with respect to all or part of the SaaS offerings, Software, and Loftware Materials, and require Company and its Affiliates to immediately cease any use of the SaaS offerings, Software, Loftware Materials or any specified part or feature thereof and, subject to Company's and its Affiliates' compliance with their post-termination obligations set forth in Section 14.4, Company will be entitled to a refund of any pre-paid but unused Fees for the SaaS offerings or Software.

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

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL A PARTY HERETO BE LIABLE TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SAAS OFFERINGS OR SOFTWARE; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA; (d) COST OF REPLACEMENT GOODS OR SAAS OFFERINGS OR SOFTWARE; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER LOFTWARE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. SUBJECT TO SECTION 13.4, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED, PER CALENDER YEAR, THE TOTAL AMOUNTS PAID TO LOFTWARE BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM (THE "**GENERAL CAP**"). THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.3 THE GENERAL CAP LIMITATIONS SET FORTH IN SECTION 13.2 SHALL NOT APPLY WITH RESPECT TO: (i) SECTION 13.4 (LIMITATION OF LIABILITY FOR CONFIDENTIALITY, DATA AND INFORMATION SECURITY INCIDENTS); (ii) EACH PARTY'S INDEMNIFICATION OBLIGATIONS; (iii) ANY CLAIMS RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (iv) CUSTOMER'S UNDISPUTED PAYMENT OBLIGATIONS UNDER THIS AGREEMENT; OR (v) CUSTOMER'S BREACH OR VIOLATION OF SECTIONS 2.1 (ACCESS AND USE), 2.2 (INSTALLED APPLICATIONS), 2.4 (DOCUMENTATION LICENSE); 3 (USE RESTRICTIONS); OR 10.1(SAAS OFFERINGS, SOFTWARE, AND LOFTWARE MATERIALS), OF THIS AGREEMENT.

13.4 LIMITATION OF LIABILITY FOR CONFIDENTIALITY, DATA AND INFORMATION SECURITY INCIDENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 13.2 (CAP ON MONETARY LIABILITY) OR ELSEWHERE IN THIS AGREEMENT, (i) EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES RELATED TO ANY BREACH OF ITS CONFIDENTIALITY AND SECURITY OBLIGATIONS UNDER SECTION 7 (SECURITY) OR SECTION 9 (CONFIDENTIALITY) AND (ii) LOFTWARE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER IN THE CASE OF DAMAGES, LOSSES OR OTHER LIABILITY ARISING FROM DAMAGES RELATED TO CUSTOMER DATA, INCLUDING DATA AND INFORMATION SECURITY BREACHES, SHALL, PER CALENDAR YEAR, NOT EXCEED TWO TIMES (2X) THE GENERAL CAP AGREED TO IN SECTION 13.2. (THE "**SUPER CAP**"). FOR CLARITY, THE SUPER CAP SET FORTH IN THIS SECTION 13.4 SHALL BE DEEMED A SEPARATE CAP AND APPLY INDEPENDENTLY FROM THE GENERAL CAP AGREED TO IN SECTION 13.2

13.5 Essential Basis. Customer acknowledges that the disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including the economic terms, would be substantially different.

14. Term and Termination.



14.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until three (3) years from such date (the "**Initial Term**").

14.2 Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**").

14.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Loftware may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Loftware's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3 or Section 9;

(b) either party may terminate this Agreement, effective on written notice to the other party, if the other party breaches any material obligation in this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Loftware shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, or at Loftware's option, destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information, (ii) permanently erase all Customer Data from the SaaS offerings, and (iii) certify to Customer in a signed written instrument that it has complied with the requirements of this Section 14.4(b);

(c) Customer shall immediately cease all use of any SaaS offerings, Software, or Loftware Materials and (i) promptly return to Loftware, or at Customer's option, destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Software, Loftware Materials or Loftware's Confidential Information, (ii) permanently erase all Software, Loftware Materials and Loftware's Confidential Information from all systems Customer controls, including the Customer Cloud, and (iii) certify to Loftware in a signed written instrument that it has complied with the requirements of this Section 14.4(c);

(d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control, (i) the Receiving Party may retain the Disclosing Party's Confidential Information in its then current state and solely to the extent and for so long as required by applicable Law, (ii) Loftware may also retain Customer Data in its backups, archives, and internal business and disaster recovery systems until such Customer Data is deleted in the ordinary course, and (iii) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e) Loftware may disable all Customer and Authorized User access to the SaaS offerings, Software, and Loftware Materials;

(f) to the extent applicable, Customer will delete all Installed Applications from Customer Systems or any other systems controlled by Customer;

(g) if Customer terminates this Agreement pursuant to Section 14.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination;



(h) if Loftware terminates this Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Initial Term or then-current Renewal Term (as the case may be) will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Loftware's invoice therefor; and

(i) if Customer requests in writing at least thirty (30) days prior to the effective date of expiration or termination, subject to Section 14.4(d), Loftware shall, within thirty (30) days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Loftware, provided that Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Loftware's Professional Services in transferring such Customer Data.

14.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3, Section 9, Section 11.4, Section 12, Section 13, Section 14.4, this Section 14.5, and Section 15.

15. Miscellaneous.

15.1 Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.3):

If to Loftware: Loftware, Inc.
249 Corporate Drive
Portsmouth, New Hampshire 03801
United States of America
Attn.: General Counsel
Email: legal@loftware.com

If to Customer: Shall be the "Bill To" Customer address in the applicable Ordering Document.

Notices sent in accordance with this Section 15.3 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.4 Interpretation. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.



15.5 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.6 Publicity; Cooperation. Customer grants Loftware the right to add Customer's name and company logo to its customer list and web site and to publicly announce that Customer has entered into a formal relationship with Loftware. Upon reasonable request from Loftware, Customer agrees to serve as (i) a customer reference for Loftware and/or (ii) provide Loftware with assistance with case studies and/or testimonials.

15.7 Assignment. Neither party may assign this Agreement or any Order or Change Order executed in connection herewith or the rights or obligations hereunder without the express written consent of the other party. Notwithstanding the foregoing statement, either party may assign this Agreement in whole or in part to an Affiliate, upon written notice to the other party or public notice (such notice or announcement to be delivered electronically or otherwise), and Loftware may assign this Agreement to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Loftware's assets or ownership rights or the sale of that portion of the party's business to which this Agreement relates. Any attempt to assign this Agreement other than as permitted herein will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15.8 Force Majeure.

(a) No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

(b) Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.9 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.10 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law. This Agreement shall be construed in accordance with (a) to the extent you use (if you are an individual), or to the extent were organized in (if you are a corporate entity), North America or South America, the laws of the United States and the State of Delaware, or (b) to the extent you use (if you are an individual), or to the extent were organized in (if you are a corporate entity) outside of North America or South America, the laws of England and Wales. The parties agree that (i) to the extent the governing law is determined under this Section 15.11(a), all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the courts of the State of Delaware, United States, and (ii) to the extent the governing law is determined under this Section 15.11(b), all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the courts located in London, England. This choice of venue is intended

by the parties to be mandatory and not permissive in nature and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceedings brought under this Agreement. Any action of any kind brought arising out of or in any way connected with this Agreement must be commenced within one (1) year of the date upon which the cause of action accrued.

15.12 Dispute Resolution.

(a) *Negotiation.* In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach thereof (each, a “**dispute**”), the parties hereto shall use good faith efforts to settle such dispute by negotiation. To this end, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

(b) *Equitable Relief.* Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9 or, in the case of Customer, Section 3 or Section 4.3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of any such breach or threatened breach, the other party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.13 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15.14 Corporate Responsibility. Loftware complies with the principles and requirements of the (i) Loftware Code of Ethics and Business Conduct and (ii) Privacy Policy. Loftware expects its customers to abide by and comply with similar requirements set out in the customer’s own code of conduct and privacy policy, including applicable environmental, social and human rights aspects, and quality and safety requirements applicable to its business.

15.15 Insurance Requirements. Loftware will maintain adequate levels of insurance in order to meet the performance of its obligations under the Agreement. Upon annual written request from Customer, Loftware will provide an updated copy of its standard certificate of insurance for the current year.

15.16 Non-Solicitation. Neither party will hire or contract with, either as an employee or an independent contractor (either directly or through a third party), any of the other party’s employees who are Professional Services personnel or who participated in the performance of this Agreement within the preceding twelve (12) month period. Breach of this Section 15.16 will constitute a material breach of this Agreement.

15.17 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The terms and conditions of this Agreement will prevail over any additional or conflicting terms or conditions contained in any Loftware “shrink-wrap” or “click-wrap” agreements made available to Customer in connection with the SaaS offerings and Software.

EXHIBIT A DEFINITIONS

Definitions. For purposes of this Exhibit A and the Agreement, each word or phrase listed below has the meaning designated. Other words or phrases used in the Agreement may be defined in the context in which they are used.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the SaaS offerings or Software.

“**Access Date**” means the date on which Customer is first able to access the SaaS offerings in a Production or Non-Production environment.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

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

“**Authorized Users**” means Customer’s employees, consultants, contractors, and agents who are authorized by Customer to access and use the SaaS offerings or Software under the rights granted to Customer pursuant to this Agreement.

“**Available**” means the SaaS offerings are available for access and use by Customer and its Authorized Users over the internet and operating in material accordance with the SaaS Specifications.

“**Code of Ethics and Business Conduct**” means Loftware’s Code of Ethics and Business Conduct available at <https://www.loftware.com/about-us/legal>.

“**Customer Cloud**” means use of the Software in either Customer or third party, owned and controlled environments that are run and managed within Customer on-premise environments or private clouds delivered by third party providers contracted by the Customer.

“**Customer Data**” means information, data, and other content, in any form or medium, which is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the SaaS offerings or this Agreement.

“**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“**Device Seat**” means a unique printer or logical output device license purchased by Company for Production, Non-Production or disaster recovery use.

“**Documentation**” means, as applicable, the SaaS Documentation or Software Documentation.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the SaaS offerings, Software or Loftware Systems as intended by this Agreement. Harmful Code does not include any Loftware Disabling Device.

“**Installed Applications**” means Loftware’s proprietary and licensed computer programs that are installed on and will operate on Customer Systems in connection with the SaaS offerings. For clarity, “Installed Applications” do not include any aspect of the Customer Systems.

“**Integration**” means connection(s) from a Source Application to the SaaS offerings or Software, as applicable, for use in a Production environment, Non-Production environment and/or disaster recovery environment at a single Site.



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

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

“**Loftware Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Loftware or its designee to disable Customer’s or any Authorized User’s access to or use of the SaaS offerings or Software automatically with the passage of time or under the positive control of Loftware or its designee.

“**Loftware Materials**” means the Specifications, Documentation, and Loftware Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Loftware or any Subcontractor in connection with the (i) SaaS offerings or (ii) Software, or otherwise comprise or relate to the SaaS offerings, Software, or Loftware Systems. For the avoidance of doubt, Loftware Materials do not include Customer Data.

“**Loftware Personnel**” means all individuals involved in the performance of SaaS offerings or Software as employees, agents, or independent contractors of Loftware or any Subcontractor.

“**Loftware Systems**” means the information technology infrastructure used by or on behalf of Loftware in performing the SaaS offerings, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Loftware or through the use of third-party services.

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

“**Non-Production**” means an environment in which the SaaS offerings or Software are used by or on behalf of Company to output labels and documents for test, development, quality assurance and/or back-up purposes, but not to run Company’s business operations or for any other commercial use.

“**On-Premise Subscription**” means Loftware has provided or will provide Customer with the Software licensed in accordance with the terms of this Agreement, for the Term as set forth in an applicable Ordering Document, for use in a Customer Cloud. The On-Premise Subscription Software license includes On-Premise Software Support Services during the Term.

“**On-Premise Software Support Services**” means the maintenance and support services provided by Loftware to Customer for the On-Premise Subscription Software, as such maintenance and support services are defined within the Support Services Appendix available at <https://www.loftware.com/siteassets/docs/legal/loftware-support-services.pdf>.

“**Ordering Document**” means the form used by a Customer to designate the SaaS Offerings, On-Premise Subscription, or Professional Services being purchased by the Customer, as applicable. The Ordering Document may be an order form, purchase order, statement of work, or other form as otherwise designated by Loftware or its Representatives. Each Ordering Document will be non-cancelable and non-refundable, except to the extent expressly provided in this Agreement or such Ordering Document or under applicable law

“**Permitted Use**” means: any use of the Loftware provided Software for the benefit of Customer in the ordinary course of its internal business operations, but only for the applicable licensing capacity purchased by Company as designated in the Ordering Document.

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

“**Privacy Policy**” means Loftware’s data privacy policy available at <https://www.loftware.com/privacy-policy>.

“**Process**” means to take any action or perform any operation or set of operations that the SaaS offerings are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage,



maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Production**” means an environment in which the SaaS offerings or Software are used by or on behalf of Company to output labels and documents to run Company’s business operations.

“**Professional Services**” means Loftware’s installation, configuration, implementation, and training services in respect of the SaaS offerings or On-Premise Subscription Software license.

“**Recovery Point Objective**” or “**RPO**” means the maximum period of time in which data may be lost from the SaaS offerings due to a major incident. The recovery point is determined by the timestamp of the last backup or last database log file that is successfully restored or applied to the disaster recovery environment.

“**Recovery Time Objective**” or “**RTO**” means the maximum period of time in which the SaaS offerings must be restored after an outage or major infrastructural incident. The recovery time is determined by the time elapsed between a declaration of a disaster and restoration of the SaaS offerings.

“**Representatives**” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

“**SaaS**” means (i) the software-as-a-service offerings described in the applicable Ordering Document and (ii) to the extent applicable, the Installed Applications. The SaaS license includes SaaS Support Services during the Term.

“**SaaS Documentation**” means any manuals, instructions, or other documents or materials that the Loftware provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the SaaS offerings or Loftware Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**SaaS Specifications**” means the specifications for the SaaS offering set forth in the SaaS Documentation.

“**SaaS Support Services**” means the maintenance and support services provided by Loftware to Customer for the SaaS offerings, as such maintenance and support services are defined within the Support Services Appendix available at <https://www.loftware.com/siteassets/docs/legal/loftware-support-services.pdf>.

“**Site**” means a single physical or virtual location.

“**Software**” means the software listed in the applicable Ordering Document, including any enhancements, Updates, modifications or other releases made generally available by Loftware and provided to Customer. Software may be managed by Loftware as part of the SaaS offering or deployed in the Customer Cloud pursuant to the applicable Ordering Document.

“**Software Documentation**” means the full and complete documentation in any media and form (CD, written hard copy, digital, electronic, etc.) to be used with or related to the Software, including, without limitation, the Software Specifications and all programmer, user, training, operating, support and other manuals, technical specifications and documents and manuals relating to the installation, implementation, use, maintenance, testing and operation of the Software, together with all revisions, updates and other modifications thereto as Loftware may make from time to time.

“**Software Specifications**” means the technical specifications contained in the Software Documentation describing the functionality of the Software.

“**Specifications**” means, as applicable, the SaaS Specifications or Software Specifications.

“**Source Application**” means a non-Loftware software application located at a single Site.

“**Support Services**” means, as applicable, the SaaS Support Services or On-Premise Software Support Services, as each are defined within the Support Services Appendix available at <https://www.loftware.com/siteassets/docs/legal/loftware-support-services.pdf>.

“**Updates**” means any modifications or revisions to the SaaS offerings or Software, as applicable, made generally available by Loftware to its customers, including upgrades, new releases and new versions of the SaaS offerings and Software.