

CAPFFINITY STANDARD TERMS

These Standard Terms are legally binding on the parties and shall govern all statements of work, purchaser orders and order forms (collectively, "Ordering Documents") for the provision of Software Services, Professional Services and/or Support Services (together, the "Services") by Cappfinity, Inc. ("Cappfinity"). Client should read these Standard Terms carefully before entering into any Ordering Documents.

These Standard Terms and one or more Ordering Documents (together, the "Agreement") are a legal agreement between Client and Cappfinity for the Services and use of the Software Services. Cappfinity grants Client to right to use the Software Services and to receive the Professional Services and Support Services, as applicable, on the basis of this Agreement.

1. CAPFFINITY SERVICES

1.1 Provision of Services. The Services and access to the Software Services will only be provided to Client subject to the Client's compliance with these Standard Terms and payment of the Charges when due under this Agreement. The Software Services are described more fully in the then-current version of any supporting technical documentation provided to Client by Cappfinity and as may be available on Cappfinity's website ("Documentation"). The Software Services is provided on a subscription basis for the Subscription Term.

1.2 Access to the Software Services. Subject to the terms and conditions of the Agreement, Cappfinity hereby grants to Client a non-exclusive, non-transferable, worldwide right during the Subscription Term to access and use the Software Services solely for Client's internal business purposes and pursuant to the Documentation, including any restrictions designated on the Order Form.

1.3 Permitted Users. Use of and access to Software Services is permitted only by the number of users specified on the Order Form ("Permitted Users"). The Permitted Users will receive user IDs and passwords to access the Software Services. Client will ensure that all Permitted Users keep these credentials strictly confidential. Client is responsible for any and all actions taken by Permitted Users or by anyone using Client's accounts and passwords. Where Cappfinity provide Client access to the Software Services, Client is responsible for ensuring only Permitted Users have access with regular access checks being undertaken by Client.

1.4 Restrictions. Client shall not use the Services in a manner that violates any applicable Laws. Further, Client shall not, and shall not allow or assist any Permitted User or third party to: (a) use the Software Services for non-business purposes or to abuse the Software Services; (b) unless in accordance with the terms herein, grant third parties permission to use the Software Services, resell, transfer, pledge, lease, rent, or share Client's rights under this Agreement; (c) modify, remove or amend Cappfinity's name or logo, update, reproduce, duplicate, copy all or any part of the Software Services; (d) make the Software Services or content generated by the Software Services available to anyone other than Clients employees and consultants for use for its benefit as intended pursuant to this Agreement, or use the Software Services for the benefit of any entity other than Client; (e) access or attempt to access any of Cappfinity's systems, programs or data that are not made available for public use, or attempt to bypass any of the Software Services security and traffic management devices; (f) use the Software Services for benchmarking or to developing a product which is competitive with any Cappfinity product offering; or (g) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, object code or underlying ideas, structure, know-how, algorithms, file formats or programming or interoperability interfaces relevant to the Software Services or any software, documentation or data related to the Software Services by any means whatsoever. "Laws" refers to any statute, regulation, rule, ordinance or ruling by a foreign, federal, state or local government including, but not limited to data transfer, intellectual property rights and privacy laws.

1.5 Support Services. Cappfinity shall provide Client with the Support Services during Cappfinity business hours in accordance with Cappfinity's Support Services Policy in effect at the time that the Support Services are provided. Cappfinity may amend the Support Services Policy in its sole and absolute discretion from time to time. Client may purchase additional support services separately at Cappfinity's then current rates.

2. CLIENT DATA AND CLIENT OBLIGATIONS

2.1 Client Data. "Client Data" means electronic data and information submitted by or for Client to the Software Services or collected and processed by or for Client using the Software Services.

2.2 Client Obligations. Client acknowledges that Cappfinity's ability to provide the Services is dependent upon the timely co-operation of Client (which Client agrees to provide), as well as the accuracy of the applicable Ordering Document and any information Client provides to Cappfinity. Accordingly, Client shall provide, in a timely manner, access to and use of information and documentation reasonably required for the performance by Cappfinity of its obligations under this Agreement. Client shall ensure that Client's use of Software Services and all Client Data is at all times compliant with all applicable Laws. Client represents and warrants to Cappfinity that Client has sufficient rights in the Client Data to authorize Cappfinity to input, process, distribute and display the Client Data as contemplated by this Agreement. Where the Client requests Professional Services to be performed on Client premises, without prejudice to the foregoing, the Client shall: (i) provide Cappfinity with access to the Client's premises, office accommodation and other facilities as needed to perform the Professional Services; (ii) prepare the Client's premises to Cappfinity's reasonable satisfaction for the supply of the Professional Services; and (iii) obtain

and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Professional Services and the premises at which they are to be provided.

2.3 Rights in Client Data. As between the parties, Client shall retain all right, title and interest (including any and all intellectual property rights) in and to the Client Data as provided to Cappfinity. Subject to the terms of this Agreement, Client hereby grants to Cappfinity a non-exclusive, worldwide, royalty-free right to use, copy, process store, transmit, distribute, perform and display, modify and create derivative works of the Client Data solely to the extent necessary to provide the Software Services and to comply with applicable Laws.

2.4 Aggregated and Anonymized Data. Cappfinity may process aggregated and anonymous general platform usage data on an anonymized basis for Cappfinity's legitimate business purposes, including for testing, development, controls, and operation of the Software Services, and may retain such data at Cappfinity's discretion ("Aggregated and Anonymized Data"). For clarity, nothing in this Section 2.4 gives Cappfinity the right to publicly identify Client or any individual user as the source of Aggregated and Anonymous Data.

3. OWNERSHIP

3.1 Cappfinity Technology. This is a subscription agreement for use of Software Services and not an agreement for sale. Client acknowledges that it is obtaining only a limited right to use the Software Services on a hosted basis. Client agrees that Cappfinity or its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the Software Services, including any and all related and underlying software (including mobile applications, extensions and interfaces), databases, technology, and all copies, modifications and derivative works thereof, the Documentation, and all system performance data and machine learning, including machine learning algorithms, data used for optimization and services improvement, and the results and output of such machine learning (collectively, "Cappfinity Technology"). Cappfinity reserves all rights to the Software Services not expressly granted in this Agreement. Nothing in this Section 3.1 shall be deemed as granting Cappfinity ownership of Client Data or in any way impacting Client's ownership of Client Data.

3.2 License by Client to Use Feedback. Client grants to Cappfinity and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Client or Permitted Users relating to the operation of Cappfinity's or its Affiliates' services.

4. SUBSCRIPTION TERM; FEES AND PAYMENT

4.1 Subscription Term. Unless otherwise specified on the Order Form, each Subscription term shall begin on the effective date of the applicable Order Form and expire 12 months thereafter ("Initial Subscription Term"). Thereafter, the Initial Subscription Term will automatically be renewed for successive one-year renewal terms from the end of the Initial Subscription Term unless Client or Cappfinity provides written notice of its intent not to renew no later than 60 days prior to the end of the current Term (each, a "Renewal Subscription Term"). The Initial Subscription Term and any Renewal Subscription Term are collectively referred to as the "Subscription Term."

4.2 Fees and Payment. All fees are as set forth on the Order Form and unless otherwise specified on the Order Form, all fees are due net 30 days from the invoice date. Client is responsible for providing complete and accurate billing and contact information to Cappfinity and notifying Cappfinity of any changes to such information. Except as expressly set forth in Section 6.1 (Limited Warranty) and Section 7.1 (Cappfinity Indemnification), payment obligations are noncancelable and fees are non-refundable. Any late payments shall be subject to a service charge equal to 1.0% per month of the amount due or the maximum amount allowed by law, whichever is less. If Client believes that Cappfinity has billed Client incorrectly, Client must contact Cappfinity no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit.

4.3 Taxes. Cappfinity's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Client is responsible for paying all Taxes associated with its purchases hereunder. If Cappfinity has the legal obligation to pay or collect Taxes for which Client is responsible under this section, Cappfinity will invoice Client and Client will pay that amount unless Client provides Cappfinity with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Cappfinity is solely responsible for taxes assessable against it based on its income, property and employees.

5. CONFIDENTIALITY

5.1 Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client includes Client Data; Confidential Information of Cappfinity includes the Software Services and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to

its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Cappfinity services.

5.2 Protection of Confidential Information. Each party will (i) hold the Confidential Information of the other party in confidence, (ii) not disclose to any other person or use such Confidential Information or any part thereof, except in connection with the limited purpose of performing its obligations pursuant to the terms of this Agreement and except if compelled to do so under applicable law and having delivered a written notice to that effect to the disclosing party and taken all reasonable steps to avoid the disclosure of such Confidential Information, and (iii) use at least the same degree of care with respect to the other party's Confidential Information as it uses to avoid the unauthorized use, disclosure or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care. Each party will disclose the other party's Confidential Information, to the extent such disclosure is permitted under the terms of this Agreement, to its employees and agents on a "need to know" basis; provided in each case that such employees and agents are bound by confidentiality obligations similar to those in this Agreement.

5.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost.

6. LIMITED WARRANTY

6.1 Limited Warranty. Cappfinity shall use reasonable effort consistent with prevailing industry standards to maintain the Software Services in a manner which minimizes errors and interruptions in the Software Services and shall perform the Services in a professional and workmanlike manner. The Software Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Cappfinity or by third-party providers, or because of other causes beyond Cappfinity's reasonable control, but Cappfinity shall use reasonable efforts that any scheduled service disruption will occur out of Cappfinity business hours and to provide advance notice by e-mail of any scheduled service disruption. Further, Cappfinity represents warrants that the Software Services, when used in accordance with this Agreement, will perform in substantial conformity with the applicable Documentation. Client's sole and exclusive remedy under such warranty shall be that Cappfinity will use commercially reasonable efforts and at no charge to Client, to correct the reported non-conformity in accordance with the current service level and support terms or if Cappfinity determines such remedy to be impracticable, to allow Client to terminate the applicable Subscription Term and receive as its sole remedy a refund of any fees Client has pre-paid for use of the Software Services that it has not received as of the date of the warranty claim. The limited warranty set forth in this Section 6.1 shall not apply: (i) unless Client makes a claim within 60 days of the effective date of the order and support it with documented evidence, (ii) if the error was caused by (a) misuse, unauthorized modifications or third-party hardware, software or services, or (b) combination with any other products, process, equipment or software not approved by Cappfinity or (iii) to use provided on a no-charge or evaluation basis.

6.2 Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 6.1, THE SERVICES ARE PROVIDED "AS IS". NEITHER CAPPFINITY NOR ANY OF ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. CLIENT MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, ANY STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. CAPPFINITY SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CAPPFINITY.

7. INDEMNIFICATION

7.1 Cappfinity Indemnification. Subject to Section 7.3 (Procedures) and the remainder of this Section 7.1, Cappfinity shall (a) defend Client and its shareholders, partners, members, directors, officers, employees, lenders, successors and assigns, (collectively with Client, each a "Client Indemnitee") from and against any claim by a third party alleging that the technology underlying the Software Services, when used as authorized under this Agreement, directly infringes such third party's copyright, U.S. patent, or trademark and (b) in relation to such claim, indemnify and hold harmless the Client Indemnitees from any damages and costs finally awarded or agreed to in settlement by Cappfinity (including reasonable attorneys' fees). If Client's use of the Software Services is, or in Cappfinity's opinion is likely to be, enjoined due to the type of infringement specified above, if required by settlement, or if Cappfinity determines such actions are reasonably necessary to avoid material liability, Cappfinity may, in its sole discretion: (i) substitute substantially functionally similar products or services; (ii) procure for Client the right to continue using the Software Services; or if (i) and (ii) are not commercially reasonable, (iii) terminate the Agreement and refund to Client the fees paid by Client for the portion of the Subscription Term which was paid by Client but not rendered by Cappfinity. The foregoing indemnification obligation of Cappfinity shall not apply: (1) if the Software Services are modified by any party other than Cappfinity, but solely to the extent the alleged infringement is caused by such modification; (2) the Software Services are combined with other non-Software Services services or processes not authorized by Cappfinity, but solely to the extent the alleged infringement is caused by such

combination; (3) to any unauthorized use of the Software Services; (4) to any action arising as a result of Client Data or any third-party components contained within or uploaded to the Software Services; or (5) if Client settles or makes any admissions with respect to a claim without Cappfinity's prior written consent. THIS SECTION 7.1 SETS FORTH CAPPFINITY'S SOLE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

7.2 Client Indemnification. Client shall (a) defend Cappfinity from and against any claim by a third party alleging that the Client Data, or Client's use of the Software Services in breach of this Agreement infringes or misappropriates such third party's intellectual property rights or violates applicable Laws, and (b) in relation to such claim, indemnify and hold harmless Cappfinity from any damages and costs finally awarded or agreed to in settlement by Client (including reasonable attorneys' fees).

7.3 Procedures. The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification: (i) prompt written notice of the claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of the indemnified party, at indemnifying party's expense.

8. LIMITATION OF REMEDIES AND DAMAGES

8.1 Liability. IN SECTION 8 (LIMITATION OF REMEDIES AND DAMAGES), "LIABILITY" MEANS ANY LIABILITY, WHETHER UNDER CONTRACT, TORT, OR OTHERWISE.

8.2 Limitations. SUBJECT TO SECTION 8.3 (EXCEPTIONS TO LIMITATIONS):

8.2.1 NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (1) THE OTHER PARTY'S LOST REVENUES; (2) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (3) EXEMPLARY OR PUNITIVE DAMAGES; AND

8.2.2 EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO CAPPFINITY FOR THE APPLICABLE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGE.

8.3 Exceptions to Limitations. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM ITS GROSS NEGLIGENCE OR THE GROSS NEGLIGENCE OF ITS PERSONNEL; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAWS; (D) A PARTY'S LIABILITY UNDER SECTION 7 (INDEMNIFICATION); OR (E) A PARTY'S BREACH OF ITS DATA SECURITY OBLIGATIONS UNDER SECTION 9 (DATA SECURITY); *PROVIDED HOWEVER* THAT CAPPFINITY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A BREACH OF ITS DATA SECURITY OBLIGATIONS WILL NOT EXCEED AN AMOUNT EQUAL TO THREE TIMES (3X) THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO CAPPFINITY FOR THE APPLICABLE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

8.4 Failure of Essential Purpose. The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. DATA SECURITY

9.1 Treatment of Personal Information. Each of Cappfinity and Client shall process any personal data in respect of which Client is the controller in accordance with applicable laws. Cappfinity shall process any personal data in respect of which the Client is the controller in accordance with Cappfinity's Data Processing Agreement.

10. PROFESSIONAL SERVICES.

10.1 Cappfinity shall provide the Professional Services as may be described in an applicable Ordering Document or statement of work/individual work order ("SOW"). The parties acknowledge that the scope of the Professional Services provided hereunder consists of: (a) assistance with setup, deployment, and/or optimization of the Software Services including installation and maintenance services, (b) customizations to the Software Services, and/or (c) other general consultancy services. Client shall have a license right to use any deliverables (including any documentation or other work product) delivered as part of the Professional Services ("Deliverables") solely in connection with Client's permitted use of the Software Services, subject to all the same use restriction terms (including in Section 1.4), and subject to any additional terms and conditions provided with the Deliverables. Client may order Professional Services under an Ordering Document or SOW describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each Ordering Document or SOW, as applicable, must be signed by both parties before Cappfinity shall commence work under such document. Client will reimburse Cappfinity for reasonable travel and lodging expenses as incurred.

11. TERMINATION

11.1 Termination. Either party may terminate this Agreement if the other party materially breaches its obligation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within 30 days after receipt of written notice from the non-defaulting party.

11.2 Effects of Termination. Upon termination or expiration of this Agreement for any reason whatsoever, (i) all rights granted to Client under this Agreement will immediately cease and Client shall immediately stop using the Software Services, and (ii) Cappfinity will make Client Data available for download or export for 30 days following such termination.

11.3 Refund or Payment upon Termination. If this Agreement is terminated by Client in accordance with the "Termination" section above, Cappfinity will refund Client any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Cappfinity in accordance with the "Termination" section above, Client will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable Law. In no event will termination relieve Client of its obligation to pay any fees payable to Cappfinity for the period prior to the effective date of termination.

11.4 Survival. The following Sections shall survive any expiration or termination of this Agreement: Section 4.2 (Fees and Payment) and the following sections of these General Terms and Conditions: 2.4, 3, 5, 6.2, 7, 8, 9, 11.2, and 12.

12. GENERAL

12.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.3 Governing Law; Jurisdiction and Venue. The Uniform Computer Information Transactions Act does not apply to this software as a service agreement or orders placed under it. Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of the State of New York, U.S.A. The exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the competent federal and state courts in New York, New York. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

12.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

12.5 Publicity and Advertising. Either party may otherwise use the name, trade name, logos, trademarks, icons, service marks, or other proprietary identifying symbols of the other party in any press release, public statement, advertising, signage, marketing materials, brochures, or other materials in any medium, to include the internet, with the other party's prior written consent. Any such permitted use shall comply with the guidelines or restrictions provided by the other party. A party may revoke consent at any time for any reason upon written notice to the other party. The foregoing notwithstanding, in the event that either party is required to make a public disclosure in order to comply with legal or regulatory requirements, the disclosing party will provide the other party with reasonable advanced notice of such required disclosure. Cappfinity may disclose Client as a customer of Cappfinity and use Client's name and logo on Cappfinity's web site and in Cappfinity's promotional materials.

12.6 Notice. All notices to Cappfinity shall be valid only if sent via pre-paid first class certified mail or overnight courier to Cappfinity attn: Legal Department, legal@cappfinity.com, for notices excluding notice of indemnification obligations, through email address or portal to a designated person approved in writing by Cappfinity. Cappfinity may give notice applicable to Cappfinity subscription customer base by means of a general notice on Cappfinity portal for the Software Services, and notices specific to Client by electronic mail to Client e-mail address on record in Cappfinity account information or by written communication sent by first class mail or pre-paid post to the most recent Client address provided by Client to Cappfinity. Client's current address shall be the address provided on the Order Form.

12.7 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

12.8 Entire Agreement and Order of Precedence. This Agreement (including mutually agreed exhibits or

attachments) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The parties agree that any term or condition stated in a Client purchase order or in any other Client order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) any exhibit, schedule or addendum to this Agreement, (3) the body of this Agreement, and (4) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

12.9 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, pandemic, epidemic, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. Any party claiming an excuse for non-performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and damages caused by events when known, and that the other party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a defence under this Section. The impacted party shall give written notice of the event to the other party at the earliest possible time. If the delay or failure by a party to perform its obligations due to such an event lasts more than 15 calendar days, either party has the option to immediately terminate that Ordering Document and a refund of all pre-paid fees from the date of the event.

12.10 Subcontractors. Cappfinity may use the services of subcontractors for performance of services under this Agreement, provided that Cappfinity remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement, all applicable Laws as well as Client's reasonable safety standards and protocols as provided to Cappfinity in writing, and (ii) the overall performance of the Software Services as required under this Agreement.

12.11 Third Party Beneficiaries. No third party is intended to be a beneficiary of this Agreement entitled to enforce its terms directly.

12.12 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.13 Government End-Users. The Software Services is based upon commercial computer software. If the user or licensee of the Software Services is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Software Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. the Software Services was developed fully at private expense. All other use is prohibited.

12.14 Export Control. In its use of the Software Services, Client agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Client represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country and (ii) Client shall not (and shall not permit any of its Permitted Users or others to) access or use the Software Services in violation of any U.S. export embargo, prohibition or restriction.

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