

Cloud Services Agreement

Last Modified: March 5, 2020

This Cloud Services Agreement (this "**Agreement**") is a binding contract between you or the organization on behalf of which you are entering into this Agreement (in either case, "**Customer**," "**you**," or "**your**") and SQL Sentry, LLC, d/b/a SentryOne, a Delaware limited liability company, with offices located at 4001-B Yancey Road, Charlotte, North Carolina 28217 ("**Provider**," "**we**," or "**us**"). This Agreement governs your access to and use of the Services. Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

THIS AGREEMENT TAKES EFFECT WHEN YOU SUBMIT AN ORDER FOR THE SERVICES ON THE PROVIDER'S WEBSITE AFTER SELECTING THE "I AGREE" BOX, INDICATING YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT, OR BY ACCESSING OR USING THE SERVICES (the "**Effective Date**"). BY SELECTING THE "I AGREE" BOX DURING THE ORDERING PROCESS OR BY ACCESSING OR USING THE SERVICES YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION TO THE TERMS OF THIS AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES.

1. Definitions.

(a) "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement, (ii) for whom access to the Services has been purchased hereunder, and (iii) with respect to consultants, contractors and non-employee agents of Customer, who have entered into a written agreement with Customer obligating such consultant, contractor and non-employee agent to protect the confidentiality of the Services and Provider's Confidential Information to at least the same extent as protected by this Agreement.

(b) "**Collection Software**" means the software program or programs that Provider requires Customer to install on Customer Systems in order to permit Provider to collect certain Customer Data required for Customer's use of the Services.

(c) "**Customer Data**" means information, data, and other content, that is uploaded, submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User in compliance with this Agreement, including through Customer's use of Provider's Collection Software, in connection with Customer's use of the Services.

(d) **"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, other than the Services.

(e) **"Documentation"** means any manuals, instructions, or other documents or materials that the Provider provides makes available to Customer at <https://docs.sentryone.com/help> and which describes the functionality, components, features, or requirements of the cloud-based Services.

(f) **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

(g) **"Personal Information"** means information relating to an identified or identifiable individual or which used alone or in combination with other information does or can (directly or indirectly) identify a specific individual.

(h) **"Professional Services"** means Provider technical or other services specifically requested by Customer and mutually agreed between Customer and Provider as set forth in a separate statement of work.

(i) **"Provider IP"** means the Services, the Documentation, Collection Software, Provider Systems and any and all intellectual property, including 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 Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Resultant Data and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

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

(k) **"Resultant Data"** means data and information related to Customer's use of the Services, including statistical information regarding such use and information relating to the performance and operation of the Services during such use, but not including Customer Data.

(l) **"Sales Order"** means the purchasing page of the Provider's website where a customer initiates the purchase of the Services and which includes the quantity metric (such as the number of targeted database instances, databases or technologies), fees and payment terms for the specific Services purchased or any sales order prepared by Provider and provided to

Customer, that identifies the same, in each case subject to the terms and conditions of this Agreement.

(m) **"Services"** means the cloud-based software-as-a-service offering described on the Sales Order.

(n) **"Third-Party Products"** means any third-party software components provided with or incorporated in the Services.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other/the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g)) right to access and use the Services during the Term, solely with respect to the quantity metric (such as the number of targeted database instances, databases or technologies) on the Sales Order and in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer access to the necessary passwords and network links or connections to allow Customer to access the Services. Customer shall designate an administrator that will have access to the Customer's Platform Security Portal and will be responsible for designating additional administrators. Customer administrators shall provide access to Authorized Users as determined necessary by Customer. The total quantity (number of targeted database instances, databases or technologies) shall not exceed the number set forth in the Sales Order, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b) License to Collection Software. If the Services purchased by Customer require use of Provider's Collection Software, subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable (except in compliance with Section 12(g)) license to use the Collection Software during the Term solely for Customer's internal business purposes in connection with its use of the Services.

(c) Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable (except in compliance with Section 12(g)) license to access and use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

(d) Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties:

(i) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Services, Documentation and Provider Systems; and

(ii) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services, Documentation and Provider Systems by any Person by or through the Customer Systems 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 Services or Provider; (ii) results obtained from any use of the Services, Documentation or Provider System; and (iii) conclusions, decisions, or actions based on such use.

(e) Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services, Documentation, Collection Software or Provider System except as expressly permitted by this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Provider IP, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Provider IP; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Provider IP, in whole or in part; (iv) remove any proprietary notices from the Services, Collection Software or Documentation; (v) access or use the Provider IP for purposes of competitive analysis of the Provider IP, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; (v) use the Provider IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law or (vi) upload, submit, post or otherwise transmit Personal Information in connection with Customer's or any Authorized User's use of the Services.

(f) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(g) Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services, Documentation and Provider Systems that it deems necessary or useful, including to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law; provided that no such change shall materially diminish the functionalities of the Services.

(h) Subcontractors. Provider may from time to time in its discretion engage third parties to assist Provider in the provision of the Services (each, a "**Subcontractor**").

(i) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized End User's use of the

Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized End User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; or (ii) in accordance with Section 5(a) (any such suspension described in subclause (i) or (ii), a “**Service Suspension**”). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(j) Resultant Data. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Resultant Data. As between Provider and Customer, all right, title, and interest in Resultant Data, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Resultant Data based on Customer Data input into the Services. Customer agrees that Provider may (i) make Resultant Data publicly available in compliance with applicable law, and (ii) use Resultant Data to the extent and in the manner permitted under applicable law; provided that in either case such Resultant Data do not identify Customer or Customer's Confidential Information.

3. Customer Responsibilities. Customer is responsible and liable for all uses and disclosures of Customer Data and all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users or any Person using a password or login credentials assigned to an Authorized User, and any act or omission by an Authorized User or such Person that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

4. Support. During the Term, the access rights granted hereunder entitles Customer to the support services which may be accessed by customer at <http://support.sentryone.com>.

5. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees ("**Fees**") as set forth in the Sales Order without offset or deduction. Customer shall make all payments hereunder in US dollars at the time of purchase or on or before the due date set forth in the Sales Order. If Customer fails to make any payment when due, without limiting Provider's other rights and

remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

(b) Fee Increases. Provider may increase Fees no more than once annually after the Initial Term, including for any Renewal Term, by providing written notice to Customer at least 30 calendar days prior to the commencement of such Renewal Term, and the Sales Order will be deemed amended accordingly.

(c) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. 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, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

6. Confidential Information and Information Security.

(a) Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, in each case whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Without limiting the foregoing, the Provider IP is the Confidential Information of Provider. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall (I) exercise at least reasonable care to protect the other Party's Confidential Information against unauthorized access; (II) not use the other Party's Confidential Information for any purpose other than performance of this Agreement or the exercise of any benefit expressly provided herein; and (III) not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, agents or subcontractors who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder and who are legally required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each Party may disclose the other Party's Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, if legally permissible, first have given written notice to the other Party and cooperate with legally permissible efforts of the other Party to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the

Agreement, the receiving Party shall, at the request of the disclosing Party, promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations herein with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b) Information Security.

(i) Subject to the terms and conditions of this Agreement, Provider agrees to comply with applicable laws, rules and regulations in its collection, receipt, access, use, storage, disposal, and disclosure of Customer Data which shall not, in accordance with Section 2(e), include Personal Information.

(ii) Customer has and will retain sole responsibility for: (a) all Customer Data, including its content, accuracy, use, and disclosure; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Customer's and its Authorized Users' access credentials; and (e) all access to and use of the Services and Provider IP 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. Intellectual Property Ownership; Feedback.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, create derivative works of and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, create derivative works of and otherwise use and display Customer Data to the extent necessary to exercise Provider's rights set forth in Section 2(j).

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(a) Provider warrants during the Term that the Services will materially conform with the Documentation when accessed and used by Customer in accordance with the Documentation. In the event Provider fails to satisfy this limited warranty, Provider's sole liability and Customer's sole remedy, shall be for Provider to use commercially reasonable efforts to correct the Services so that the Services materially conform to the Documentation.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER 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. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, 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.

9. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights/US patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Provider may, at Provider's sole discretion, (A) modify or replace the Services, or component or part thereof, to make it non-infringing without materially diminishment of the Services, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer and Provider will issue a pro-rata refund of any pre-paid Fees applicable to the period of time after such termination.

(iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights, any Third-Party Claim arising out of Customer's breach of its obligations in respect of Customer Data hereunder, and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability.

(a) EXCLUSION OF DAMAGES. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e)

COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

(b) CAP ON MONETARY LIABILITY. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNT PAID OR PAYABLE TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination.

(a) Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for one (1) year from such date (the "**Initial 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 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). In the event Customer elects to opt out of the auto renewal provision in this Agreement, this Agreement shall terminate upon the expiration of the Initial Term unless Customer renews the Term by paying the next year's annual Fee prior to such expiration.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(e), Section 3 or Section 6;

(ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) 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; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) 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.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, (i) Customer shall immediately discontinue use of the Provider IP; (ii) without limiting Customer's obligations under Section 6(a), Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed; (iii) Provider may disable all Customer and Authorized User access to the Services and (iv) Provider may destroy Customer Data stored on Provider's Systems. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

(d) Survival. This Section 11(d) and Sections 1, 5, 6(a), 7, 8(c), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Sales Orders, 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, and representations and warranties, both written and oral, with respect to such subject matter. For clarity, this Agreement shall not supersede any prior agreement between the Parties with respect to Provider's on premise software products and offerings, including Provider's Software End User License Agreement, which shall remain in effect in accordance with its terms. To the extent any terms or conditions contained in the Sales Order conflict with the terms or conditions contained in this Agreement, the terms and conditions of the Sales Order shall supersede only those conflicting terms or conditions contained in this Agreement and only to the minimum extent necessary to harmonize the terms in such Sales Order with the terms contained herein. UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY SALES ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERSEDED OR REPLACED BY ANY CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY CUSTOMER TO PROVIDER. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO CUSTOMER AND ONLY FOR CUSTOMER'S INTERNAL ACCOUNTING PROCEDURES, CUSTOMER MAY DELIVER TO PROVIDER A CUSTOMER PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY CUSTOMER, INCLUDING PROVIDER'S DELIVERY OF ANY SERVICES OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY PROVIDER PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES AND EXPRESSLY REFERRING TO THIS SECTION 12(a).

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the Sales Order (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Modification; Waiver. You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement from time to time, and that modified terms become effective on posting a notification within the Services or by email. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) 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 and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will 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 shall negotiate in good faith to modify this Agreement so as to effect their original intent 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.

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

(g) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina in each case located in the County of Mecklenburg County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(h) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(i) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services outside the US.

(j) US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(k) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6(a) or, in the case of Customer, Section 2(e), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, 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.