

## SERVICE AGREEMENT AND EULA

THIS SERVICE AGREEMENT AND EULA ("**Agreement**"), effective as of date ("**Effective Date**") of the order form to which this Agreement is attached ("**Order Form**"), is by and between SERG SOLUTIONS, LLC, a Georgia limited liability company, a Henry Schein Veterinary Solutions company, with offices located at 304 Ohio St., Oshkosh, WI 54902, or its subsidiary or affiliate identified on the Order Form ("**Provider**") and "**Customer**" (as identified on the Order Form). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

1.1. "**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

1.2. "**Authorized User**" means Customer's employees, consultants, contractors and agents: (i) who are authorized by Customer to access and use the Services or the Software under the rights granted to Customer pursuant to this Agreement, and (ii) for whom access to the Services or the Software has been acquired hereunder.

1.3. "**Customer Data**" means, other than Aggregated Statistics, information, data and other content, in any form or medium, that is submitted, posted or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services or the Software, or maintained in connection with the Services or Software or any databases maintained in connection with the Services or the Software, or otherwise collected by Provider from Customer or Customer's clients, including without limitation information about Customer's clients and their pets.

1.4. "**Documentation**" means Provider's user manuals, handbooks and guides relating to the Services or Software, available as described on the Weblink.

1.5. "**Provider IP**" means the Services, Software, Documentation and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services or Software, but does not include Customer Data.

1.6. "**Services**" means the software-as-a-service offering described in the Order Form or any other service, software-offered-as-a-service or product-offered-as-a-service offered to or procured by Customer from Supplier related thereto pursuant another order form (unless other specific terms apply to such procurement).

1.7. "**Software**" means the software licensed to Customer hereunder as provided on the Order Form or where software is copied, located at or otherwise transferred to Customer's site as part of the Services (unless other specific terms apply to such procurement).

1.8. "**Third-Party Products**" means any third-party products described in the Order Form or referenced on the Weblink, provided with or incorporated into the Services or Software or enabled by Customer.

1.9. "**Weblink**" means <https://hsveterinarysolutions.com/user-agreements/>.

2. Software as a Service. To the extent that Customer purchases Services as indicated on an Order Form, the provisions of this Section 2 shall apply to such Services.

2.1. Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12.7 (Assignment)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. If applicable, the total number of Authorized Users will not exceed the number set forth in the Order Form, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder. If a trial period for the Services is identified on an Order Form, such trial period shall not be longer than thirty (30) days, shall be in addition to the Term and shall be subject to this Agreement.

2.2. Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized 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 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 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 User is prohibited by applicable law; (F) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (G) failure to pay any amount owed to Provider after any cure period provided herein (each such suspension described in subclause (E), (F) or (G) only, a "**Service Suspension**"). Provider shall use commercially reasonable efforts to: (X) provide written notice of any Service Suspension to Customer; (Y) to provide updates regarding resumption of access to the Services following any Service Suspension; and (Z). 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.

2.3. **Service Levels.** Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service levels referenced in the Weblink ("SLAs"). Unless stated otherwise on the Weblink, the SLAs will be calculated excluding: (i) scheduled network, hardware or service maintenance; (ii) downtime caused by the acts or omissions of Customer or Customer's employees, agents, contractors or vendors, or anyone gaining access to the Services by means of Customer's or Authorized Users' passwords or equipment; (iii) failures, incompatibility or malfunctions of any equipment or services provided directly or indirectly by Customer; (iv) failures of the Internet, power outages, natural disasters and data communication failures; and (v) the occurrence of any event that is beyond Provider's reasonable control.

2.4. **Support.** The access rights granted hereunder entitles Customer to the support services referenced on **the Weblink**, if any, following the Effective Date.

3. **License.** To the extent that Customer licenses Software as indicated on an Order Form, or where Software is copied, located at or otherwise transferred to Customer's site as part of the Services, the provisions of this Section 3 shall apply to such Software.

3.1. **License Grant.** Provider hereby grants to Customer a non-exclusive, personal, non-sublicensable and non-transferable (except as stated in Section 12.7 (Assignment)), limited license to use the Software, and the Documentation in connection with Customer's use of the Software or Services, during the Term solely for Customer's internal business purposes, at Customer's business located at the address set forth on the Order Form, and Customer accepts such license. This license may not be sublicensed or assigned without Provider's prior written consent. Should Customer change its business location or sell its business to another owner, this license can be transferred to the new location or owner after written notification to Provider by Customer, by providing Provider with documentation and proof of the sale and after the new business owner has agreed to the terms of and signed a Service Agreement and EULA.

#### 4. **Customer Responsibilities/Restrictions.**

4.1. **General.** Customer is responsible and liable for all uses of the Services, Software 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, and any act or omission by an Authorized User 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, Software and Documentation, and shall cause Authorized Users to comply with such provisions. Customer is responsible for supplying all equipment, Internet access and bandwidth needed to access and use the Services and Software. The Services and Software may include certain communications from Provider or its partners such as service announcements, administrative messages and newsletters. Customer hereby agrees to receipt of such communications and acknowledges that Customer may not be able to opt out of receiving such communications.

4.2. **Third-Party Products.** Provider may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow through provisions referred to at <https://hsveterinarysolutions.com/user-agreement>, and Customer hereby agrees thereto. If Customer does not agree to abide by the applicable terms for any Third-Party Products, then Customer should not install or use such Third-Party Products.

4.3. **Use Restrictions.** Except to the limited extent expressly authorized by this Agreement (if applicable), Customer shall not: (i) license, sublicense, sell, resell, transfer, rent, lend, assign, distribute or otherwise commercially exploit or make available to any third party any Service, Software or Documentation, or any technology, software or data used by Provider to provide the Services or to license the Software or Documentation

(collectively, “**Provider Technology**”) in any way; (ii) provide any data contained within any Provider Technology or otherwise obtained by Customer using the Provider Technology to any third party; (iii) modify, adapt, translate or create derivative works based upon any Provider Technology; (iv) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from any Provider Technology or otherwise reduce any Provider Technology software to human-readable form; (v) reproduce any portion of any Provider Technology; (vi) access any Service or Software (including, without limitation, any databases or data thereof) by any means other than through an interface that is provided by Provider for such access (if any); (vii) use any Provider Technology for any purpose or in any manner that is unlawful or prohibited by this Agreement; (viii) use any Service or Software in a manner that could reasonably be expected to interfere with or disrupt the integrity, security or performance of any Provider Technology, including, without limitation, the integrity or security of any data contained therein; (ix) access or use any Provider Technology to build a competitive product, software or service; (x) attempt to gain unauthorized access to any Service or its related systems or networks; (xi) mine, scrape or otherwise extract data from any Provider Technology (including, without limitation, databases); (xii) use any Provider Technology to send or store infringing or otherwise unlawful or tortious material, including, without limitation, material violative of third party intellectual property or privacy rights, or any materials that are misleading, obscene or hateful; or (xiii) authorize, instruct or cause any third party to do any of the foregoing. For the avoidance of doubt, as used in this Agreement, the term “third party” shall include, without limitation, service providers and vendors of Customer, in addition to other third parties. Provider shall have the right to suspend its provision of the Services or terminate this Agreement immediately if Customer violates any provision of this paragraph.

## 5. Fees and Payment.

5.1. Fees. Customer shall pay Provider the fees (“**Fees**”) as set forth in the Order Form without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in the Order Form, and if no date is set, then thirty (30) days from invoice date. 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 ten (10) 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.

5.2. 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.

5.3. Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5.1. Customer shall pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds 3% for any quarter. Such inspection and auditing rights will extend throughout the Term and for a period of two years after the termination or expiration of this Agreement.

## 6. Confidential Information.

6.1. Confidentiality Obligations. 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, whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”). 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 not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose 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 first have given written notice to the other Party and made a reasonable effort 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 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, except as to Customer Data stored in the Services can be delivered to Customer, upon Customer's written request within one (1) year after such expiration or termination, in .csv or .pdf format. Each Party's obligations of non-disclosure 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.

6.2. Privacy and Security Obligations. Provider will comply with all laws and regulations applicable to Provider's provision of the Services, license of the Software or Documentation or otherwise to exercise its rights or obligations hereunder, and Customer will comply with all laws and regulations applicable to Customer's use of the Services, the Software and Documentation and otherwise to exercise its rights or obligations hereunder. Provider has adopted, implemented, will maintain and shall comply with a privacy policy ("Privacy Policy") and an information security program designed to protect Customer Data from loss, misuse and unauthorized access or disclosure, which shall include, without limitation, appropriate administrative, technical and physical safeguards to prevent the unauthorized access, modification or disclosure of the Customer Data ("Security Policy"), each as referenced on the Weblink. Each of the Privacy Policy and the Security Policy may be revised, modified, updated, supplemented and re-posted from time to time without prior notice at the discretion of Provider. Such policies posted at the links on the Weblink shall govern over any conflicts between such policy and this Agreement. Customer is advised to review the posted Privacy Policy and Security Policy regularly and to direct any questions about it to the address set forth therein.

## 7. Intellectual Property Ownership; Feedback.

7.1. Provider IP. Customer acknowledges that, as between Customer and Provider, except as specifically provided herein, Provider owns all right, title and interest, including all intellectual property rights, in and to the Provider IP. 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.

7.2. Customer Data. Provider acknowledges that, as between Provider and Customer, except as specifically provided herein, Customer owns all right, title and interest, including all intellectual property rights, in and to the Customer Data.

7.2.1 Customer hereby grants to Provider a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license: (a) to remotely access, obtain, reproduce, distribute and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data (including to reproduce, modify, analyze, aggregate and otherwise use), and to exchange such data among Provider, its subsidiaries, affiliates and service providers, as may be necessary for Provider to provide the Services or license the Software to Customer, to support the Services and/or Software, to comply with applicable laws, for the purposes set forth herein and for Provider's business purposes, including account administration, customer service, transaction processing, reporting, processing and delivering of account statements, research and analysis, product enhancement and development, analytics, marketing and delivery of products and services to third parties; (b) to reproduce, modify, analyze, aggregate and otherwise use, aggregated de-identified Customer Data and to disclose, display and distribute such aggregated de-identified Customer Data to third parties; and (c) to reproduce, distribute, otherwise use and display, modify, disclose, analyze and aggregate Customer Data incorporated within the Aggregated Statistics (or otherwise de-identified and aggregated), for its business purposes, including as described in subsection (a) above.

7.2.2 Customer represents and warrants that it has the right, under all applicable laws, to grant the rights, permissions and approvals set forth in this Agreement with respect to identifiable and non-identifiable data, including Customer's clients' individually identifiable information, and that any limits or cap on Customer's liability under this Agreement shall not apply to third party claims arising from Customer's misrepresentation under, or breach of, this sentence. Customer is solely responsible for obtaining and maintaining or verifying that it or its organization has obtained and is maintaining all Customer client consents and other legally necessary consents and permissions required or advisable for Provider to send any communications to Customer's clients on Customer's behalf, to perform the Services, to license the Software hereunder and to exercise other rights hereunder.

7.3. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services, Software and Documentation, and collect and compile Aggregated Statistics. As

between Provider and Customer, all right, title and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services and the Software. Customer agrees that Provider may: (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

7.4. 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. Warranty Disclaimer. THE PROVIDER IP AND THIRD-PARTY PRODUCTS ARE 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. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP OR THE THIRD-PARTY PRODUCTS, 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.

9.1. Provider Indemnification.

9.1.1. 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, Software or Documentation, or any use of the Services, Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's 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.

9.1.2. If such a claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to: (A) modify or replace the Services, Software or Documentation, or component or part thereof, to make it non-infringing, 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.

9.1.3. This Section 9.1 will not apply to the extent that the alleged infringement arises from: (A) use of the Services, Software or Documentation in combination with data, software, hardware, equipment or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Services, Software or Documentation not made by Provider; (C) Customer Data; or (D) Third-Party Products.

9.2. 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 patents, copyrights or trade secrets and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services, Software or Documentation in a manner not authorized by this Agreement; (iii) use of the Services, Software or Documentation 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, Software or Documentation 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.

9.3. 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, SOFTWARE OR DOCUMENTATION INFRINGE, MISAPPROPRIATE OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. 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. 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 AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination.

11.1. 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 as stated on the Order Form, and if not stated on the Order Form, on a month-to-month basis ("**Initial Term**"). This Agreement will automatically renew for additional successive monthly terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party at least ninety (90) days prior written notice of non-renewal (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). Provider may increase pricing once each year during the Term by at least ninety (90) days prior notice.

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

11.2.1. 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 ten (10) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 4.3 (Use Restrictions) or Section 6 (Confidential Information);

11.2.2. 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

11.2.3. 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; or

11.2.4. Unless otherwise provided in a master or other agreement between the parties relating to the Services, either Party may terminate any or all Service(s) relating to a single, multiple or all site(s) of use, effective ninety (90) days after written notice to the other Party, for convenience.

11.3. Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6 (Confidential Information), 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. 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.

11.4. Survival. This Section 11.4 (Survival) and Sections 1 (Definitions), 5 (Fees and Payment), 6 (Confidential Information), 7 (Intellectual Property Ownership, Feedback), 8 (Warranty Disclaimer), 9 (Indemnification), 10 (Limitations of Liability) and 12 (Miscellaneous) 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.

12.1. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related exhibits, 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. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the Order Form; (ii) second, this Agreement, excluding its exhibits; (iii) third, the exhibits to this Agreement as of the Effective Date; and (iv) fourth, any other documents incorporated herein by reference. Each party represents and warrants that the respective individual executing below is a duly authorized representative of such party.

12.2. 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 first page of this Agreement (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) 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.

12.3. 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.

12.4. Amendment and Modification; Waiver. Except as set forth in this Section 12.4, 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 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. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PROVIDER SHALL HAVE THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS AGREEMENT FROM TIME TO TIME. WHEN PROVIDER DOES SO, PROVIDER WILL GIVE CUSTOMER REASONABLE NOTICE OF THE MODIFICATION (WHICH MAY BE VIA EMAIL, AN ALERT DISPLAYED WITHIN OR VIA THE SERVICES OR SOFTWARE, OR OTHERWISE, BUT IS NOT REQUIRED TO COMPLY WITH SECTION 12.2). CUSTOMER'S CONTINUED USE OF THE SOFTWARE FOLLOWING CUSTOMER'S RECEIPT OR VIEWING OF SUCH NOTICE WILL CONSTITUTE CUSTOMER'S AGREEMENT TO SUCH MODIFICATION, AND THIS AGREEMENT SHALL THEN BE AUTOMATICALLY DEEMED TO BE AMENDED BY SUCH MODIFICATION.

12.5. 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.

12.6. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York 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 New York. 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 New York in each case located in the city of New York and County of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

12.7. Assignment. Except as provided herein, 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. Any purported assignment or delegation in violation of this section will be null and void. No assignment or delegation by Customer will relieve Customer (or other 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.

12.8. Export Regulation. The Services, Software and Documentation utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export or release the Services, Software, Documentation or the underlying software or technology to, or make the Services, Software, Documentation or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule or 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), prior to exporting, re-exporting, releasing or otherwise making the Services, Software, Documentation or the underlying software or technology available outside the US.

12.9. US Government Rights. Each of the Documentation and the software components that constitute the Services and Software 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, Software 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.

12.10. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 (Confidential Information) or, in the case of Customer, Section 4.3 (Use Restrictions), 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.

12.11. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

SERG SOLUTIONS, INC.

[CUSTOMER NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_