

**HUNTSVILLE TOWN
RESOLUTION 2024-05-15
CODIFICATION SERVICES**

**A RESOLUTION OF HUNTSVILLE TOWN, UTAH, APPOINTING
TOWN STAFF AND CIVICLINQ COMPANY TO PROVIDE
CODIFICATION AND REVISION SERVICES TO HUNTSVILLE TOWN
FOR THE HUNTSVILLE MUNICIPAL CODE.**

WHEREAS, Huntsville Town (hereafter "Town") is a municipal corporation, duly organized and existing under the laws of the State of Utah;

WHEREAS, *Utah Code Annotated* §10-3-707 grants to the Town power to codify ordinances into a Municipal Code and states: "[a]ny municipality is hereby empowered to revise, codify and compile from time to time and to publish in book, pamphlet or looseleaf form all ordinances of the municipality of a general and permanent character and to make such changes, alterations, modifications, additions, and substitutions therein as it may deem best to the end that a complete simplified code of the ordinances then enforced shall be presented, but with errors, inconsistencies, repetitions, and ambiguities therein eliminated."

WHEREAS, *Utah Code Annotated* §10-3-706 states that "[t]he governing body by resolution may authorize and direct the mayor to appoint, with the advice and consent of the governing body, one or more persons to prepare and submit to the governing body a compilation, revision or codification of municipal ordinances. The compensation for the service shall be fixed by resolution of the governing body and paid out of the municipal treasury."

WHEREAS, *Utah Code Annotated* §10-3-708 authorizes the Town to arrange its ordinances stating: "[t]he ordinances in the revision, codification and compilation shall be arranged in such order as the governing body may decide and may exclude the titles, enacting clauses, signatures of a mayor or mayor pro tempore of the governing board, attestations, and other formal parts..."

WHEREAS, *Utah Code Annotated* §10-3-709 states that: "[s]uch revision shall be by one ordinance embracing all ordinances of a general and permanent character preserved as changed or added to and perfected by the revision, codification and compilation and shall be a repeal of all ordinances in conflict with the revision, codification and compilation, but all ordinances then enforced shall continue in force after the revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor."

WHEREAS, the Town desires to establish permissions and authorizations for codification of the municipal code;

WHEREAS, the Mayor recommends the appointment of CIVICLINQ to revise and codify the Huntsville Municipal Code, in conjunction with the Town Staff;

NOW, THEREFORE, be it resolved by the Town Council of Huntsville Town, Utah:

Section 1: Appointment. Based upon the recommendation of the Mayor, the Town Council, acting as the governing body, hereby appoints and designates CIVICLINQ, in conjunction with the Town Staff, to provide revision and codification services to the Town for the Huntsville Municipal Code.

Section 2: Codification. CIVICLINQ, along with Town Staff, is hereby delegated authority with regards to the Huntsville Municipal Code and in accordance with *Utah Code Annotated* §10-3-707 “to make such changes, alterations, modifications, additions, and substitutions therein as it may deem best to the end that a complete simplified code of the ordinances then enforced shall be presented, but with errors, inconsistencies, repetitions, and ambiguities therein eliminated.”

This includes, but is not limited to modifying, reorganizing, and/or renumbering the Huntsville Municipal Code as needed to eliminate errors, inconsistencies, repetitions, and ambiguities; and to make additional changes, alterations, modifications, additions, and substitutions therein as it may deem best to the end that a complete simplified code of the ordinances then enforced may be presented to the Town Council for approval.

Section 3: Compensation. CIVICLINQ is hereby compensated as provided in the Agreement in Exhibit “A” hereby approved and attached hereto and incorporated herein by this reference for the services provided.

Section 4: Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Town Council on this 6 day of June, 2024.


Mayor

ATTEST:

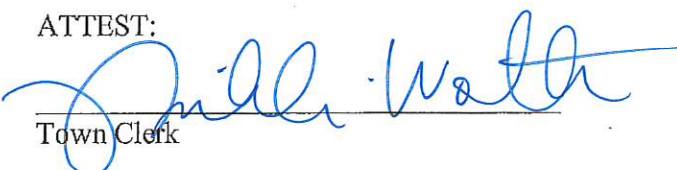

Town Clerk



EXHIBIT A

civiclInQ SUBSCRIPTION SERVICE AGREEMENT

This Subscription Services Agreement (the "Agreement") is between Jones & DeMille Engineering, Inc. ("Company") and the subscriber identified in the accompanying Order ("Subscriber") or Subscriber's Authorized User (as defined below). "You" means either Subscriber or an Authorized User, as applicable.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING IT. THIS AGREEMENT GOVERNS THE USE OF THE SUBSCRIPTION SERVICE AND HOSTED SOFTWARE PROVIDED BY COMPANY TO SUBSCRIBER UNDER THE ORDER SIGNED OR AGREED TO BY SUBSCRIBER. BY AGREEING TO THE ORDER, YOU ARE INDICATING YOUR ACCEPTANCE OF THIS ENTIRE AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, DO NOT AGREE TO THE ORDER.

If you are an employee or other individual staff of the Subscriber (In other words, an Authorized User), you are also required to accept this Agreement and abide by the Subscriber's obligations, except that any terms relating to Subscriber's payment obligations do not apply to you as an individual Authorized User. Company's warranties and other commitments under this Agreement apply only to the Subscriber, not to Authorized Users.

This Agreement is effective as of the date Subscriber signs the Order (the "Effective Date") (or in the case of an Authorized User, when such person accepts this Agreement electronically). The person accepting the Order and this Agreement on behalf of Subscriber represents that he or she has the authority to bind such entity to these terms and conditions.

Company has developed a subscription service to provide online access to a municipality or other jurisdiction's statutory code, together with the option to codify Subscriber's existing ordinances and upload ordinances online, and other content and materials provided by Company on its website or otherwise. Subscriber desires to obtain rights to use the subscription service to host Subscriber's statutory code, and Company desires to grant such rights to Subscriber, subject to the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements set forth herein, the sufficiency of which are hereby acknowledged, Company and you agree as follows:

AGREEMENTS:

1. General Definitions.

- (a) "Authorized Users" means individual employees and staff of Subscriber who are authorized by Subscriber to access and use the Subscription Service to upload, update and modify Subscriber's Code. Authorized Users may use the Subscription Service solely for Subscriber's own internal business purposes.
- (b) "Code" means Subscriber's own statutory code and/or ordinances, including any modifications thereto made by Subscriber during the Term.
- (c) "Confidential Information" means Company's pricing, Subscriber's payment card data, either party's non-public business and technology information, the Software, trade secrets, any written materials marked as confidential and any other information which reasonably should be understood to be confidential. Confidential Information excludes information that the receiving party can document: (i) is or becomes generally available to the public without fault of the receiving party; (ii) was rightfully in the receiving party's possession prior to its disclosure by the other party; (iii) is

Independently developed without the use of any Confidential Information of the disclosing party; or (iv) is obtained without obligation of confidentiality from a third party who has the right to disclose it. The receiving party also may disclose Confidential Information to the extent required under a judicial or legislative order or proceeding or as necessary to comply with any open records act or other freedom of information law or regulation; provided that it gives the disclosing party, if legally permissible, reasonable prior notice and an opportunity to respond or object to the disclosure.

- (d) "Documentation" means Company's online user instructions and/or manual for the Subscription Service, as updated by Company from time to time.
 - (e) "Malicious Code" means any virus, worm, trap door, back door, snoopware, spyware, malicious logic, Trojan horse, time bomb or other malicious software functionality that would intentionally erase or render the Subscription Service unusable or intentionally interfere with the use of the Subscription Service or an Authorized User's computer system or software.
 - (f) "Modifications" means updates, upgrades, patches, improvements, enhancements, bug fixes, additional features, and other modifications to the Software or Subscription Service.
 - (g) "Order(s)" means the electronic or written documents for placing orders hereunder for Subscriber's rights and access to the Subscription Service, or for any other Services of Company, such as codification and ordinance online upload. Orders are subject to acceptance by Company. Orders are incorporated into this Agreement by reference, except as provided in Section 14(a).
 - (h) "Service(s)" means technical support, Software maintenance, and other services offered by Company as part of or in connection with the Subscription Service, as well as training, consulting or other professional services for which Company may offer and charge a fee.
 - (i) "Software" means the Company software that Company will make available to you as part of the Subscription Service, including Modifications. Software will be provided to you only through online access as part of the Subscription Service.
 - (j) "Subscription Service" means the civiclinQ subscription service providing online access to the hosted Software, and any related products and Services offered by Company that are made available online, including any associated offline components, as described in the Documentation. The Subscription Service will be hosted either on Company servers or the servers of a third party that in the business of hosting web- or cloud-based software applications.
 - (k) "Term" means the Initial Term of this Agreement together with any and all Renewal Terms, as those terms are defined in Section 7(a).
2. Grant of Rights. During the Term, Company grants Subscriber a non-exclusive, non-transferable right to access and use the Subscription Service and Software on Company's website, including an option to codify and upload Subscriber's Code to the Subscription Service and modifying the Code as needed, and solely for use by Authorized Users. Once the Code is uploaded and published on the Subscription Service by Subscriber or Company and published by Subscriber, the public will have the ability to view the Code online during the Term, through a link to Company's website that Subscriber may place on its website.
3. Limitations and Conditions. Subscriber's and its Authorized Users' use of the Subscription Service is subject to the following terms and limitations:
- (a) Use of Subscription Service. Use of the Subscription Service and Software is limited to Subscriber's own internal business purposes. Subscriber is granted the right to authorize Authorized Users to access and use the Subscription Service and related materials made available as part of the Subscription Service by Company. Authorized Users may use the Subscription Service only for the benefit of Subscriber. Each Authorized User must also accept this Agreement when first accessing the Subscription Service. Subscriber and Authorized Users are authorized to use the Software only as part of the Subscription Service, except as otherwise specifically set forth in this Agreement.

- (b) Free Trial Terms. If Subscriber registers for a free trial of the Subscription Service, Company will make the Subscription Service available to you on a trial basis free of charge until the end of the free trial period specified on the trial registration web page. Additional terms and conditions may appear on such registration page. DURING THE FREE TRIAL PERIOD, THE SUBSCRIPTION SERVICE IS PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, NOTWITHSTANDING SECTION 10. Any data you enter into the Subscription Service during the free trial period will be permanently lost unless you purchase a subscription to the same service or upgraded service, before the end of the trial period.
- (c) Modifications. Subscriber acknowledges and agrees that the Subscription Service, Company's website, the Software and other materials provided by Company may be updated and changed from time to time with Modifications, in Company's sole discretion.
- (d) Proprietary Rights Notices. Subscriber shall not remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded by Company on or in the Subscription Service or related Documentation.
- (e) Restrictions. Subscriber and Authorized Users will not:
- use the Subscription Service for any unauthorized Site or business, including for the benefit of any third party business;
 - modify or create derivative works of the Subscription Service or Software;
 - use the Subscription Service or Software to develop a competitive product or service, or copy any features, functions or graphics of the Subscription Service, Software or Company's website, or allow a direct competitor of Company to access the Subscription Service through Subscriber's or its Authorized Users' accounts;
 - reverse engineer, disassemble, decompile or otherwise attempt to derive source code, trade secrets, algorithms, programming methods or Confidential Information from the Software or Subscription Service, except to the extent expressly permitted by applicable law;
 - upload any content that contains any libelous or unlawful material or any materials or instructions that may cause harm or injury, or violates any person's right of privacy or any copyright, trademark, or other intellectual property rights;
 - use the Subscription Service in any manner which could damage, disable, overburden, or impair the Subscription Service or interfere with any other party's use and enjoyment of the Subscription Service;
 - obtain or attempt to obtain any materials or information on or through the Subscription Service through circumventing any access or use restrictions or by any other unauthorized methods, such as hacking or password mining.
 - use any bots, spiders, page-scraping or other automated or manual processes or methods to copy or monitor this Subscription Service or any of its contents.
 - upload to the Subscription Service any libelous or unlawful content or any materials or instructions that may cause harm or injury, or that violate any person's right of privacy or any copyright, trademark, or other intellectual property rights.

Subscriber is responsible for ensuring its Authorized Users' compliance with the terms of this Agreement and is liable for any breach of this Agreement by an Authorized User.

- (f) Subscriber's Obligations. Subscriber is solely responsible for all Code content and any other data supplied or used by Subscriber and its Authorized Users in connection with the Subscription Service. Subscriber is solely responsible for determining the suitability of the Subscription Service for its purposes and for complying with any applicable regulations, laws or conventions applicable to Subscriber's use of the Subscription Service.
- (g) Suspension of Access. Company may suspend Subscriber's and Authorized Users' access to the Subscription Service in the event of a material violation of this Agreement. Company will use reasonable efforts to notify Subscriber prior to any such suspension or disablement, unless

Company reasonably believes that: (a) it is prohibited from doing so under applicable law or any judicial or governmental process; or (b) immediate action by Company is necessary to prevent harm to the Subscription Service, Subscriber or an Individual. In such cases, Company will provide notice as soon as is feasible and permissible.

- (h) Content Database. Company offers an optional online content database (currently called "Insights"), including best practice recommendations, white papers, articles, and other materials (the "Content Database"). Subscriber may elect to sign up for access to the Content Database as part of the Services. Company may in its sole discretion at any time add to, delete, or modify the materials it makes available in the Content Database. These materials are provided as a convenience to Subscribers and Authorized Users, and you are responsible for confirming the accuracy of the materials in the Content Database and determining if and how such materials apply to Subscriber in each case. Company disclaims any liability arising out of or related to your use or reliance on any of the materials in the Content Database.
- (i) Third Party Software and Links. The parties acknowledge that the Software may contain open source code and other third party software components. Open source components are subject to the applicable third party open source license terms. Any other third party software is provided by Company to Subscriber pursuant to the terms of this Agreement. Third party software (other than open source) is licensed only for use with the Subscription Service. If you decide to access or use any third party websites linked to the Subscription Service, you do this entirely at your own risk.

4. Other Services.

- (a) Technical Support and Maintenance. Company will provide Subscriber with email or other web-based technical support and maintenance Services to assist Subscriber in utilizing the Subscription Service. Support Services will be available during Company's regular business hours. Company technicians will use reasonable, good faith efforts to resolve Subscriber's problems. Company may update its support and maintenance policies from time to time, upon notice to Subscriber.
- (b) Professional Services. Upon Subscriber's request, Subscriber may purchase implementation Services (e.g., codification and uploading the Code to the Subscription Service or making Code updates), training, consulting, or other professional Services from Company. Subscriber takes sole responsibility for approval and publishing of any code codified, and uploaded by Company. All such Services are subject to the terms and conditions set forth in this Agreement.

5. Ownership.

- (a) Company Ownership. Company (or, if applicable, its licensors or suppliers) owns and retains all right, title and interest in and to the Subscription Service and all content and materials on Company's website or made available through the Subscription Service, including the Software and Documentation, Company's trademarks and service marks, Modifications, text, graphics, logos and images, training and other written or electronic documents and materials produced by Company that relate to the Subscription Service, and all intellectual property rights in the foregoing (the "Company Materials"). The Company Materials are protected by copyright and/or other laws protecting intellectual property and proprietary rights, and may be used by Subscriber and Authorized Users only for the purposes described in this Agreement. Any rights not expressly granted herein are reserved by Company. Neither this Agreement nor any other agreement between the parties changes ownership of any pre-existing software or other materials.
- (b) Subscriber Ownership. As between the parties, Subscriber owns and shall retain all right, title and interest in and to the Code content and all other data or content supplied by Subscriber.
- (c) Metadata and Usage Data. The Subscription Service may track metadata and other usage data related to Subscriber's and Authorized Users' use of the Subscription Service ("Usage Data") and provide such data to Company. Company shall own such Usage Data, excluding any personal data of individuals incorporated therein. Subscriber agrees that Company shall have the perpetual right to collect, aggregate, use, distribute and sell such Usage Data for any legal purpose, including

without limitation providing and improving the Subscription Service and Company's products and services generally. Company may retain and use Usage Data permanently. To the extent such Usage Data contains any personal data, Company shall not provide the Usage Data to any third party unless the data been anonymized and/or aggregated, so that it is not identifiable as to any particular person. Notwithstanding the foregoing, Company may share Usage Data in its original form as necessary or appropriate to provide the Services to Subscriber (for example, using a third party to process payments) or to comply with legal obligations or exercise its legal rights.

- (d) Feedback. Company shall have a royalty-free, worldwide, irrevocable, perpetual license to use any suggestions, enhancement requests, complaints or other feedback from Subscriber or Authorized Users relating to the Subscription Service, Software or Company's Services ("Feedback") and incorporate it into Company's software, products and services. Company shall exclusively own all right, title and interest in and to any software and intellectual property developed or delivered to Subscriber in the performance of this Agreement, regardless of whether it is based on or incorporates any Feedback, subject to the rights granted herein to Subscriber.
- (e) Trademarks. Company's name and its trademarks, service marks and logos, as well as any other Company product names or logos displayed on our website or Subscription Service, are registered or unregistered trademarks of Jones & DeMille Engineering, Inc. The names and marks of any third parties on our website are the property of their respective owners and may also be trademarks. Company's trademarks may be used publicly only with its prior written permission.

6. Fees.

- (a) Fees. Access to the Subscription Service and Other Services for Subscriber and its Authorized Users is subject to timely payment of the one time, monthly or annual subscription fees specified in the applicable Order(s), except during any free trial period as agreed. Subscriber's credit card will be charged in advance for both monthly and annual plans. Basic support and maintenance Services for the Subscription Service, as described in Section 4(a), are included as part of such fees at no additional charge. Company may offer premium support plans or other optional Services for an additional fee.
- (b) Past Due Amounts. If any amounts owed by Subscriber are thirty (30) or more days overdue, Company may, without limiting its other rights and remedies: (i) charge interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less, on the past due amounts; (ii) terminate this Agreement under Section 7(c), and/or (iii) subject to seven (7) days' prior written notice to Subscriber, suspend Subscriber's and its Authorized Users' access to the Subscription Service and the Code thereon until such amounts are paid in full.
- (c) Other. Company reserves the right to change its subscription fees and other Service fees from time to time, upon at least thirty (30) days' prior written notice to Subscriber. All amounts paid under this Agreement are payable in U.S. dollars. All Orders are final and all payments are non-refundable, other than as expressly set forth in this Agreement. Subscriber is responsible for any applicable sales, use or other taxes or duties associated with this Agreement, other than taxes on Company's net income.

7. Term and Termination.

- (a) Term. This Agreement will commence on the Effective Date and will continue for an initial monthly or annual term, as specified in the Order (the "Initial Term"). At the end of the Initial Term, this Agreement will automatically renew for additional terms (each a "Renewal Term") equal in length to the Initial Term, subject to termination as set forth below.
- (b) Termination by Subscriber. Subscriber may cancel the Subscription Service, with or without cause, at any time prior to its next billing cycle. Subscriber will be responsible for any charges already incurred. No refunds will be made for previously paid fees, except as otherwise set forth in this Agreement.

- (c) Termination by Company. Company may terminate this Agreement upon at least thirty (30) days' written notice prior to the end of a monthly or annual term, as applicable. Company may also terminate this Agreement for cause at any time, upon written notice, in the event of (i) any material breach of this Agreement by Subscriber, subject to thirty (30) days prior written notice and opportunity to cure such breach. Company may also terminate an Authorized User's access to the Subscription Service, without notice, if the Authorized User breaches this Agreement or their employment or engagement with the Subscriber ends.
- (d) Effect of Termination. Upon termination of this Agreement, Subscriber and its Authorized Users' access to the Subscription Service will immediately terminate and Company may delete the Code from its system. Subscriber will promptly pay all outstanding amounts owed to Company, including any amounts owed for Services. Each party will promptly return to the other party all Confidential Information of the other party and delete any copies of such information or materials from its systems and files. Prior to termination of this Agreement, Subscriber may copy the Code content from the Subscription Service (currently this is a manual process). Sections 3(e), 3(f), 3(i), 5, 6(c), 7(d), 8, 9, 10, 11 and 14 will survive termination of this Agreement.
8. Confidential Information. The receiving party of any Confidential Information (i) shall not disclose the Confidential Information or any information derived therefrom to any person, other than employees and independent contractors with a need to know such information and who are obligated to keep such information confidential; or (ii) use the Confidential Information for any purpose, except as expressly permitted by this Agreement. The receiving party shall give Confidential Information at least the same level of protection as it gives its own information of similar sensitivity, but not less than a reasonable level of protection. Confidentiality obligations shall survive any termination of this Agreement.
9. Payment Data. The parties acknowledge and agree that any personal data of individuals received by Company from Subscriber or its Authorized Users is incidental to this Agreement, except for payment card information. All payment card information and other payment information of Subscriber ("Payment Data") will be processed by an independent third party payment processor. Company and its employees will not have access to Payment Data or store such data on its servers, other than minimal information such as the last four digits of a credit card or bank account. Company engages to use a qualified third party payment processing vendor that offers a token method or similarly secure method for payment and that has committed to comply with PCI DSS standards.
10. Warranties and Disclaimers.
- (a) Company Warranties. Company warrants to Subscriber as follows:
- (i) Company warrants, during the Term, that the Subscription Service and Software, when used properly and in accordance with its Documentation and this Agreement, will be free from a reproducible defect that materially adversely affects the operation of the Subscription Service or Software, as described in the Documentation.
- (ii) Company will use industry-standard, commercially reasonable efforts to keep Malicious Code out of the Software.
- (b) Exclusions. Company's warranties exclude non-performance issues that result from (i) modification of the Subscription Service or Software by Subscriber or any person or entity other than Company; (ii) defects or problems that are outside the reasonable control of Company, including defects or damage resulting from use of the Subscription Service in other than its normal and authorized manner; or (iii) Subscriber's or its Authorized Users' failure to comply with due standards of care. Subscriber will reimburse Company for its reasonable time and expenses for any Services provided at Subscriber's request to remedy excluded non-performance issues.
- (c) Remedies. In the event of a breach of the above warranties, Subscriber shall contact Company's designated support personnel. As Subscriber's exclusive remedy and Company's sole obligation to Subscriber for any material defect in the Software or Subscription Service for which Company is

responsible under the above warranties, Company shall use reasonable efforts to correct or cure any such defect, provided that it can be reproduced by Company. If Company cannot correct the defect within a reasonable time then, at Company's option, Company will replace the defective Software or Subscription Service with a functional equivalent or terminate this Agreement and refund any prepaid and unused fees for the defective Software or Subscription Service.

(d) Limitation of Warranties. Except as expressly set forth herein or agreed in writing by an authorized official of Company, the Subscription Service (including the Software, Documentation and website) and all Company Services are provided "AS IS". COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, whether arising by law, by reason of custom or usage of trade, or by course of dealing.

11. Limitations of Liability. IN NO EVENT SHALL COMPANY BE LIABLE FOR LOST PROFITS, LOST DATA, INTERRUPTIONS OF BUSINESS, OR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SUBSCRIPTION SERVICE OR SOFTWARE, INCLUDING WHERE SUCH TYPES OF DAMAGES RELATE TO THE ACCIDENTAL OR UNLAWFUL DESTRUCTION, LOSS, ALTERATION, UNAUTHORIZED DISCLOSURE OF, OR ACCESS TO PERSONAL DATA TRANSMITTED, STORED OR OTHERWISE PROCESSED, REGARDLESS OF WHETHER COMPANY HAS NOTICE OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE, AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE AND STRICT LIABILITY). COMPANY'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO COMPANY DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. OPEN SOURCE COPYRIGHT HOLDERS HAVE NO LIABILITY TO SUBSCRIBER FOR ANY REASON. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy. The above limitations may be superseded by law in some jurisdictions.

12. Publicity. Any press releases or other public statement regarding this Agreement may be made only with the other party's consent, which shall not be unreasonably withheld, except that a party may make public disclosures to the extent required by law or regulation, and Company is permitted to include Subscriber's name on subscriber lists that may be posted on Company's website or provided to potential subscribers and other third parties.

13. Assignment and Acquisitions. Neither party may assign or transfer this Agreement or any of its rights or duties hereunder to any third party without prior written consent of the other party, which may not be unreasonably withheld. However, a party may, upon written notice to the other party, assign this Agreement to a third party in connection with a merger with such third party or acquisition of all or substantially all of the assigning party's stock or assets to which this Agreement relates.

14. General.

(a) Entire Agreement; Amendment. This Agreement, including Subscriber's Order(s), which are incorporated herein by reference, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or oral agreements or understandings with respect thereto. Any preprinted terms in a purchase order submitted by Subscriber are expressly agreed to be of no force or effect. This Agreement may not be amended except by a writing signed by authorized representatives of both parties.

(b) No Waiver. Any waiver by either party of a default or obligation under this Agreement will be effective only if in writing. Such a waiver does not constitute a waiver of any subsequent breach or default. No failure to exercise any right or power under this Agreement or to insist on strict compliance by the other party will constitute a waiver of the right in the future to exercise such right or power or to insist on strict compliance.

- (c) Choice of Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Utah. Should any dispute arise concerning this Agreement and/or Company's products or services, venue shall be laid in Salt Lake City, Utah. Utah state and federal courts shall have exclusive jurisdiction over any such dispute, and the parties hereby consent to the jurisdiction and venue of such courts.
- (d) Severability. If any provision of this Agreement is deemed invalid or unenforceable by a court or governmental authority, that provision shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remainder of this Agreement shall remain in full force and effect.
- (e) Export Compliance. Subscriber may not use, export or re-export any data, content or materials the Software in any form in connection with this Agreement in violation of U.S. export laws and regulations, or without first obtaining the appropriate U.S. and foreign government authorizations. Company controls the Subscription Service from our offices in the United States of America. Company makes no representation that the Company Materials are appropriate or available for use in other locations, and access to them from territories where their content is illegal is prohibited.
- (f) Notices. All notices or other communications required under to this Agreement will be in writing and will be delivered personally, or mailed by registered or certified mail, return receipt requested, or sent by commercial overnight delivery service with provisions for a receipt, or sent by confirmed facsimile or e-mail, to the address of the receiving party set forth in the applicable Order or such other address a party may specify by written notice. Notwithstanding the foregoing, Subscriber specifically agrees to receive and/or obtain notices and communications from Company related to the Subscription Service in the form of electronic communications posted to the portal of the Subscription Service. Subscriber acknowledges that it is able to retain such electronic communications by printing them or downloading and saving them. Subscriber agrees that such electronic communications are reasonable and proper notice for the purpose of any applicable laws and regulations, including that communications be provided in writing and/or in a form that Subscriber may keep.
- (g) Independent Contractors. The parties are independent contractors. Subscriber is not an agent of Company and will not represent to any third party that it is an employee or agent of Company. Subscriber shall have no authority to enter into any contract on behalf of Company.
- (h) Injunctive Relief. Subscriber acknowledges that Company's intellectual property and Confidential Information is highly valuable to Company, that any breach with respect to confidentiality and/or use of such intellectual property, including any breach of any restrictions on use of the Subscription Service or the scope of the rights granted by Company herein, may severely damage Company, the extent of which damage would be difficult to ascertain and, therefore, that Company is entitled to seek, among other remedies, temporary and permanent injunctive relief and other equitable relief for any such breach, without the necessity of posting bond or other security, to the extent permitted by law.
- (i) Force Majeure. A party shall be excused from delays or failure to perform its duties (other than payment obligations) to the extent such delays or failures result from acts of nature, riots, war, acts of public enemies, fires, epidemics, or any other causes beyond its reasonable control. The parties will promptly inform and consult with each other as to any of the above causes that in their judgment may or could be the cause of a substantial delay in the performance of this Agreement.
- (j) Compliance with Law. Company's provision of the Subscription Service and other Company Materials and services is subject to existing laws and legal process, and nothing contained in this Agreement limits Company's ability to comply with governmental, court and law enforcement requests or requirements, without liability.
- (k) Electronic Signatures. You agree that if you or your representative checks a box, draws, types or attaches your or their signature or any other text or image in a box or space associated with an Order or this Agreement, you are agreeing to be legally bound by such terms and conditions. You

and Company agree that such actions shall constitute an electronic signature that shall have the same force and effect as an original signature.