

Version: 1.0.2  
Last revised: October 6, 2020

## **EXHIBIT A**

### **FIVE QUARTERS PLATFORM SUBSCRIPTION AGREEMENT**

This Subscription Agreement (this “**Agreement**”) contains the terms under which Five Quarters LLC (“**Five Quarters**”) agrees to grant Customer access to and use of Five Quarters’ online extensibility platform and, if applicable, certain professional services. By indicating Customer’s acceptance of this Agreement, by executing a Sales Order that references this Agreement, or by using Five Quarters’ services or software, Customer agrees to be bound by this Agreement. If you are entering into this Agreement on behalf of an entity, such as the company you work for, then you represent to Five Quarters that you have the legal authority to bind the Customer to this Agreement. If you do not have that authority or if Customer does not agree with the terms of this Agreement, then you may not indicate acceptance of this Agreement, and neither you nor Customer may use or access any of Five Quarters’ service offerings or other services. The “Effective Date” of this Agreement is the date on which you first indicate your assent to the terms of this Agreement.

#### **Background**

Five Quarters provides SaaS extensibility, customization, and integration solutions, by providing its customers with access to Five Quarters’ on-line software platform and tools and, if applicable, provides related professional services. Customer wishes to acquire a subscription-based license to access and use the software platform and tools and, if applicable, to purchase professional services, all as specified in one or more “Sales Orders” under and subject to this Agreement. Therefore, for good and valuable consideration, the receipt and sufficiency of which they each acknowledge, Five Quarters and Customer agree to be bound by this Agreement.

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#### *Terms and Conditions*

### **1. Definitions and Construction**

**1.1. Definitions.** For the purposes of this Agreement, the following initially capitalized words have the following meanings:

“**Acceptable Use Policy**” means the Five Quarters policy described in Section 12.

“**Administrative User**” means any individual who is an employee or independent contractor of Customer, its Affiliates, or its or their Customer Service Providers, and who is authorized by Customer to use the administrative features and functions of the Five Quarters Platform to administer access to and use of Customer Applications.

“**Affiliate**” means any person, partnership, joint venture, corporation or other form of venture or enterprise, domestic or foreign, including subsidiaries, which directly or indirectly Control, are Controlled by, or are under common Control with a party.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the

determination is being made, through the ownership of more than fifty percent (50%) of its voting or equity securities, contract, voting trust or otherwise.

**“Five Quarters Platform”** means the computer software applications, tools, application programming interfaces (APIs), connectors, programs, networks and equipment that Five Quarters uses to make the Subscription Services available to its customers.

**“Confidential Information”** has the meaning ascribed to it in Section 6.1.

**“Customer”** means the entity identified as such in the applicable Sales Order.

**“Customer Application”** means an application or web-based service developed or used by Customer or its Affiliates (including its APIs), and which utilizes the Five Quarters Platform to manage or execute extensions. Customer Applications are provided by Customer or its Affiliates, and not by Five Quarters; “Customer Application” does not include the Five Quarters Platform.

**“Customer Data”** means any data that Customer or its Users input into the Five Quarters Platform for Processing as part of the Services, including any Personal Data forming part of such data.

**“Customer Service Provider”** means a third party, to the extent the third party is providing services to Customer.

**“Documentation”** means the software user and administrator manuals published by Five Quarters at <https://fusebit.io/docs>, regarding use of the Five Quarters Platform, including additional, updated or revised documentation, if any.

**“End User”** means any individual who has been authorized by Customer to use the end user features and functionality of the Five Quarters Platform as part of its obtaining access to and use of Customer Applications.

**“Entitlements”** means the license metrics and other scope limitations applicable to Customer’s license rights to access and use the Subscription Services, as specified in the applicable Sales Order.

**“Intellectual Property Rights”** means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

**“Personal Data”** means any information relating to an identified or identifiable natural person.

**“Private Deployment”** means a version of the Five Quarters Platform deployed as a private instance for Customer. Customer will be using a Private Deployment version only if so specified in the applicable Sales Order.

**“Process”** or **“Processing”** means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Professional Services”** means the professional services (typically consulting and advice concerning Customer systems architecture) to be performed by Five Quarters that

are specified in the applicable Sales Order. Professional Services are not required for use of the Subscription Services.

**“Renewal Term”** has the meaning ascribed to it in Section 8.

**“Sales Order”** means any mutually agreed, written sales order, executed on behalf of Five Quarters and Customer, including its exhibits and addenda, describing the Subscription Services, Support Program, Professional Services (if applicable), fees, and any special terms for using the Services that Customer has ordered. Each Sales Order becomes effective when executed by both Five Quarters and Customer, and is made part of this Agreement as described in Section 1.2.

**“Services”** means the Subscription Services and the Professional Services.

**“Subscription Services”** means the Five Quarters Platform service offerings to which Customer subscribes, together with the applicable Support Program, each as specified in the applicable Sales Order, and the Documentation.

**“Subscription Start Date”** means, with respect to each Sales Order, the later to occur of the “Subscription Start Date” specified in the Sales Order, or the date on which the last of Five Quarters and Customer executes the Sales Order. For Renewal Terms, the Subscription Start Date will be the day immediately following the date on which the preceding term expired, unless otherwise specified in the Sales Order.

**“Subscription Term”** has the meaning ascribed to it in Section 8.

**“Supplemental Materials”** means sample code and sample programs made available by Five Quarters or by third parties for use with the Five Quarters Platform. Supplemental Materials are not required for use of the Subscription Services, and may be accessed and used by Customer in its sole discretion.

**“Support Program”** means the Five Quarters support and maintenance services program specified in the applicable Sales Order.

**“Tenant”** means a logical isolation unit, or dedicated share of a particular Five Quarters Platform instance; the dedicated share may be configured to reflect the needs of the specific Customer business unit using the share.

**“User”** means any Administrative User or End User.

The following words will be interpreted as designated: (i) “or” connotes any combination of all or any of the items listed; (ii) where “including” is used to refer to an example or begins a list of items, such example or items will not be exclusive; (iii) “specified” requires that an express statement is contained in the relevant document; (iv) “will” is, unless the context requires otherwise, an expression of command, not merely an expression of future intent or expectation; and (v) “may” is, unless the context requires otherwise, an expression of permission, but not an obligation.

**1.2. Construction.** This Agreement applies to the provision of all Services. The parties will enter into one or more Sales Orders that contain additional terms and conditions applicable to the provision of certain Services. Upon execution by the parties, each Sales Order will be incorporated into this Agreement.

## **2. Provision and Use of Services; Operational Issues**

**2.1. Provision of Subscription Services.** During the Subscription Term, Customer may access and use the Five Quarters Platform in accordance with this Agreement. Five Quarters will make the

Five Quarters Platform available to Customer, and provide the Support Program. Five Quarters service levels with respect to the Five Quarters Platform and Support Program are specified in the Sales Order.

**2.2. Customer's Account.** Customer will designate one or more of its employees to be the point of contact with Five Quarters for the management and support of the Subscription Services, and who will be responsible for establishing and managing Customer's use of the Subscription Services ("**Account**"), including the creation of authentication credentials to access Customer's Account. Customer is solely responsible for maintaining the status of its User base. Customer will safeguard all Administrative User authentication credentials in its possession or under its control. Customer is responsible for all activities that occur under the Account.

**2.3. Customer's General Responsibilities.** Customer and its Users are solely responsible for obtaining and maintaining their Internet access to the Subscription Services. Customer is solely responsible for the accuracy, quality and integrity of the Customer Data that Customer or its Users input into the Five Quarters Platform. Customer must comply, and will ensure that its Administrative Users comply, with the Acceptable Use Policy referenced in Section 12 below. Customer is responsible for acts and omissions of its Administrative Users relating to this Agreement as though they were Customer's own.

**2.4. Customer Application.** Customer is solely responsible for the development, implementation, operation, support, maintenance and security of each Customer Application.

**2.5. Customer Load Testing or Penetration Testing.** Customer may conduct load testing or penetration testing on Customer infrastructure that interoperates with the Five Quarters Platform as Customer determines necessary or advisable. Customer may not conduct any penetration testing or load testing on the Five Quarters Platform without Five Quarters prior written consent in each instance, and then only subject to such conditions as Five Quarters reasonably requires. Five Quarters may terminate any testing of the Five Quarters Platform at any time, as Five Quarters determines necessary or advisable to protect the Five Quarters Platform's operation or integrity.

**2.6. Technology Improvement.** Five Quarters may modify the Subscription Services and Five Quarters Supplemental Materials as it determines necessary to reflect changes in technology and information processing practices. Five Quarters will notify Customer in advance of any material modifications. If Five Quarters proposes to introduce any "Breaking Change" (defined below) into the Five Quarters Platform, then Five Quarters will provide Customer at least three months' notice prior to Five Quarters implementation of the Breaking Change, except in cases of emergency, such as critical vulnerability remediation, in which case Five Quarters will provide as much prior notice as is reasonable in the circumstances. If a modification made by Five Quarters materially reduces the features or functionality of the Subscription Services then, unless Five Quarters has provided a substantially equivalent replacement, or made the modification (i) to remain compliant with applicable law, (ii) to comply with changes in its third party certification standards (such as ISO 27001 and ISO 27018), or (iii) to address a security vulnerability, Customer may, at any time within the 30 day period following Five Quarters implementation of the modification, terminate any affected Sales Order by delivery of written notice to Five Quarters to that effect. Within 30 days of such termination, Five Quarters will refund to Customer a pro-rata amount of any affected

Subscription Services fees prepaid to Five Quarters and applicable to the unutilized portion of the Subscription Term for terminated Subscription Services, and any affected unutilized Professional Services fees prepaid to Five Quarters. Upon any modification to the Subscription Services or Supplemental Materials, Five Quarters may require Customer to utilize updates to Five Quarters software, or updates to third party software utilized by Customer in order to continue using some or all of the Subscription Services (but at no additional charge with respect to any Five Quarters updates or third party updates that are provided by Five Quarters).

A “**Breaking Change**” means a change to the Five Quarters Platform that, to Five Quarters knowledge, will cause failures in the interoperation of the Five Quarters Platform and Customer Applications.

### **3. License Grants and Proprietary Rights**

**3.1. License by Five Quarters.** Subject to the terms and conditions of this Agreement, Five Quarters hereby grants to Customer a non-exclusive, non-transferable (except in accordance with Section 13.12 – Assignment), royalty-free, worldwide license, without right to sub-license, for the Subscription Term, to (a) access and use, and to permit its Users to access and use, the Five Quarters Platform, in accordance with the Documentation, subject to the Entitlements, and (b) reproduce, modify, and distribute and display the Documentation, in each case solely for Customer’s operations in its ordinary course of business. Five Quarters reserves all other rights not expressly granted in this Agreement.

**3.2. License by Customer.** Customer hereby grants to Five Quarters a non-exclusive, non-transferable (except in accordance with Section 13.12 – Assignment), royalty-free license, without right to sub-license (except to its sub-processors, as required for the provision of the Subscription Services), to use the Customer Data, solely as necessary to perform the Services and as otherwise may be agreed in writing by Customer. Customer reserves all other rights not expressly granted in this Agreement.

#### **3.3. Ownership of Intellectual Property Rights.**

**3.3.1. *Ownership and Use of Customer Data.*** Customer retains all of its rights, title and interest and Intellectual Property Rights in and to the Customer Data and Customer Confidential Information. No ownership interest in the Customer Data or Customer Confidential Information is transferred or conveyed to Five Quarters by virtue of this Agreement. Five Quarters will use Customer Data and Customer Confidential Information only for purposes of providing the Services, unless otherwise authorized in writing by Customer.

**3.3.2. *Five Quarters Intellectual Property and Ownership Rights.*** As between Customer and Five Quarters, Five Quarters and Five Quarters licensors retain and own all right, title and interest and all Intellectual Property Rights in and to the Subscription Services, Five Quarters Confidential Information, and Five Quarters Supplemental Materials, and all enhancements or improvements to, or derivative works of any of the foregoing created or developed by or on behalf of Five Quarters (collectively, “Five Quarters Intellectual

Property”). Nothing in this Agreement transfers or conveys to Customer any ownership interest in or to the Five Quarters Intellectual Property.

**3.4. Restrictions.** Customer will not: (i) except to the extent, if any, permitted by applicable law or required by Five Quarters licensors, reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from any of the Five Quarters Platform; (ii) reproduce, modify, or prepare derivative works of the Five Quarters Platform; or (iii) share, rent or lease the Subscription Services, or use the Subscription Services to operate any timesharing, service bureau or similar business or to provide the Five Quarters Platform as a standalone offering.

## **4. Compensation**

**4.1. Subscription Plans.** Customer’s subscription plan for the Subscription Services is specified in the applicable Sales Order. Customer may not reduce Customer’s commitment under the subscription plan specified in the Sales Order during the Subscription Term. Customer is not entitled to any refund of fees paid or relief from fees due if the volume of Subscription Services Customer actually uses is less than the volume Customer ordered, and Customer may not carry over any of the unused volume to Customer’s next Subscription Term.

**4.2. Payment of Services Fees.** Customer will pay Five Quarters the fees for the Services as specified in the applicable Sales Order. Five Quarters invoices in advance for use of the Services. Unless specified otherwise in the applicable Sales Order, Customer will make all payments within thirty (30) days of receipt of Five Quarters’ invoice. Unless otherwise specified in the applicable Sales Order, all Fees are stated and payable in US dollars.

**4.3. Sales Taxes, Etc.** Customer will be responsible for any applicable sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions (“**Taxes**”) payable with respect to its acquisition of Services, or otherwise arising out of or in connection with this Agreement, other than taxes based upon Five Quarters’ personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence of such status with its purchase orders or upon request by Five Quarters.

**4.4. Withholding.** If Customer is located outside the U.S.A., and is required to withhold taxes imposed upon Five Quarters for any payment under this Agreement by virtue of the statutes, laws, codes or governmental regulations of a country in which any Subscription Services are delivered or obtained, then such payments will be made by Customer on behalf of Five Quarters by deducting them from the payment then due Five Quarters and remitting such taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that Five Quarters actually receives the full amount of the fees set forth in the applicable Sales Order. Customer will provide Five Quarters with official documentation or tax receipts on such withholdings supporting such taxes and such payments as may be required by Five Quarters for its tax records as soon as reasonably possible following payment to the applicable tax authority, and in any event no later than when required by applicable law.

## **5. Warranties**

**5.1. Warranties.** Five Quarters warrants to Customer that:

5.1.1. *Performance Warranty.* During the Subscription Term, the Five Quarters Platform, in the form provided by Five Quarters, will conform in all material respects to its applicable specifications set forth in the Documentation.

5.1.2. *Viruses.* Five Quarters will use commercially reasonable efforts, using applicable current industry practices, to ensure that the Five Quarters Platform, in the form provided by Five Quarters to Customer under this Agreement, contains no computer virus, Trojan horse, worm or other similar malicious code.

5.1.3. *Support Program.* Five Quarters will provide the Support Program in a good, professional and workmanlike manner, consistent with applicable industry standards.

5.1.4. *Infringement.* Five Quarters' provision to Customer of the Subscription Services does not infringe any third party patent existing under the laws of the United States, Canada, any member state of the European Economic Area, the United Kingdom, Australia, New Zealand, Singapore, Brazil, South Korea, India or Japan, or infringe any third party copyright, trademark or service mark, or result from misappropriation by Five Quarters of any third party's trade secrets (collectively, an "**Five Quarters Infringement**").

5.1.5. *Compliance with Law.* The Services, in the form provided or made available by Five Quarters, will comply with all laws applicable to Five Quarters and its provision of Services.

**5.2. Performance Remedy.** If the Five Quarters Platform fails to conform to the warranty set forth in Section 5.1.1 and Customer provides written notice of the non-conformance to Five Quarters within the applicable Subscription Term then, as Customer's exclusive remedy and Five Quarters' sole obligation: Five Quarters will either repair or, at its option, replace the non-conforming Five Quarters Platform or, if Five Quarters is unable to correct the non-conformance within 30 days of receipt of such written notice from Customer, Customer may terminate the applicable Subscription Services, and Five Quarters will refund to Customer a pro-rata amount of any Subscription Services fees prepaid to Five Quarters and applicable to the unutilized portion of the Subscription Term for the terminated Subscription Services.

**5.3. Infringement Remedy.** Customer's sole and exclusive remedy for any non-conformance with the warranty in Section 5.1.4 above will be Customer's defense and indemnification rights under Section 9.1 below, and Customer's termination rights under Section 8.2 below.

**5.4. Bugs and Abatement; Scope.** Without limiting the express warranties in this Section 5 or any express warranties specified in the Additional Terms of Service, Five Quarters does not warrant that the Five Quarters Platform or Services are completely free from all bugs, errors, or omissions, or will ensure complete security. The warranties in Sections 5.1.1 and 5.1.3 do not apply to any Five Quarters Supplemental Materials. Supplemental Materials developed, created or provided by third parties are made available AS IS, without warranty of any kind. The

warranties in this Agreement are for the sole benefit of Customer, and may not be extended to any other person or entity.

**5.5. Disclaimer Of Implied Warranties.** Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in this Agreement or the Additional Terms of Service. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 5 OR THE ADDITIONAL TERMS OF SERVICE, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON- INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

## **6. Confidential Information**

**6.1. Restrictions on use and Disclosure.** Neither Five Quarters nor Customer will disclose to any third party any information provided by the other party pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "**Confidential Information**"), and will make no use of such Confidential Information, except under and in accordance with this Agreement. The receiving party will take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of this Agreement. Each party will be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Five Quarters' Confidential Information includes information regarding the Five Quarters Platform, Five Quarters' processes, methods, techniques and know-how relating to SaaS extensibility and customization, Documentation, road-maps, pricing, marketing and business plans, financial information, information security information, and Personal Data of Five Quarters personnel. Customer's Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to Customer's other suppliers, and Personal Data of Customer's personnel. This Section 6 does not apply to Five Quarters' obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (Data Protection).

**6.2. Exclusions.** Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

**6.3. Disclosure Required By Law.** If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "Disclosure Order") then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

**6.4. Independent Development.** The terms of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

## **7. Data Protection**

### **7.1. Regulatory Issues.**

**7.1.1. Personal Data – Compliance with Applicable Law.** Customer may select the Personal Data it elects to input into and Process using the Five Quarters Platform in its sole discretion; Five Quarters has no control over the nature, scope, or origin of, or the means by which Customer acquires, Personal Data Processed by the Subscription Services. Subject to the Customer Legal Basis Assurance (defined in Section 7.1.3 below), Five Quarters will comply, and will ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing Customer Personal Data in Five Quarters' possession or under its control and applicable to Five Quarters' provision of Services. Customer is solely responsible for ensuring that it complies with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Five Quarters Platform.

**7.1.2. ePHI.** If Customer is subject to US healthcare data protection laws (e.g., HIPAA), Customer may not use the Five Quarters Platform to Process "electronic Protected Health Information" unless the applicable Sales Order specifies that it intends to do so.

**7.1.3. Data Consents.** Customer is solely responsible for obtaining, and represents and covenants that it has obtained or will obtain prior to Processing by Five Quarters, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis under EU Data Protection Laws for the Processing of, any Personal Data provided by Customer or its Users as part of the Services (the "**Customer Legal Basis Assurance**").

**7.1.4. Regulator Inquiries and Court Orders.** If any regulator, or any subpoena, warrant or other court or administrative order, requires Five Quarters to disclose or provide Customer Data to a regulator or to any third party, or to respond to inquiries concerning the Processing of Customer Data, Five Quarters will promptly notify Customer, unless prohibited by applicable law. Following such notification, Five Quarters will reasonably

cooperate with Customer in its response, except to the extent otherwise required by applicable law.

**7.2. Instructions.** Five Quarters will Process Customer Data only as necessary to provide the Services, and in accordance with Customer's written instructions. This Agreement, and Customer's use of the Five Quarters Platform's features and functionality, are Customer's instructions to Five Quarters in relation to the Processing of Customer Data.

**7.3. Information Security.** Five Quarters will implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody and under the control of Five Quarters; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that Five Quarters' return or disposal of such Customer Data is performed in a manner consistent with Five Quarters' obligations under items (i)-(iii) above. Customer is solely responsible for consequences of Customer's decision not to adopt updates or best practices that Five Quarters makes available to Customer.

**7.4. Data Export, Retention, Deletion and Return.** Customer may export Customer Data from the Five Quarters Platform at any time during the Subscription Term, using the Five Quarters Platform's then existing features and functionality, at no additional charge. Customer is solely responsible for its data retention obligations with respect to Customer Data. Customer may delete Customer Data on its Tenants at any time. Five Quarters will delete Customer's Tenants (and any data remaining on such Tenants) within 30 days of termination or expiration of the Subscription Term, and other Customer Data retained by Five Quarters (if any). Five Quarters is not obligated to delete copies of Customer Data retained in automated backup copies generated by Five Quarters, which Five Quarters will retain for up to 14 months from their creation. Such backup copies will remain subject to this Agreement until the copy, or the Customer Data in the copy, is destroyed. Five Quarters' obligations to return Customer Data upon termination of a Subscription Term may be fulfilled by permitting Customer to export Customer Data as specified above.

**7.5. Sub-Processors.** Customer consents to Five Quarters' use of sub-processors to provide aspects of the Subscription Services, and to Five Quarters' disclosure and provision of Customer Data to those sub-processors. Five Quarters publishes a list of its then-current sub-processors at <https://fusebit.io/legal> ("**Sub-Processor List**"). Five Quarters will require its sub-processors to comply with terms that are substantially no less protective of Customer Data than those imposed on Five Quarters in this Agreement (to the extent applicable to the services provided by the sub-processor). Five Quarters will be liable for any breach of its obligations under this Agreement that is caused by an act, error or omission of a sub-processor. Five Quarters may authorize new sub-processors by updating the Sub-Processor List.

**7.6. Access by Five Quarters Personnel.** Five Quarters will ensure that its personnel access Personal Data only when authorized by Five Quarters, and in accordance with Five Quarters' applicable controls. Access is typically required only in connection with Five Quarters' provision of the Support Program, and then only when necessary to resolve an issue. Five Quarters will ensure that its personnel are subject to obligations of confidentiality with respect to Customer Data.

**7.7. Breach Notification.** Five Quarters will notify Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data in Five Quarters' possession or under its control (a "**Security Breach**") within 48 hours of Five Quarters' confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach including, in the case of Five Quarters, prompt provision of the following, to the extent then known to Five Quarters: (i) the possible cause and consequences of the Security Breach; (ii) the categories of Personal Data involved; (iii) a summary of the possible consequences for the relevant Users; (iv) a summary of the unauthorized recipients of the Customer Data; and (v) the measures taken by Five Quarters to mitigate any damage. Upon confirmation of any vulnerability or breach of Five Quarters' security affecting Customer Data in Five Quarters' custody and control, Five Quarters will modify its processes and security program as necessary to mitigate the effects of the vulnerability or breach upon such Customer Data. Insofar as the Security Breach relates to Customer, and except to the extent required otherwise by applicable law, Customer will have approval rights on notifying its Users and any third-party regulatory authority of the Security Breach. All security breach or security compromise notifications will be via email to the persons designated by Customer to receive notices in the Five Quarters Platform dashboard, account center, or Sales Order.

**7.8. Territorial Restrictions.** Five Quarters will Process Customer Data within the AWS regions selected by Customer upon creation of the applicable Tenant. Five Quarters personnel may access Customer Data from any location for purposes of providing Support Program (subject to the restrictions described in Section 7.6 above).

## **8. Term; Termination of Sales Orders**

**8.1. General.** This Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Section 8.2 or 8.3 below.

**8.2. Termination On Breach.** In the event of a material breach of the Agreement by either party, the non-breaching party may terminate the Agreement or any Sales Order affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then this Agreement or any such Sales Order will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, Customer's failure to pay any overdue fees and expenses within 30 days of Five Quarters notifying Customer of the overdue payment will constitute a material breach of this Agreement. If Customer has not cured a material breach within the applicable cure period, then Five Quarters may, on not less than 5 business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Five Quarters' obligations to provide Services under this Agreement. If Customer terminates this Agreement or any Sales Order for breach in accordance with this Section 8.2, then Five Quarters will refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Five Quarters and applicable to the unutilized

portion of the Subscription Term for terminated Subscription Services, and any affected unutilized Professional Services fees prepaid to Five Quarters.

**8.3. Termination for Convenience.** The parties acknowledge and agree that each Subscription Term is priced as a minimum term, and may not be terminated for convenience, except as explicitly called out in the attached Sales Order. Customer may terminate any Professional Services for convenience at any time, upon not less than 30 days' prior notice to Five Quarters. Subject to the foregoing, Five Quarters may not terminate any Services for convenience.

**8.4. Subscription Term and Renewal.** Each subscription term for Subscription Services will commence on the Subscription Start Date, and will continue for the period specified in the Sales Order or, if not so specified, one year (an "**Initial Term**"). Upon expiration of the Initial Term the parties may renew the Subscription Services term for successive periods of at least one year each (each, a "**Renewal Term**") at such rates as may be mutually agreed in writing between them. Five Quarters will provide Customer with notice of its proposed fees for renewal at least one month prior to the expiration of the then-current term. The Initial Term and each Renewal Term are individually referred to in these Terms as the "**Subscription Term**".

**8.5. Fulfillment of Obligations on Termination.** Except as otherwise specified in this Agreement or any Additional Terms of Service, termination of the Agreement or of any Services will not entitle Customer to any refund of or relief from payment of any Services fees paid or payable under this Agreement.

**8.6. Post Termination Obligations.** Following any termination of the Agreement or any Sales Order, each party will, within 30 days of such termination, (i) immediately cease use of any Confidential Information of the other communicated for the purposes of this Agreement or such Sales Order, and (ii) return or destroy (and certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement or such Sales Order within 30 days of such termination, subject to each party's customary backup and archival processes.

**8.7. Suspension – Critical Threats.** If Five Quarters, acting reasonably in the circumstances then known to Five Quarters, determines that Customer's or any of its Users' use of the Subscription Services poses an imminent threat to (i) the security or integrity of any Customer Data or the data of any other Five Quarters customer, or (ii) the availability of the Five Quarters Platform to Customer or any other Five Quarters customer (collectively, a "**Critical Threat**"), then Five Quarters will immediately attempt to contact Customer to resolve the Critical Threat. If Five Quarters is unable to immediately contact Customer, or if Five Quarters contacts Customer but Customer is unable to immediately remediate the Critical Threat, then Five Quarters may suspend Customer's and its Users' use of the Five Quarters Platform until the Critical Threat is resolved and Five Quarters is able to restore the Subscription Services for Customer.

**8.8. Survival.** The provisions of Sections 1, 3.3-3.4, 4.3-4.4, 6, 7, 8.5-8.8, 9-11 and 13 of this Agreement will survive any termination or expiration of this Agreement.

## **9. Indemnification**

**9.1. Five Quarters' Infringement Indemnification.**

9.1.1. *Defense and Indemnity.* If any third party makes any claim against Customer that alleges a Five Quarters Infringement (defined in Section 5.1.4) then, upon notification of such claim, Five Quarters will, at its sole cost and expense, defend Customer against such claim and any related proceeding brought by such third party against Customer, and indemnify Customer from and against all damages, fines and penalties finally awarded against Customer or agreed to be paid by Customer in a written settlement approved in writing by Five Quarters, and resulting from the Five Quarters Infringement. Five Quarters' obligations under this Section 9.1.1 are subject to Customer's compliance with the "Indemnification Conditions" (defined below).

**"Indemnification Conditions"** means the following conditions with which a party must comply in order to be entitled to defense or indemnification under the Agreement by the other party: (i) the indemnified party notifies the indemnifying party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the indemnified party or member of the indemnified party's legal department first knows of the claim, provided, however, that no failure to so notify an indemnifying party will relieve the indemnifying party of its obligations under this Agreement except to the extent that such failure materially prejudices defense of the claim, and except to the extent of damages incurred by the indemnifying party as a result of the delay; (ii) the indemnifying party is given primary control over the defense and settlement of the claim (subject to the foregoing, the indemnified party may nonetheless participate in the defense at its sole cost and expense); (iii) the indemnified party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the indemnifying party's prior written agreement (not to be unreasonably withheld); (iv) the indemnified party provides such assistance in defense of the proceeding as the indemnifying party may reasonably request, at the indemnifying party's reasonable expense; and (v) the indemnified party uses all commercially reasonable efforts to mitigate its losses.

9.1.2. *Five Quarters' Mitigation Rights.* If any Subscription Services become (or in Five Quarters' opinion are likely to become) the subject of any infringement or misappropriation claim, Five Quarters may, and if Customer's use of the Subscription Services is enjoined, Five Quarters must, at its sole expense, either: (i) procure for Customer the right to continue using the relevant Subscription Services; (ii) replace or modify the relevant Subscription Services in a functionally equivalent manner so that they no longer infringe; or (iii) terminate the applicable Sales Order or Customer's rights to use affected Subscription Services, and refund to Customer a pro-rata amount of any subscription fees prepaid to Five Quarters and applicable to the unutilized portion of the Subscription Term for the terminated Subscription Services.

9.1.3. *Exclusions.* Notwithstanding the foregoing, Five Quarters will have no obligation with respect to any infringement or misappropriation claim to the extent based upon (i) any use of the Subscription Services not in accordance with their applicable license rights, (ii) the combination of the Subscription Services with other products, equipment, software, services or data not supplied by Five Quarters where the infringement would not have occurred but for such combination, or (iii) any Customer Data.

## **9.2. Customer's Consent Indemnification.**

9.2.1. *Defense and Indemnity.* If any third party makes any claim against Five Quarters that alleges a non-conformance with the Customer Legal Basis Assurance (defined in Section 7.1.3) then, upon notification of such claim, Customer will, at its sole cost and expense, defend Five Quarters against such claim and any related proceeding or investigation brought by such third party against Five Quarters, and Customer will indemnify Five Quarters from and against all damages, fines and penalties finally awarded against Five Quarters or agreed to be paid by Five Quarters in a written settlement approved in writing by Customer, and resulting from the non-conformance. Customer's obligations under this Section 9.2.1 are subject to Five Quarters' compliance with the Indemnification Conditions.

9.2.2. *Mitigation Rights.* If Customer Data is, or in Customer's reasonable opinion is likely to become, the subject of a claim of non-conformance with the Customer Legal Basis Assurance, then Customer will have the right to: (i) procure the rights necessary for Customer and Five Quarters to continue to Process the affected Customer Data; (ii) modify the Customer Data so that there is no longer a non-conformance; or (iii) delete or otherwise remove the non-conforming Customer Data from the Five Quarters Platform.

9.2.3. *Exclusions.* Notwithstanding the foregoing, Customer will have no obligation under this Section 9.2 or otherwise with respect to any claim of non-conformance with the Customer Legal Basis Assurance to the extent based upon Five Quarters' Processing of the affected Customer Data other than in accordance with this Agreement.

## **10. Limitations and Exclusions of Liability**

**10.1.** Exclusion of Certain Claims. SUBJECT TO SECTION 10.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

**10.2.** Limitation of Liability. Subject to Section 10.3, neither party's maximum aggregate liability arising out of this Agreement or any related agreement will in any event exceed the fees paid to Five Quarters under the Sales Order giving rise to the claim during the 12 month period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

**10.3.** Exceptions. Sections 10.1 and 10.2 do not apply to either party's (i) willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other's Intellectual Property

Rights, or (iii) liability or loss which may not be limited by applicable law. Any amounts payable by an indemnified party to a third party pursuant to a judgment or to a settlement agreement approved in writing by an indemnifying party, liability for which falls within the indemnifying party's indemnification obligations under this Agreement, and all fees payable by Customer under this Agreement, will be deemed direct damages for purposes of this Section 10. Section 10.2 does not apply to (i) each party's defense and indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under this Agreement, nor (iii) either party's obligations under Section 6 (Confidential Information) or Section 7 (Data Protection), provided, however, that except to the extent of willful misconduct or gross negligence of Five Quarters, Five Quarters' maximum aggregate liability under Section 7 will not exceed two times (2X) the fees paid by Customer to Five Quarters under the affected Sales Order in the 12 month period immediately preceding Customer's first assertion of its claim.

**10.4. General.** Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party, or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under this Agreement more than two years after the occurrence of the applicable cause of action.

## 11. Dispute Resolution

**11.1. Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the internal laws of the states or countries specified in the table below, without regard to conflicts of laws principles. In the event of any controversy or claim arising out of or relating to this Agreement, or its breach or interpretation, the parties will submit to the exclusive jurisdiction of and venue in the applicable courts or arbitration bodies specified in the table below. Each party waives all defenses of lack of personal jurisdiction and inconvenient forum.

If the Customer's address in the Sales Order is in:	The governing law is that of:	The courts or arbitration bodies having exclusive jurisdiction are:
The USA, Mexico, or any country in Central or South America or the Caribbean	Washington, USA, and controlling United States federal law	Courts located in Seattle, Washington, USA
Canada	Ontario, Canada, and controlling Canadian federal law	Courts located in Toronto, Ontario, Canada
Any country in Europe, the Middle East, or Africa	England	Courts located in London, England
Any country located in Asia or the Pacific region, other than Australia or New Zealand	England	Arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre then in force, which rules are incorporated by reference in this clause. <sup>1</sup>
Australia or New Zealand	New South Wales, Australia	Courts located in Sydney, New South Wales, Australia

Note 1: The Tribunal will consist of one independent, disinterested arbitrator. The language of the arbitration will be English. The determination of the arbitrator will be final, conclusive and binding. Judgment upon the award rendered may be entered in any court of any state or country having jurisdiction.

**11.2. Legal Expenses.** If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief arising out of this Agreement, its reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

## **12. Additional Terms of Service**

The following additional terms and conditions ("**Additional Terms of Service**") apply to Customer's use of the Services, and are incorporated into this Agreement by this reference. The Additional Terms of Service are published at <https://fusebit.io/legal> :

- Support Program
- Acceptable Use Policy

## **13. Miscellaneous Provisions**

**13.1. Affiliates.** This Agreement set forth the general terms and conditions under which Five Quarters will provide Services to Customer and its Affiliates. Sales Orders may be entered into under this Agreement by either the entity designated above as "Customer" or any of Customer's Affiliates. The entity that executes a Sales Order in the position of services recipient will be considered the "Customer" for all purposes of the Sales Order; and the Sales Order will be considered a two party agreement between Five Quarters and such "Customer" under this Agreement.

**13.2. Publicity; References.** Unless otherwise specified in the applicable Sales Order, Five Quarters may refer to Customer as one of Five Quarters' customers and use Customer's logo as part of such reference, provided that Five Quarters complies with any trademark usage requirements notified to it by Customer. With Customer's prior written approval, including if so specified in the applicable Sales Order, (i) Five Quarters may either (a) issue a press release announcing the relationship between Five Quarters and Customer, or (b) submit a joint press release to Customer for Customer's approval, such approval not to be unreasonably withheld or delayed; and (ii) Customer will be a reference account for Five Quarters, provided, however, that Five Quarters will provide Customer with reasonable notice and obtain Customer's consent before scheduling any reference calls or site visits.

**13.3. Compliance With Laws.** Each party will comply with all laws and regulations applicable to it, including U.S. export control laws. Neither party will have any liability to the other for any non-performance of their obligations under this Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order, including US export control laws, and names appearing on the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

**13.4. U.S. Government Rights In The Services.** Five Quarters provides the Services for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202- 3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Five Quarters to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**13.5. Equitable Relief.** Each of Customer and Five Quarters acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them will have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

**13.6. Force Majeure.** If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease.

**"Force Majeure Event"** means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than 30 days, then the other party may terminate the affected Services without liability.

**13.7. Service Enhancement Analysis.** Five Quarters may use Customer's and its Users' Subscription Services usage history, statistics and telemetry ("**Enhancement Data**") for Five Quarters' internal analytical purposes related to its provision of Services, including to improve and enhance the Subscription Services and the Five Quarters Platform. Five Quarters may make information derived from its analysis of Enhancement Data publicly available on an aggregated

and anonymized basis, provided that such information does not contain any Personal Data. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

**13.8. Captions and Headings.** The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.

**13.9. Severability; Invalidity.** If any provision of this Agreement is held to be invalid, such invalidity will not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision will be interpreted to be only so broad as is enforceable.

**13.10. Waiver.** No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, will in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver will be effective only in the specific instance and for the purpose for which given.

**13.11. Third Party Beneficiaries.** Except as expressly set forth in this Agreement, no provisions of this Agreement are intended nor will be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. If the law governing this Agreement is English law, then a person who is not a party to this Agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999) to enforce any term of this Agreement. Notwithstanding the foregoing, Five Quarters' suppliers of products and services delivered hereunder will enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such products and services as does Five Quarters.

**13.12. Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other, which will not be unreasonably withheld, provided, however that, subject to any restrictions specified in any applicable Sales Order, either party may assign all, but not some of its rights and obligations under this Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party, but without requiring consent. Subject to the foregoing restriction on assignment, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**13.13. Notices.** Five Quarters will provide Customer with notices that affect Five Quarters' customers generally (e.g., notices that relate to modifications or updates to, or the availability or interoperability of the Five Quarters Platform) via e-mail or the Five Quarters Platform dashboard or account center. Five Quarters will provide Customer with any legal notices by pre-paid first class mail, air courier or e-mail to the mailing or e-mail address Customer provided Five Quarters on the applicable Sales Order, or during Customer's registration for the Services, or to a substitute, updated mailing or e-mail address that Customer has provided to Five Quarters for these purposes. Customer is responsible for keeping its mailing and e-mail address current with Five Quarters. Except as otherwise specified in this Agreement, all notices to be given to Five Quarters under this Agreement must be in writing and sent by email to [legal@fivequarters.io](mailto:legal@fivequarters.io), or by prepaid first class mail or air courier at the address specified on the first page of this Agreement (or, if none, at <https://fivequarters.io/>), or to a substitute, updated address notified by

Five Quarters, marked "Attention: Legal Department". Notices sent electronically will be deemed received within 1 business day of dispatch. Notices sent by prepaid first class mail will be deemed received within 5 business days of dispatch (however, notices sent by mail to addressees in a different country from that of the sender will be deemed received upon delivery). Notices sent by air courier, or personally delivered, will be deemed received upon delivery.

**13.14. Governing Language.** The governing language for this Agreement and its related transactions, for any notices or other documents transmitted or delivered under this Agreement, and for the negotiation and resolution of any dispute or other matter between the parties, will be the English language. If there is any conflict between the provisions of any notice or document and an English version of the notice or document (including this Agreement), the provisions of the English version will prevail. Customer waives any rights it may have under any law in any state or country to have the Agreement written in any language other than English. In transactions between the parties, a decimal point will be indicated by a period, and not by a comma.

**13.15. Entire Agreement; Amendments.** This Agreement constitutes and embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. This Agreement may not be modified or amended except by a written instrument executed by both parties. With the exception of the Additional Terms of Service, any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click through license agreement or terms of use, are specifically and expressly rejected by each party. In the event of any conflict between the provisions of this Agreement and any Sales Order, the provisions of this Agreement will prevail.

**13.16. Counterparts.** Sales Orders, this Agreement, and any amendments to this Agreement may be executed in one or more counterparts, which taken together will constitute a single agreement between the parties.