

MASTER SERVICES AGREEMENT

IMPORTANT! READ THIS BEFORE USING THE LOGISENSE SERVICE. THIS MASTER SERVICES AGREEMENT GOVERNS YOUR USE OF THE LOGISENSE SERVICE, UNLESS YOU OR THE ORGANIZATION YOU REPRESENT HAS PREVIOUSLY ENTERED INTO A NEGOTIATED AND EXECUTED AGREEMENT WITH LOGISENSE.

Effective upon signing of a Sales Order (the “Effective Date”), you or the organization you represent (“Licensee”) agree with LogiSense Corporation (“LogiSense”) that you have read, understood and accepted all the terms and conditions in this Master Services Agreement set forth below and that Licensee agrees to be legally bound by them.

WHEREAS, LogiSense offers a proprietary subscription billing service (the “**Service**”); and

WHEREAS, Licensee plans to use the Service for its internal purposes and also to handle billing and other functions for its customers;

NOW, THEREFORE, for good and valuable consideration, of which the receipt and sufficiency are acknowledged, LogiSense and Licensee (referred to herein as the “**Parties**” and each individually as a “**Party**”) agree as follows:

1. DEFINITIONS

1.1 Definitions

(a) “**Access Methods**” means the user identifiers, passwords and other login credentials for the Service issued and managed by Licensee to its internal authorized users and to End Users pursuant to this Agreement;

(b) “**Agreement**” means this Master Services Agreement, all schedules attached hereto, each Sales Order, SOW and all documents incorporated by reference herein and therein, and any amendments hereto and thereto as may be made from time to time, all as mutually agreed to in writing by the Parties;

(c) “**Confidential Information**” means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, information technology networks, including all technical information, data, documentation, code, security measures and procedures and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential, but specifically excluding Licensee Data, which is addressed in Sections 10.4 and 10.6 of this Agreement. In addition, Documentation shall be considered Confidential Information. Confidential Information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;

(d) “**Deliverable**” means a deliverable related to the implementation of the Service specifically identified and agreed to between the Parties as set out in an SOW;

(e) “**Documentation**” means written materials prepared by LogiSense that contain information intended for the Licensee or End User for the purpose of explaining the operation of the Service, any

related software, features, guidelines and/or other items of concern to the user, as updated by LogiSense from time to time. The Documentation for the general LogiSense Software product is available at <http://www.logisense.com/learn/docs> and is updated from time to time;

(f) **“End User”** means any employee or customer of Licensee to which Licensee provides access to the Service in connection with the Licensee’s business;

(g) **“Intellectual Property Rights”** means any right that is or may be granted or recognized relating to patents, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights and similar forms of protection, whether registered or unregistered, and including rights in any application for any of the foregoing;

(h) **“Licensee Data”** means all electronic data, information, content and materials provided or submitted by Licensee and End Users to or through the Service;

(i) **“Professional Services”** means the consulting and professional services to be performed by LogiSense for Licensee in connection with the implementation of the Service pursuant to the terms and conditions of this Agreement and an SOW;

(j) **“Sales Order”** means a sales order, order schedule, a sales quote, a purchase order, an SOW or any other document identifying the Service and any ancillary services to be purchased by Licensee, any applicable Subscription Period(s), and any Professional Services to be performed, in each case, as agreed to by LogiSense and Licensee and consistent with the terms and conditions of this Agreement;

(k) **“Service”** means the proprietary subscription billing service made available from LogiSense on a subscription basis but specifically excludes any third party software connected to the Service by APIs or other gateways;

(l) **“Service Level Schedule”** means the service level and support schedule applicable to the availability of the Service and related support for the Service available at <http://www.logisense.com/legal/>, which may be updated from time to time at LogiSense’s sole discretion, acting reasonably and in good faith;

(m) **“SOW”** means the statement of work setting out the details of the Professional Services to be provided by LogiSense to Licensee and any related Deliverables;

(n) **“Subscription”** means a subscription to access and use the Service for the Subscription Period, as set out in a Sales Order; and

(o) **“Subscription Period”** means the time period of each Subscription set out in the applicable Sales Order and commences on the commencement date identified in the applicable Sales Order. If no time period is identified in the Sales Order, then the Subscription Period shall be one year.

2. THE SERVICE

2.1 **Access to and use of the Service.** For the Subscription Period set out in a Sales Order, LogiSense grants Licensee a non-exclusive, non-sublicensable, non-transferable, terminable license to access and use the Service and the Documentation, subject at all times to the terms and conditions of this Agreement, including payment for the Service. Except for the limited rights expressly granted herein, LogiSense reserves all rights, title and interest in and to the Service and the Documentation and all amendments, modifications and upgrades thereto.

2.2 **Service Level Schedule.** During the Subscription Period, LogiSense shall ensure the Service is available to Licensee and the End Users in accordance with the Service Level Schedule. The remedies listed in the Service Level Schedule are Licensee’s sole remedy for any failure of the Services. LogiSense’s obligations in the Service Level Schedule do not apply to the extent any of

the following are applicable: (i) Licensee's or End User's system does not meet the minimum requirements to support the Service, or (ii) Licensee or any End User has breached or continues to breach this Agreement.

- 2.3 **Service Updates and Modifications.** LogiSense shall provide continuous updates to the Service and such updates may result in additions, modifications or removal of functionality, features, content and appearance of the Service; provided, however, any updates will not adversely affect the functionality or delivery of the Service.
- 2.4 **Professional Services.** LogiSense may perform implementation, training, consultation or other Professional Services as described in this Agreement and set out in a SOW. LogiSense will provide such resources and utilize such employees and/or consultants as LogiSense deems necessary to perform the Professional Services. LogiSense will use commercially reasonable efforts to meet the schedules set forth in the SOW, and Licensee agrees to cooperate in good faith to allow LogiSense to achieve completion of such Professional Services in a timely manner, including by providing materials and assistance as reasonably requested by LogiSense. If achievement of any particular milestone is dependent upon performance of tasks by Licensee or by a third party outside of LogiSense's control, the projected dates for accomplishing such milestones will be reasonably adjusted to reflect any changes or delays in such tasks, but LogiSense reserves the right to request payment on the original agreed upon dates regardless of such performance delays.

3. LICENSEE OBLIGATIONS

- 3.1 **Integrity of Access Methods; Responsibility for End Users.** Licensee is responsible for protecting the security and integrity of the Access Methods of its internal authorized users and End Users of the Service. Licensee is responsible for all actions taken by the End Users and is liable for any acts or omissions by the End Users in connection with this Agreement and their use of the Service. Licensee shall ensure that none of its users, including End Users, will gain, or attempt to gain, or permit any third party to gain, unauthorized access to the Service or to use the Service in an unauthorized manner. Licensee will use reasonable efforts to prevent and stop any unauthorized access and shall promptly report any suspected or known unauthorized access or use of the Service to LogiSense.
- 3.2 **End Users; Responsibility for End Users.** Licensee shall make End Users aware of the terms and conditions of accessing and using the Service as set out herein or shall ensure that the End Users are bound by terms and conditions which are substantially similar and no less protective of LogiSense than as set out herein.
- 3.3 **Licensee Data.** Licensee is responsible for the accuracy, quality and legality of all Licensee Data at all times, including compliance with any applicable laws, licenses, permissions and consents to collect, use, provide, share and process such Licensee Data. Licensee has exclusive control and responsibility for the nature of Licensee Data submitted to LogiSense, either directly or through the Service, and for obtaining any necessary consents and permissions for the submission of personal data and processing instructions to LogiSense.

Usage Event related data is stored in the LogiSense Billing database at the granularity in which it is received. This data is periodically aggregated into summarized form for long term online access. During usage processing, several related datasets are generated, including but not limited to: Mediated Usage Data, Usage Exception Data and Usage Tax Data. LogiSense will retain all granular usage related data in its database for a minimum of 3 months, after which time this data may be deleted from the system. At the option of the LICENSEE, data may be archived to file prior to deletion and transferred to LICENSEE for long term storage.

Logging data, including but not limited to: System Event Logs and User Audit Logs are retained in the LogiSense database for a minimum of 3 months, after which time this data may be deleted from the system. At the option of the LICENSEE, this data may be archived to file prior to deletion and transferred to LICENSEE for long term storage.

- 3.4 **Restricted Data.** Licensee agrees that it will not, and shall make commercially reasonable efforts to ensure that its End Users do not, submit the following types of information to the Service without the express prior written consent of LogiSense: government issued personal identification numbers, consumer financial account information, personal health information, or information deemed “sensitive” under data protection laws of the EU or other applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs). For the purpose of clarity, examples of government issued personal identification numbers include, but are not limited to, drivers’ license numbers, Social Insurance Number (Canada), and passport information. In addition, Licensee agrees that it will not, and shall make commercially reasonable efforts to ensure that its End Users do not, submit credit and payment card information to the Service. Credit card and payment information is to be submitted only to the Spreedly payment gateway via provided hosted payment page(s). Licensee acknowledges that credit and payment card information is provided directly to third party credit card processors, that such information is not processed or stored in the Service and that LogiSense makes no representations or warranties with respect to any third party software, including, without limitation, Spreedly. Licensee further acknowledges that only the production environment of the Service has adequate security and protection to handle information about an identifiable individual and that any such restricted data submitted or processed in the test environment is at Licensee’s sole risk and liability.
- 3.5 **Restrictions on Use of the Service.** Licensee agrees not to, and shall make commercially reasonable efforts to ensure that its End Users do not:
- (a) copy, modify, reverse compile, decompile, disassemble, attempt to discover the source code, or reverse engineer the Service or any part of LogiSense’s services;
 - (b) sell, rent, lease, assign, distribute, or host any part of the Service, adapt, make adaptations, translations or derivative works of the Service or otherwise build a competitive product with the Service;
 - (c) use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Service, or to otherwise engage in denial of service attacks;
 - (d) impose an unreasonable or disproportionately large load on the Service or infrastructure used to operate and to make the Service available;
 - (e) access or use the Service for purposes of monitoring the Service availability, performance or functionality, or for any other benchmarking, comparison or competitive purpose;
 - (f) use any software in connection with the Service that may require the Service or portion of the Service, or other intellectual property of LogiSense or its third party suppliers or licensors to be disclosed or distributed in source code form, made available free of charge to recipients, or modifiable without restriction by recipients;
 - (g) remove, modify or obscure any proprietary notices, labels or marks in or on any or all of the Service; or
 - (h) access or use the Service in a manner inconsistent with the Documentation or this Agreement, or in a manner that is contrary to applicable law, rule or regulation, including, without limitation, any privacy laws.

- 3.6 **Usage Limits; Audits.** Licensee is responsible for using the Service within the usage limits identified in the relevant Sales Order, the Documentation and this Agreement. If Licensee exceeds a limit, LogiSense reserves the right to charge the Licensee for the over-usage and Licensee agrees to pay for these additional fees. Licensee understands that LogiSense may audit and monitor the use of the Service by Licensee and its End Users to ensure compliance with this Agreement, including the restrictions on use and any applicable usage limits.
- 3.7 **Test Environment.** For an additional cost, LogiSense shall provide Licensee with a test environment; provided, however, that no restricted data described in Section 3.4 shall be stored or processed through the test environment. Notwithstanding anything else in this Agreement, including, without limitation, Sections 4, 7, 8 and 10, no representations, warranties or indemnities are provided with respect to any test environment and any data contained within any test environment. Test environments are strictly provided “as is” and “as available”.

4. SECURITY AND DATA PROTECTION

- 4.1 **Security and Data Integrity.** LogiSense will maintain reasonable administrative, physical, and technical safeguards designed for the protection, confidentiality, and integrity of the Service, including, without limitation, the Licensee Data at least as rigorous as the safeguards LogiSense employs to protect its own data. If LogiSense becomes aware of any breaches of security or unauthorized access affecting Licensee Data, LogiSense will promptly report such security breach or unauthorized access to Licensee. LogiSense will use diligent efforts to perform a root cause assessment and remedy such breach of security or unauthorized access in a timely manner.
- 4.2 **Aggregated Data.** LogiSense may collect and aggregate data derived from the operation of the Service and may use such aggregated data for purposes of operating, developing and improving the Service and any related LogiSense business and for monitoring performance of the Service. LogiSense’s use of aggregated data will not reveal any Licensee Data, Licensee Confidential Information, or personally identifiable information of End Users.
- 4.3 LogiSense shall process the Licensee Data in accordance with the terms of the data processing agreement (“DPA”) available at <http://www.logisense.com/legal/>. The DPA shall form part of this Agreement.

5. INTELLECTUAL PROPERTY

- 5.1 **LogiSense Intellectual Property.** LogiSense owns and will continue to own all right, title and interest (including all related Intellectual Property Rights) in and to the Service, Documentation, aggregated data, Deliverables and any and all related services provided or performed by LogiSense, including, in all cases, all modifications, updates and improvements thereto. Unless otherwise expressly set forth in this Agreement, LogiSense is not providing to Licensee any ownership or Intellectual Property Rights in the Service or any part of the Professional Services that are performed by LogiSense for Licensee. All rights not specifically granted herein are reserved by LogiSense.
- 5.2 **Licensee Data.** Subject to the limited license below, Licensee owns all right, title and interest (including all related Intellectual Property Rights) in and to the Licensee Data.
- 5.3 **Limited License to Licensee Data.** Licensee hereby grants to LogiSense: (a) a worldwide license to host, copy, transmit, process and display Licensee Data as reasonably necessary for LogiSense to provide the Service in accordance with this Agreement; and (b) a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, recommendations or other feedback specifically relating to the Service that Licensee in its discretion may provide to LogiSense.

6. INVOICING AND PAYMENTS

- 6.1 **Sales Orders.** All Subscriptions for the Service shall be set out in a Sales Order and all Professional Services shall be detailed in a SOW. The terms of all Sales Orders must be consistent with this Agreement, unless specifically stated and agreed to by the Parties. No terms in any form of customer order form, other than the identification of the services being purchased, the Subscription Period, the applicable pricing and the address for invoicing shall be binding on LogiSense.
- 6.2 **Fees.** All fees are as set out in the Sales Order, together with the payment schedule, method of payment, usage limits, overage charges and additional costs. Fees for the full Subscription Period agreed between the Parties in the Sales Order are non-cancelable (even if this Agreement or the applicable Sales Order is terminated) and once paid, fees are non-refundable unless specifically provided for herein.
- 6.3 **Invoices.** All invoices are due on receipt. Unless otherwise specified in the Sales Order, all fees and charges are in United States dollars and once paid, fees are non-refundable. A 3% surcharge will be added to all credit card payments. Licensee's access to the Services may be suspended or terminated if Licensee's account falls into arrears. Unpaid amounts may be subject to interest at the lesser of 1.5% per month or the maximum permitted by law plus collection costs. Suspension from the Service will not relieve Licensee's obligation to pay amounts due. Upon termination of this Agreement for any reason, Licensee will pay the balance due on Licensee's account including any fees applicable to the remainder of the current Subscription Period.
- 6.4 **Invoice dispute resolution process.** Licensee shall provide written notice of any dispute over an invoice and documentation and other evidence with respect to the underlying reason for the dispute within 10 business days of Licensee's receipt of the invoice. The Parties shall promptly address and attempt to resolve the dispute within 10 business days of the dispute being brought to the attention of LogiSense. If the dispute is resolved in favour of Licensee, LogiSense shall re-issue an invoice for the agreed amount and Licensee shall promptly pay such invoice. If the dispute is resolved in favour of LogiSense, Licensee shall promptly pay such invoice.
- 6.5 **Taxes.** All fees are exclusive of all applicable sales, use, consumption and value add taxes and any levies and duties, all of which are the responsibility of the Licensee. LogiSense reserves the right to determine VAT, GST or similar taxes for a transaction based on LogiSense's "bill to" or "ship to" address, or other use location information provided by Licensee. In the event that Licensee's "bill to" or "ship to" address is outside Canada, but Licensee maintains a presence in Canada, Licensee will be required to provide written evidence to LogiSense's satisfaction to ensure LogiSense will not be required to collect applicable taxes in Canada for Licensee. Where Licensee has provided such written evidence, the rights to use the Service granted herein will be deemed to explicitly exclude the right to use the Service in Canada. Licensee will be responsible for any damages (taxes, penalties or interest incurred by LogiSense) that might apply based on LogiSense's failure to charge appropriate tax due to incomplete or incorrect information provided by Licensee, including the failure to advise LogiSense if Licensee's tax status changes during the Subscription Period.

7. CONFIDENTIAL INFORMATION

- 7.1 **Confidential Information.** Each Party undertakes that it shall at all times keep confidential, and ensure its employees and agents shall keep confidential, any Confidential Information which it or they may receive from or on behalf of the other Party and shall not use or disclose such information except with the express written consent of that other Party. Neither Party shall use the other Party's Confidential Information for any purpose other than to use the Service or to perform its obligations under this Agreement.

- 7.2 **Destruction of Confidential Information.** Upon the termination of this Agreement, or at any time at the disclosing Party's request, the recipient Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such information (such as archived computer records), and such information will continue to be treated as Confidential Information, notwithstanding any termination or expiration of this Agreement. Upon the request of the disclosing Party, the recipient Party shall certify in writing that all materials containing Confidential Information of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.
- 7.3 **No Rights to Confidential Information.** All Confidential Information remains the sole property of the disclosing Party and except as set forth in Section 7.1, no license or other rights to Confidential Information is granted or implied by this Agreement.
- 7.4 **Required Disclosure.** In the event that Confidential Information has been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 **By Each Party.** Each party represents and warrants that it has the power and authority to enter into this Agreement, that this Agreement constitutes a valid and binding obligation and that the entering into of this Agreement will not conflict with or result in a breach or violation of any of the terms of any other agreement or obligation to which it is a party.
- 8.2 **By LogiSense.**
- (a) **Conformity with Documentation.** LogiSense warrants that, during the Subscription Period, the Service will perform materially in accordance with the Documentation. In the event of a breach of the foregoing warranty, Licensee's exclusive remedy shall be to request LogiSense to prioritize repair of such non-conformity as a Level One Error under the Service Level Schedule.
 - (b) **Malicious Code.** LogiSense warrants that the Service is free from all known software viruses, worms, Trojan horses and other code, files, scripts, or agents intended to do harm, as identified using commercially available antivirus software.
 - (c) **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 8, ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 8, THE SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". LOGISENSE DISCLAIMS ALL LIABILITY RELATED TO DELAYS, DELIVERY FAILURES, INTERCEPTION, ALTERATION OR OTHER DAMAGE RESULTING FROM PROBLEMS INHERENT IN THE USE OF THE INTERNET, MOBILE AND PERSONAL COMPUTING DEVICES, AND TRANSMISSION OF ELECTRONIC COMMUNICATIONS OVER THE INTERNET OR OTHER NETWORKS OUTSIDE OF ITS CONTROL. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS

SECTION 8, NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY LOGISENSE WILL CREATE ANY REPRESENTATION, WARRANTY, COVENANT OR CONDITION.

9. TERM AND TERMINATION

- 9.1 **Subscription Periods; Automatic Renewals.** Unless otherwise indicated in the applicable Sales Order, each Subscription Period shall automatically renew for one year periods with a 10% increase on top of the rate for the current period. Renewals of the Subscription Period may be canceled with at least sixty days notice prior to the expiration of the then-current term. Licensee is responsible for all fees for the current Subscription Period even if Licensee ceases to use the Service. All prepaid fees are non-refundable.
- 9.2 **Term of Agreement.** This Agreement is effective from the Effective Date and expires on the date that the last Sales Order expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.
- 9.3 **Termination for Breach.** With written notice to the breaching Party, the non-breaching Party may terminate this Agreement and any other obligations (other than the obligation to pay for Service fees), if any of the following events occur: (a) Licensee fails to pay any amount owed to LogiSense under this Agreement within fifteen days after Licensee receives written notice of the non-payment; (b) the other Party is in breach of a material, non-monetary term, condition, or provision of this Agreement and such breach is not cured within thirty days of the written notice; or (c) the other Party undertakes liquidation, dissolution or winding-up, is unable to pay its debts or obligations as they become due, makes an assignment for the benefit of creditors, becomes subject to direct control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding under federal or state law.
- 9.4 **Suspension of Service.** In addition to the termination provisions, LogiSense may suspend Licensee's access to and use of the Service upon (a) any non-payment of fees within five (5) days after Licensee receives written notice of the non-payment, and (b) any violation of the obligations of Licensee and any End User set out in Section 3 within five days after Licensee receives written notice of the violation.
- 9.5 **Termination Obligations.** Upon termination of this Agreement, or, upon written request of either Party, upon termination or expiration of any Sales Order or Subscription Period, Licensee shall (a) immediately make payment of any outstanding amounts owing to LogiSense, (b) delete all LogiSense Confidential Information, including all Documentation, (c) immediately download all Licensee Data which it wishes to maintain and then cease any further use or access of the Service and (d) upon request, certify to LogiSense as to its compliance with this Section. Upon termination or expiration of any Sales Order or any termination of this Agreement, all Licensee Confidential Information, including Licensee Data, shall be deleted and destroyed, except for any ordinary course backup or archival copies.

10. INDEMNIFICATIONS

- 10.1 **LogiSense IP Indemnification.** LogiSense undertakes to defend Licensee (including its principals, directors, officers, employees and agents, collectively, with the Licensee, the "**Licensee Indemnified Parties**") from and against any claim or action brought by a third party that the Service (but specifically excluding any Licensee Data and any third party software) or any part thereof infringes the Intellectual Property Rights of a third party ("**IP Claim**") and shall indemnify and hold harmless the Licensee Indemnified Parties from and against any losses, damages, costs (including all reasonable outside legal fees) and expenses incurred by or awarded against Licensee as a result of, or in connection with, any such IP Claim.
- 10.2 **Exceptions to LogiSense IP Indemnification.** Notwithstanding Section 10.1, LogiSense shall have no obligation to indemnify or defend the Licensee Indemnified Parties for any IP Claim to the

extent that the alleged infringement arises from: (a) modifications to the Service or any part thereof by anyone other than LogiSense or an approved contractor, (b) use of the Service in a manner inconsistent with the Documentation or this Agreement, (c) use of the Service in combination with any other product or service not provided or approved by LogiSense if the infringement arises from that combination, or (d) after one year from the expiration or termination of this Agreement.

- 10.3 **Sole Remedy for IP Claim.** In response to any pending or potential IP Claim, LogiSense may, at its sole option and expense: (a) procure for the Licensee the right to continuing using the Service (or any part thereof), (b) modify the Service so that it ceases to be infringing, (c) replace the Service (or any part thereof) with non-infringing software, or (d) terminate the Subscription and repay to Licensee all sums which Licensee has paid to LogiSense for the unused portion of the Subscription. This Section 10.3 is LogiSense's entire obligation and liability to Licensee, and Licensee's sole remedy, with respect to any IP Claim.
- 10.4 **LogiSense Data Protection Indemnification.** LogiSense undertakes to defend the Licensee Indemnified Parties from and against any claim or action brought by a third party arising from LogiSense's breach of its obligations under Section 4.1 of this Agreement ("**Data Protection Claim**"), and shall indemnify and hold harmless the Licensee Indemnified Parties from and against any losses, damages, costs (including all reasonable outside legal fees) and expenses incurred by or awarded against the Licensee as a result of, or in connection with, any such Data Protection Claim.
- 10.5 **Exceptions to LogiSense Data Protection Indemnification.** Notwithstanding Section 10.4, LogiSense shall have no obligation to indemnify or defend the Licensee Indemnified Parties for any Data Protection Claim to the extent that the alleged claim arises from: (a) damages caused by the reckless conduct or failure to comply with applicable laws by Licensee; (b) exclusions set out in Section 3.4 or Licensee's breach of its obligations in Section 3.3 and 3.4; (c) damages caused by a breach outside of LogiSense's control (e.g. on a reputable third party cloud provider such as AWS, by any third party software or service provider or due to a force majeure event); or (d) liability to Licensee's End Users or other third parties that is over and above the amount Licensee has taken on under its contracts with them.
- 10.6 **Licensee Indemnification.** Licensee undertakes to defend LogiSense (including its principals, directors, officers, employees and agents, collectively, with LogiSense, the "**LogiSense Indemnified Parties**") from and against any claim or action brought by a third party that (a) Licensee has failed to fulfill its obligations as set forth in Sections 3.3 and 3.4 of this Agreement, (b) any act or omission by Licensee or its End Users results in a misuse or other breach of the restrictions on use of the Service and (c) the Licensee Data or any part thereof infringes the Intellectual Property Rights or confidentiality or privacy rights of that third party ("**Licensee Claim**") and shall indemnify and hold harmless the LogiSense Indemnified Parties and against any losses, damages, costs (including all reasonable outside legal fees) and expenses incurred by or awarded against Licensee as a result of, or in connection with, any such Licensee Claim.
- 10.7 **Indemnification Conditions.** The indemnification obligations set out above are subject to the following conditions: (a) the indemnified party has promptly notified the indemnifying party of the claim and the indemnifying party is not prejudiced by any delay by the indemnified party, (b) the indemnifying party has full control over the defence of the claim, provided that any settlement or resolution entered into by the indemnifying party shall not require an admission of liability or payment by the indemnified party without its consent, (c) the indemnified party has not made any admission against the indemnifying party's interests and has not agreed to any settlement of any claim or demand without the indemnifying party's consent, and (d) the indemnified party cooperates with the indemnifying party in any defense of the claim, at the expense of the indemnifying party.

11. LIMITATION OF LIABILITY

11.1 **EXCLUSIONS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE (INCLUDING LOST PROFITS, ANTICIPATED OR LOST REVENUE, LOSS OF DATA, LOSS OF USE OF ANY INFORMATION SYSTEM, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS, OR ANY THIRD PARTY CLAIM), WHETHER ARISING IN NEGLIGENCE, TORT, FUNDAMENTAL BREACH, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

11.2 **LIMITATIONS; CARVE-OUTS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, EACH PARTY'S TOTAL CUMULATIVE LIABILITY FOR DAMAGES, EXPENSES, COSTS AND LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SERVICE IS (A) LIMITED TO DIRECT, ACTUAL, PROVABLE DAMAGES, AND (B) IN NO EVENT WILL EXCEED, IN THE AGGREGATE, ALL AMOUNTS PAID BY LICENSEE TO LOGISENSE UNDER THIS AGREEMENT IN THE SIX MONTHS IMMEDIATELY PRIOR TO THE EVENTS GIVING RISE TO SUCH CLAIM FOR DAMAGES.

12. NOTICES

12.1 Any notice or other communication shall be in writing and given effect if (a) delivered personally; (b) sent by prepaid courier service; or (c) sent by registered mail or electronic email to LogiSense at 278 Pinebush Drive, Unit 101, Cambridge, Ontario Canada N1T 1Z6, Attention Chief Executive Officer, finance@logisense.com and to Licensee at the address indicated on the applicable Sales Order.

12.2 Any notice or other communication given shall be deemed to have been given and received on the delivery date provided that it is a business day and received prior to 4:30 p.m., Eastern Time. Otherwise, such notice or communication shall be deemed to have been given and received on the next following business day. Any notice or other communication sent by registered mail shall be deemed to have been given and received on the fifth business day following the mailing thereof; provided however, that no such notice or other communication shall be mailed during any actual or apprehended disruption of postal services. Any such notice or other communication given in any other manner shall be deemed to have been given and received only upon actual receipt.

13. DISPUTE RESOLUTION; ARBITRATION

13.1 Licensee and LogiSense agree to use commercially reasonable efforts to resolve any dispute that arises related to this Agreement promptly and in an amicable manner. Upon any dispute, the Parties shall give written notice to the other Party, including details of its objections and the reasons therefor. If the Party's representatives cannot resolve the issue within 5 business days, the positions of the Parties shall be escalated to their respective COO or CEO for resolution. If a mutually satisfactory agreement cannot be reached within 15 business days of the dispute being referred to senior management, then the dispute will be resolved in accordance with the following sections.

13.2 The dispute will be referred to and determined exclusively through binding arbitration conducted in Toronto, Ontario, Canada or such other location as may be mutually agreed by the Parties, before a single arbitrator and in accordance with the applicable Ontario arbitration statute (the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended, or the *International Commercial Arbitration Act*, R.S.O. 1990, c. 1.9, as amended, or such other statute that may be enacted). Except as may be necessary

for a Party to comply with or enforce a decision of the arbitrator, the arbitration proceedings and the award of the arbitrator shall be kept confidential.

- 13.3 The arbitrator shall not have the power to award any damages in excess of the limits set forth in or excluded under the limitations of liability provided in this Agreement. The decision of the arbitrator made with respect to the dispute or with respect to any aspect of, or any matter related to, the arbitration (including, without limitation, the procedures of the arbitration) shall be rendered in writing, shall contain a brief recital of the facts upon which the decision is made and the reasons thereof, shall be final and binding on the Parties to the arbitration and no appeal shall be taken from any determination unless the determination contains an error of law, which results in a determination that is patently unreasonable. The arbitrator shall hold a hearing within 30 days after the appointment of the arbitrator. The arbitrator shall render its decision within a further 30 days following the completion of the hearing on the matter. The arbitrator shall deliver the decision not less than 60 days after appointment of the arbitrator and shall not accept such appointment unless the arbitrator is willing to render the decision within that 60 day period. For greater certainty, the arbitrator shall not have the power or authority to change the requirement to deliver the decision within 60 days of the arbitrator's appointment.
- 13.4 Nothing in this section shall prevent either Party from applying for or obtaining any interim, interlocutory or preliminary injunctive or declaratory relief or from bringing any claim for contribution or indemnity in the same court in which a suit against the Party is brought by any third party.
- 13.5 Except where clearly prevented by the nature of the matter in dispute, the Parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved or arbitrated unless and until such obligations are terminated or expire in accordance with the provisions hereof.

14. MISCELLANEOUS TERMS

- 14.1 **Employee Non-Solicitation.** Both Parties agree not to solicit, induce or attempt to hire any employee or contractor of the other during the term of this Agreement and for a period of 2 years thereafter, without the prior written consent of the other Party. Licensee agrees that it shall not solicit or hire any of LogiSense's employees or contractors ("**Resource**") that were involved in the performance of services without the prior written consent of LogiSense in each instance. Licensee shall have no liability under this section if Licensee hires a Resource that responds to a public ad or open recruitment notice (so long as Licensee has not notified the Resource of the position). In the event of Licensee's breach of this section, Licensee agrees to pay LogiSense liquidated damages equal to the total compensation LogiSense has paid the Resource during the twelve month period leading up to the date of hire by Licensee. Licensee agrees that this amount constitutes reasonable compensation for LogiSense's actual damages and shall not be classified as a penalty.
- 14.2 **Force Majeure.** Neither Party will be responsible to the other for any failure or delay in its performance of any obligation or provision of this Agreement where such failure or delay was occasioned by conditions or causes beyond its reasonable control including civil disturbances, acts of military authorities, fires, floods, natural disasters or catastrophes, epidemics, earthquakes, riots, wars, insurrections, acts of God and similar circumstances. If any such delay occurs, any applicable time period is automatically extended for a period equal to the time of the delay, provided that the Party affected makes reasonable efforts to correct the reason for delay and gives to the other Party prompt notice of the delay.
- 14.3 **Survival.** The provisions of Sections 3, 5, 6, 7, 8, 9, 10 and 11 of this Agreement, together with any other provision that must survive termination to fulfill its essential purpose, shall survive the early termination or expiration of this Agreement.
- 14.4 **Sublicense and Assignment.** Licensee may not assign, rent, transfer or sublicense this Agreement or any of its rights under this Agreement, without the prior written consent of LogiSense.

- 14.5 **No Third-Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties are not intended for the benefit of, or enforceable by, any other person who is not a Party to this Agreement.
- 14.6 **Third Party Software.** The use of any third party software connected to the Service via APIs or other gateways is governed by and limited to the terms of service or other license terms between such vendor and the Licensee, or alternatively, the terms of the license agreement between LogiSense and such vendor. LogiSense does not provide any representations, warranties or indemnities with respect to any third party software or its vendor. A list of such third party software is available upon request.
- 14.7 **Governing Law and Venue.** This Agreement shall be governed by and interpreted under the laws of the province of Ontario and the federal laws of Canada applicable therein, and subject to Section 13, the Parties attorn to the jurisdiction of the courts in the province of Ontario, with a venue for disputes of Waterloo Region, Ontario. LogiSense may bring suit in a forum other than Ontario, provided that (a) such suit is solely for an injunction to enforce this Agreement and is not for damages, (b) such suit is brought against the other Party in a jurisdiction or forum in which the other Party is doing business, and (c) the other Party is not a resident of Ontario and would not otherwise be directly subject to an injunction issued by an Ontario, Canada court.
- 14.8 **Corporate Logo.** LogiSense may display Licensee's corporate logo on press materials and on LogiSense's public website for the purpose of general marketing and awareness. Otherwise, LogiSense must request and receive authorization from Licensee for placement of logo on other materials.
- 14.9 **Rights and Remedies.** Unless otherwise specifically set out herein, all rights and remedies of each of the Parties under this Agreement will be cumulative, and the exercise of one of more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement or applicable law. The Parties agree that each of them shall have the right to seek to obtain specific performance and injunctive relief to prevent the other Party from wilfully breaching its obligations under this Agreement or to seek to compel the other Party to perform its obligations under this Agreement.
- 14.10 **Legal Review.** Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.
- 14.11 **Entire Agreement.; Amendment.** This Agreement constitutes the entire understanding between the Parties with respect to Licensee's use of the Service and related Professional Services. This Agreement supersedes all prior and contemporaneous communications and proposals, whether electronic, oral or written, between the Parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both Parties.
- 14.12 **Waiver; Severability.** The waiver of any breach of this Agreement, or the failure of a Party to exercise or enforce any right under this Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under this Agreement. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then LogiSense's liability will be limited to the greatest extent permitted by law.