

POINT PURCHASING™
TERMS OF SERVICE FOR POINT SYSTEMS APPLICATIONS

ATTENTION! THE FOLLOWING TERMS AND CONDITIONS (“TERMS OF SERVICE”) WILL BE LEGALLY BINDING ON CUSTOMER UPON EXECUTION OF THE POINT SYSTEMS STANDARD SUBSCRIPTION SERVICES AGREEMENT. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE EXECUTING THE AGREEMENT.

Section Headings and Numbers.

Certain Sections may have been renamed and/or renumbered in this document for convenience only and such renaming and/or renumbering shall not affect the validity, construction or interpretation of the Agreement. References in the Point Purchasing Subscription Services Agreement to any Section names or numbers under this document shall be deemed to be a reference to the identified or corresponding provisions in this document to accomplish the reasonable intent and objectives of such provisions to the greatest extent possible under applicable law.

1. Definitions.

“Affiliates” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party.

“Confidential Information” means: (a) Customer Data; (b) the terms of this Agreement and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that: (i) in the case of information in tangible form, is marked “confidential” or “proprietary;” (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. The following shall not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party’s Confidential Information and (5) aggregate data collected or generated by Point Systems or on behalf of Point Systems regarding Point Systems’ products and services (for purposes of providing or improving Point Systems products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Customer-specific information.

“Customer Data” means all electronic data or information submitted to and stored in the Service by Users.

“Electronic Communications” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

“Estimate/Order Form” means a Point Systems estimate, renewal notification or order form in the name of and executed by Customer or its Affiliate and accepted by Point Systems which specifies the Service, and any Support Services and/or Professional Services to be provided by Point Systems subject to the terms of this Agreement.

“Help Documentation” means the online English language help center documentation describing the Service features, including User Guides which may be updated from time to time.

“Professional Services” means the general consulting, implementation and/or training services to be provided to Customer pursuant to (i) the Point Systems Professional Services Agreement found at <http://www.pointpurchasing.com/legal/>, or such other URL as specified by Point Systems, and (ii) a Statement of Work (as defined in such professional services agreement).

“Service” means, collectively, Point Systems’ online business application suite (the “Point Purchasing Service”) and modules as described in the applicable User Guides that is procured by Customer from Point Systems in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated offline components, but excluding Third Party Applications, Support Services and Professional Services.

“Support Services” means Point Systems’ supplemental, fee-based technical support services to be provided to Customer pursuant to the terms for Support Services, found at <http://www.pointpurchasing.com/legal/>, or such other URL as specified by Point Systems.

“Third Party Applications” means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Point Systems, as further described in Section 2.4 (“Third Party Applications”) that interoperate with the Service.

“Users” means individuals who are authorized by Customer to use the Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate/Order Form or amendment to this Agreement, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by Point Systems at Customer’s request). Users may include but are not limited to Customer’s and Customer’s Affiliates’ employees, consultants, contractors and agents.

“User Guides” mean the online English language user guides for the Service, accessible via login at <http://www.pointpurchasing.com> (under “Help”), as updated from time to time. Customer acknowledges that it has had the opportunity to review the User Guides made available by Point Systems.

“URL Terms” means the terms with which Customer must comply, which are located at a

URL, referenced in this Agreement and are hereby incorporated by reference.

2. Terms of Service. Customer acknowledges and agrees to the following terms of service, which together with the terms of the Point Purchasing Subscription Services Agreement entered into between Customer and Point Systems, shall govern Customer's access and use of the Service (collectively, the "Agreement"). Capitalized terms not otherwise defined in these Terms of Service shall have the meaning given to them in the Agreement.

2.1. Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

2.2. Users: Passwords, Access, And Notification. Customer shall authorize access to and assign unique passwords and user names to the number of Users procured by Customer on the Estimate/Order Form. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be permanently reassigned to another User as needed. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Point Systems will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify Point Systems of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

2.3. General Restrictions. ~~(a)~~ **(b) General.** Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Customer's use of the Service shall not include service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single User login, or time-sharing of the Service. Customer shall not and shall not permit any third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form unless expressly allowed in the Help Documentation; (b) access or use the Service to circumvent or exceed Service account limitations or requirements; (c) use the Service for the purpose of building a similar or competitive product or service, (d) obtain unauthorized access to the Service (including without limitation permitting access to or use of the Service via another system or tool, the primary effect of which is to enable input of requests or transactions by other than authorized Users); (e) use the Service in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights; (f) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (g) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Service. Customer shall comply with all applicable local, state,

federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer is responsible for ensuring that its use of the Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall store credit card and social security data in the Service except in the designated encrypted fields for such data. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by Point Systems. Customer shall not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log- in information, user names, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by Point Systems. Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement. Any action or breach by any of such User shall be deemed an action or breach by Customer.

(b) HIPAA. Customer agrees that: (i) Point Systems is not acting on Customer's behalf as a Business Associate or subcontractor; (ii) the Service may not be used to store, maintain, process or transmit protected health information ("PHI") and (iii) the Service will not be used in any manner that would require Point Systems or the Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected" health information" or "PHI" shall have the meanings described in HIPAA.

2.4. Third Party Applications. Point Systems may offer certain Third Party Applications under Estimate/Order Forms. Any procurement of such Third Party Applications by Customer shall be subject to the terms specified in such Estimate/Order Forms.

In addition, Point Systems or third party providers may offer Third Party Applications through the Service or otherwise related to Customers' use of the Service. Except as expressly set forth in the Estimate/Order Form, Point Systems does not warrant any such Third Party Applications, regardless of whether or not such Third Party Applications are provided by a third party that is a member of a Point Systems partner program or otherwise designated by Point Systems as "certified," "approved" or "recommended." Any procurement by Customer of such Third Party Applications or services is solely between Customer and the applicable third party provider. Customer may not use Third Party Applications to enter and/or submit transactions to be processed and/or stored in the Service, unless Customer has procured the applicable subscription to the Service for such use and access.

Point Systems is not responsible for any aspect of such Third Party Applications that Customer may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third Party Applications for use with the Service, Customer agrees that Point Systems may enable such third party providers to access Customer Data as required for the interoperation of such Third Party Applications with the Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider pursuant to a separate privacy policy or other terms governing Customer's access to or use of the Third Party Applications. Point Systems shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers. No procurement of such Third Party Applications is required to use the Service. If Customer was referred to Point Systems by a member of one of Point Systems' partner programs, Customer hereby authorizes Point Systems to provide such member or its successor entity with access to Point Systems' business information related to the procurement and use of the Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases and billing/payment information.

2.5. Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Service. Customer is responsible for securing DSL, cable or another high speed Internet connection and up-to-date "browser" software in order to utilize the Service. Customer expressly consents to Point Systems' interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Point Systems. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Point Systems is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Point Systems, including, but not limited to, the Internet and Customer's local network.

2.6. Service Level. During the Term, the Service will meet the service level specified in the "Service Level Commitment" listed on the Point Systems website located at <http://www.pointpurchasing.com/legal/>, or such other URL as specified by Point Systems, which is hereby incorporated by reference. If the Service fails to achieve the service level, then Customer will be entitled, as its sole and exclusive remedy, to a credit for the Service in accordance with the terms set forth in the Service Level Commitment. The Service's system logs and other records shall be used for calculating any service level events.

2.7. Point Systems' Support Services and Professional Services. As part of the Service, Point Systems will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service. Point Systems also offers optional "for fee" Support Services and Professional Services.

2.8. Security. Point Systems shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of

Customer Data.

2.9. Confidentiality. Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section. Nothing in this Agreement will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

2.10. Ownership of Customer Data. As between Point Systems and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with Service, Point Systems as part of its standard Service offering makes daily backup copies of the Customer Data in Customer's "live" account and stores and maintains such data for a period of time consistent with Point Systems standard business processes, which period shall not be less than one week.

2.11. Point Systems Intellectual Property Rights. All rights, title and interest in and to the Service (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Point Systems) are owned exclusively by Point Systems or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Customer grants Point Systems a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Service. Any rights in the Service or Point Systems' intellectual property not expressly granted herein by Point Systems are reserved by Point Systems. Point Systems service marks, logos and product and service names are marks of Point Systems (the "Point Systems Marks"). Customer agrees not to display or use the Point Systems Marks in any manner without Point Systems' express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

2.12. U.S. Government Rights. The Service is a "commercial item" as that term is defined at FAR 2.101. If Customer or User is a US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Point Systems provides the Service, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement;

or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Point Systems 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 to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement .

2.14. Dispute Resolution.(a) The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. Except as provided in 2.14(b), each party agrees that before it seeks mediation, arbitration, or any other form of legal relief, it shall provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the parties and which are allegedly being breached). Within thirty days after such notice knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute. Except as provided in 2.14(b), any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS for mediation before arbitration or any other form of legal relief may be instituted. Mediation may be commenced by a party providing JAMS a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS in selecting a single mediator and scheduling a mediation, which should take place within 45 days following a request for mediation. The mediator shall be a retired judge who has had experience with technology disputes. The parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation shall take place in either San Francisco or Santa Clara County, California.

(b) The dispute resolution procedures in this Agreement shall not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

3. Warranties

3.1. Warranty of Functionality. Point Systems warrants that: (i) the Service will achieve in all material respects the functionality described in the User Guides applicable to the Service procured by Customer, and (ii) such functionality of the Service will not be materially decreased during the then-current subscription term. Customer's sole and exclusive remedy for Point Systems' breach of this warranty shall be that Point Systems shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the User Guides and if Point Systems is

unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid under the Agreement for its use of the Service for the terminated portion of the then-current subscription term. Point Systems shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to billing@pointsystems.com. The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the User Guides, this Agreement and applicable law.

3.2. Warranty of No Malicious Code. Each party warrants that it will not introduce viruses, Trojan horses, worms, spyware, or other such malicious code (“Malicious Code”) into the Service.

4. Disclaimer of Warranties. EXCEPT AS STATED IN SECTION 3.1 AND 3.2 ABOVE, POINT SYSTEMS DOES NOT REPRESENT THAT CUSTOMER’S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER’S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER’S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY POINT SYSTEMS. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS STATED IN SECTIONS 2.6, 3.1, and 3.2 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND IS FOR COMMERCIAL USE ONLY. POINT SYSTEMS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER’S USE OF THE SERVICE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION HIPAA OR THE GRAMM-LEACH-BLILEY ACT OF 1999. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSES.

5. Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN THE FOLLOWING PARAGRAPH.

THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO THE EQUIVALENT OF THREE (3) MONTHS OF SUBSCRIPTION FEES APPLICABLE AT THE TIME OF THE EVENT, AND IN THE EVENT OF A BREACH OF SECTION 2.9 (CONFIDENTIALITY) OF THESE TERMS OF SERVICE, SUCH MAXIMUM LIABILITY OF EITHER PARTY SHALL BE AN AMOUNT EQUAL TO TWO (2) TIMES THE EQUIVALENT OF 3 MONTHS OF SUBSCRIPTION FEES APPLICABLE AT THE TIME OF THE EVENT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN THE SECOND PARAGRAPH OF THIS SECTION SHALL NOT APPLY TO: (A) FEES DUE UNDER THIS AGREEMENT; (B) A BREACH OF SECTION 2.3 OF THESE TERMS OF SERVICE; OR (C) EITHER PARTY'S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 6 BELOW.

6. Indemnification.

6.1. Infringement. Subject to the terms and conditions set forth in this Section 6, Point Systems shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Service, as used in accordance with this Agreement, infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets and shall indemnify Customer from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim.

Point Systems will have no liability for Claims to the extent arising from (a) use of the Service in violation of this Agreement or applicable law, (b) use of the Service after Point Systems notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Service not made by Point Systems or made by Point Systems based on Customer specifications or requirements, (d) use of the Service in combination with any non-Point Systems software, application or service, or (e) services offered by Customer or revenue earned by Customer for such services.

If a Claim of infringement as set forth above is brought or threatened, Point Systems shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Customer against such Claim without cost to Customer; (b) to modify or replace all or portions of the Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term.

The rights and remedies granted Customer under this Section 6.1 state Point Systems's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

6.2. Customer's Indemnity. Subject to the terms and conditions set forth in this Section 6, Customer shall, at its own expense, defend Point Systems from and against any and all Claims (i) alleging that the Customer Data or any trademarks or service marks, or any use thereof, infringes the copyright or trademark or misappropriates the trade secrets of a third party, or has caused harm to a third party, or (ii) arising out of Customer's breach of Section 2.3 (General Restrictions) above and shall indemnify Point Systems from and against liability for any Losses to the extent based upon such Claims.

6.3. Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section 6, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 6 are expressly conditioned upon the indemnified party's compliance with this Section 6.3 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 6 but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section 6 shall survive termination of this Agreement for one year.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. Point Systems reserves the right to suspend Customer's and any Customer Affiliates' access to and/or use of the Service and/or Support Services if any payment is due but unpaid but only after Point Systems has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that Point Systems shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section.

7.2. Suspension for Ongoing Harm. Point Systems may with reasonably contemporaneous telephonic notice to Customer suspend access to the Service if Point Systems reasonably concludes that Customer's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer's Service is causing immediate, material and ongoing harm to Point Systems or others. In the extraordinary event that Point Systems suspends access to the Service, Point Systems will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with Customer to resolve the issues causing the suspension of Service. Customer agrees that Point Systems shall not be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this Section.

7.3. Termination for Cause, Expiration. Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty

(30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) (“Notice”). Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then Point Systems shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Point Systems’ breach of this Agreement, then Customer shall be entitled to a refund of the pro rata portion of any subscription fees paid by Customer to Point Systems under this Agreement for the terminated portion of the Term.

7.4. Handling of Customer Data Upon Termination/Expiration. Following expiration or termination of the Agreement or a Customer account, if applicable, Point Systems may immediately deactivate the applicable Customer account(s) and shall be entitled to delete such Customer account(s) from Point Systems’ “live” site following a forty (40) day period. Customer further agrees that Point Systems shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Point Systems is in compliance with the terms of this Section.

8. Modifications; Discontinuation of Service.

8.1 To the Service. Point Systems may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. Point Systems reserves the right to discontinue offering the Service at the conclusion of Customer’s then current subscription term for such Service. Point Systems shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section.

8.2 To Applicable Terms. If Point Systems makes a material change to any applicable URL Terms, then Point Systems will notify Customer by either sending an email to the notification email address or posting a notice to the administrator in Customer’s account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Point Systems via legalnotices@pointsystems.com within thirty days after receiving notice of the change. If Customer notifies Point Systems as required, then Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then current subscription term for the affected Service. If the affected Service is renewed, it will be renewed under Point Systems’ then current URL Terms.