

APPLICATION HOSTING SERVICES AGREEMENT

In consideration of your payment of fees for the Service type you selected, and by clicking on the “I Agree” button on our purchasing website page, or by using the Services (as defined herein), and effective as of the date on which Summit Hosting sends a welcome email to Customer regarding the availability of the purchased Services (the “Effective Date”) the following terms for this Application Hosting Services Agreement, including our pricing website page, and our privacy policy, which may also be found at www.summithosting.com/privacypolicy (and which may be updated from time to time) (“Privacy Policy”), which is incorporated herein by reference (collectively, the “Agreement”, which may be amended from time to time as described below), form a binding agreement between you (“Customer”, “you” or “your”) and Summit Hosting LLC (“Summit Hosting”, “we”, “us” or “our”). Customer represents that, Customer has read, accepts and agrees to be bound and abide by this Agreement, and, if he/she is an individual, Customer is at least 18 years of age. If Customer does not agree to be bound by this Agreement, Customer and its authorized users must not access or use the Services.

IMPORTANT—THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION REQUIRING ALL CLAIMS TO BE RESOLVED BY WAY OF BINDING ARBITRATION, AND ALSO CONTAINS A CLASS ACTION WAIVER. PLEASE CAREFULLY REVIEW SECTIONS 13-14 OF THIS AGREEMENT FOR MORE INFORMATION.

1. DESCRIPTION OF SERVICE

A. Services; Grant of Right to Access. Summit Hosting hosts certain software applications (“Hosted Applications”) as set forth on the [application hosting directory](#) website page and other pages on Summit Hosting’s www.summithosting.com website (“Website”) and provides dedicated application-level access thereto (“Services”) to Customers for a fee. Customer will choose which Hosted Applications it wishes to have access to as part of the signup activities. The Hosted Applications will be installed on and accessed via a server area designated for Customer (the “Server”). Subject to Customer’s timely payments and its compliance with this Agreement, Summit Hosting grants to Customer, as of the Effective Date, the right to access the Hosted Applications for which Customer has paid. Summit Hosting has the right to verify the legality of all third party licenses.

B. License of Server Content. Customer agrees to and does hereby grant to Summit Hosting a nonexclusive, royalty-free, and perpetual, irrevocable right and license to use, store, transmit, copy, display, process, delete, retain, and modify Customer Data (as defined herein) solely in conjunction with Summit Hosting's performance of the Services.

C. Customer Responsibility for Data Backups. Summit Hosting will utilize commercially reasonable efforts to create a daily backup of Customer’s data located on Summit Hosting servers (or those of its providers) seven (7) days each week, subject to the Service availability provisions of Section 3. Data backups will be retained for a period of not less than fifteen (15) days. Customer agrees that the backup service may be unavailable or inaccessible during Down Time. Nevertheless, Customer is ultimately responsible for separately backing up its Customer Data, and Customer agrees to back up all Customer Data stored in the Hosted Applications at least once daily to Customer’s own separate backup location. All Hosted Applications include the ability and procedure for Customer to make offline backups which Customer can and should store in a safe place.

D. Data.

(i) "Customer Data" means all data and information relating to Customer's, and its customers', business provided to, generated, collected, processed or stored by Summit Hosting in connection with the Hosted Applications,. Customer Data does not include data created Summit Hosting or derived from Customer Data (e.g., data regarding cost, usage, analytics, etc.). Summit Hosting acknowledges that Customer Data is confidential and/or proprietary to Customer. Other than as permitted under this Agreement Summit Hosting agrees not to disclose to any third party any Customer Data without Customer's prior written consent, unless required to do so by subpoena, court order, or other lawful directive (as discussed further below) or unless requested by licensors of Hosted Applications, and then, with regard to such licensors, disclosing only information regarding the number and type of Customer's licenses in use. In either of the foregoing two events, Summit Hosting will notify Customer of such requests, unless disclosure is prevented by law.

(ii) Summit Hosting maintains appropriate information security measures with appropriate written policies, standards, and procedures, including an administrative, technical, physical and logical security procedures with respect to its access and maintenance of the Services and any Customer Data contained therein. Summit Hosting uses reasonable measures designed to secure and defend its location and equipment against intruders. Summit Hosting periodically tests its systems for potential security breaches.

(iii) Summit Hosting will limit access to the applicable systems to authorized individuals with user passwords assigned to Customer, and authorized Summit Hosting agents and personnel,. Summit Hosting shall be responsible for performing, managing, and monitoring of the backups made by Summit Hosting and restore processes for Customer Data. A secure electronic copy of Customer Data shall be maintained offsite or at Summit Hosting's disaster recovery site as determined by Summit Hosting.

(iv) If Customer Data is corrupted, rendered unavailable, or lost due to system outage, application error or customer error Summit Hosting will only be responsible for recovering the Customer Data to a specific point in time, based on the most recent available backup. Summit Hosting is not liable for Customer Data that has become corrupted, rendered unavailable, or lost after the most recent backup that Summit Hosting has done.

E. Information Shared with Partners and Service Providers. Customer acknowledges and agrees that Summit Hosting may provide Customer Data to Summit Hosting's partners and service providers, but only as may be required to provide the Services. All such partners and service providers shall be under written obligations of confidentiality to maintain Customer Data as confidential.

F. Cooperation with Law Enforcement and Government Agencies; Required Disclosures. Customer acknowledges that Summit Hosting has the right to investigate and act on any violation of this Agreement, including, but not limited to, intellectual property, publicity and privacy rights infringement, and security issues, to the fullest extent of the law. Summit Hosting may involve and cooperate with law enforcement authorities in investigating and prosecuting users who violate this Agreement. Customer acknowledges that Summit Hosting has no obligation to monitor Customer's access to or use of the Services, but Summit Hosting has the right to do so for the purpose of providing the Services, to ensure Customer's compliance with this Agreement or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental or regulatory body. Customer understands and agrees that Summit Hosting may disclose information Customer or Customer's users upload to or obtain from the Services if required to do so by law, court order, legal

process, or subpoena, including to respond to any government or regulatory request, or if Summit Hosting believes that such action is necessary to (i) conform to the law, comply with legal process served on Summit Hosting or its affiliates or partners, or investigate, prevent, or take action regarding suspected or actual illegal activities; (ii) to enforce this Agreement (including for billing and collection purposes), take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or integrity of the Summit Hosting Website; or, (iii) to exercise or protect the rights, property, or the safety of Summit Hosting, its users, or others.

2. PRICING AND PAYMENT

A. Pricing. Current pricing for the Hosted Applications is on Summit Hosting's Website. Summit Hosting explicitly reserves the right in its sole discretion to modify pricing at any time and to establish or modify limitations and guidelines concerning the use of the Services. Summit Hosting will provide notice as described in Section 12 below. Revised amounts will be charged to your credit card or ACH, and the revised pricing will appear on Summit Hosting's invoices.

3. SERVICE AVAILABILITY

A. Application Server Availability.

Summit Hosting is fully committed to providing quality service to all customers. Summit Hosting will use commercially reasonable efforts to have the Service, including the Website, available 24 hours per day, 7 days per week, excluding any scheduled maintenance as described below and unscheduled down time due to events beyond its control. Times noted below are approximate and may change (scheduled maintenance and unscheduled down time referred to as "Down Time"). Summit Hosting's goal is to maintain a 99% monthly average of scheduled availability of its Servers. Server availability is defined as Customer's ability to connect to Customer's application and Customer Data through a web browser. Summit Hosting only monitors access to Customer's Data on the Server designated for Customer.

B. Maintenance and Down Time.

(i) Scheduled maintenance. To ensure optimal performance of the Servers, Summit Hosting performs maintenance on the Servers on a routine basis. Such maintenance often requires taking Summit Hosting's servers off-line. Summit Hosting reserves the right to perform scheduled maintenance up to sixteen (16) hours each month, during which time some or all of the Services or hosted applications may not be available or may have slow response times. This Server unavailability is not included in Server downtime calculations. Customers are sent notice in advance and Summit Hosting will try to perform maintenance during off-peak hours (12 a.m. - 6 a.m., Eastern time).

(ii) Unscheduled maintenance. Unscheduled maintenance may be required to resolve issues that are critical for Customers and/or performance of the Services. Summit Hosting will notify Customers when possible via email prior to the unscheduled maintenance. When possible, unscheduled maintenance will be conducted between 9:00 p.m. and 3:00 a.m. Eastern time.

(iii) Force Majeure events. Emergencies or causes beyond the control of or that were not reasonably foreseeable by Summit Hosting, including, without limitation, interruption or failure of telecommunications carriers or digital transmission links, network attacks, network congestion, DDOS or other attacks, intrusion, or other failures as well as Acts of God.

(iv) Other Down Time: Customer also understands that the Services may be inaccessible during periods of time wherein Customer has scheduled upgrades or modifications to the Service.

C. Monitoring. To verify that the Server is available, Customer should ping each designated Server every 15 minutes using industry-standard monitoring tools. If a Server does not respond, the Server is considered non-operational and is automatically rebooted. If rebooting the Server does not solve the problem, the incident should be immediately escalated to Summit Hosting's Connectivity Support Center. In cases where two or more consecutive pings fail, the Server downtime will be registered as the number of minutes between the first and the last failed pings. Downtime of less than 5 minutes in duration is not recorded. Summit Hosting calculates Server uptime based on this type of server monitoring.

D. Network Availability. "Network availability" is defined as Summit Hosting's network's ability to pass incoming and outgoing TCP/IP traffic. Interruptions of service or access due to problems with Customer's ISP or connection or issues on Customer's network are beyond Summit Hosting's control and are not included in downtime calculations. Interruptions of service caused by denial of service or similar attacks are beyond Summit Hosting's control and are not included in downtime calculations. Interruptions of service caused by Force Majeure Events are not included in downtime calculations. A "Force Majeure Event" means an event beyond reasonable control rendering performance commercially unreasonable, including, but not limited to acts of God, war, acts of terrorism, natural disasters, embargo, prohibitive or punitive duties, shortage of materials, failure of performance by suppliers, acts of governments, delay of carrier, power failure, or failure of telecommunications or internet service.

E. Service Level Agreement. For Customers who purchase the Annual Initial Term or an Annual Renewal Term, the Support Level Agreement in Exhibit A (attached hereto and incorporated herein) shall apply.

4. AUTHORIZED USERS

Customer shall maintain accurate and timely information that identifies all authorized users of the Hosted Application Servers at all times. Such information shall be made available to Summit Hosting upon demand at any time, with or without advanced notice. All authorized users must be identifiable by first and last name, place of employment or purpose for accessing Servers, a physical street address and telephone number, and an e-mail address. This data must be maintained in the user directory of each Server.

5. YOUR OBLIGATIONS

A. Providing Information. Customer acknowledges and agrees that Customer shall be obligated to provide to Summit Hosting, any and all information reasonably sought by Summit Hosting pursuant to the establishment and operation of the Hosted Applications for Customer's use.

B. No Intellectual Property Violations. Customer represents and warrants to Summit Hosting that Customer Data shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising, or services that violates any applicable law or regulation or infringes or misappropriates any proprietary, intellectual property, contract or tort right of any third party and that Customer owns the Customer Data and all proprietary or intellectual property rights therein, or have express written authorization from the owner thereof to transmit, store, copy, use and display the content on and within Customer's server account. Customer also represents and warrants the server content being hosted by Summit Hosting shall not be used in connection with any illegal activity.

C. Storage, Access, and Security. Customer is responsible for maintaining the confidentiality of Customer's password and account information. Except as expressly set forth in this Agreement, Client will not share with or provide access to the Hosted Applications to third parties not authorized by Customer. Customer will employ reasonable security measures necessary to prevent unauthorized users from accessing the Hosted Applications and Customer's login credentials). Customer is solely responsible for the maintenance of Customer's login credentials. Customer accepts responsibility for, and will be liable for all access provided by it to the Hosted Applications in connection with Customer's login credentials. Customer acknowledges and agrees Customer is solely responsible for all acts, omissions and use under and charges incurred with Customer's account or login credentials or in connection with Summit Hosting's server or any of Customer's server content displayed, linked, transmitted through or stored on the server. At all times, Customer shall bear full risk of loss and damage to Customer's server and all of Customer server content to the extent caused by Customer's failure to maintain the confidentiality of Customer's login credentials and account information. Customer shall indemnify, defend and hold Summit Hosting harmless from any Losses (as defined below) due to Customer's failure under this Section 5, other than to the extent such Losses are due to Summit Hosting's breach of this Agreement.

D. Summit Hosting servers are intended to provide a business service and are not an archive, and Summit Hosting shall have no liability to Customer or any other person for loss, damage or destruction of Customer's applications or Customer Data. Summit Hosting will not transfer Customer's applications or Data to another service provider. In the event that Customer's service is terminated as a result of a dispute between Summit Hosting and Customer or as a result of Customer's failure to fulfill Customer's obligations under this Agreement, Summit Hosting will not transfer or manage Customer's applications or Data.

E. No Malware. Customer shall not permit any Malware (as defined below) to be uploaded to Summit Hosting's servers. Summit Hosting shall use commercially reasonable efforts to prevent Malware from being transmitted by its servers to Customer. "**Malware**" means any of the following: computer instructions or code that can alter, destroy, shut down, lock out, lock up, encrypt, inhibit or interfere the operation of or access to computer software, databases, data, network, servers, or any related computer environment, including but not limited to other programs' data storage and computer libraries; programs that self-replicate without manual intervention; instructions programmed to activate at a predetermined time upon a specified event; programs that permit unauthorized access to computer software or hardware or databases; programs that purport to do a meaningful function but are designed for a different and harmful function; and programs that perform no useful function but utilize substantial computer, telecommunications, memory, or other resources, including viruses, Trojan horses, botnets, spiders, time bombs, protect codes, data destruction keys, trap doors, kill switches, DDOS (distributed denial of service) code, and similar code or devices.

6. LIMIT OF CONNECTIVITY SUPPORT

A. Reasonable Connectivity Support. Summit Hosting will engage resources that it deems reasonable in its sole discretion to provide technical connectivity support for the infrastructure required to provide Services to Customer. Customer acknowledges and agrees that Summit Hosting is not responsible for the connectivity support of any specific application installed in Customer's Hosted Application Server environment. Summit Hosting agrees to make efforts as it deems reasonable to provide limited assistance to Customer or Customer's designated third-party service provider for the purpose of providing technical connectivity support for Customer's Hosted Applications. Customer agrees that any third-party service provider will limit the scope of their connectivity support to specific applications, and that Customer is responsible for the actions of said service provider when they are

granted access to the Hosted Application environment on Customer's behalf. Customer acknowledges and agrees that Summit Hosting has no control over the continuous and uninterrupted availability of connectivity support.

B. Connectivity Support Outside of Scope. Summit Hosting may, in its sole discretion, provide connectivity support beyond its normal scope of responsibility hereunder, or during periods of time beyond normal operating hours. Customer acknowledges and agrees that any such extension of Service or hours of operation shall in no manner obligate Summit Hosting, nor creates any liability for Summit Hosting that is otherwise excluded by the terms of this Agreement. Customer also acknowledges and agrees that from time to time, technical connectivity support may be inaccessible or unavailable for any reason, including, without limitation:

- (i) Periodic maintenance procedures undertaken by Summit Hosting;
- (ii) Equipment malfunctions; and
- (iii) Causes beyond the reasonable control of Summit Hosting.

In the event that Customer authorizes Application Hosting to be accessed by third parties, Customer acknowledges and agrees that Summit Hosting has no obligation to provide connectivity support to such third parties and further, that Summit Hosting has no obligation to prevent such third parties from accessing Customer's Data and no responsibility or liability whatsoever if Customer Data is disclosed to such third parties or to any other person or party as a result thereof. Furthermore, Summit Hosting reserves the right to refuse service to anyone in its sole discretion. Customer or a delegate appointed by Customer and confirmed by Summit Hosting shall serve as the sole liaison between Customer and Summit Hosting for purposes of connectivity supporting third party users.

C. Charges for Customer and Technical Connectivity Support. Customer agrees to pay Summit Hosting for requested support which falls outside of the scope of basic support required for Summit Hosting to fulfil its obligations under this Agreement at Summit Hosting's then-current hourly rate (currently \$165.00 per hour) in increments of thirty (30) minutes. Summit Hosting reserves the right to estimate such fees in advance and require full or partial payment of such fees prior to the commencement of any work being performed.

7. TERM

The initial term of this Agreement shall be for an initial period of either one (1) month ("Monthly Initial Term") or twelve (12) months ("Annual Initial Term") (each referred to as an "Initial Term") from the Effective Date, depending on the term ("Annual Term" or "Monthly Term") chosen and paid for by Customer. This Agreement may be terminated by either party for cause, during the applicable Initial Term. After the applicable Initial Term, this Agreement shall automatically renew for subsequent terms of either one (1) month ("Monthly Renewal Term") or twelve (12) months ("Annual Renewal Term") (each referred to as a "Renewal Term"), depending on the renewal term purchased by Customer. Together, the Initial Term and Renewal Term are referred to as the "Term."

8. TERMINATION

A. Either party may terminate this Agreement if the other party is in default thereof and, other than payment obligations by Customer, has not cured such default within thirty (30) days of receiving written notice thereof. Summit Hosting may terminate Agreement immediately, with or without notice, and without Customer having the opportunity to cure, if Customer's use of the Services is abusive or unnecessarily or illegally harasses Summit Hosting or third parties, or for non-payment of fees due, or if Customer's activities deface, defame, embarrass, harm, abuse, threaten, slander or harass third parties,

or for activities prohibited by laws in territories where Customer conducts business, or for Customer's practices which encourage unlawful behavior by others. Customer's use of the Services may be suspended or terminated if Customer's use of the Services results in, or is the subject of, legal action or threatened or proposed legal action, even if such action is proven to be without merit. Summit Hosting has no responsibility to monitor Customer's utilization of technical connectivity support, but Summit Hosting reserves the right in its sole discretion to do so.

B. Either party may terminate this Agreement without cause by providing at least thirty (30) days' prior written notice. Upon receiving Customer's notice of termination, Summit Hosting will send Summit Hosting an email confirming such notice. After the effective date of termination Summit Hosting shall have no obligation to maintain any Customer Data. Customer should make sure it has a current backup of its Customer Data prior to terminating the Service. If Customer is on an Annual Term and terminates this Agreement prior to the end of the then-current Term, Customer agrees to pay for the remainder of that Term, and Customer authorizes Summit Hosting to charge Customer's credit card for such amount.

C. Deposits. If Customer has paid a deposit and subsequently terminates this Agreement, then Customer has thirty (30) days from the date Customer notifies Summit Hosting of termination to request return of any unused deposit. Summit Hosting may first apply any Customer deposit to fees owed. If Customer does not request return of a deposit within such thirty (30) days, that deposit is deemed forfeited and may be retained by Summit Hosting.

9. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless Summit Hosting, together with its agents, representatives, officers, directors, shareholders, owners, members, attorneys, and employees, from any and all claims, judgments, damages, penalties, fines, costs, losses or liabilities (including without limitation, reasonable attorneys' fees and court costs) (collectively, "Losses"), to the extent that such Losses are proximately caused in whole or part by the breach of this Agreement by Customer or the negligent act or omission or willful misconduct of Customer or anyone who uses the Services on Customer's behalf, whether authorized to do so or not. This Section 9 shall survive the expiration or termination of this Agreement with respect to any Losses occurring before such expiration or termination.

10. LIMITATION OF LIABILITY

A. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SUMMIT HOSTING OR ITS AFFILIATES, OR ANY OF SUMMIT HOSTING'S RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO CUSTOMER'S USE OF OR INABILITY TO USE THE SERVICES FOR:

- (i) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OR CORRUPTION DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES;
- (ii) ANY ACTION CUSTOMER TAKES BASED ON THE INFORMATION CUSTOMER RECEIVES IN THROUGH OR FROM THE SERVICES;
- (iii) CUSTOMER'S FAILURE TO KEEP PASSWORDS OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

(iv) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES;

(v) THE IMPROPER AUTHORIZATION FOR THE SERVICES BY SOMEONE CLAIMING SUCH AUTHORITY;

(vi) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE GREATER OF (i) THE AMOUNT ACTUALLY PAID BY CUSTOMER DURING, THE SIX (6) MONTHS OF SERVICES IF YOU SUBSCRIBE TO AN ANNUAL TERM, OR ONE (1) MONTH IF YOU SUBSCRIBE TO A MONTHLY TERM, EACH FOR THE PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE AND (ii) ONE HUNDRED DOLLARS (U.S.). THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OR CAUSE OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR SUMMIT HOSTING WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU. SUMMIT HOSTING DOES NOT GUARANTEE THE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO THE SITE OR THE SERVICES, OR ANY RELATED SERVICES. THE OPERATION OF SITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OUR CONTROL. UNDER NO CIRCUMSTANCES SHALL SUMMIT HOSTING BE LIABLE FOR ANY DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SITE, INCLUDING BUT NOT LIMITED TO RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM THE SITE OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO OUR RECORDS, PROGRAMS, OR SERVICES. YOU HEREBY ACKNOWLEDGE THAT THIS PARAGRAPH SHALL APPLY TO ALL CONTENT, DATA, AND INFORMATION SUBMITTED TO THE SITE.

C. IF CUSTOMER IS A CALIFORNIA RESIDENT, CUSTOMER WAIVES CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. IF CUSTOMER IS A RESIDENT OF A STATE WITH PROTECTIONS SIMILAR TO CALIFORNIA CIVIL CODE §1542, CUSTOMER HEREBY WAIVES SUCH PROVISIONS OR PROTECTIONS.

D. This Section 10 shall survive the expiration or termination of this Agreement.

11. USER PRIVACY

Customer agrees that when accessing Hosted Applications, or allowing others to access the Hosted Applications, all user activity may be monitored, recorded and disclosed by Summit Hosting for any lawful purposes, including the management and maintenance of Servers, to ensure that the Servers are protected against unauthorized access or utilization, and to verify security procedures, survivability and operational security. Customer agrees that use of the Hosted Applications by any user, authorized or unauthorized, constitutes express consent to monitoring and recording of user activity.

12. CHANGES TO THE AGREEMENT

Summit Hosting may revise and update this Agreement from time to time in our sole discretion. Summit Hosting will post the revised Agreement on the Website. Summit Hosting will also send Customers an

email with an announcement that the Agreement has changed. Summit Hosting will also include a similar announcement in our email newsletter. Summit Hosting may also post a notice on your account page. The revised Agreement is effective immediately upon posting to the Website. However, any changes to the dispute resolution provisions set forth in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted on the Website. Customer's continued use of the Services following the posting or notification of the revised Agreement means that Customer accepts and agrees to the changes.

13. CLASS ACTION WAIVER

Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither Customer nor Summit Hosting will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity, and each party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under this Agreement or any disputes between the parties. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

14. DISPUTE RESOLUTION; ARBITRATION

A. In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement, or the relationship that results from this Agreement (a "Dispute"), the parties hereto shall attempt to settle the Dispute. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then the parties agree that the Dispute shall be resolved by binding arbitration in Atlanta, Georgia, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"), subject to the limitations of this section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other party hereto and with the AAA. In no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. The parties agree that one (1) arbitrator shall arbitrate the Dispute. The arbitrator shall be selected by the joint agreement of the parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing, shall be final, judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by sections 10 and 11 of the Federal Arbitration Act, the terms of which sections the parties agree shall apply. Further, unless both parties agree in writing otherwise, the arbitrator may not consolidate more than one person's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding. The expenses of arbitration, including reasonable attorneys' fees and the fees and expenses of the arbitrator, shall be shared equally by the parties.

B. The arbitrator will have no authority to award attorneys' fees, punitive damages, or any other monetary relief not measured by the prevailing party's actual damages and each party irrevocably waives any claim thereto. The award may include equitable relief. The arbitrator will not make any ruling, finding, or award that does not otherwise conform to this Agreement. The arbitrator may render a summary disposition relative to all or some of the issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition.

C. The parties agree to treat all aspects of the arbitration as confidential, as provided in the AAA Rules. Before making any disclosure permitted by the AAA Rules, a party shall give written notice to the other party and afford such party a reasonable opportunity to protect its interests.

15. MISCELLANEOUS

A. In addition to any transactions entered into by Customer or on Customer's behalf, Customer also agrees to be bound by the terms of this Agreement for transactions entered into on Customer's behalf by anyone acting as Customer's agent, and transactions entered into by anyone who uses the account Customer has established with Summit Hosting, whether the transactions were made on Customer's behalf or not. Customer acknowledges and agrees that Summit Hosting's acceptance of any application made by Customer for Services provided by Summit Hosting and all Services are deemed to take place or be provided at the offices of Summit Hosting located in Alpharetta, Georgia USA

B. **Choice of Laws.** This Agreement is governed by the Laws of the State of Georgia without regard to its conflict of laws provisions.

C. **Venue; Jurisdiction.** To the extent any party is permitted to bring an action under this agreement in any court, such action shall be brought only in either a state court of competent jurisdiction located in Fulton County, Georgia or in the Atlanta Division of the Northern District of Georgia. The parties agree that only those courts (or either of them) shall have exclusive personal and subject matter jurisdiction and venue in such action. Neither Summit Hosting nor Customer shall seek to have any such action transferred from such venue(s) to any other venue on the grounds of forum non convenience or otherwise. In the event of any violation of this Section 15C (e.g., by filing suit in a venue other than those prescribed herein), the party bringing such action shall be liable for other party's damages and fees associated with such violation, including, without limitation, the other party's reasonable attorney's fees and costs relating to such violation (e.g., fees and costs associated with any motion to dismiss and/or transfer venue).

D. **Limitation of Time to File Claims.** Any claim or action Customer has against Summit Hosting must be brought (as permitted under this Agreement) within twelve (12) months of the claim arising, otherwise, such claim or action is permanently barred.

E. **Notices.** Customer agrees that Summit Hosting may provide Customer with notices, including those regarding changes to this Agreement, by email to the address Customer provided at the time of registration or as changed in Customer's account profile on the Platform.

Exhibit A

Support Level Agreement

The following commitments apply only to Customers who purchase the Annual Initial Term or an Annual Renewal Term:

- 1. Performance Credits.** Upon Customer's written notice to Summit Hosting, if availability of any Server (excluding those items not included in downtime calculations as set forth herein) for the calendar month is below the Server availability goal level (set forth below), Summit Hosting will credit to Customer, according to the schedule below, a portion of the monthly fees charged for the calendar month during which such goal was not met:
 - (A) Server availability goal 98.0% – 98.9%: 5% of monthly fee credited;
 - (B) Server availability goal 95.0% – 97.9%: 10% of monthly fee credited ;
 - (C) Server availability goal 90.0% – 94.9%: 20% of monthly fee credited;
 - (D) Server availability goal 89.9% or below: 2.5% credited for every 1% of lost availability below 90.0%

- 2. Credit Requests.** To receive the credit, Customer must specifically request it during the month following the month for which the credit is owed. Customer must provide all dates and times of Server unavailability along with Customer's account username. This information must be submitted to Summit Hosting's Connectivity support Department. Summit Hosting will compare information provided by Customer to the Server availability monitoring data that Summit Hosting maintains. A credit is issued if the unavailability warranting the credit is confirmed. **NOTWITHSTANDING ANYTHING IN THIS SECTION 2 OR ELSEWHERE IN THIS AGREEMENT TO THE CONTRARY, THE TOTAL CREDIT TO YOU FOR ANY SERVICE SHALL NOT EXCEED 50% OF THE MONTHLY FEES CHARGED FOR THAT SERVICE DURING THE CALENDAR MONTH FOR WHICH THE CREDIT IS TO BE ISSUED. IN ADDITION, YOU SHALL NOT BE ENTITLED TO ANY CREDIT IF YOUR ACCOUNT IS PAST DUE OR SUSPENDED.**