



**BY CLICKING "I AGREE" ON OUR WEBSITE OR LOG-IN AS A NAMED USER/SUBSCRIBER ON OUR WEBSITE OR SIGNING THIS AGREEMENT, YOU INDICATE YOUR ACCEPTANCE OF THE TERMS CONTAINED HEREIN, IN THE SUBSCRIPTION LICENSE TERMS (BELOW), AND IN THE PRIVACY POLICY AND TERMS OF USE (set forth at <http://www.iknowware.com/legalnotices/>),**

**ALL CONTAINED AND INCORPORATED HEREIN. YOUR SUBMISSION OF THIS APPLICATION CONSTITUTES AN OFFER TO IKNOWWARE LP, AND NO CONTRACT WILL BE FORMED UNTIL THIS OFFER IS ACCEPTED BY IKNOWWARE LP.**

### **Subscription License Terms**

These Subscription License Terms (the "Agreement") between You ("Subscriber, Company and/or You/Your" includes a person and/or an individual entity) and IKNOWWARE LP, its subsidiaries, affiliates and licensees (collectively "IKNOWWARE LP") concerning specified software products provided to You as a service by IKNOWWARE LP (hereinafter referred to as "Software Products" or "Software"). The Software Products include computer software and all component parts, and may include associated media, printed materials, updates, and any "online" or electronic documentation. As used herein, "Services" means IKNOWWARE LP's operation, maintenance, and provision of access via the Internet to, the Software. NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **A. DEFINITIONS**

Unless otherwise defined herein, capitalized terms used herein, and in the exhibits hereto, have the meanings ascribed to them in the Hosted Application Subscription Agreement. "Client Software" means software that allows a Device to access or utilize the Services or functionality provided by the Services. "Device" means a computer, workstation, terminal, handheld PC, pager, telephone, "smart phone," or other electronic device which can be used to access the Internet.

#### **B. LICENSE GRANT AND SOFTWARE-SPECIFIC TERMS**

(1) LICENSE GRANT. Subject to the payment of all applicable Fees, and subject to the terms and conditions of this Agreement, IKNOWWARE LP hereby grants to You a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software in accordance with the instructions, and in connection with the application services, provided to You by IKNOWWARE LP, solely for Your internal use. You are only authorized to remotely access the functionality of the Software, except for certain Client Software that may be installed on Your Devices, as expressly authorized by IKNOWWARE LP. Other than such Client Software, You may not install any other components of the Software Products on Your Devices.

(2) IKNOWWARE LP iKnowBASIC ("iKnowBASIC"). If the Software includes iKnowBASIC, then the following additional terms apply to Your use of, or access to, iKnowBASIC: (a) You will receive a single User ID and Password (as defined below) for access to the server on which the Software is hosted, and You may access such server only using such User ID and Password; As used herein, "User ID and Password" means two unique character strings provided by IKNOWWARE LP to You and intended to enable You to access the Services

(3) IKNOWWARE LP iKnowPLUS ("iKnowPLUS "). If the Software includes iKnowPLUS, then (i) the Software is designed to perform general business account management, finance and operations functions, and (ii) the subscription, or "hosted" version of the Software (which this Agreement provides You with the right to use) The following additional terms apply to Your use of, or access to, iKnowPLUS: (a) You will receive a User ID and Password for each Authorized User (as defined below), and each Authorized User may access the Services only using his or her issued User ID and Password; (b) You may register any number of Authorized Users, but only that number of permitted concurrent users set forth in Section 4 of the Application may access the Services concurrently; (c) the licenses granted herein are personal and specific to Authorized Users, and no person or entity other than an Authorized User will access or use the Services without the prior written consent of IKNOWWARE LP; (d) You may change Authorized Users, or access privileges for Authorized Users, only pursuant to the procedures established by IKNOWWARE LP from time to time; As used herein, "Authorized User" means any individual(s) authorized by You to access and use the Services pursuant to the terms of this Agreement.

(4) IKNOWWARE LP iKnowPROFESSIONAL ("iKnowPROFESSIONAL"). The following additional terms apply for Your use of, or access to, IKNOWWARE LP iKnowPROFESSIONAL: (a) You will receive a Company ID, and a User ID and Password for each Named User, and each Named User may access the Services only using his or her issued User ID and Password; (b) the licenses granted herein are personal and specific to Named Users/Subscribers, and no person or entity other than a Named User will access or use the Services without the prior written consent of IKNOWWARE LP, provided however, if You have selected the self service component, You may have an unlimited number of companies, as exist in Your IKNOWWARE LP implementation.

iKnowPROFESSIONAL database, access their individual records; (c) You may change Named Users/Subscribers, or access privileges for Named Users/Subscribers, only pursuant to the procedures established by IKNOWWARE LP from time to time; As used herein, "Named User/Subscriber" means the individual(s) identified by name and authorized by You to access and use the Services pursuant to the terms of this Agreement; and (e) product support, at the Standard Level, for each Named User is included with Your subscription. Details of the Standard support level can be found at: [www.iKnowWare.com/support](http://www.iKnowWare.com/support).

#### **C. SUBSCRIPTION SERVICES**

During the registration process You selected from the available Services and/or service plan(s) to which You wish to subscribe, as set forth in the Agreement. All subscriptions to Services are subject to acceptance by IKNOWWARE LP. Your subscription to the Services will be deemed accepted by IKNOWWARE LP unless You are notified to the contrary by IKNOWWARE LP within fifteen (15) days from the Effective Date. Subject to the payment of a prorated refund where applicable, IKNOWWARE LP reserves the right to remove one or more Software Product(s) from the Services in its sole discretion if the Software Product is, or in the opinion of IKNOWWARE LP may become, (i) the subject of any claim or suit for infringement or (ii) unsuitable for hosting. If IKNOWWARE LP's removal of any Software Product(s) from the Services substantially impairs Your use and enjoyment of the Services, You may terminate this Agreement and receive a refund of any prepaid fees. IKNOWWARE LP also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as provided in the Service Level Agreement.

#### **D. SET-UP AND SUBSCRIPTION FEES**

Fees for the Services You selected include the fees set forth in the Agreement. The Implementation and/or Set-up Fee and the Monthly Subscription Fee, where applicable, may include, but are not limited to, a per company/per function set-up fee, named or concurrent user fee, data transfer fees, connect time fees, application use and storage fees and other variable fees as may be set forth in the Agreement ("Fees"). IKNOWWARE LP shall not change Your Fees prior to the end of the Subscription Term, as defined in Section E below. Any change to Your Fees shall be effective upon thirty (30) days' notice.

## **E. SUBSCRIPTION TERM**

The Agreement shall be effective as of the Effective Date defined therein. The initial term of the Agreement shall be the number of months specified as Subscription Term in the Agreement and shall begin on the Commencement Date (the "Subscription Term"). Upon expiration of the Subscription Term or any Renewal Term, unless You notify IKNOWWARE LP in writing not less than thirty (30) days prior to the expiration of the Subscription Term or Renewal Term of your intention to either cancel this Agreement or to enter into a new agreement for Services, this Agreement shall thereafter automatically continue on a month-to-month basis (such month-to-month or other renewal term is referred to herein as a "Renewal Term"). This Agreement is effective unless and until You or IKNOWWARE LP terminates it in accordance with the terms set forth herein. Regardless of the location of the Software, You are responsible for strict compliance with any and all of the terms and conditions of this license. If You fail to comply with any of the limitations or other requirements described herein, IKNOWWARE LP may in its sole discretion, following delivery of notice and an opportunity to cure if required under Section R, terminate this Agreement. Any such termination shall be in addition to and not in lieu of any criminal, civil or other remedies available to IKNOWWARE LP. When this agreement terminates for any reason, You must immediately cease using your "Hosted" Named Users/Subscribers of the Software.

## **F. PAYMENT**

By providing a credit card account number, checking account number, ACH account number or other account number permitting electronic charge, debit or transfer of funds (collectively "Electronic Payment Method"), You authorize IKNOWWARE LP to charge the account number You specified as set forth in writing. Payment may be made by a method other than the Electronic Payment Method only with IKNOWWARE LP's prior written consent and will include appropriate manual processing fees. You hereby agree to pay to IKNOWWARE LP the (1) Set-up Fees, if any, plus the First Full Month's Subscription Fee, and any prorated current month's fees, which equals the Total Activation Fee Due Now, (2) the Monthly Variable Fee, if applicable, and (3) applicable Variable Fees. You will pay to IKNOWWARE LP Monthly Subscription Fees in advance of Services being received. You will pay to IKNOWWARE LP all Monthly Variable Fees following the end of the month in which they were incurred. Monthly invoices are generated on or after the first day of each calendar month for the following calendar month, as applicable. Concurrently with the generation of each invoice, IKNOWWARE LP will (i) charge the amount of such invoice to You by Electronic Payment Method or, in the case of payment other than by Electronic Payment Method, (ii) deliver such invoice to You for payment in accordance with alternative payment terms approved in advance by IKNOWWARE LP. Fees for any partial month(s) will be prorated. If You prepaid fees, and the Total Monthly Fees exceed the Discounted Prepaid Monthly Fees in any month, You will pay such excess amount to IKNOWWARE LP (i) concurrently with the generation of the invoice to, You by Electronic Payment Method or, in the case of payment other than by Electronic Payment Method, (ii) upon delivery of such invoice to You for payment, in accordance with alternative payment terms approved in advance by IKNOWWARE LP. Prepaid fees are earned by IKNOWWARE LP upon payment and are nonrefundable for any reason whatsoever. You guarantee to pay all Fees as required herein, plus any applicable late fees or penalties, in the event that any check or electronic charge, debit or transfer is not honored by Your bank or financial institution for any reason. The handling fee for a dishonored or declined check, credit card, ACH debit or other payment method or instrument is USD \$25.00, which may or may not be charged at IKNOWWARE LP's sole discretion. You are obligated to pay all Fees irrespective of whether You received an invoice. Unless otherwise indicated, all Fees are due in the currency specified in the Agreement. Late payments will accrue interest at the higher of one and one-half percent (1 1/2%) per month or at the highest rate permitted by law. All payments required by this Agreement are exclusive of applicable taxes and shipping charges. If applicable to your subscribed application, You may increase or decrease Your number of Named Users/Subscribers at any time. In the event that (a) You terminate this

Agreement for any reason (other than breach by IKNOWWARE LP) prior to expiration of the Subscription Term or any Renewal Term, or (b) IKNOWWARE LP terminates this Agreement prior to expiration of the Subscription Term or any Renewal Term because of your breach of this Agreement, You agree to pay IKNOWWARE LP a termination fee equal to 50% of (i) the number of months remaining under the then-current term of this Agreement, multiplied by (ii) Your Monthly Subscription Fee. If the Monthly Subscription Fee is based on a subscribed number of users, it will be calculated based on Your highest number of users during the term of this Agreement. In the case of iKnowBASIC the Monthly Subscription Fee is based on Your highest level of Named Users/Subscribers of your Company.

#### **G. RULES AND REGULATIONS REGARDING YOUR CONDUCT**

In using the Services, You agree to comply with the Terms of Use incorporated herein by reference and set forth at [www.iKnowWare.com/legal/TermsOfUse](http://www.iKnowWare.com/legal/TermsOfUse) (the "Terms of Use"). IKNOWWARE LP may modify the Terms of Use in its sole discretion from time to time by delivery of thirty (30) days' notice to You in accordance with Section T(j).

When You register for the Services, IKNOWWARE LP will provide You with a Company ID, a user ID and a password. You may use the Services or modify Your information, data and content only through such user ID and password. You are entirely responsible for maintaining the confidentiality of Your Company ID, user IDs, and passwords. You are entirely responsible for any and all activities which occur under Your Company ID, user IDs and passwords, unless the passwords' confidentiality is breached by IKNOWWARE LP's own negligence. You agree to immediately notify IKNOWWARE LP of any unauthorized use of Your account or any other breach of security known to You. If Your conduct fails to conform to this Section IKNOWWARE LP may, in its sole discretion and upon delivery of notice and an opportunity to cure if required under Section R, terminate this Agreement and/or Your access to the Services.

#### **H. OWNERSHIP RIGHTS**

The Software, Services and IKNOWWARE LP system are protected by United States copyright laws and international treaty provisions. As between You and IKNOWWARE LP, IKNOWWARE LP acknowledges that it claims no proprietary rights in the content or data (including without limitation, text, data elements, etc.) supplied by You for processing ("Your Content"). As between You and IKNOWWARE LP, You acknowledge and agree that IKNOWWARE LP, its affiliates and/or its licensors owns all right, title, and interest in and to (i) the Services; (ii) the technology and software available on the Services; and (iii) all content (including without limitation, any images, text, software, music, sound, photographs, video, graphics, and "applets" incorporated into the Software) except Your Content maintained on the Services ("IKNOWWARE LP Technology"), and all copyright, trade secret, patent, trademark and other intellectual property rights therein. You acknowledge that Your possession, installation, or use of the Software does not transfer to You any ownership, title, or registrable interest of any kind to the intellectual property in the Software, and that You will not acquire any rights to the Software except as expressly set forth in this Agreement. Any use of the IKNOWWARE LP Technology other than to process Your Content within the scope of the Services provided by IKNOWWARE LP is not licensed and strictly prohibited. You agree that You will not download, transmit, reproduce, distribute or in any way exploit any IKNOWWARE LP Technology obtained through the Services without first obtaining the express written permission to do so from IKNOWWARE LP. This Agreement does not constitute a license to use either party's trade names, service marks or any other trade insignia. Any use of any of either party's trade names, services marks or any other trade insignia shall require prior written consent by the consenting party.

#### **I. RESTRICTIONS**

You may not rent, lease, sublicense, loan, resell or directly or indirectly transfer the Software. You may not permit any parent, affiliate, subsidiary or any other third parties to benefit from the use or functionality of the Software, either directly or via a facility management, timesharing, service bureau or any other arrangement. You may not

provide any access to the Software Products with the intention to process the data of another entity, unless You own more than fifty percent (50%) of that entity. You may not transfer any or all of the rights granted to You under this Agreement. You may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, the Software in whole or in part. You may not duplicate or copy any portion of the Software, unless otherwise set forth herein. You may not remove any proprietary notices or labels on the Software. All rights not expressly set forth hereunder are reserved by IKNOWWARE LP. IKNOWWARE LP reserves the right to conduct audits from time to time upon not less than three (3) days' advance written notice to verify compliance with the terms of this Agreement. Information disclosed in the course of an audit shall be treated as Subscriber Confidential Information under Section Q below.

#### **J. SUPPORT AND UPGRADES.**

IKNOWWARE LP shall provide live telephone support to address connectivity issues twenty-four (24) hours per day, seven (7) days per week. A "connectivity issue" is any issue in the IKNOWWARE LP System, or caused by IKNOWWARE LP and affecting Your ability to access the IKNOWWARE LP System, which results in Your inability to use or access the Services. Product support for the Software Products is available, for an additional fee, from IKNOWWARE LP or, if applicable, your IKNOWWARE LP Business Partner. Product support for Microsoft products is not provided by IKNOWWARE LP but may be available from Microsoft for an additional fee. Within a commercially reasonable time after releasing any new version or upgrade of a licensed Software Product, IKNOWWARE LP shall make the subscription version of such Software Product available to You for access and use.

Client and/or subscriber request of custom reports and/or custom programming or reprogramming, Any changes made outside specifications of the client/subscriber's use of iKnowWare LP will obviously void the SOW/estimate and may well result in a final cost figure greater than the original estimate. Client agrees to this change in cost should he/she make any iKnowWare modifications. iKnowWare LP will honor and deliver the requested modifications and custom reports and hours will result in additional charges for the requests. The programming fee is \$200 per hour for iKW Engineer, \$150 per hour for Project Management, \$50 per hour for Testing . Telephone time spent discussing system changes, system performance etc. is included in the Statement of Work. Payments are made as work is completed at the discretion of iKnowWare LP and the Client/Subscriber validates progress. iKnowWare will at its discretion not charge for client/subscriber's requests or charge at a reduced rate.

#### **K. LIMITED WARRANTIES**

(1) IKNOWWARE LP will use reasonable commercial efforts to ensure that the IKNOWWARE LP System will be accessible to connection from the Internet as more fully set out in the Service Level Agreement incorporated herein by reference. The "IKNOWWARE LP System" is defined as IKNOWWARE LP's information system, including the hosting servers that run applications and process data and the internal network components that connect these servers to the Internet backbone, but excluding the Internet backbone itself and the network by which You connect to the Internet backbone. In the event of a claim for breach of the above warranty (the "Limited Warranty"), IKNOWWARE LP's sole obligation and Your sole remedy shall be as set forth in the Service Level Agreement. There are no warranties, liabilities or remedies provided by IKNOWWARE LP's suppliers or any other third party regarding the Software, the Services or the IKNOWWARE LP System.

(2) IKNOWWARE LP represents and warrants that (a) it owns or licenses sufficient rights in and to the Software to grant You the license set forth in Section B(1), and (b) to the best of IKNOWWARE LP's knowledge, the Software does not infringe any U.S. copyright, U.S. patent or U.S. trademark right of any third party ("Infringement").

## **L. DISCLAIMERS**

(1) WARRANTY DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS PROVIDED IN SECTION L, THE SOFTWARE (AND ACCOMPANYING DOCUMENTATION) AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, YOU ASSUME SOLE RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, IKNOWWARE LP MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, VIRUS FREE, OR, EXCEPT AS SET FORTH IN SECTION L, FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE WILL SATISFY YOUR SPECIFIC REQUIREMENTS. EXCEPT AS PROVIDED IN SECTION L, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IKNOWWARE LP DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF LACK OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE SOFTWARE AND ASSOCIATED DOCUMENTATION. THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NONINFRINGEMENT WITH REGARD TO THE SOFTWARE. THE ENTIRE RISK OF THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE AND THE SERVICES, IF ANY, REMAINS SOLELY WITH YOU. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE

MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(2) DATA DISCLAIMER. YOU ACKNOWLEDGE THAT ANY DATA ENTRY, CONVERSION OR STORAGE IS SUBJECT TO THE LIKELIHOOD OF HUMAN AND MACHINE ERRORS, MALICIOUS MANIPULATION, OMISSIONS, DELAYS, AND LOSSES, INCLUDING, BUT NOT LIMITED TO, INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA THAT MAY RESULT IN LOSS OR DAMAGE TO YOU AND/OR YOUR PROPERTY, AND/OR YOUR DETRIMENTAL RELIANCE ON MALICIOUSLY MANIPULATED DATA. EXCEPT AS PROVIDED IN SECTION L, IKNOWWARE LP SHALL NOT BE LIABLE FOR ANY SUCH ERRORS, OMISSIONS, DELAYS, OR LOSSES. YOU ARE RESPONSIBLE FOR ADOPTING REASONABLE MEASURES TO LIMIT THE IMPACT OF SUCH PROBLEMS, INCLUDING BACKING UP DATA, ADOPTING PROCEDURES TO ENSURE THE ACCURACY OF INPUT DATA, EXAMINING AND CONFIRMING RESULTS PRIOR TO USE, ADOPTING PROCEDURES TO IDENTIFY AND CORRECT ERRORS AND OMISSIONS, REPLACING LOST OR DAMAGED MEDIA, AND RECONSTRUCTING DATA. YOU ARE ALSO RESPONSIBLE FOR COMPLYING WITH ALL LOCAL, STATE, AND FEDERAL LAWS PERTAINING TO THE USE AND DISCLOSURE OF ANY DATA. IF YOU ARE LICENSING SOFTWARE OR SERVICES FOR EVALUATION PURPOSES (AN "EVALUATION PRODUCT"), YOU ACKNOWLEDGE AND UNDERSTAND (I) THAT THE EVALUATION PRODUCT MAY BE USED FOR EVALUATION PURPOSES ONLY, (II) THAT THE EVALUATION PRODUCT SHALL BE OPERABLE ONLY FOR A LIMITED TIME AND (III) THAT, UPON EXPIRATION OF THE EVALUATION PERIOD, ANY DATA OR OTHER

INFORMATION USED WITH, PROCESSED BY AND/OR STORED IN CONJUNCTION WITH THE EVALUATION PRODUCT MAY BE IRRETRIEVABLE, UNRECOVERABLE AND/OR OTHERWISE UNUSABLE.

(3) **DISCLAIMER CONCERNING SOLUTION PROVIDERS AND CERTIFIED CONSULTANTS.** ANY AUTHORIZED IKNOWWARE LP SOLUTION PROVIDER, CERTIFIED CONSULTANT, RESELLER, INSTALLER OR CONSULTANT IS NOT AFFILIATED WITH IKNOWWARE LP IN ANY CAPACITY OTHER THAN AS A RESELLER, INSTALLER OR CONSULTANT OF IKNOWWARE LP'S PRODUCTS AND HAS NO AUTHORITY TO BIND IKNOWWARE LP OR MODIFY ANY LICENSE OR WARRANTY. IKNOWWARE LP MAKES NO REPRESENTATIONS, WARRANTY, ENDORSEMENT OR GUARANTEE WITH RESPECT TO THE SKILLS OR QUALIFICATIONS OF ANY AUTHORIZED IKNOWWARE LP SOLUTION PROVIDER, CERTIFIED CONSULTANT, RESELLER, INSTALLER OR CONSULTANT AND YOU ARE ENCOURAGED TO INDEPENDENTLY INVESTIGATE THE SKILLS AND QUALIFICATIONS OF ANY AUTHORIZED IKNOWWARE LP SOLUTION PROVIDER, CERTIFIED CONSULTANT, RESELLER, INSTALLER OR CONSULTANT WITH WHOM YOU ASSOCIATE.

**M. LIMITATION ON LIABILITY**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL IKNOWWARE LP BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE SOFTWARE OR THE SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, AND STRICT LIABILITY), BREACH OF CONTRACT, OR BREACH OF WARRANTY BY IKNOWWARE LP, AND EVEN IF IKNOWWARE LP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL IKNOWWARE LP BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE REMEDY PROVIDED IN THE SERVICE LEVEL AGREEMENT, AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF ANY SOFTWARE OR SERVICES PROVIDED BY IKNOWWARE LP SHALL BE AS PROVIDED IN THE SERVICE LEVEL AGREEMENT. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU. THE FOREGOING SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **N. INDEMNIFICATION**

(1) You agree to defend, indemnify, and hold IKNOWWARE LP harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from (i) any breach of Your covenants under this Agreement; (ii) Your use of the Services; (iii) all conduct and activities occurring under Your user ID and password; (iv) any item or service sold or advertised in connection with Your Content or Your information and data; (v) any defamatory, libelous or illegal material contained within Your Content or Your information and data; (vi) any claim or contention that Your Content or Your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity; and (vii) any third party's access or use of Your Content or Your information and data. IKNOWWARE LP reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from You, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of IKNOWWARE LP, which shall not be unreasonably withheld.

(2) IKNOWWARE LP will defend defend, indemnify, and hold You harmless against all costs and losses arising out of any action by a third party against You involving an alleged Infringement, including reasonable attorneys fees, unless the Infringement is caused by (a) compliance with designs, plans or specifications of Yours; (b) use of the Software in an environment other than as specified in the documentation of the Software; (c) modification of the Software by any person other than IKNOWWARE LP; (d) use of third party goods in combination with the Software; or (e) information, service or technical support furnished by a third party. If a preliminary or final judgment shall be obtained against Your use of the Software or any portion thereof by reason of any Infringement or, in IKNOWWARE LP's sole discretion, the Software is likely to become subject to a claim of Infringement, IKNOWWARE LP shall at its option and expense: (i) procure for You the right to continue to license the Software as provided in this Agreement; or (ii) replace or modify the Software with a version that is non-infringing but performs substantially similar functions; or (iii) terminate this Agreement and issue You a refund of all Fees which You paid for the month in which this Agreement is terminated. IKNOWWARE LP's indemnity obligation set forth above is subject to Your providing written notification to IKNOWWARE LP of any Infringement claim within ten (10) days of the date You receives actual notice of such claim. IKNOWWARE LP shall control the defense in any such action and, at its discretion, may enter into a stipulation of discontinuance and settlement thereof. You shall, at IKNOWWARE LP's request and expense, reasonably cooperate with IKNOWWARE LP in any such defense and shall reasonably make available to IKNOWWARE LP all those persons, documents (excluding attorney/client or attorney work product materials), and things required by IKNOWWARE LP in the defense of any such action. You may, at your expense, assist in such defense.

The foregoing constitutes IKNOWWARE LP's entire obligation, and Your exclusive remedy, in the event of an Infringement.

## **O. PRIVACY**

IKNOWWARE LP hosts Your Web site as part of the Services You hereby expressly agree that IKNOWWARE LP may distribute information regarding Your products and services and personally identifiable public information available on Your Web site to the IKNOWWARE LP site's search engine and various other comparative shopping and search services partners, and create a database of public information about You or Your business and make that database available to our partners. Public information means information available to the public on Your web site, and may include the following: information about the products or services You offer through Your web site, Your operating hours, Your business address, Your URL, Your business contact information, and other similar information. In no

event, however, will IKNOWWARE LP disclose Subscriber Confidential Information as defined in Section P(2) below.

IKNOWWARE LP will not actively monitor Your Content but will investigate complaints of a violation of a third party right. IKNOWWARE LP will cooperate with those attempting to minimize Internet or telecommunications abuse and reserves the right to institute "filters" or other mechanisms for that purpose. IKNOWWARE LP will cooperate with law enforcement authorities and will notify such authorities if it suspects that You are engaged in illegal activities. For more information regarding IKNOWWARE LP's protection of Your information, please consult the Privacy Policy available at <http://iKnowWare.com/legal/PrivacyPolicy.pdf> ("Privacy Policy").

IKNOWWARE LP may in its sole discretion change the Privacy Policy from time to time by delivery of thirty (30) days' notice to You in accordance with Section S(j).

#### **P. CONFIDENTIALITY**

(1) IKNOWWARE LP Confidential Information. For the purposes hereof, "IKNOWWARE LP Confidential Information" shall mean any proprietary or confidential information owned or controlled by, or licensed to, IKNOWWARE LP at any time during the term hereof, including without limitation, the Services, the Software and all other computer software developed by or licensed to IKNOWWARE LP (including all documentation, source and object code, screen shots and displays, graphical user interfaces, algorithms, formulae, data structures, scripts, application programming interfaces and protocols), inventions (whether patentable or not), patents, patent applications, know-how, ideas, discoveries, compositions, products, schematics, databases, drawings, designs, proposals, photographs, samples, models, processes, procedures, data, information, manuals, reports, correspondence, notes, any item marked "confidential" or "proprietary," trade secrets, vendors, customers (including without limitation the identity of IKNOWWARE LP's clients and their employees) and markets of IKNOWWARE LP, business plans, opportunities, forecasts and strategies, pricing and costing information, finances and all other proprietary or confidential information related to the business or affairs of IKNOWWARE LP. IKNOWWARE LP Confidential Information shall not be disclosed or disseminated to any third party, except for information which: (a) is known to Subscriber at the time of disclosure to Subscriber by IKNOWWARE LP; (b) has become publicly known through no wrongful act of Subscriber; (c) has been rightfully received by Subscriber from a third party without restriction on disclosure and without breach of any agreement with IKNOWWARE LP; (d) has been independently developed by Subscriber without the use of IKNOWWARE LP Confidential Information, as evidenced by appropriate documentation; (e) has been approved for release by IKNOWWARE LP in writing, at IKNOWWARE LP's sole discretion; or (f) is required to be disclosed by Subscriber pursuant to a court order or similar mandate, provided that IKNOWWARE LP shall first have been given the opportunity to seek a protective order protecting the IKNOWWARE LP Confidential Information. Notwithstanding anything herein to the contrary, any IKNOWWARE LP Confidential Information which is disclosed or disseminated to any third party shall nevertheless remain IKNOWWARE LP Confidential Information. Subscriber acknowledges that it may be furnished, receive or have access to IKNOWWARE LP Confidential Information. Subscriber agrees to preserve and protect the confidentiality of the IKNOWWARE LP Confidential Information and all physical forms thereof, whether disclosed to Subscriber before or after the Effective Date. Subscriber shall not disclose or disseminate the IKNOWWARE LP Confidential Information to any third party without the written consent of IKNOWWARE LP, and shall not use the IKNOWWARE LP Confidential Information for Subscriber's own benefit or for the benefit of any third party, except to the extent permitted by the laws governing Subscriber's use of the Hosted Software. Upon IKNOWWARE LP's request, Subscriber shall return to IKNOWWARE LP all copies of the IKNOWWARE LP Confidential Information in Subscriber's possession or control.

(2) Subscriber Confidential Information. For the purposes hereof, "Subscriber Confidential Information" shall mean any proprietary or confidential information owned or controlled by Subscriber during the term hereof and stored or processed in the System, including without limitation, all data, text, content, information, manuals, reports, correspondence and notes. IKNOWWARE LP shall implement commercially reasonable security measures designed to prevent the disclosure or dissemination of Subscriber Confidential Information to any third party, except for information which: (a) is known to IKNOWWARE LP at the time of disclosure to IKNOWWARE LP by Subscriber; (b) has become publicly known through no wrongful act of IKNOWWARE LP; (c) has been rightfully received by IKNOWWARE LP from a third party without restriction on disclosure and without breach of any agreement with Subscriber; (d) has been independently developed by IKNOWWARE LP without the use of Proprietary Information, as evidenced by appropriate documentation; (e) has been approved for release by Subscriber in writing, at Subscriber's sole discretion; or (f) is required to be disclosed by IKNOWWARE LP pursuant to a court order or similar mandate, provided that Subscriber shall first have been given the opportunity to seek a protective order protecting the Subscriber Confidential Information. Notwithstanding anything herein to the contrary, any Subscriber Confidential Information which is disclosed or disseminated to any third party shall nevertheless remain Subscriber Confidential Information. IKNOWWARE LP acknowledges that it may be furnished, receive or have access to Subscriber Confidential Information. IKNOWWARE LP shall implement commercially reasonable security measures designed to preserve and protect the confidentiality of the Subscriber Confidential Information and all physical forms thereof. IKNOWWARE LP shall implement commercially reasonable security measures designed to prevent the disclosure or dissemination of Subscriber Confidential Information to any third party without the written consent of Subscriber, and shall not use the Subscriber Confidential Information for IKNOWWARE LP's own benefit or for the benefit of any third party. At Subscriber's request and expense, IKNOWWARE LP shall return to Subscriber all copies of the Subscriber Confidential Information in IKNOWWARE LP's possession or control.

#### **Q. TERMINATION**

IKNOWWARE LP may terminate this Agreement either (1) on thirty (30) days' written notice to You prior to the expiration of the Subscription Term or any Renewal Term, in which case this Agreement will be deemed terminated as of the end of such term, (2) upon your breach of this Agreement, as follows: (a) If you breach this Agreement by engaging in conduct which is criminal, tortuous, fraudulent, malicious, or which infringes any privacy or intellectual property right of IKNOWWARE LP or any third party, IKNOWWARE LP may in its sole discretion terminate this Agreement and/or Your access to the Services immediately without notice to You and without any opportunity for You to cure such breach; or (b) If you breach this Agreement in any other manner, IKNOWWARE LP may in its sole discretion terminate this Agreement and/or Your access to the Services following delivery to You of thirty (30) days' written notice of such breach and opportunity to cure; provided, however, that upon Your third breach of this Agreement for any reason, if You received notice and an opportunity to cure regarding the previous two breaches, IKNOWWARE LP may terminate this Agreement and/or your access to Services immediately, without notice or opportunity to cure. The termination of this Agreement will terminate Your access to the Services. IKNOWWARE LP shall not be liable to You or to any third party for termination of the Services for any reason. The termination of this Agreement does not relieve You of Your obligation to pay (i) any Fees accrued or payable to IKNOWWARE LP prior to the effective date of termination of this Agreement and (ii) any Fees owing under Section F for the remainder of the term hereof. Upon termination of this Agreement or in the event that IKNOWWARE LP ceases to do business for any reason, IKNOWWARE LP will, at Your request, provide You with access to Your data files. IKNOWWARE LP may, thirty (30)

days or more after termination of this Agreement, delete your data files from our System. IKNOWWARE LP will maintain copies of Your data files and records for archival purposes only as part of our routine data back-up practices, which copies shall be, at Your request and expense, deleted and transmitted to You. Upon termination of this Agreement, provisions which by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

#### **R. NOT FAULT TOLERANT**

The Software may contain technology, including support for programs written in languages which are not fault tolerant, that is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). IKNOWWARE LP expressly disclaims any express or implied warranty of fitness for High Risk Activities.

#### **S. MISCELLANEOUS**

(a) Export Control Compliance. You agree to abide by U.S. and other applicable export control laws and not to transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a destination prohibited under such laws, without first obtaining, and then complying with, any requisite government authorization. (b) Independent Contractors. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between You and IKNOWWARE LP. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party or its affiliates, whether express or implied, or to bind the other party or its affiliates in any respect whatsoever. (c) Non-Solicitation. Neither party will solicit the employees of the other party during the term of this Agreement or for a period of one year thereafter. (d) No Assignment. Your rights and obligations under this Agreement shall not be transferred or assigned directly or indirectly without the prior written consent of IKNOWWARE LP. (e) Severability. If any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction, or declared under any law, rule or regulation of any government having jurisdiction over the parties hereto, to be invalid, illegal or otherwise unenforceable, then such provision will, to the extent permitted by the court or government not be voided but will instead be construed to give effect to its intent to the maximum extent permissible under applicable law and the remainder of this Agreement will remain in full force and effect according to its terms. (f) Applicable Law, Jurisdictional Matters. Except as otherwise agreed to in writing by the parties, this Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Texas, without giving effect to its conflict of laws principles. The Texas state courts in Williamson County, Texas, or the U.S. federal courts for the Central District of Texas, shall have exclusive jurisdiction for disputes arising out of this Agreement. You expressly consent to (I) the jurisdiction of such courts; and (II) service of process being effected upon You by registered mail sent to the address You provide IKNOWWARE LP in conjunction with Your subscription for services, as may be changed from time to time by written notice actually received by IKNOWWARE LP. Unless prohibited by the law of Your jurisdiction, You waive any requirement that service of process or of any documents be made upon You pursuant to the provisions of the Hague Convention. The official language of this Agreement shall be English and all reports, notices and communications shall be in the English language. (g) Force Majeure. Except for payments due hereunder, neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "Force Majeure") including, but not limited to, acts of God (such as fire, flood, storm, earthquake),

wars, hostilities, acts of terrorism and/or other intentional, malicious acts, revolutions, riots, civil commotion, national emergency, embargoes, epidemics, force of nature, explosion, any law, proclamation, regulation, ordinance or other act or order of any civil or military authorities, accidents, breakdown of equipment or network components not under the control or responsibility of the party asserting Force Majeure, shortages of materials, fuel or energy crises, labor disputes, or denial of or delays in processing of export license applications. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days.

(h) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver, or continuing waiver, of such rights. Rights may only be waived hereunder in a writing signed by both parties. (i) Entire Agreement; Amendment. This Agreement and its Exhibits or Addenda, if any, are the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersede and replace any and all prior or contemporaneous agreements, communications, representations and understandings (both written and oral) regarding such subject matter. Except as expressly provided herein, this Agreement may only be modified by a written document executed by both parties. (j) Notices and Electronic Communications. All notices permitted or required under this Agreement may be sent by e-mail, fax, express mail, mail, or registered mail to the email address, fax number, or address most recently provided and will be effective upon transmission. Evidence of successful transmission shall be retained. (k) Attorney Fees. If any party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses.

#### **T. IKNOWWARE LP CUSTOMER CONTACT**

If You have any questions concerning this Agreement, please email: [legal@iKnowWare.com](mailto:legal@iKnowWare.com) or write to us at: IKNOWWARE LP, 439 Champions Drive, Georgetown, TX 78628 USA.

#### **Service Level Agreement**

- 1. Capitalized Terms.** Capitalized terms have the meanings set forth in Section 7 below or, if not defined in Section 7, in the Hosted Application Subscription Agreement between You and IKNOWWARE LP (the "HASA").
- 2. Efforts to Ensure IKNOWWARE LP System Operative.** IKNOWWARE LP shall use reasonable commercial efforts to ensure that the IKNOWWARE LP System is Operative. In the event the IKNOWWARE LP System becomes inoperative, IKNOWWARE LP will exert reasonable commercial efforts to restore services as quickly as possible. This would include utilizing other data centers available to IKNOWWARE LP where possible. IKNOWWARE LP has no responsibility for matters within your control which may impair your ability to access the IKNOWWARE LP System, including without limitation as (a) your hardware, network components and infrastructure, (b) any software running on your hardware (other than IKNOWWARE LP software), and (c) your connection to the Internet.
- 3. System and Application Program Updates.** As part of normal operations and in its sole discretion, IKNOWWARE LP will perform necessary upgrades, service pack implementation and fixes to both system and application programs as they become available. Where possible and within reasonable limits, clients will be provided the ability to determine when to upgrade their applications.
- 4. Backups.** As part of the data center backup procedures IKNOWWARE LP performs daily backup procedures to tape. In addition to having the ability to restore from tapes stored at the data center, IKNOWWARE LP also stores backups in off-site locations in preparation of disaster recovery.
- 5. Scheduled Downtime and Emergency Downtime.** IKNOWWARE LP reserves the right to execute Scheduled Downtime and, as necessary, Emergency Downtime. IKNOWWARE LP may, but shall not be required to, provide You with advance notice of Emergency Downtime. IKNOWWARE LP shall exercise reasonable efforts to minimize the duration of Emergency Downtime.

**6. Performance Shortfall.** If a Performance Shortfall occurs, You will be eligible for a credit against Your Monthly Subscription Fee in the amount set forth in the table below. You may claim this credit in writing or by email within seven (7) days of the end of the Month during which the Performance Shortfall occurs. If You do not claim the credit within this period, You will be deemed to have waived the credit.

Monthly Uptime Credit

90.0% - 97.9% 10%

85.0% - 89.9% 20%

84.9% or less 100% Credit/Refund for the Month

**7. Definitions.**

- a) "Emergency Downtime" means a cessation of Your access to the IKNOWWARE LP System caused by the execution of emergency maintenance on the IKNOWWARE LP System for an urgent and unexpected condition which IKNOWWARE LP is unable to prevent notwithstanding the exercise of commercially reasonable precautions. "Emergency Downtime" may include, without limitation, preventing (a) the imminent loss of data, or (b) the introduction or reproduction of a virus, worm or other malicious application. The hours associated with this "Emergency Downtime" shall not be counted as "Unscheduled Downtime" so long as they occur between the hours of 10 PM to 4 AM CST.
- b) "Scheduled Downtime" means a cessation of Your access to the IKNOWWARE LP System for reasonable purposes of software installation by IKNOWWARE LP or its agents, or changes or maintenance to operating systems or hardware platforms by IKNOWWARE LP or its agents. IKNOWWARE LP shall notify You of "Scheduled Downtime" not less than 5 days prior to the start of any "Scheduled Downtime". The hours associated with "Scheduled Downtime" shall not be counted as "Unscheduled Downtime" so long as they occur between the hours of 10 PM to 4 AM CST.
- c) "Force Majeure" means except for payments due, either party's failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God (such as fire, flood, storm, earthquake), wars, hostilities, acts of terrorism and/or other intentional, malicious acts, revolutions, riots, civil commotion, national emergency, embargoes, epidemics, force of nature, explosion, any law, proclamation, regulation, ordinance or other act or order of any civil or military authorities, accidents, breakdown of equipment or network components not under the control or responsibility of the party asserting Force Majeure, shortages of materials, fuel or energy crises, labor disputes, or denial of or delays in processing of export license applications. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days.
- d) "Hours of Operation" means the total number of hours in any Month. For example, in a 31-day Month, Hours of Operation would be 744 (31 X 24).
- e) "Month" means Your monthly billing cycle under the License Subscription Agreement. The Billing Date of the License Subscription Agreement is the first day of each calendar month, and each calendar month is considered a Month hereunder.
- f) "Unscheduled Downtime" means the hours of Downtime excluding appropriate "Emergency Downtime" and "Scheduled Downtime" executed in their prescribed time periods.
- g) "Monthly Unscheduled Downtime" means the total amount of hours of "UnscheduledDowntime" during any Month.
- h) "Monthly Uptime" means the percentage calculated as 100% less the ratio (expressed as a percentage) of Monthly Unscheduled Downtime to Hours of Operation, rounded to the nearest one-tenth percent (0.1%). For example, if Monthly Unscheduled Downtime is 12 hours, and Hours of Operation is 744 hours, Monthly Uptime would be 98.4% (100% - (12 / 744)).
- i) "Operative" refers to the state of the IKNOWWARE LP System when delivering Services in accordance with this Service Level Agreement, subject to Scheduled Downtime, Emergency Downtime, and Force Majeure.
- j) "Performance Shortfall" means Monthly Uptime falling below 98% during any Month.