



## SERVICE SUBSCRIPTION AGREEMENT

This Agreement, between Technical Sales Development, Inc. (TSD) and the individual or non-individual legal entity agreeing to the terms herein, creates certain rights and responsibilities. If you execute this agreement on behalf of a non-individual legal entity such as a company, you claim the authority to bind such legal entity to the terms of this Agreement. **By executing this Agreement, whether by signature, by online interaction, by paying fees for access to the services described herein, or by any other legally recognized method, you represent and warrant that you have read and understood it, that you have the authority to bind your company or organization to its terms and conditions and that you agree to its terms.**

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### 1. DEFINITIONS

**“Agreement”** - this Hosted Service agreement.

**“Corrections”** - any corrections, changes, or workarounds we may provide you for any defects, errors, or malfunctions in our Software Product or systems.

**“Documentation”** - our online user guides, documentation, and help and training materials, including courses, quizzes and videos.

**“End User License”** - as defined in Section 4.2 herein.

**“Force Majeure”** - events beyond our control, such as an act of God or act of government, including but not limited to flood, fire, earthquake, civil unrest, act of terror, provider strike or other labor problem, internet service provider failure or delay, or denial of service attack.

**“Hosted Service/Server”** - the infrastructure including any on-line library or store used to access and provide the online delivery of the Software Product, or any part thereof.

**“Malevolent Code”** - code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.



**“Other Applications”** - any on or offline software application created or provided by you or any party other than TSD, that interoperates with our Software Product or Hosted Service.

**“Quote”** - the ordering documents specifying the pricing terms for the Software Product, Hosted Service, and Standard or Premium Support Service and other services as applicable provided by us to you, including any addenda and supplements thereto.

**“Services”** – the services we provide to you pursuant to this Agreement, including the Hosted Service, Software Product, and End User Licenses.

**“Software Product”** - any computer programs, applications or scripts created by us and used or accessed by you, directly or indirectly, including all functionality described in the Documentation, or any part thereof.

**“Standard Support”** - the support services provided to all Hosted Service customers.

**“User”** - an individual authorized to use our Hosted Service, Software Product or Support Service.

**“We,” “we,” “Us,” “us,” “Our,” or “our”** - Technical Sales Development, Inc. (TSD)

**“You,” “you,” “Your,” or “your”** - the company or other legal entity represented by the person executing the Agreement, as well as affiliates of that company or entity.

## **2. GENERAL PROVISIONS**

**2.1 Order of Precedence.** In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) this Agreement, (2) the applicable Quote and (3) the Documentation.

**2.2 Assignment.** You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without our party's prior written consent.

**2.3 Relationship of the Parties.** The parties are independent entities. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**2.4 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**2.5 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.



### 3. OUR OBLIGATIONS

**3.1. Hosted Service.** We will make the Hosted Service and Software Product available to you pursuant to this Agreement, at the rates set out in the applicable Quote.

**3.2. Software Product and Upgrades.** We grant you End User Licenses to use our Hosted Service and Software Product pursuant to this Agreement, at the rates set out in the applicable Quote. We are constantly improving our Software Product and want you to benefit from such improvements. To that end, we will:

a) Provide you with corrections, changes, or workarounds (“Corrections”) for any significant defects, errors, or malfunctions in our Software Product or systems, on a timely basis, given the nature and scope of the defect.

b) Install upgrades of our Software Product to the hosted servers so they can be accessed by you as soon as practical after they become available. We will promptly notify you of any upgrades that will significantly affect your program functionality.

c) Make release notes available and identify any significant impact upgrades may have.

d) Make available to you any revisions to the Documentation developed to reflect upgrades and improvements to the Software Product.

**3.3. Technical Support and Maintenance.** We will provide product support to you at no additional charge. This support will include:

a) Providing you with support for the most recent release of our Software Product. Following any new release, we will also provide you with support for the immediately prior version of our Software Product for four months.

b) Support for Standard Functionality and Software Product defects. It does not include the provision of customization advice or consulting services. Neither does it cover problems caused by your system administrator, by third party software, by connectivity issues, user error, or by a Force Majeure.

c) Bug fixes. Should you provide notice of a bug via e-mail or through the TSD Website, we will provide to you a plan for resolution of the bug within forty-eight (48) hours of your notice.

d) All requests for support should be transmitted via e-mail or through the TSD Website. We will address requests for support within forty-eight (48) hours, however we do not guarantee that your issue will be resolved within such time.



#### **4. LICENSING, RESTRICTION OF USE, RIGHTS RESERVED**

**4.1 Reservation of Rights.** Our Software Product is protected by domestic and international intellectual property laws and treaties, including copyright laws. Our Software Product is licensed, not sold. You may only access and use our Software Product in accordance with this Agreement. Subject to the limited rights expressly granted hereunder, we reserve all of our right, title and interest in and to the Hosted Service and Software Product, including all of our related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

**4.2 License by us to Use our Software Product.** We grant to you herein a specific number of End User Licenses, in accordance with your Quote. An “End User License,” as used herein, means a limited, non-exclusive, non-sublicensable, non-transferable license, to use our Software Product and grants no rights or abilities outside of the minimum required to use our Software Product for the apparent use for which it was designed.

THE END USER LICENSE DOES NOT PERMIT YOU TO COPY OR REVERSE ENGINEER ANY PART OF THE HOSTED SERVICE, INCLUDING ANY FEATURE, FUNCTION, OR USER INTERFACE.

**4.3 Usage Limits.** Our Software Product is subject to usage limits, particularly limits on the number of End User Licenses purchased. The applicable Quote will specify the number of End User Licenses purchased, and you agree to stay within the license restrictions detailed here and in the applicable Quote.

YOU MAY NOT USE THE HOSTED SERVICE IN CONNECTION WITH BUILDING A COMPETITIVE PRODUCT OR SERVICE.

**4.4 Usage Control.** You will be responsible for User compliance with this Agreement. You agree to use commercially reasonable efforts to prevent unauthorized access to or use of our Hosted Service or Software Product, and to notify us promptly of any such unauthorized access or use. You agree to use our Hosted Service and Software Product only in accordance with its apparent purpose, the Documentation, and applicable laws and government regulations. It is your responsibility to comply with any terms of service for Other Applications which you use in conjunction with our Hosted Service or Software Product.

**4.5 Usage Restrictions.** You will not (a) make any Hosted Service or Software Product available to, or use any Hosted Service or Software Product for the benefit of, anyone other than you or users, or (b) sell, resell, license, sublicense, distribute, rent or lease the Hosted Service or Software Product. You will not use the Hosted Service to perform any unlawful or tortious acts, to interfere with or disrupt the integrity or performance of any Hosted Service or data not belonging to you, or attempt to gain unauthorized access to any Hosted Service or Software Product or its related systems or networks.

**4.6 Right to Modify.** We reserve the right to modify the Hosted Service and/or Software Product at our sole discretion, and without prior notice to you.



## 5. OTHER APPLICATIONS

**5.1 Acquisition of Other Applications and Hosted Service.** Any rights or obligations associated with the acquisition by you of other applications, products or services, and any exchange of data between you and any third party provider, are held between you and that provider. We do not warrant or support Other Applications.

**5.2 Integration with Other Applications.** The Hosted Service or Software Product contains features designed to interoperate with Other Applications. To use such features, you may be required to obtain access to Other Applications from their providers, and may be required to grant us access to your account(s) for the Other Applications. If the provider of the Other Application ceases to make the Other Application available for interoperation with the corresponding Hosted Service or Software Product on reasonable terms, or changes the API in a manner which breaks the integration with the Software Product or Hosted Service, you will not be entitled to any refund, credit, or other compensation.

## 6. FEES AND PAYMENT

**6.1 Fees.** You agree to pay all fees as set out in the applicable Quote. Except as otherwise stated herein, you agree that fee payment obligations are non-cancelable, and fees paid are non-refundable. You understand that licenses and services purchased can be increased at any time but cannot be decreased until the end of the applicable term.

**6.2 Suspension of Service and Acceleration.** If any amount owed by you for our Hosted Service is thirty (30) or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations so that all such obligations become immediately due and payable, and suspend our Hosted Service to you until such amounts are paid in full. We will give you at least ten (10) days' prior notice that your account is overdue, in accordance with Section 11.1 (Manner of Giving Notice), before suspending Hosted Service to you.

**6.3 Prospective Functionality.** You acknowledge that your purchase of our Hosted Service or Software Product is not contingent on the delivery of any prospective functionality or features, or dependent on any oral or written comments made by us regarding future functionality or features.

**6.4 Right to Increase Fees.** You understand and acknowledge that we reserve the right to increase our fees at our sole discretion. We agree, however, to provide you notice of any increase in our fees at least thirty (30) calendar days prior to the effective date of any such increase.



## **7. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**7.1 Representations.** Each party represents that it has entered into this Agreement in good faith and has the legal power to do so.

**7.2 No Warranty to Particular Outcome.** Regardless of any claims made about the performance, effectiveness, usefulness, and/or benefit of the Hosted Service and/or Software Product, we expressly disclaim any promise, warranty, or guarantee of any particular outcome, whether general or specific, and whether related to performance, effectiveness, or usefulness of the Hosted Service and/or Software Product, or any monetary, business, sales, or other benefit to you.

**7.3 Limited Warranties.** We warrant that we will not materially decrease the overall security of the Hosted Service during the applicable term; that the Hosted Service will perform materially in accordance with the applicable Documentation, that, subject to Section 5.2 (Integration with Other Applications), we will not materially decrease the functionality of the Hosted Service during the current term, and that the Hosted Service and Software Product will not introduce Malevolent Code into your systems. For any breach of the warranties described in this subsection, your exclusive remedies are those described in Section 10 herein.

**7.4 Mutual Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, OUR SOFTWARE PRODUCT AND HOSTED SERVICE ARE PROVIDED "AS IS" AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE MAKE NO REPRESENTATION AND WARRANTY WHATSOEVER WITH RESPECT TO THIRD PARTY SOFTWARE THAT INTEROPERATES WITH THE SOFTWARE PRODUCT.

## **8. INDEMNIFICATION**

**8.1 You Indemnify Us.** You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that your use of our Hosted Service or Software Product, in breach of this Agreement, is tortious or otherwise violates any applicable law, and you will indemnify us from any damages, attorney fees and costs finally awarded against us as a result of such a claim, or for any amounts paid by us under a settlement approved by You in writing, of such a claim against us, provided we (a) promptly give you written notice of such a claim against us, (b) give you sole control of the defense and settlement of such a claim against us, except that you may not settle any such claim against us unless it unconditionally releases us of all liability, and (c) give you all reasonable assistance in the defense of such a claim against us, at your expense.



**8.2 We Indemnify You.** We will defend you against any claim, demand, suit, or proceeding brought against you by a third party alleging that your use of our Software Product or Hosted Service infringes or misappropriates such party's intellectual property rights, and will indemnify you from any damages, attorney fees and costs finally awarded against you as a result of such a claim against you, or for amounts paid by you under a settlement approved by Us in writing of such a claim, provided you (a) promptly give us written notice of such a claim, (b) give us sole control of the defense and settlement of such a claim, except that we may not choose to settle any such claim unless it unconditionally releases you of all liability, and (c) give us all reasonable assistance, at our expense and provided that your use of the Software Product or Hosted Service has not in any way breached any of the terms of this Agreement.

If we receive information about an infringement or misappropriation claim related to our Software Product or Hosted Service, we may choose, in our discretion and at no cost to you, to (a) modify our Software Product or Hosted Service so that it no longer infringes or misappropriates, without breaching our warranties under Section 7 herein, (b) obtain a license to allow for your continued use of our Software Product or Hosted Service in accordance with this Agreement, or (c) terminate your use of our Software Product or Hosted Service upon fifteen (15) days' written notice and refund you any prepaid fees, pro rata, covering the remainder of the term.

**8.3 Exclusive Remedy.** This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 8.

## **9. MUTUAL LIMITATION OF LIABILITY**

**9.1 Limitation of Liability.** Except for each party's indemnification obligations set forth in Section 8 herein, in no event shall the aggregate liability of each party together with all of its affiliates arising out of or related to this agreement exceed the total amount owed and paid by you for services rendered by us. This limitation will apply whether an action is in contract or tort and regardless of the theory of liability. However, the above limitations will not limit your payment obligations under section 6 (fees and payment for hosted service).

**9.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.



## 10. RENEWALS AND TERMINATION

**10.1 Term of Agreement.** This Agreement commences on the date you first accept it and continues unless and until Termination.

**10.2 Renewal.** This Agreement will automatically renew for each billing period, unless modified by us or terminated by either party pursuant to Section 10.4.

**10.3 Increases and Decreases.** You may purchase additional licenses or services at any time, and the additional costs associated with these purchases will be based on current pricing, pro-rated to the end of your current contract term. Decreases in service or the number of licenses must be made at the end of your current term, and any renewal for a decrease in licenses will be based on current pricing without regard to prior per-license pricing.

**10.4 Termination.** Either party may terminate this Agreement at their discretion. We reserve the right to terminate this Agreement by discontinuing provision of the Services to you. In no event, however, will we discontinue provision of the Services to you on less than fourteen (14) calendar days' notice.

**10.5 Refund or Payment upon Termination.** If this Agreement is terminated by you in accordance with Section 10.4, we will not refund you any prepaid fees covering the remainder of the term from the effective date of termination, unless such termination is based on an unfixable defect, provided that you have provided notice, in accordance with Section 11.1, to us of such a defect. In the event of such a defect, we will refund any prepaid fees, pro rata, for the remainder of the term calculated from the date of such notice.

If this Agreement is terminated by us in accordance with Section 10.4, you will pay any unpaid fees for service up through the termination date.

**10.6 Surviving Provisions.** The sections titled "Warranties, Exclusive Remedies and Disclaimers," "Indemnification," "Mutual Limitation of Liability," "Governing Law and Exclusive Jurisdiction," and "General Provisions" will survive any termination or expiration of this Agreement.

## 11. GOVERNING LAW AND JURISDICTION

**11.1 Manner of Giving Notice.** All notices, permissions and approvals given under this Agreement shall be in writing and shall be deemed to have been provided upon: (a) personal delivery, (b) the second business day after first class mailing, or (c) one day after receipt of an email sent to the email address of notice. All notices to us shall be addressed to [info@technicalsalesdevelopment.com](mailto:info@technicalsalesdevelopment.com). Billing-related notices to you shall be addressed to the relevant billing contact or email address designated by you.





**11.2 Consent to Governing Law and Exclusive Jurisdiction.** Each party agrees to the applicable governing law of the following jurisdictions, without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of their courts as follows:

- a) Each Party agrees to participate, in good faith, in informal and confidential dispute resolution prior to bringing any claim against the other in a court of competent jurisdiction.
- b) This Agreement shall be governed by the laws of the State of New York, and adjudicated in the state courts located in Erie County, New York, or if required by law, the federal courts of the Western District of New York.

--- End of Agreement ---