

COS SYSTEMS MASTER AGREEMENT

This COS Systems Master Agreement ("**Agreement**") is between the party accepting this Agreement and COS Systems, Inc. ("**COS**") and consists of the below terms and conditions, the EULAs, the SLAs, and the pricing and related terms listed on the Sales Order for your Subscription. This Agreement is effective on the date COS provides you with confirmation of your first order. Key terms are defined in Section 10.

1. USE OF SERVICES.

1.1. **Right to use.** COS grants you the right to access and use the Services and to install and use Software included with your Subscription, as further described in this Agreement. You may only use the Services and Software included with your Subscription in accordance with the terms set forth herein. COS reserves all other rights. Separate charges may apply for each additional Network and/or for each additional End User/Service Location added on each Network, as may be further described in the Sales Order for your Subscription. All Products & Services may, in our discretion, be provided in one or more modules ("Services/Modules"). You will only have access to Services/Modules which you have ordered and for which you have made payment, as set forth in a Sales Order.

1.2. **Manner of use.** You may only use the Products and Services in accordance with the terms of this Agreement. You may not reverse engineer, decompile, disassemble or work around technical limitations in the Product, except where applicable law permits it despite this limitation. You may not disable, tamper with or otherwise attempt to circumvent any mechanism that tracks the use of the Services or Software by you, your Network or Networks and/or the End Users attached to such Networks. Unless specifically authorized in the Product use description set forth in the Sales Order, you may not rent, lease, lend, resell, transfer, or sublicense any Products to or for third parties.

1.3. **Restrictions on use.** You shall not, and shall not aid, abet, or permit any third party to:

- (a) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Products by any means whatsoever;
- (b) remove any identification, copyright, or other notices from the Products;
- (c) provide, lease, lend, use for unauthorized (as indicated in the Sales Order) timesharing or service bureau purposes;
- (d) create a derivative work of any part of the Products; or
- (e) develop methods to enable unauthorized parties to use the Products.

If European Union law is applicable, the restrictions in this Subsection are limited so that they prohibit such activity only to the maximum extent such activity may be prohibited without violating the EC Directive on the legal protection of computer programs.

1.4. **Additional Networks.** You may use the Products in connection with additional Networks only after paying all applicable fees associated with adding such additional Networks.

1.5. **End Users.** You control access by your Networks and by applicable End Users, and you are responsible for their use of the Products in accordance with this Agreement.

1.6. **Customer Data.** You are solely responsible for the content of your Customer Data and the Customer Data of each of your End Users. You will secure rights in all such Customer Data necessary for us to provide you the Services without violating the rights of any third party, or otherwise obligating COS to you or to any third party. COS does not and will not accept any obligations set forth in any separate license or other agreement that may apply to Customer Data or your use of the Products.

1.7. **Non-COS Products.**

- a. COS may make non-COS products available to you through the Service or other means. The use of a non-COS product will be governed by separate terms between you and the third party providing that non-COS product. For your convenience, COS may include charges for the non-COS product as part of your bill from COS. COS, however, assumes no responsibility or liability whatsoever for the non-COS product.
- b. You are solely responsible for any non-COS product that you install or use with the Services. COS is not a party to and are not bound by any terms governing your use of non-COS product.
- c. If you install or use any non-COS product with the Services, then you, not COS, direct and control the installation and use of it in the Services through your actions (for example, through your use of application programming interfaces and other technical means that are part of the Services). COS will not run or make any copies of such non-COS product outside of COS' relationship with you.
- d. If you install or use any non-COS product with the Services, you may not do so in any way that would subject COS' intellectual property or technology to obligations beyond those included in this Agreement.

1.8. **Responsibility for your accounts.** You are also responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Products. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials, or any security incident related to the Services.

1.9. **Updates.** COS may make changes to the Products from time to time. COS may, in its sole discretion, remove any material feature or functionality of the Software (excluding Previews), at any time, including, without limitation, for security, legal or system performance considerations, in which case COS will not be liable for any such changes.

1.10. **Preview releases.** COS may make available Previews. PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," AND ARE EXCLUDED FROM THE SLAS AND LIMITED WARRANTY. Previews may be subject to reduced or different security and privacy commitments, as further explained in the Privacy Policy and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

1.11. **Hosting.** You acknowledge, understand and agree that the Products, in COS discretion, may be provided to you from a third party hosted site and/or facility. You expressly consent to all information you provide hereunder being hosted at any such third party facility. COS makes no representations or warranties, and expressly disclaims the same, pertaining to the physical location of any third party hosted site and/or facility. To the extent any third party consent are necessary relative to the foregoing authorization, you represent and warrant you have obtained the same.

2. SECURITY, PRIVACY, AND DATA PROTECTION.

a. **Security.** COS maintains appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction.

b. **Privacy and data location.** COS treats Customer Data in accordance with our Privacy Policy. Subject to any restrictions set forth in the Privacy Policy, we may transfer to, store, and process Customer Data in any country where we or our Affiliates or subcontractors have facilities used for Services. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Services to you. You will obtain any necessary consent from End Users or others whose personal information or other data you will be hosting in Services.

c. **Customer Data.** Our use of Customer Data shall be governed by the terms of our Privacy Policy published at <http://www.cossystems.com/privacy-policy-us> or an alternate site designated by us.

e. **Third Party Requests.** We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless required by law. Should a third party contact us with a demand for Customer Data, we will ask the third party to contact you directly and may provide your basic contact information to the third party. If compelled to disclose Customer Data to a third party, we will use commercially reasonable efforts to notify you in advance of a disclosure unless legally prohibited. You are responsible for responding to requests by a third party regarding your use of Services, such as a request to take down content under the Digital Millennium Copyright Act.

f. **Subcontractors.** We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this Agreement.

g. **Compliance with law.** We will comply with all laws applicable to our provision of the Products, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your Customer Solution, Customer Data, and use of the Services, including any laws applicable to you or your industry.

3. OWNERSHIP AND INTELLECTUAL PROPERTY

3.1 **Exclusive Right of Ownership by COS.** To the maximum extent permitted by applicable law, you agree that all right, title and interest in and to all Products, all Intellectual Property in and associated with all Products shall be and remain with COS.

3.2 **Intellectual Property.**

COS shall be and remain the owner of

- (a) all Intellectual Property rights owned by COS on or before the commencement of this Agreement,
- (b) all Intellectual Property rights created as a result of the Software or Services provided by COS hereunder, or obtained or developed by or for you (or by or for any of your affiliates) (collectively, the "Developments"), and
- (c) all Intellectual Property rights that constitute Derivative Works of those items included in either clause (a) or (b) of this Section.

All Intellectual Property rights and other proprietary rights ("Rights") shall automatically vest in COS at the time that Developments are created. You hereby assign, waive, and agree not to assert, any moral rights of authorship with respect to Developments, and each and every part of them, for any and all now known or hereafter existing uses, media and/or forms, including, without limitation, any and all rights arising under Section 106A of the U.S. Copyright Act (entitled "Rights of Certain Authors to Attribution and Integrity").

3.3 **Disclosure, Cooperation.** You agree to fully disclose all Developments to COS promptly upon creation. You agree to take such action and execute, or cause your agents to execute, such further instruments as may be necessary to give effect to the ownership provisions of this Agreement. In particular, as reasonably requested by COS and at COS' expense, you shall execute and file with appropriate government agencies, all documents and other materials necessary to permit COS to perfect, protect, apply for, or enforce its Rights, including but not limited to its patent, copyright, industrial design, or trademark rights, or any other industrial or intellectual property rights in and to the Developments.

3.4 **Exclusions.** The parties acknowledge and agree that, except as otherwise provided herein, nothing in the Agreement shall be construed as conferring upon one party any right, title, interest in and to, or any license to use any Intellectual Property belonging to the other party as of the Effective Date of this Agreement.

3.5 **Survival.** The terms of this Article shall survive the expiration or termination of this Agreement.

4. PURCHASING SERVICES.

4.1. **Pricing and payment.** Pricing shall be as set forth in the Sales Order. COS reserves the right to charge, and you agree to pay, all amounts pertaining to your use of any third party API and third party hosting costs which may include, without limitation, CPU power consumption, rack space rental and other applicable charges. Terms of payment shall be net 30 days, United States currency, except as otherwise set forth in the Sales Order. If one or more Products are provided to you under one or more Sales Orders, failure to pay for one Product shall constitute a payment default on all Products ordered. For purposes of the foregoing sentence, a Module shall be considered a separate and distinct Product.

4.2. **Taxes.** Prices are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the provision of Product to your Affiliates. We shall be responsible for all taxes based upon our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

5. TERM, TERMINATION, AND SUSPENSION.

5.1 **Agreement Term and termination.** This Agreement will remain in effect unless terminated by either party. You understand and agree that a material condition of the provision of the Products by COS is your agreement to pay according to the Sales Order which includes standard maintenance and Support Services.

5.1. **Term and Termination.** You may terminate a Subscription at any time during its Term, however, you must pay all amounts due and owing before the termination is effective and no refunds will be provided. Termination of Support Services will automatically terminate your right to use the Products for which the Support Services were provided.

5.2. **Effect of termination or expiration on Software.** If this Agreement or your right to use any Services or Software is terminated or expires, then you must immediately stop using the Services or Software, and delete all copies of Software licensed under this Agreement and destroy any associated media. Any such termination shall continue to be subject to the no competing solutions restrictive covenants set forth in Section 11.17.

5.3. **Customer Data return and deletion.** You may extract and/or delete Customer Data at any time. When a Sales Order expires or terminates, we will retain any Customer Data you have not deleted for at least 90 days so that you may extract it, except for free trials, where we may delete Customer Data immediately without any retention period, subject to payment of COS' then-applicable fees and any prior fees which remain unpaid. You remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, we will delete all Customer Data, including any cached or back-up copies, within 30 days of the end of the retention period. You agree that we have no additional obligation to continue to hold, export or return Customer Data and that we have no liability whatsoever for deletion of Customer Data pursuant to these terms.

5.4. **Regulatory.** In any country where any current or future government regulation or requirement applies to us, but not generally to businesses operating there, presents a hardship to us operating the Services or supporting the Software without change, and/or causes us to believe this Agreement or the Services or Software may be in conflict with any such regulation or requirement, we may change the Services or Software or terminate the Agreement. If we use this subsection of the Agreement to change the Services, then you may terminate this Agreement within thirty (30) days of our change, after which you will be deemed to have accepted the applicable change.

5.5. **Suspension.** We may suspend your use of the Services if: (1) reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under this Agreement within a reasonable time; (3) you do not pay amounts due under this Agreement; or (4) you do not abide by any of the terms of this Agreement, or our policies, or violate other terms of this Agreement. A suspension will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 15 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 30 days after we suspend, we may terminate your Services and delete your Customer Data without any retention period.

5.6. **Data Aggregation and Analysis.** Notwithstanding anything to the contrary in this Agreement, COS shall be, and hereby is, authorized to collect, compile and use de-identified information collected in the performance of Services or compiled by the Software ("**Benchmarking Statistics**"), for the purpose of analyzing the data for such uses as COS may decide. "De-identified information" means data or information that neither identifies nor provides a reasonable basis to identify a company or an individual, where, without limitation, the following identifiers have been removed: company names and the names of individuals, addresses, account numbers, social security numbers, phone numbers, e-mail address(es) and any other information which could reasonably be anticipated to identify, when taken in the aggregate, a specific company, other organization or individual.

6. TERMS OF SERVICES.

6.1. **Limited warranty.** NO WARRANTIES - We warrant that the Services will meet the terms of the SLAs during the Term. Your only remedies for breach of this warranty are those in the SLAs.

6.2. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:

- a. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- b. this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this Agreement, or resulting from events beyond our reasonable control;
- c. this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- d. this limited warranty does not apply to Previews or free offerings.

6.3. **DISCLAIMER.** THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS," AND "WHERE IS" AND WE PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. YOU ACKNOWLEDGE THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND CUSTOMER DATA. ACCORDINGLY, COS CANNOT AND DOES NOT GUARANTY THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

7. COMPLIANCE WITH ACCEPTABLE USE POLICY AND OTHER POLICIES.

At all times during the Term, you will comply with our Acceptable Use Policy and other policies published at <http://www.cossystems.com/acceptable-use> or at an alternate site that we identify.

8. DEFENSE OF CLAIMS.

8.1. **Defense.** You will defend us against any claims made by an unaffiliated third party that (1) any Customer Solution or Customer Data you provide directly or indirectly in using the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret or (2) arise from violation of this Agreement or any of our policies.

8.2. **Limitations.** Our obligations in subsection 6(a) will not apply to a claim or award based on: (1) any customer technology or software not provided by COS, the Customer Data, any non-COS product, modifications you make to the Product, or materials you provide or make available as part of using the Product; (2) your combination of the Product with, or damages based upon the value of, a non-COS product, data or business process; (3) your use of a COS trademark, patent, or other intellectual property without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; or (4) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party.

9. LIMITATION OF LIABILITY.

9.1. **Limitation.** EXCEPT FOR YOUR VIOLATION OF OUR ACCEPTABLE USE POLICY, THE AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES IN THE AMOUNT OF ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00 USD). EXCEPT FOR VIOLATION OF OUR ACCEPTABLE USE POLICY, IN ADDITION TO THE FOREGOING, EACH PARTY AND THEIR RESPECTIVE AFFILIATES WILL NOT BE LIABLE OR RESPONSIBLE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER OR NOT ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) DAMAGES FOR LOST PROFITS OR LOST DATA; OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES, OR RIGHTS; OR FOR AMOUNTS IN EXCESS OF THOSE RECEIVED BY US FOR THE PARTICULAR PRODUCTS CAUSED THE LIABILITY. Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, each party's liability in such jurisdictions shall be limited to the extent permitted by law.

9.2. **EXCLUSION.** NEITHER PARTY WILL BE LIABLE FOR LOSS OF REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF THE PARTY KNEW THEY WERE POSSIBLE.

9.3. **Exceptions to Limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6; or (2) violation of the other's intellectual property rights.

10. SOFTWARE.

10.1. **Software provided for use on devices.** If the Software is provided to you with its own proprietary license terms, those terms control. If the Software does not have its own license terms, then you may install and use only the number of copies of Software set forth in the Sales Order. This Section does not apply to Software addressed in subsection 8(b). Documentation and other written materials, or software that are delivered under this agreement are subject to the same restrictions on use that are identified in this agreement for software.

10.2. **Software provided for use within Services.** We may provide you with the option of running Software within the Services (for example, in a virtual machine). Your use of the Software is subject to COS's proprietary license terms contained in the Software, as modified below:

- a. You may use such Software, including documentation and any software updates or enhancements only within the Services and only in conjunction with your permitted use of any applicable Services role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
- b. You have no other rights under the Software's license terms or under this Agreement to run the software (for example, you may not run copies on your on-premise servers or other devices unless you separately obtain the license to do so). You may not incorporate our software or documentation into any third party products or service without first obtaining permission for COS.

10.3. **Other rights.** Rights to access Software on any device do not give you any right to implement COS patents or other COS Intellectual Property in software or services that access that device.

10.4. **Third party software.** Products may contain third party proprietary programs that are licensed under separate terms that are presented to you. Products may also contain third party open source programs that COS, not the third party, licenses to you under COS' license terms. Notices, if any, for the third party open source programs are included for your information only, but we assume no obligation to notify you of any such programs.

11. MISCELLANEOUS.

11.1. **Notices.** Each party must send notices by mail to the address below.

Notices should be sent to:

COS Systems Inc.
42 Broadway, Suite 12-206
New York, NY, 10004
USA

Copies (which shall not constitute notice) should be sent to:

David J. Shaw
Kirtan McConkie PC
2600 West Executive Parkway, Suite 400
Lehi, Utah 84043, USA
dshaw@kmclaw.com

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent.

11.2 **Assignment.** You may not assign this Agreement either in whole or in part, without our prior written consent which shall not be unreasonably withheld.

11.3 **Severability.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

11.4 **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

11.5 **No agency.** We are independent contractors. This Agreement does not create an agency, partnership or joint venture.

11.6 **No third-party beneficiaries.** There is no third-party beneficiaries to this Agreement.

11.7 **Applicable law and venue.** This Agreement is governed by laws of the State of Delaware, without regard to its conflict of laws principles except that (1) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (2) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this Agreement must be brought in the courts of Rhode Island. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.

11.8 **Entire agreement.** This Agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.

11.9 **Survival.** The following provisions will survive this Agreement's termination or expiration: Sections 1, 2, 3, 5, 6, 7, 8, 10 and 11. This Agreement will remain in effect for the term set forth in your Sales Order.

11.10 **U.S. export jurisdiction.** The Product is subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end -user, end -use and destination restrictions issued by U.S. and other governments.

11.11. **International availability.** Availability of the Services, including specific features and language versions, varies by country. Information on availability is located at <http://www.cossystems.com> or at an alternate site we identify.

11.12. **Acquired rights.** You will defend us against any claim that arises from (1) any aspect of the current or former employment relationship between you and any of your current or former personnel or contractors or under any collective agreements, including, without limitation, claims for

wrongful termination, breach of express or implied employment contracts, or payment of benefits or wages, unfair dismissal costs, or redundancy costs, or (2) any obligations or liabilities whatsoever arising under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations, (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) including a claim from your current or former personnel or contractors (including a claim in connection with the termination of their employment by us following any transfer of their employment to us pursuant to such laws or regulations). You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims. We will notify you promptly in writing of a claim subject to this section. We must (1) give you sole control over the defense or settlement of such claim; and (2) provide reasonable assistance in defending the claim. You will reimburse us for reasonable out of pocket expenses that we incur in providing assistance.

11.13. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services). The Services rely upon your ability to access the Internet, third party software or services, and other technical means, all of which COS does not provide. COS shall not be liable for any failures of your Internet connection, third party software or services, utility outages, equipment failures, incompatibility of equipment, or any other technical issue not directly associated with the programming of the affected COS Product. This section will not, however, apply to your payment obligations under this Agreement.

11.14. **Modifications.** We may modify this Agreement at any time by posting a revised version at <http://www.cossystems.com/master-us> or an alternate site we identify, or by notifying you in accordance with subsection 10a. Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Services you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Sales Order or a new Sales Order for any Products.

11.15. **Precedence.** In the event of a conflict between this Agreement and any of the documents referenced herein, precedence shall be given in the following order: (1) Sales Order; (2) this Agreement; (3) SLAs (4) EULAs; (5) Services Terms; and (6) Privacy Policy.

11.16. **Audit Rights.** At any time, COS may audit your use of the Products to verify your compliance with the license provisions of this Agreement. COS may exercise this right when COS has a reasonable basis to believe you are not in compliance. Such audits, if any, shall be performed during normal business hours, by COS' employees or an independent public accountant or equivalent party ("CPA Firm"), and in a manner so as not to unreasonably interfere with your operations. You will comply with COS' audit request as reasonably as possible. COS shall pay the costs of conducting such audit unless the audit discloses that your underpayment of license fees exceeds five percent (5%) of the license fees paid. If underpayment exceeds 5% of the license fees paid, you will pay the reasonable costs incurred by the audit. You must also pay COS for any unauthorized copies or instances of the Product being used by you at then-existing market rates. You shall keep complete and accurate books and

records relating to the fulfillment of your compliance with the terms and conditions of this Agreement. You shall maintain such books and records for six (6) years after the expiration or termination of this Agreement. COS shall have the right to audit your books and records to determine whether or not you are in compliance with your obligations.

11.17. **No Competing Solutions.** Throughout the Term of this Agreement, and for a period of twelve (12) months following the termination, you will neither develop nor sell competing Software or Services, as determined by COS in its sole discretion, in the event of a termination of this Agreement by you as a consequence of our own breach of the Agreement.

12. DEFINITIONS.

Any reference in this Agreement to "day" will be a calendar day.

"Affiliate" means any legal entity that a party owns or that owns a party, with a 50% or greater interest.

"COS API" shall have the meaning set forth in the COS API Policy and Terms of Use.

"COS Documentation" means any documentation provided in connection with any Product, whether in print, electronic form, embedded within the Product or in any other form.

"Customer Data" means all data, including all text, sound, software, or image files, that are provided to us by, or on behalf of, you through your use of the Services or Software, or through any of your End Users' use of the Services or Software. In order to facilitate COS' ability to provide the Products to you, you hereby grant COS a worldwide, irrevocable, royalty-free license to use your branding, and that of your Customers. You represent and warrant you have all necessary ownership and/or licensing of all Customer Data, and that no other person or entity shall have any legal claim thereto. In the event the foregoing is inaccurate, you will indemnify, defend and hold harmless COS, its employees, officers, directors, shareholders, parents, subsidiaries, affiliates, contractors, attorneys and insurers from any against all claims related thereto.

"EULA" or **"EULAS"** means the end user license agreements published at

<https://www.cossystems.com/cos-eula-us> or at an alternate site that we identify.

"Intellectual Property" means (1) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice), including but not limited to any reissues, continuations, continuations-in-part, divisions, revisions, extensions or re-examinations thereof; (2) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans, tag lines, and advertising materials (and all translations, adaptations, derivations and combinations of the foregoing) and Internet domain names, together with all goodwill associated with each of the foregoing; (3) copyrights and copyrightable works; (4) registrations, applications and renewals for any of the foregoing; (5) trade secrets, confidential information and know-how (including without limitation ideas, formulas, compositions, manufacturing and production processes and techniques; research and development information, drawings,

specifications, designs, plans, proposals, technical data, financial and accounting data, business and marketing plans, and customer and supplier lists and related information); (6) Confidential Information; and (7) all other intellectual property rights, including, without limitation, moral rights and any other rights legally recognized anywhere in the World.

"Network" means a uniquely-identifiable communications system, typically delineated by separate ownership structures, branding, demarcation points, or other means, as determined by COS in its sole discretion. Each Network requires additional licensing of Services and/or Software under this Agreement.

"Network Subscriber" means an individual or entity with the capability of connecting to a Network which uses one or more COS Products.

"Non-COS Product" is any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Product or elsewhere.

"Previews" means preview, beta, or other pre-release versions of the Services or Software offered by COS to obtain customer feedback.

"Privacy Policy" means the COS Privacy Policy, published at <http://www.cossystems.com/privacy-policy-us> or at an alternate site that we identify.

"Product" means any Services and/or Software.

"Service Location" means a physical location in a building, a planned location, street address, unit or apartment number that is documented in the software where service may be offered using COS Service Zones by the network owner or operator.

"Service Area" means a geographical area in COS Service Zones that is represented by one or more polygons that identify the bounds of a geographic area where a network owner or operator will offer fiber/wireless services to service locations that meet a business case or service mandate within the Service Area. Service locations within a service area represent possible service points on the network, subject to the network owner creating a successful plan to offer services to one or more zones within the service area. Service Areas are created in COS Service Zones by COS authorized persons at the start of your COS Service Zones Service/Subscription starts.

"Service Zone" means a geographical area in a Service Area, the Service Zones can be created by you

"Service Provider" means a third party provider of voice, video, data, or other services across a Network.

"Service Provider Subscriber" means a customer of a Service Provider.

"Maintenance and Support" means your subscription to our separate maintenance and support services for any Service or Software. Standard Support Services are detailed in the Sales Order. Additional Maintenance or Extended Support & Consulting Services shall be governed by a separate statement of work (SOW) which is included with the Sales Order for that type of Service.



"Services" means one or more of the COS services or features made available to you under this Agreement by COS and identified on your Sales Order.

"Services Terms" provide additional terms that govern specific features within any Product and customer support for the Product and are identified on your Sales Order. You may also need to use other COS websites and online services to access and use the Services, and if so, the terms of use associated with those websites or online services apply to your use of them.

"SLAs" means the commitments we make regarding delivery or performance of the Services, as published in the service level agreements available at <http://www.cossystems.com/sla-us> or at an alternate site that we identify.

"Software" means COS software we provide to you for installation on your own computers or networks, all as set forth in a Sales Order.

"Term" means the duration of your right to use a Product or Products as set forth in your Sales Order.

"we" and **"us"** means COS Systems, Inc., and its affiliates, as appropriate.

"you" and **"your"** means the entity signing this Agreement to use the Products.