



Master Subscription Agreement
Last Updated – December 5th, 2022

THIS MASTER SUBSCRIPTION AGREEMENT, AND ANY APPLICABLE APPENDICES (COLLECTIVELY, “AGREEMENT”), GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES (DEFINED BELOW). IF YOU REGISTER FOR A FREE TRIAL OF OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. TERMS AND CONDITIONS IN ANY APPENDICES RELATING TO DISCRETE PORTIONS OF SERVICES SHALL APPLY ONLY TO THE EXTENT YOU RECEIVE SUCH SERVICE.

We expressly reserve the right to amend the terms of this Agreement from time to time, with or without notice. You should periodically check for updates to this Agreement (available at www.bernieportal.com/msa) from time to time and to familiarize yourself with any updates. Because You have the right to terminate this Agreement on thirty (30) days notice, Your continued use of the Services for more than thirty (30) days after such Agreement has been updated will constitute acceptance of the terms of the updated Agreement. If You are new to the Services, this Agreement is effective between You and Us as of the date You accept this Agreement.

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1. DEFINITIONS

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Knowledge Base**” means the online user guide for the Services, accessible via login at <https://help.bernieportal.com/>, as updated from time to time. You acknowledge that You have had the opportunity to review the Knowledge Base.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs.

“**Non-BerniePortal Applications**” means online and offline applications and software products or services that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services.

“**Order Form**” means the documents for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

“**Purchased Services**” means services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

“**Services**” means the products and services that are ordered by You under a free trial or an Order Form and made available by Us online via the customer login link at <https://www.bernieportal.com> or via other communications provided through the Services. Services also includes all manuals and related documentation, tutorials, and training materials.

“**Third-Party Service Provider**” means a company or other legal entity or individual with which We have signed an agreement that authorizes them to support or provide Services for You and Your Users.

“**Users**” means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

“**We,**” “**Us,**” or “**Our**” means BH Web Services, LLC, having an address of 2817 West End Ave, Ste 126-281, Nashville, TN, 37203.

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

“Your Data” means all electronic data or information submitted by You or your Users to the Services.

2. FREE TRIAL

If You register on our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered or are registering to use the applicable Service or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Some Services are not available for a free trial period.

ANY DATA YOU OR YOUR USERS ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADE SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL; THEREFORE, IF YOU PURCHASE SERVICES THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST.

NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

Please review the Knowledge Base so that You become familiar with the features and functions of the Services before You make Your purchase.

3. PURCHASED SERVICES

3.1. Provision of Purchased Services. We may have a separate agreement between Us and a Third-Party Service Provider that authorizes them to assist Us in providing the Services pursuant to this Agreement that You will have directly with Us upon your acceptance hereof. We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms until terminated. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by Us regarding future functionality or features.

3.2. User Subscriptions. Unless otherwise specified in the applicable Order Form, (i) Services are purchased on a month-to-month basis as User subscriptions, and (ii) additional User subscriptions may be added during any particular month at the same pricing as that for the pre-existing subscriptions thereunder, and paid for at the beginning of the following month as described in Section 6. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

4. USE OF THE SERVICES

4.1. Our Responsibilities. We shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during night or weekend hours), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other

than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

4.2. Our Protection of Your Data. We shall maintain reasonable administrative, physical, and technical safeguards to help protect the security, confidentiality and integrity of Your Data.

4.3. Your responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality, and legality of Your Data and of the means by which You acquired or share Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the Knowledge Base and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

4.4. Usage Limitations. Services may be subject to other limitations, such as, for example, limits on disk storage space and on the number of calls You are permitted to make against Our application programming interface. Any such limitations are specified in the Knowledge Base. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

4.5 Use of Data. We may disclose anonymous data about Your and Your Users' use of the Services ("Usage Statistics") to our service providers for the purpose of helping us improve Users' experience with the Services, or as required by law. Any such disclosures of Usage Statistics to our services providers will not include Your identity or Your User's identity. The Services also allow You to share certain data with third parties, for example, Third-Party Service Providers, Users, insurance companies, payroll processors, and the like. While the Services allow You and Your Users to elect to disclose and share certain data with third parties, You are solely responsible for the data that You or Your Users share with third parties, and for compliance with all applicable laws and regulations. We may also use Data entered into or provided as part of the Services in a manner pursuant to our Privacy Policy (available at <https://www.bernieportal.com/privacy-policy/>), and You consent to such use.

5. NON-BERNIEPORTAL APPLICATIONS

5.1. Acquisition of Non-BerniePortal Applications. We or third parties may from time to time make available to You third-party products or services, including but not limited to Non-BerniePortal Applications. Any acquisition by You of such non-BerniePortal Applications, and any exchange of data between You and any non-BerniePortal Application provider, is solely between You and the applicable non-BerniePortal Application provider. We do not warrant or support non-BerniePortal Applications, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. Subject to Section 5.3 (Integration with Non-BerniePortal Applications), no purchase of non-BerniePortal Applications is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

5.2. Non-BerniePortal Applications and Your Data. If You install or enable Non-BerniePortal Applications in conjunction with the Services, You acknowledge that We may allow providers of those Non-BerniePortal Applications to access Your Data as required for the interoperation of such Non-BerniePortal Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-BerniePortal Application. The Services allow You to restrict such access by restricting Users from installing or enabling such Non-BerniePortal Applications for use of the Services.

5.3. Integration with Non-BerniePortal Applications. The Services may contain features designed to interoperate with Non-BerniePortal Applications. To use such features, You may be required to obtain access to such non-BerniePortal Applications from their providers. If the provider of any such Non-BerniePortal Application ceases to make the Non-BerniePortal Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You shall pay all fees specified in all Order Forms hereunder.

6.2. Invoicing and Payment. We will issue monthly invoices to You for the fees specified in the Order Form and You shall pay all invoiced amounts due to Us on receipt of the invoice. All fees are quoted and payable in United States dollars, and You shall make all payments by automated clearinghouse (ACH) pursuant to guidelines provided by Us. ACH payments shall be automatically swept from Your account on or around the first business day of each month, for the Services provided the prior month, without requiring further action by You. Payment shall be deemed received when We receive funds. Fees paid are non-refundable. You shall pay all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of this Section 6.2 (Invoicing and Payment).

6.3. Overdue Charges. If any charges are not automatically received from You per Section 6.2 (Invoicing and Payment) above, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future Services on pre-payment terms.

6.4. Suspension of Service and Acceleration. If any amount owed by You under this or any other agreement for Our Services is ten (10) or more days overdue, We may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.

6.5. Payment Disputes. We shall not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

6.6. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

7. PROPRIETARY RIGHTS

7.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. Restrictions. You shall not and shall not permit Your Users or any third party to: (i) modify, adapt, copy or create derivative works based on the Services, or attempt to merge the Services into any other

program, software, or application; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code any software used to provide the Services (or any component thereof); (iii) obscure, remove, or alter any of the trademarks, trade names, logos, patent or copyright notices, or other confidential or proprietary notices in the Services; (iv) access the Services in order to (a) build a competitive product or services, or (b) copy any ideas, features, functions or graphics of the Services; (v) access the Services if You are Our direct competitor, except with Our prior written consent; or (vi) access the Services for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

7.3. Your Data. The Services allow You and Your Users to enter Your Data. You authorize Us and Third-Party Service Providers to receive, store, and use Your Data to provide the Services. Subject to the limited rights granted by You hereunder, We acquire no right or title from You in or to Your Data, including any intellectual property rights therein.

7.4. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

7.5. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software right related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFARS 252.227-7015 (Technical Data - Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

8. CONFIDENTIALITY

8.1. Definition of Confidential Information. As used herein, “**Confidential Information**” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without the use of, or reference to, the Disclosing Party’s Confidential Information.

8.2. Protection of Confidential Information. The Receiving Party shall (i) use the same degree of care to protect the confidentiality of the Disclosing Party’s Confidential Information that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care), (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentially agreements with the Receiving Party containing protections no less stringent than those

herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than Third-Party Service Providers (as necessary), the party's Affiliates, and their legal counsel and accountants without the other party's prior written consent.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

9. WARRANTIES AND DISCLAIMERS

9.1. Our Warranties. We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with the Knowledge Base, and (iii) subject to Section 5.3 (Integration with Non-BerniePortal Services), the functionality of the Services will not be materially decreased during a subscription term. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) below.

9.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

9.3. Disclaimer. EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE SERVICES AND ANY OTHER MATERIALS, SERVICES, SOFTWARE AND/OR INFORMATION PROVIDED BY US ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND NEITHER WE NOR OUR LICENSORS MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE AND OUR LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE AND OUR LICENSORS DO NOT WARRANT THAT THE SERVICES OR ANY OTHER INFORMATION, MATERIALS, SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET YOUR OR YOUR USERS' REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.

9.4. Non-GA Services. From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers ("**Non-GA Services**"). You may accept or decline any such trial in Your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non- GA Services at any time in Our sole discretion and may never make them generally available.

10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property right of a third party (a "**Claim Against You**"), and shall indemnify You for any damages, attorney fees and cost finally awarded against You as a result of, and for amounts paid by You in settlement of a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You if such settlement adversely affects You without Your prior consent, not to be unreasonably withheld, and if the settlement does not unconditionally release You of all liability); and (c) provide to Us all reasonable assistance, at Our

expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate such Services upon 30 days’ written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

10.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party (i) related to the collection, use, or distribution of Your Data that is entered, authorized or directed by You, Your Users, or any third party with which you transact business, including any claim that such collection, use, or distribution violates applicable law or violates the privacy of You, Your Users, or such third party; and (ii) alleging that Your use (or Your User’s use) of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of such third party or violates applicable law (either of which referred to as a “**Claim Against Us**”), and shall indemnify Us for any damages, attorney fees and cost finally awarded against Us as a result of, or for any amounts paid by Us in settlement of a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that you may not settle any Claim Against Us if such settlement adversely affects Us without Our prior consent, not to be unreasonably withheld, and if the settlement does not unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 (Mutual Indemnification) 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.

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. IN NO EVENT SHALL OUR OR OUR LICENSORS’ AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO LIABILITY.

THIS AGREEMENT IS SUBJECT TO A ONE-YEAR LIMITATIONS PERIOD FOR THE ASSERTION OF CLAIMS. THE PARTIES AGREE THAT ANY CLAIMS FOR VIOLATIONS OF THIS AGREEMENT OR CLAIMS RELATED IN ANY WAY TO PERFORMANCE OF THIS AGREEMENT (INCLUDING CLAIMS SOUNDING IN TORT AS WELL AS CONTRACT) MUST BE ASSERTED WITHIN ONE YEAR OF THE INITIAL ACT, EVENT OR OMISSION THAT FORMS THE BASIS OF THE CLAIM. THE PARTIES AGREE THAT ANY CLAIMS ASSERTED AFTER ONE YEAR FROM THE INITIAL ACT, EVENT OR OMISSION THAT FORMS THE BASIS OF THE CLAIM SHALL BE DISMISSED BY THE TRIBUNAL HEARING THE CLAIMS AND ALL COSTS, INCLUDING REASONABLE ATTORNEY’S FEES, ASSOCIATED WITH DEFENDING SUCH CLAIMS ARE RECOVERABLE BY THE PARTY AGAINST WHICH THE CLAIMS WERE ASSERTED.

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL WE OR OUR LICENSORS HAVE ANY LIABILITY TO YOU FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. TERM AND TERMINATION

12.1. Term of Agreement. This Agreement commences on the date You accept it and continues for a term as described on the Order Form until terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

12.2. Termination for Convenience. Subject to Appendix A (if applicable), You may terminate this Agreement for any reason on thirty (30) days written notice to Us. We may terminate this Agreement for any reason on one hundred twenty (120) days written notice to You.

12.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Payment upon Termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5. Your Data After Termination. We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

12.6. Surviving Provisions. Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 9.4 (Non-GA Services), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Payment upon Termination), 12.5 (Your Data After Termination), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

13. NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. You are contracting with BH Web Services, LLC under this Agreement, and Your full entity name, address, and contact information is set forth on the Order Form.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the first business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

13.3. Governing Law and Jurisdiction. This Agreement shall be governed exclusively by the internal laws of the State of Tennessee, without regard to its conflicts-of-laws rules. Each party hereby irrevocably submits to the sole and exclusive jurisdiction of the state and federal courts located in Davidson County, Nashville, Tennessee for purposes of any action, suit or proceeding arising out of this Agreement.

13.4. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

14. GENERAL PROVISIONS

14.1. Independent Contractors. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party is authorized or empowered to, and covenants that it will not create any contract or obligation, either express or implied, on behalf of the other party.

14.2 No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each party and nothing in this Agreement, express or implied, is intended to confer upon any third party any rights or remedies of any nature whatsoever under or by reason of this Agreement, except as otherwise expressly provided herein.

14.3 No Waiver. Unless otherwise provided for herein, no failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

14.4 Validity and Construction. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

14.5 Assignment. You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent (not to be unreasonably withheld). Notwithstanding the foregoing, You may assign this Agreement in its entirety, without Our consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Your assets not involving a direct competitor of Ours. Any attempt by You to assign Your rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

14.6 Integration. This Agreement, including all addenda and exhibits hereto, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event there are conflicting terms in the body of this Agreement and any addenda, the terms in the body of this Agreement shall control.

14.7 Force Majeure. If the performance of any obligation under this Agreement is prevented or interfered with by a Force Majeure Event (*i.e.*, any act or condition whatsoever beyond the reasonable control of, and not occasioned by the fault or negligence of, the affected party), the party so affected shall be excused from such performance to the extent of such prevention or interference; provided, however, that the non-performing party shall provide notice of such cause preventing or delaying performance and resume its performance as soon as practicable and provided further that the other Party may terminate this Agreement upon notice if such non-performance continues for a period of thirty (30) days.

14.8 Equitable Remedies. The parties agree that there are inadequate remedies at law to compensate for certain actual or threatened breaches of this Agreement, including the disclosure of Confidential Information to unauthorized entities under Section 8 and violations of the restrictions and covenants in Section 7.2. Therefore, any such actual or threatened breaches may be enjoined and specific performance of a party's obligations may be compelled without proof of actual damages, notwithstanding any other relief that may be available under the circumstances. Any requirement to post a bond associated with seeking equitable relief is waived. The prevailing party in any action under this Section is entitled to recovery of the costs, including reasonable attorney's fees, associated with such action.

APPENDIX A PAYMENT SERVICES

If We agree to provide Payment Services to You, the additional terms and conditions of this Appendix A shall also apply. We may use Third-Party Service Providers to help provide some aspects of the Payment Services portion of the Services. For the purposes of this Appendix A, references to Us, We, or Our may include such Third-Party Services Providers, and references to “Services” in this Appendix A refers to the Payment Services.

In the event of a conflict as among this Master Subscription Agreement, the General Terms and Conditions of this Appendix A, Article I, and any Supplemental Terms and Conditions in this Appendix A, Article II, (a) the provisions of the Master Subscription Agreement shall prevail over any provision of the General Terms and Conditions and any Supplemental Terms and Conditions, and (b) the provisions of any Supplemental Terms and Conditions shall prevail over any provision of the General Terms and Conditions.

ARTICLE I – GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Definitions. Capitalized words used in this Appendix A, and not otherwise defined herein or in the Master Subscription Agreement, shall have the meanings set forth below.

“**Business Day**” means any day other than a Saturday, a Sunday, or a day on which national banks are not open for business or are authorized by law to close.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Dedicated Deposit Account**” means the deposit account designated by You and established with a bank within the United States into which You shall deposit amounts sufficient to satisfy Your funding obligations under the Agreement and Your contractual obligations with Us, and from which We shall be entitled to debit or impound funds for purposes of satisfying Our obligations under the Agreement. For the avoidance of doubt, We shall separately invoice You for Our fees payable by You to Us for the services provided hereunder.

“**Effective Date**” in this Appendix A shall mean the date when We began providing the Services under this Appendix A.

“**EFTs**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**Entries**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**IAT**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**General Terms and Conditions**” shall mean this Appendix A, Article I, as such may be restated, amended, supplemented, or modified from time to time.

“**NACHA**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**National List**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**NSF Event**” shall have the meaning ascribed to it in Appendix A, Article I, Section 3.4.

“**ODFI**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**OFAC**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**Online Use Terms**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.1.

“**Originator**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**Party**” means either You or Us, as the context requires, and “**Parties**” means You and Us, collectively.

“**Payment Services**” means any Services that require Us, as part of such Services, to impound funds from Your bank account to pay Your third-party payment obligations (e.g., Tax Filing Services, wage garnishment processing services, pay cards, direct deposit services and/or Our Positive Paycheck Services).

“**Payroll Processing Services**” means those certain services identified herein (if applicable) related to the processing of payroll for Your employees and payees, delivery of payroll to You, and the processing of direct deposits to those employees electing such service.

“**Person**” means an individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

“**Positive Paychecks**” shall have the meaning ascribed to it in Section 8 of Appendix A, Article II.

“**Prime Time Hours**” means each Business Day during the period commencing at 8:00 a.m. (prevailing Central time) and ending at 5:00 p.m. (prevailing Central time).

“**Rules**” shall have the meaning ascribed to it in Appendix A, Article I, Section 2.6.

“**Setup Fee**” means the fees payable by You to Us in compensation for the preparation and execution of onboarding You into Our systems, as reflected on the applicable Order Form, for the services provided under this Appendix A.

“**Supplemental Terms and Conditions**” shall be the terms and conditions set forth in this Appendix A, Article II.

“**Tax Filing Services**” means all those certain tax filing services identified in Appendix A, Article II, Section 1.

2. THE SERVICES

2.1 Use of Our Services. You agree to the following regarding Your use of the Services provided under this Appendix A: (a) You shall use the Services in accordance with the instructions and reasonable policies established or provided by Us and communicated in writing to You from time to time, and only for Your internal business purposes; (b) to the extent You elect to (i) discontinue any Service, (ii) rely on Your own provisioning of the Service, or (iii) delegate the performance of any Service to a third party, We will not be responsible or liable for providing such Service or any damages or liabilities resulting

therefrom; (c) without the prior written consent of Us, You shall not permit any Person (including any Affiliate of Yours) other than You to use, either directly or indirectly, the Services, or any portion thereof, as contemplated by the Agreement; (d) You shall not provide service bureau or other data processing services that make use of the Services, or any part thereof, without Our prior written consent; (e) You shall be responsible for ensuring that You and each of Your employees who access the Services shall comply with all the terms and conditions of this Appendix A, and any other reasonable policies adopted by Us and communicated in writing to You from time to time governing the use of the Services (collectively, “**Online Use Terms**”); (f) as between You and Us, You will remain solely responsible for all decisions affecting Your employees; (g) You acknowledge that You shall be solely responsible for the manner in which You use the Services, including the manner in which You interpret and act upon any guidance or recommendation provided by Us; (h) You acknowledge, as between Us and You, You shall be solely responsible for any liability arising out of or related to any acts or omissions committed by Us at Your direction; and (i) You acknowledge that We may suspend access to or the use of the Services by any of Your employees or plan participants in the event that We have reason to believe that such employee or plan participant has violated the terms of this Appendix A (including the Online Use Terms) or is otherwise using any Service in an inappropriate manner, upon prior notice to the extent possible.

2.2 Prohibited Actions. You agree not to engage in any of the following prohibited actions without prior written approval from Us: (a) copying, distributing, or disclosing any part of the Services in any medium, including without limitation by any automated or non-automated “scraping;” (b) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc. to access the Services in a manner that sends more request messages to servers providing the Service than a human can reasonably produce in the same period of time by using a conventional on-line web browser; (c) transmitting spam, chain letters, or other unsolicited email; (d) attempting to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from the servers running the Services; (e) taking any action that may impose an unreasonable or disproportionately large load on infrastructure providing the Services, as determined by Us; (f) uploading invalid data, viruses, worms, or other software agents through the Service; (g) collecting or harvesting any personally identifiable information, including account names, from the Services, except for use with the Services as designed; (h) using the Services for any commercial solicitation purposes; (i) impersonating another Person or otherwise misrepresenting Your affiliation with a Person, conducting fraud, hiding or attempting to hide Your identity; (j) using the Services in order to obtain information about Us, the Services, or Our customers for the purpose of competing with Us or otherwise replicating some or all of the Services for any reason; (k) interfering with the proper working of the Services; (l) accessing any content of Services through any technology or means other than those provided or authorized by Us; or (m) bypassing the measures We may use from time to time to prevent or restrict access to the Services, including features that prevent or restrict use or copying of any content or that enforce limitations on use of the Services or the content thereof.

2.3 Modification of Services. Any Service may be modified from time to time at Our sole discretion; provided, however, that any such modification shall not have a material adverse effect on Our provision of the Services or Your use and enjoyment of the Services.

2.4 Additional Documentation. You shall execute and deliver any other agreements, addenda, annexes, or other applicable documentation that We deem reasonably necessary in order for Us to provide the Services requested by You from time to time, including power of attorney forms for tax filing purposes, and additional Order Forms. Subject to post-termination obligations in Section 6, any such agreements, addenda, annexes, or other documentation shall immediately expire or otherwise terminate upon the termination of the Services provided under this Appendix A for any reason. If You request Services not provided for in the Agreement, and We agree to provide such Services, (a) the applicable Services will be included in an Order Form to be signed and attached to the face of, and made part of, the Agreement; and (b) any such Services provided to You shall be subject to the terms and conditions of the Agreement, and this Appendix A (if applicable).

2.5 Accuracy of Your Information; Review of Data. Our provision of the Services is reliant upon the accuracy and completeness of the information provided to Us by You (including proof of federal, state and local tax identification). We shall be entitled to rely upon the accuracy and completeness of the information provided by You (without any duty to independently investigate such accuracy and completeness) in Our implementation and provision of the Services, whether received directly from You or through a prior or current third-party service provider of Yours. We shall not be responsible for errors that result from Our reliance on Your information and reporting. You understand that Our Services are highly configurable and often dependent on Your Data that is not available to Us, thus You are responsible for reviewing data processed by Us to ensure it is correct according to Your specifications. You are required to adequately identify the identity of each of Your employees to whom payments will be made using the Services through appropriate documentation provided by such employee (e.g., I-9 documentation) and shall maintain such documentation during the term of such employee's employment and, if required by applicable law, rule or regulation, You shall furnish copies of such documentation to Us with appropriate confidentiality restrictions. You are required to promptly review all paychecks, withholding, benefits, and retirement plans relevant to disbursement records, reports and related documentation prepared by Us for validity, accuracy and completeness according to Your records, and You shall promptly notify Us of any errors or discrepancies (but in any case, before distributing any paychecks or relying on any such disbursement records or reports).

2.6 Compliance with Laws. Our Services are intended to assist You in complying with applicable laws and governmental regulations. Nevertheless, You, and not Us, will be solely responsible for (a) compliance with all laws and governmental regulations affecting Your business and (b) any use You may make of Our Services (including any reports and worksheets produced in connection therewith) to assist You in complying with such laws and governmental regulations. All Services utilizing electronic funds transfers ("*EFTs*") shall be provided to You in accordance with the operating rules of the National Automated Clearing House Association ("*NACHA*") and the Office of Foreign Asset Control ("*OFAC*"). You agree that You shall not provide funding sourced from a non-U.S. bank account, nor shall Your funding cause any employee direct deposit of wages to be subject to NACHA's International ACH Transactions rules ("*IAT*"). You agree that if Your funding method results in any employee direct deposit of wages being subject to IAT, then You must change the payment method to live check prior to running the payroll. You accept and acknowledge that We have no way to identify which fundings or disbursements would cause it to become subject to IAT; therefore, You shall be responsible to promptly inform Us if any disbursements become subject to IAT. You represent and warrant that You have not been suspended and do not appear on a National Association list of suspended originators ("*National List*"), and that You will immediately notify Us if You become suspended or subsequently appear on a National List. You acknowledge that, notwithstanding anything to the contrary set forth herein or in any other writing between Us and You, You (and not Us) shall be considered the originator in connection with any EFTs made by Us for or on behalf of You ("*Originator*") (including, without limitation, any direct deposit payments) under all applicable NACHA and OFAC rules. You acknowledge that, as the Originator, (i) You authorize Us and the Originating Depository Financial Institution ("*ODFI*") to originate ACH debits and credits ("*Entries*") to Your accounts, Your employees' accounts, and third party accounts authorized by You on Your behalf; (ii) You agree to be bound by the NACHA Rules ("*Rules*"); (iii) You agree to not originate Entries that violate the laws of the United States; (iv) You agree that if You breach the Rules, the ODFI and We have the right to terminate or suspend Your ability to originate entries in a manner that permits the ODFI and Us to comply with the Rules; (v) You grant the ODFI and Us the right to audit Your compliance with the Rules if requested by the applicable ODFI; and (vi) You (and not Us) shall be solely liable to the bank with respect to any representations or other obligations or liabilities whatsoever relating to any such EFTs. You acknowledge that You will not rely solely on Your use of the Services in complying with any laws or governmental regulations (including, but not limited to, any applicable Office of Foreign Assets Control ("*OFAC*") screening requirement). Each party will be responsible for complying

with all requirements of applicable law or regulation regarding security breaches and suspected security breaches involving personal information that is stored on the computer systems of such party, entity, or its subcontractors.

2.7 Your Acknowledgments. You acknowledge and agree that We are not rendering legal, tax, accounting, or investment advice in connection with the Services and are not acting as an investment advisor, broker-dealer, insurance agent or intermediary, or a financial or benefit planner, nor will We be deemed a fiduciary of You or an employer or joint employer of Your employees. You acknowledge and agree that: (a) any agreement between You and Us may be considered an application for credit; (b) You authorize Us to investigate Your credit including vendor references, bank account status and history; and (c) We may elect not to provide certain Services requested by You based upon factors determined to be relevant by Us in Our sole discretion, including, Our review of Your credit history. You acknowledge that security of transmissions over the internet cannot be guaranteed, and that We are not responsible for (i) Your access to the internet, (ii) interception or interruptions of communications through the internet or, (iii) changes or losses of data through the internet; provided, however, the foregoing should not be construed to negate Our obligations of data security and privacy hereunder. You acknowledge and agree that a particular Service may be provided or performed by an Affiliate of Ours, a Third-Party Service Provider, or an Affiliate of a Third-Party Service Provider, in lieu of Us.

3. FEES, TAXES, AND PAYMENTS

3.1 Fees. You shall pay Us for the Services identified in the Agreement at the rates set forth in the applicable Order Form. You acknowledge and agree that certain of the prices shown on the Order Form may be volume and/or transaction based, in which instance the total fees reflected on such Order Form are estimations only, based on Your-specified volumes, and total fees charged may change commensurate with the number of Your employees being serviced and/or transactions being performed. Any “pass through” charges and third-party fees, such as delivery charges or bank fees, may be changed by Us at any time and without notice, provided that such charges and fees shall not be marked up by Us if no compensating measures or additional development work had to be performed by Us to facilitate the additional or new pass through charges or fees. You shall pay Us for any additional Services requested by You after the Effective Date at Our then prevailing prices for such Services.

3.2 Billing and Funding Obligations. Your funding obligations with respect to the Services provided under this Appendix A (including any and all fees under this Section 3) shall be funded using Your Dedicated Deposit Account. You are required to maintain sufficient available funds in any specified Dedicated Deposit Account used for funding payroll at least two (2) Business Days prior to each payroll check date to cover all of Your payment obligations. We will debit Your specified Dedicated Deposit Account in order to make the payments for Services. You acknowledge that, in lieu of Us initiating a debit against Your specified Dedicated Deposit Account, We reserve the right, based on Your specified Dedicated Deposit Account funding history, Your poor payment history, and other factors, to require You to fund any future payment obligations via direct wire transfer, reverse wire transfer or similar method prior to disbursing any funds to any third party. You agree to pay any applicable wire fees incurred for each such transfer. All rights granted to Us under this Section 3.3 shall be in addition to, and not in lieu of, any and all rights and remedies to which We may be entitled under applicable law. To secure payment of fees and other charges due, You hereby grant to Us the right to an offset of, and a security interest under the Uniform Commercial Code in and to, any of Your funds of which We may, from time to time, have custody or control. You hereby designate Us the authority to offset any amounts due to Us from Your funds that We may, from time to time, have custody or control.

3.3 Insufficient or Non-Confirmed Funds. In the event sufficient funds are not available in Your specified Dedicated Deposit Account to cover Your payment obligations hereunder (an “*NSF Event*”), We may assess an NSF charge of \$150.00. Upon the occurrence of any NSF Event (a) We will use commercially reasonable efforts to promptly notify you of the NSF Event, and will provide You with an

opportunity to timely cure the NSF Event, and (b) You, not Us, shall be immediately responsible for remitting all tax deposits and filings, all employee wages, all wage garnishments, and all related penalties and interest due then and thereafter during any suspension or resulting from any suspension or termination.

3.4 Taxes. You acknowledge that You shall be responsible for payment of all taxes (excluding those on Our net income) relating to the provision of Services, except to the extent a valid tax exemption certificate or other written documentation acceptable to Us to evidence Your tax exemption status is provided by You to Us prior to the delivery of Services. We will itemize any such taxes due on the applicable invoice.

4. ONLINE ACCESS

4.1 SAAS Services and Responsibilities. You shall be solely responsible for providing Your connection to the internet and Services, and all hardware and software required for access to the internet and Services. You shall be solely responsible for the security of Your connection to the internet. In order to perform required system maintenance and product updates, the Services will periodically not be available during off peak hours (10:00pm to 3:00am CST).

4.2 Your Data. We acknowledge and agree that as between Us and You, You shall be the sole and exclusive owner of all right, title and interest in and to Your Data. We have no right, title or interest in or to any of Your Data and shall not use Your Data for any purpose other than in furtherance of Our provision of Services under this Agreement to You. You shall be solely responsible for obtaining all required rights and licenses to use and display Your Data and for updating and maintaining the completeness and accuracy of all of Your Data. You acknowledge that You are solely responsible for obtaining all required rights and licenses to use and display Your Data and for updating and maintaining the completeness and accuracy of all of Your Data. You grant Us a right to use Your Data for the sole purpose of providing the Services for You.

4.3 Password Protection. You shall maintain the privacy of usernames and passwords associated with any Services, and acknowledge that You are fully responsible for all activities that occur under Your password or internet accounts. You agree to (a) immediately notify Us of any unauthorized use of Your password or internet accounts or any other breach of security, and (b) ensure that You and Your users exit from Your internet accounts at the end of each session, to the extent possible, to ensure authorized users are accessing the Services. We shall not be liable for any damages incurred by You or any third party arising from Your failure to comply with this [Section 4.3](#). In order to protect Your Data (including any Confidential Information contained therein) in the event any breach of Our systems is suspected, We may suspend use of the Services via the internet pending an investigation; provided, however, We will provide prior written notice of such suspension to the extent possible, and if it is not possible to provide prior notice, notice as soon as practicable thereafter.

5. NONDISCLOSURE AND PRIVACY

5.1 Protection of Your Files. We recommend that You keep copies of all source documents delivered to Us (including any of Your Data). If You request that We provide any of Your Data or employee or plan participant information to any third party or to any non-U.S. location of Yours, You represent that You have acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any international, federal, state or local laws and/or regulations that are applicable to You. Upon expiration or termination of this Agreement for any reason, or upon request by You at any time during the Term, We shall provide, at Your sole cost and expense, an export of all Your Data stored on or in Our systems or otherwise in Our possession or under Our control (in a format reasonably requested by You) to You or, in the alternative, We will provide You with the access and functionality necessary for You to retrieve an equivalent export file.

6. TERM; TERMINATION; DEFAULT; REMEDIES UPON DEFAULT

6.1 Termination Timing by You. You must notify Us of termination of payroll services at least 90 days prior to the termination date. You will be required to pay an early termination fee if the notice of termination is not supplied at least 30 days prior to termination.

6.2 Termination by Us. We may (a) terminate the Services related to this Appendix A immediately without prior notice (i) in the event You, Your employee(s) or any other third party includes in any Services any of Your Data which is obscene, offensive, inappropriate, threatening, malicious, which violates any applicable law or regulation or any contract, privacy or other third-party right or which otherwise exposes Us to civil or criminal liability, and fails to cure such inclusion within five (5) business days after receiving written notice from Us or (ii) intentionally wrongfully uses or accesses the Services, and (b) immediately suspend or terminate the Payment Services without prior notice if (i) We have not received timely funds from You as required and You fail to remedy such funding within three (3) Business Days after receiving written notice from Us, (ii) Your bank notifies Us that it is no longer willing to originate debits and credits from the Dedicated Deposit Account for any reason and You are unable to remedy such issue within three (3) Business Days after receiving written notice from Us, (iii) the authorization to debit Your Dedicated Deposit Account is terminated and You are unable to remedy such issue within three (3) Business Days after receiving written notice from Us, (iv) We reasonably determine that You no longer meet Our credit/financial eligibility requirements for such Services or (v) You have any material adverse change in its financial condition.

6.3 Post-Termination. If any such Services are terminated pursuant to this Section 6, but subject to this Section 6.3, You will immediately (a) become solely responsible for all of Your third-party payment obligations covered by such Services then or thereafter due (including, for Tax Filing Services, all related penalties and interest), (b) reimburse Us for all payments made by Us hereunder on Your behalf to any third party, and (c) pay any and all appropriate fees and charges invoiced by Us to You relating to Our Services.

6.4 Other Remedies. If We elect not to terminate any or all of the Services as permitted hereunder, We, in Our sole discretion, may require You to pay Your outstanding and all future third-party payments relating to the provision of Services and/or Our fees and charges for Services to Us by bank or certified check or by wire transfer as a condition to receiving further Services.

7. MISCELLANEOUS

7.1 Regulatory Notice. No state or federal agency monitors or assumes any responsibility for the financial solvency of third-party tax filers.

7.2 Use of Agents. We may designate any agent or subcontractor, without notice to, or the consent of, You, to perform such tasks and functions to complete any services covered under this Appendix A, so long as: (a) We require such agent or subcontractor to enter into a business associate agreement, to the extent applicable to the services to be provided; (b) such agent or subcontractor shall be required to comply with the terms of this Agreement, to the extent applicable; and (c) We ensure that all agreements with agent or subcontractor contain provisions that protect Your Confidential Information and Your Data at a level no less restrictive than those terms herein. We remain responsible for the actions and omissions of such agent or subcontractor and of its personnel or agents who perform services under this Appendix A. However, nothing in the preceding sentence shall relieve Us from responsibility for performance of Our duties under the terms of the Agreement.

7.3 Client Responsibilities for Prior Taxes. You understand that You are responsible for the returns, taxes, penalties, and interest assessed for periods prior to the date payroll was first processed by Us or our

Third-Party Service Providers. It is further understood We (nor our Third-Party Service Providers) do not assume responsibility for any delinquent tax payments made by You.

7.4 Signature Authorization for Tax Forms. The signature on the Order Form will be used to create Power of Attorney forms and Electronic Fund Transfer (EFT) agreements on behalf of Your company. We (and our Third Party-Service Providers) use the Power of Attorney forms to obtain account information such as filing frequencies, tax rates, account numbers, and to resolve any account discrepancies that may occur. EFT agreements allow Us (and our Third-Service Providers) to pay Your taxes electronically, which is a much faster and accurate form of payment. Power of Attorney forms are required for Our full tax service. Power of Attorney forms should be signed by an officer of Your company.

ARTICLE II – SUPPLEMENTAL TERMS AND CONDITIONS

If We have agreed to provide Payroll Processing Services and/or Tax Filing Services to You, these additional terms and conditions of this Appendix A, Article II shall also apply.

1. SERVICE DESCRIPTION

We will process payroll for Your payees, deliver payroll to Your payees business addresses, process direct deposits to those employees electing such service (“*Payroll Processing Services*”), remit payroll taxes on Your behalf to those federal, state, and local taxing jurisdictions designated by You (not including the filing or depositing of excise, sales, use, corporate, or similar taxes), and file related tax returns (such as remitting of payroll taxes and filing of related tax returns, the “*Tax Filing Services*”). For an additional fee, We will also process calendar year-end W-2 forms for Your employees and Forms 1099-MISC for payments to individuals that provide services to You as independent contractors.

2. BILLING

Payroll Processing Services and any other Service bundled into the pricing for the Payroll Processing Services are billed in accordance with the Appendix A, Article I General Terms and Conditions, and/or as specified on an Order Form.

3. FUNDING

You acknowledge and agree that certain of the Services, including, without limitation, tax filing, Positive Pay, workers compensation and direct deposit services, provided by Us hereunder will require You to remit or otherwise make available sufficient, good funds to Us within the deadline established by Us (the established time frame for You to provide good sufficient funds for the purpose of tax filing, Positive Pay, workers compensation and direct deposit services is a minimum 2 Business Days before Your given payroll check date. You acknowledge that Your failure to provide good sufficient funds within the prescribed time frame will result in a \$150 bounced item fee per occurrence. We may require more than 2 Business Days before Your check date at Our sole discretion, or We may require “reverse wire transfers” and You agree to sign any necessary forms and pay any associated fees required for the initiation of any “reverse wire transfers.” Funds obtained from a reverse wire transfer, subject to this Section 3, are to be applied by Us to satisfy Your third-party payment obligations covered by the Services (including, without limitation, as applicable, Your payment obligations to Your employees and/or tax authorities). Accordingly, You shall, at times during which You are receiving such Services, have sufficient, good funds in Your Dedicated Deposit Account or otherwise remit such funds to Our designated bank within the deadline established by Us to satisfy Your third-party payment obligations in their entirety. We are not responsible for the payment of any insufficient fund charges, taxes, penalties or interest to any tax agency

or third-party vendor that are incurred by employees or You for a delay in their direct deposit or Positive Paycheck availability if Your payroll information was not delivered to Us within 2 Business Days before the check date of Your payroll, more specifically, no later than 2:00 p.m. of Your respective time zone. Our computer system will calendar receipt of data, and Our system date will be the controlling date for purposes of this provision. We may, in Our sole discretion, transfer money out of Your account with any taxing or third-party vendor if We have remitted funds to such tax agency or third-party vendor on Your behalf, and You have failed to reimburse such amounts in the time established by Us. We may, in Our sole discretion, impound funds from Your Dedicated Deposit Account for Our Tax Filing Services, direct deposit services, Positive Pay services, workers compensation or billing services and shall have right of offset with any of Your funds that We have previously transferred to any tax agency or third-party vendor. You acknowledge and agree that We may commingle any of Your funds under Our custody or control with the funds held by Us on behalf of Our other clients. ALL AMOUNTS EARNED ON SUCH FUNDS WHILE HELD BY US WILL BE OUR SOLE PROPERTY.

4. FUNDING INDEMNIFICATION

4.1 Debits. You acknowledge that You shall be liable for debits properly initiated by Us hereunder. You unconditionally promise to pay to Us the amount of any unfunded payroll file (including any debit that is returned to Us because of insufficient or uncollected funds or for any other reason), upon demand and interest thereon at the rate set forth below. You agree to reimburse Us for any expenses incurred including interest and reasonable attorneys' fees, in collecting amounts due Us for any unfunded payroll file (including any debit that is returned to Us because of insufficient or uncollected funds or for any other reason). Also, You acknowledge that, if any debits to an employee or other payee's account reversing or correcting a previously submitted credit(s) is returned for any reason, You unconditionally promise to pay the amount of such debit upon demand and interest thereon at the rate set forth below. You acknowledge that You shall be liable for, and shall indemnify Us against, any loss, liability, claim, damage or exposure arising from or in connection with any fraudulent or criminal acts of Your employees or payees. You unconditionally promise to pay to Us the amount of any unfunded payroll file (including any debit that is returned to Us because of insufficient or uncollected funds or for any other reason), plus any associated bank fees or penalties, upon demand and interest on the unfunded payroll amount at the rate of 1.0% per month (or the maximum allowed by law, if less). Also, You agree that, if any debit to an employee or other payee's account reversing or correcting a previously submitted credit(s) is returned for any reason, You unconditionally promise to cooperate with Us and pay the amount of such debit upon demand and interest thereon at the rate set forth herein. You agree to cooperate with Us and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by Us or another party processing a transaction on behalf of Us.

5. YOUR RESPONSIBILITIES

5.1 Payroll Processing. You agree to timely supply to Us accurate and complete data necessary for the performance of the Services including, without limitation, accurate and complete payroll and tax information at least two (2) Business Days prior to each check date. All Services are dependent upon information provided to Us by You. It is recommended You and your payees promptly review and verify for each pay period the accuracy of all Your Data supplied to Us and the accuracy of all paychecks, disbursements, payroll registers, and/or reports produced for You by Us. You agree to promptly communicate to Us any errors, omissions or discrepancies. You are responsible for the consequences of any instructions You provide to Us. You acknowledge that, prior to the first credit to the account of any employee or any other individual ("*Payee*"), You shall obtain and retain a signed authorization from such Payee in accordance with NACHA rules, which shall be in a form approved by Us and shall authorize the initiation of credits to such Payee's account and debits of such account to recover funds credited to such account in error.

5.2 Tax Filing Services. In order to receive Tax Filing Services, You must execute certain additional forms and agreements including, without limitation, a Limited Power of Attorney, New Client Tax Information Form, and Your Responsibility for Prior Taxes Form. You acknowledge that the Services (including Tax Filing Services) are reliant upon information supplied by You (including proof of federal, state, and local tax identification numbers, filing frequencies, unemployment rates and EFT requirements). You acknowledge that You are responsible for the accuracy and completeness of all such information and the verification of payroll, payroll tax filing and all other data. You acknowledge that it is Your responsibility to forward to Us all coupon booklets, rate notices, frequency notices and pre-printed forms received from the IRS or any other taxing jurisdiction. You acknowledge that You shall be responsible for all penalties and interest incurred due to non-use of prescribed forms provided the coupons and forms were not received by Us. You acknowledge that You are solely responsible for notifying Us in writing of any changes in unemployment rates, filing frequency, audits, adjustments, adjudications, or any other change in status in relation to federal, state and local taxing authorities (“Tax Change Notification”). You acknowledge the Tax Change Notification by You is to be on the prescribed form issued by Us that is signed and dated by You. You acknowledge that it is Your responsibility to ensure that We receive the signed and dated Tax Change Notification. You acknowledge that You are responsible for notifying Us of any local jurisdictions in which You are obligated to withhold and pay employment related taxes. You also acknowledge that upon entering a new location, You are responsible for notifying Us of any local taxes for which You may be liable in the new jurisdiction.

You agree to pay Us an additional fee for each employee payroll processed for You without a tax identification number for the federal, state or any local taxing jurisdiction. You acknowledge that the fee may be waived by Us if You have requested that We file the necessary forms to apply for such tax identification number, and pay Us for such filing at Our then prevailing rate or show Us proof of such filing. Any “tax notices” regarding the lack of a tax identification number is the sole responsibility of You.

6. TERMINATION. In addition to the termination options in Appendix A, Article I, Section 6, Payment Services may be terminated by Us without prior notice if, (i) any unauthorized credits or debits are initiated in Your name, or (ii) You terminate or You are terminated from the Tax Filing Services. In addition to the termination options in Appendix A, Article I, Section 6, with respect to tax filing, Positive Pay, and direct deposit services, You may terminate this portion of the Services, upon at least 30 days’ prior written notice. We will continue to respond to notices received from tax authorities for up to 3 months after You terminate the Tax Filing Services. After expiration of such 3-month period, We will charge our current hourly rate to research and respond to tax notices on Your behalf. Penalties and interest assessed after such 3-month period are Your sole responsibility. You acknowledge that at any time during the Tax Filing Service period in which You change federal identification numbers, entity identification numbers or any other state or local taxing jurisdiction identification numbers, You will bear sole responsibility for the penalties and interest associated with the retroactive changes. You acknowledge that You understand that such retroactive changes will cause amended returns, amended payrolls, and tax notices from tax authorities. Assistance in dealing with each of the foregoing will be charged to You at Our prevailing hourly rate.

7. YOUR CONTACT. You are required to designate one or more payroll contacts that will serve as Your authorized representative in Your dealings with Us, and We shall have the right to rely on the representation, directives, and information provided by this contact(s) in performing payroll related services. You acknowledge that You are responsible for the accuracy of Your information provided by the payroll contact(s) and/or You.

8. POSITIVE PAY SERVICES. You acknowledge that if You elect to receive payroll checks drawn upon the account of Ours (“*Positive Paychecks*”) rather than payroll checks drawn on Your own account, We shall not be obligated to provide You with Positive Paychecks unless and until We have entered into an agreement with You to provide Positive Pay as part of the Services. You agree that We shall have no further obligation to process Your payroll on Positive Paychecks at any time after the termination. You

agree that if funds are not made available before the check date, We will delay the release of any of Your payroll, which is processed on Positive Paychecks and will thereafter release such Positive Paychecks for disbursement to You only after receipt of good and sufficient funds. You agree not to distribute any of Our checks to Payees prior to 4:00 p.m. local time on the banking date immediately before pay date. If You desire to stop payment on any of Our checks, You shall provide Us with a stop payment request form, or perform a prescribed action in BerniePortal. We shall then place a stop payment order with Our bank within 24 hours after Our receipt of such stop payment request. You shall not request We stop payment on any of Our checks that represents funds to which the applicable Payee is rightfully entitled. You agree to indemnify, defend and hold harmless Us and Our affiliates and Third-Party Service Providers and their successors and assigns from and against any liability whatsoever for stopping payment on any of Our checks requested by You and from and against all actions, suits, losses, claims, damages, charges, and expenses of every nature and character, including attorney fees, in any claims or suits arising by reason of stopping payment on said check, including claims made by a "holder in due course" of such check. You agree that We will not be liable for any damages to You or Your employees arising from any decision to withhold the release of Your payroll which is processed on Positive Paychecks and that We will not be held responsible for any error, omission, negligence, or bad faith on the part of Our bank, whether in connection with a notice to Us of insufficient or unavailable funds. Regardless of any such delay in the release of Positive Paychecks, You will still be obligated to pay Us for applicable payroll processing charges. If You receive Positive Paychecks, You shall indemnify and hold harmless Us from and against any loss liability, claim, damage or exposure arising from or in connection with any action, proceeding or claim made or brought against Us by any bank with which You maintain a payroll account for funds, for any error by Us, omission or failure incident or pursuant to Us providing the Services to You which would have been corrected by Us but for the fact that You refuse or are unable to fund or reimburse such bank for the funding of Your payroll account at such bank. We will provide You with a quarterly listing of uncashed Positive Paychecks. Uncashed Positive Paychecks older than 180 days will be refunded to You. You are responsible for complying with the applicable state statutes regarding the escheatment of unclaimed funds. You shall not distribute any of Our checks to payees prior to the applicable check date. You acknowledge that if You distribute any of Our checks prior to the check date, We may impose an early cashing fee against You. You agree that, prior to the first credit to the account of any employee or other individual under Positive Paycheck Services, You shall obtain and retain a signed authorization from such employee or individual authorizing the initiation of credits to such party's account and debits of such account to recover funds credited to such account in error.

9. GARNISHMENT PAYMENT SERVICES. We will process EFT transactions, one banking day prior to Your check date, for Your employees' garnished wages as are necessary to remit to the appropriate authorities. You agree to provide Us with a garnishment order for each employee for whom wages are to be garnished. We can hold garnished wages in a separate account established by Us until such time as the amounts are due. Garnishment payments provided via check are processed in Your normal pay cycle. For garnishment payments that are mailed, We are not responsible for any penalties or damages associated with a delay in delivery. You acknowledge that You remain solely responsible for the correct calculation of the amount to garnish from Your employees' wages.