ME
MODUS ENGAGEMENT

Subscription Agreement

CONFIDENTIAL

These terms of service are offered by Modus Engagement, Inc., a corporation duly incorporated and existing under the laws of Delaware, having it's principle offices located at 2829 University Avenue SE, Minneapolis, MN 55414.

1. PREAMBLE

a. The order of precedence shall be as follows:

    i. The Modus Subscription Agreement
    ii. The Modus Proposal and Order Agreement
    iii. The Customer Purchase Order

Whereby the higher ranked document shall prevail over the lower ranked document in the case of discrepancies, contradictions, or inconsistencies.

2. LICENSE GRANT

Upon payment of the Subscription Fee, and for the Subscription Term, Licensor grants Customer a non-exclusive, non-transferable, non- assignable, non-sub-licensable, time limited license, to use the Licensor Software in compiled code form only, subject to the terms and conditions set forth in this Agreement and its appendices. Customer will be provided access to the Licensor Software through the Cloud Service.

3. INTELLECTUAL PROPERTY RIGHTS

Ownership of the Licensor Software and all worldwide rights, title and interest in and to the Intellectual Property associated with the Licensor Software shall remain solely and exclusively with Licensor. Customer shall preserve intact all applicable Licensor copyright,

ME
MODUS ENGAGEMENT

Subscription Agreement

patent and/or trademark notices on and in all copies of the Licensor Software. All rights, title, and interest in Licensor Software not expressly granted to Customer in this Agreement are reserved by Licensor. Any Customer Data shall remain in the ownership of Customer.

4. RESTRICTIONS ON USE

Except as expressly authorized by Licensor in writing, Customer shall not copy, in whole or in part, the Licensor Software or Documentation; modify, disassemble, decompress, reverse compile, reverse assemble, reverse engineer, or translate any portion of the Licensor Software; or rent, lease, lend, distribute, sell, assign or otherwise transfer the Licensor Software or create Derivative Works of the Licensor Software. Customer may, however, always backup copies or archive copies of the Licensor Software as permitted under applicable law. Customer may only copy manuals or instructions from Licensor for the purpose of use in furtherance of Customer's business purposes, internally within Customer's organization and including its distributors and other parties authorized by Licensor.

5. THIRD PARTY USE AND RIGHTS

Customer may authorize third parties to assist Customer in the management, editing, and hosting of product information created by use of the Licensor Software, provided that: (1) such activities are within the scope of the activities Customer is itself authorized to perform under this Agreement; (2) such third party's acts are primarily for the direct or indirect benefit of Customer; and (3) such third parties are not charged a fee by Customer for such activities. Except as expressly provided in this Agreement, no third party has any rights under this Agreement. Customer is fully liable for any unauthorized use of the Licensor Software by third parties caused by any acts or omissions of Customer.

6. LICENSOR MAINTENANCE PROGRAM

Customer will automatically be included in the Licensor Maintenance Program and the fee for the Licensor Maintenance Program is included in the Subscription Fee as set out in an appendix to the Agreement. Installation of Licensor Releases and Licensor Patches is the sole decision of Customer, and Customer accepts all risk and responsibility of the consequences caused by not installing the Licensor Releases and Licensor Patches.

Subscription Agreement

7. THE PROVISION OF THE CLOUD SERVICE

Licensor will provide the application hosting environment including hardware, equipment, and systems software configuration on which Licensor supports use of the Licensor Software and the Cloud Service, on servers located at a facility selected by Licensor.

The Cloud Service is provided by Licensor and made available to Customer by setting up an Account for the Cloud Service and providing Customer with login information. During the Subscription Term Licensor will make the Cloud Service available to Customer on the terms and conditions of this Agreement.

Customer agrees not to make the Cloud Service available to any third party other than its distributors and other agreed-upon parties. Customer is responsible for compliance with the terms of this Agreement by all users and for any and all activities that occur under Customer's Account, as well as for all Customer's Data.

8. SUSPENSION OF ACCESS

Licensor reserves the right, in Licensor's reasonable discretion, to temporarily suspend Customer's access to and use of the Licensor Software and the Cloud Service if Licensor suspects or detects any malicious software connected to Customer's Account or use of the Licensor Software or the Cloud Service by Customer.

9. ACCESS TO DATA

Customer agrees that Licensor and the service providers Licensor use to assist in providing the Cloud Service to Customer shall have the right to access Customer's Account and to use, modify, reproduce, distribute, display and disclose Customer Data solely to the extent necessary to provide the Cloud Service and fulfil its obligations under the Agreement, including, without limitation, in response to Customer's support requests. Any third party service providers Licensor utilize will only be given access to the Account and Customer Data as is reasonably necessary to provide the Cloud Service and will be subject to confidentiality obligations.

10. FEES AND PAYMENT

Customer shall pay the Fees and as stated on the Proposal Order Agreement. Fees are based on the number of licenses purchased, not actual usage. Fees are payable in advance unless otherwise specifically agreed upon and are in all cases non-refundable and non-cancellable. The per unit pricing for the for the Licensed Product as applicable for the initial term shall be apply equally for any subsequent renewal term unless Modus has notified the Customer within 30 days of the end of the then-current subscription term. Invoices are due net thirty (30) calendar days from invoice date.

11. TERM OF AGREEMENT AND TERMINATION

This Agreement will become effective as of the Effective Date, and unless terminated earlier as provided in this

Subscription Agreement

Agreement, will continue in effect for the Subscription Term (the "Initial Term"), and will automatically renew for periods of one (1) year (each a "Renewal Term") unless either party provides to the other party written notice no later than ninety (90) days prior to the then-current scheduled expiration of the Initial Term or Renewal Term, as applicable, of that party's intention that the Agreement not be renewed.

Upon termination or expiration of this Agreement, all licenses granted hereunder, including but not limited to the Cloud Service or the Licensor Software, will likewise terminate, except that Customer will have sixty (60) days from the date of termination to retrieve/migrate our data from Licensor's Cloud Service.

12. CONFIDENTIAL INFORMATION

Each party will hold the other party's Confidential Information in confidence with at least as much care as it holds its own confidential information, and neither party will disclose any of the other party's Confidential Information to any third party.
The duties of confidentiality and nondisclosure under this Agreement will not apply to any information that (i) at the time of disclosure to Recipient, had previously been published or was otherwise publicly available; (ii)

is published or becomes otherwise publicly available after having been disclosed to Recipient, unless through the breach by Recipient of its obligations under this Agreement; or (iii) prior to disclosure to Recipient, was already in Recipient's possession on a non- confidential basis.

Each party will use the Confidential Information solely for purposes of its performance under this Agreement, and may disclose such information to its employees and professional advisors only on a need-to-know basis, provided that such employees are bound by obligations of confidentiality at least as restrictive as those set forth in this Agreement.

Either party may disclose Confidential Information as required by court order or otherwise by law, provided that it gives the other party written notice in advance of such disclosure sufficient to permit the other party to seek a protective order and, if so ordered, discloses only the minimum Confidential Information necessary to comply with the order.

Upon termination of this Agreement or at any time upon written request of Discloser, Recipient will return (or destroy at Discloser's option) all copies of Confidential Information in its possession, custody, or control, except that Recipient may retain a copy of Confidential Information solely to demonstrate its compliance with its obligations under this Agreement.

Subscription Agreement

Upon written request of Discloser, Recipient will certify in writing its compliance with this requirement.

Each party's obligations under this section will survive termination of this Agreement and will continue in full force and effect with respect to Confidential Information of the other party for five (5) years from the date of disclosure of such Confidential Information, except that to the extent the Confidential Information is comprised of trade secrets, the obligation of confidentiality will continue for as long as such information is protected by the applicable law of trade secrets.

13. DATA PROTECTION

To the extent that Customer Data contains Personal Data, Licensor will process that Personal Data only as a data processor acting on behalf of License (as the data controller) and in accordance with the requirements of this Agreement.

Customer will at all times take reasonable steps to comply in full with the requirements of any applicable privacy and data protection laws (including where applicable, European Union Directives 95/46/EC and 2002/58/EC and any national implementation of them) to which it is subject as a data controller.

Licensor will process the Personal Data in accordance with Customer's instructions under applicable privacy laws and will not: (a) assume any responsibility for determining the purposes for which and the manner in which the Personal Data is processed, or (b) process the Personal Data for its own purposes.

Licensor will have in place and will maintain throughout the Subscription Term, appropriate technical and organizational measures against accidental or unauthorized destruction, loss, alteration or disclosure of the Personal Data, and adequate security programs and procedures to ensure that unauthorized persons will not have access to any equipment used to process the Personal Data.

Customer authorizes Licensor to subcontract processing of Personal Data under this Agreement to a third party provided that Licensor will remain fully liable to Customer for the acts, errors and omissions of any subcontractor it appoints to process the Personal Data.

14. WARRANTIES

Licensor warrants that it owns all rights, title and interest in the Licensor Software or has obtained the rights to grant the licenses under this Agreement. Licensor warrants that the Licensor Software will function without a Documented Defect for a period of ninety (90) days from any Delivery Date. The warranty

ME
MODUS ENGAGEMENT

Subscription Agreement

given shall only apply to Documented Defects reported in writing during such period. Licensor's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Licensor Software. If Licensor is unable to repair or replace the Licensor Software within a reasonable time, subject to the limitation set out in this Agreement, Customer may pursue its remedies under this Agreement

Licensor warrants that it will not knowingly provide the Licensor Software with any "time bombs", "Worms", "viruses", "Trojan horses", "protect codes", "data destruct keys", or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Licensor Software or Cloud Service ("Malicious Code"). As Customer´s sole remedy for breach of this warranty Licensor shall take action to investigate, identify and remove such Malicious Code from the Licensor Software.

Licensor (defined in this section as licensor's parent, affiliates, subsidiaries and their respective officers, directors and employees) makes no other warranty, express or implied, as to the Licensor Software, the associated documentation, the operation of the Licensor Software, the Cloud Service or the Licensor Maintenance Program, or any other goods or services rendered by Licensor to Customer.

15. NON-INFRINGEMENT

Licensor will defend Customer a from and against any and all third party claims and will pay any costs, losses or damages that may be finally awarded against Customer (including reasonable attorneys' fees) to the extent arising out of any claimed infringement or misappropriation by the Cloud Service or the Licensor Software of any third party Intellectual Property right; provided that (a) Customer notifies Licensor in writing within thirty (30) calendar days of its receipt of written notice of the claim; (b) Licensor has sole control of the defense and settlement of the claim; and (c) Customer provides Licensor with all reasonable assistance, information, and authority necessary to perform Licensor's obligations under this paragraph. Notwithstanding the foregoing, Licensor will have no liability for any claim of infringement or misappropriation: (i) that is based on the combination, operation, or use of the Cloud Service or the Licensor Software with materials (e.g., software, hardware or content) or services not furnished by Licensor; (ii) that is based on any modification of the Cloud Service or the Licensor Software by Customer, by any third party, or by Licensor at Customer's direction; or (iii) that could have been avoided by Customer's use of an updated or revised version of the Cloud Service or the Licensor Software that was delivered or made available to Customer by Licensor. In the event the Cloud Service or the Licensor Software is held or is believed by Licensor to infringe or misappropriate any Intellectual Property

MODUS ENGAGEMENT

Subscription Agreement

at its expense, to (w) replace the Cloud Service or the Licensor Software with an noninfringing equivalent, (x) modify the Cloud Service or the Licensor Software to be noninfringing, (y) obtain for Customer a license to continue using the Cloud Service or the Licensor Software, or (z) refund the fees paid by Customer for the infringing Cloud Service or the Licensor Software and require that Customer discontinue its use. The foregoing remedies constitute Customer's sole and exclusive remedies and Licensor's entire liability with respect to infringement.

16. LIMITATION OF LIABILITY

LICENSOR (DEFINED FOR PURPOSES OF THIS SECTION AS LICENSOR'S PARENT, AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES) SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION, THE COST OF RECOVERING ANY DATA, INFRINGEMENT, OR THE COST OF SUBSTITUTE SOFTWARE, WHETHER INCURRED BY CUSTOMER INTERNALLY OR IN CONNECTION WITH ANY THIRD PARTY. EXCEPT WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION IN SECTION 14 THE LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER FOR USE OF THE LICENSOR SOFTWARE UNDER THIS AGREEMENT. THE LIMITATION PROVISIONS OF THIS SECTION SHALL BE APPLICABLE TO ANY CLAIM FILED BY CUSTOMER ARISING OUT OF OR RELATING TO ANY SEPARATELY LICENSED SOFTWARE THAT MAY BE USED WITH THE LICENSOR SOFTWARE. CUSTOMER MUST, IN ORDER TO PRESERVE ITS RIGHT TO COMPENSATION, GIVE NOTICE OF ANY CLAIM WITHIN THREE (3) MONTHS FROM WHEN CUSTOMER BECAME AWARE OF THE BASIS FOR THE CLAIM.

17. DISCLAIMERS

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOUD SERVICE AND LICENSOR SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER WITH RESPECT TO THE CLOUD SERVICE OR LICENSOR SOFTWARE OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT,

Subscription Agreement

WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

18. FORCE MAJEURE

Licensor will not be liable for delays or failures in performance of the support services caused by forces beyond its control or any force majeure event such as act of terrorism, loss of power, act of God, or similar occurrence or for damages caused by Customer's failure to perform its obligations under this Agreement.

19. WAIVERS

All waivers must be in writing and signed by authorized representatives of the parties. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

20. SEVERABILITY

If any provision of this Agreement is adjudicated to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

21. ASSIGNMENT

Customer or Licensor may assign this Agreement to a successor (whether by merger, a sale of all or a significant portion of its assets, a sale of a controlling interest of its capital stock, or otherwise) which agrees in writing to assume Licensor's obligations under this Agreement. Licensor may, without consent of Customer, transfer the right to receive payment in accordance with this Agreement.

22. GOVERNING LAW AND CHOICE OF FORUM; DISPUTE RESOLUTION

This Agreement will be governed in all respects by the laws of the State of Minnesota USA as they apply to agreements entered into and to be performed entirely within Minnesota between Minnesota residents, without regard to conflict of law provisions.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all other agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter this Agreement by any representations or promises not specifically stated in this Agreement. The protections of this Agreement will apply to actions of the parties performed in preparation for and anticipation of the execution of this Agreement. Any amendment to this Agreement must be in writing and signed by duly authorized representatives of the parties.