

**LAST MODIFIED DATE:** August 7, 2023

THE FOLLOWING SMA OFFERINGS TERMS AND CONDITIONS (“**TERMS**”) ALONG WITH ANY POLICY, NOTICE, AGREEMENT, OR OTHER DOCUMENT IDENTIFIED OR INCORPORATED HEREIN (“**POLICIES**” TOGETHER WITH TERMS, THE “**AGREEMENT**”) IS A LEGALLY BINDING CONTRACT BETWEEN UNISOFT INTERNATIONAL, INC. (“**SMA TECHNOLOGIES**”, “**WE**”, “**US**”, OR “**OUR**”) AND THE PERSON OR ENTITY (“**CUSTOMER**”, “**YOU**”, OR “**YOUR**”) IDENTIFIED IN ONE OR MORE WRITTEN, SIGNED ORDER OR SOW. THIS AGREEMENT APPLIES TO AND GOVERNS YOUR AND YOUR USERS (AS DEFINED BELOW) ACCESS TO AND USE OF THE SMA OFFERINGS (AS DEFINED BELOW).

YOU, AND THE ENTITY OR COMPANY THAT YOU REPRESENT, HAVE THE AUTHORITY TO BIND, ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY, AND BECOME A PARTY TO, THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR DO NOT AGREE TO BE BOUND BY THIS AGREEMENT AS PRESENTED, YOU MUST NOT ACCEPT THIS AGREEMENT OR ACCESS OR USE THE SMA OFFERINGS.

1. **DEFINITIONS.** For purposes of these Terms, the following capitalized words or phrases will have the specified meaning:

1.1. “**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual’s identity and authorization to access and use the Subscription Service.

1.2. “**Affiliate**” or “**Affiliates**” means any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, by a party. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through ownership of more than fifty percent (50%) of the voting interests of a person or by written agreement.

1.3. “**Confidential Information**” means information that a party (as the “**Disclosing Party**”) provides or makes available about its business affairs, products, pricing, confidential intellectual property, encryption keys, API keys, trade secrets, third-party confidential information, and other sensitive or proprietary information in written or electronic form or media, whether or not marked, designated or otherwise identified as “confidential” to the other party (as the “**Receiving Party**”) in connection with the Agreement. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain, (b) known to the Receiving Party at the time of disclosure, (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third-party, or (d) independently developed by the Receiving Party.

1.4. “**Customer Content**” means any information, data, and other content that is submitted, posted, or otherwise transmitted by or on behalf of you to or through or using the Subscription Service or to us as part of the Professional Services. Customer Content does not include Usage Data or information, data, text, software, sound, music, video, photographs, graphics, images, and tags we incorporate into the Subscription Service or Professional Services.

1.5. “**Customer Systems**” means your or your Affiliates, or your or your Affiliates’ Users information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer, an Affiliate, or User, or through the use of third-party services (excluding our information technology systems).

1.6. “**Data Protection Addendum**” or “**DPA**” means our then-current Data Processing Agreement for the Cloud Service (current version available [here](#)).

1.7. “**Documentation**” means any technical or non-technical manuals, instructions, or other documents or materials made available by us to you describing the functionality, components, features, or requirements of the Subscription Service (current version available [here](#)).

1.8. “**Feedback**” means feedback, suggestions, or contributions provided to us by you or your Users regarding the Subscription Service, Documentation, or SMA Offerings.

1.9. “**Fees**” means the (i) recurring base annual and other fees invoiced to you by us for access to and use of the Subscription Service (“**Subscription Fees**”); (ii) fee and other costs invoiced to you by us for the Legacy Software (“**License Fees**”); (iii) hourly or fixed fees and costs invoiced by us to you for provision of the Professional Services (“**Professional Fees**”); (iv) fees invoiced to you by us based on Task usage as further described in Section 3.5 (“**Usage Fees**”); and (v) any other charges, costs, or other amounts set forth in an Order or SOW.

1.10. “**IP Rights**” means, collectively, all (a) United States or foreign patents, patent disclosures, patent applications, and divisions, continuations, extensions or continuations-in-part thereof, and all discoveries which may be patentable; (b) trademarks, service marks, trade dress, trade names and corporate names and registrations and applications for registration thereof (collectively, “Trademark Properties”); (c) copyrights (registered or unregistered), registrations and applications for registration thereof, including all renewals, derivative works, enhancements, modifications, updates, new releases or other revisions thereof, and all works of authorship; (d) computer software (including source code and object code), data, databases, code segments, algorithms, objects, routines, templates and documentation; (e) trade secrets and other Confidential Information, including, but not limited to, ideas, processes, formulas, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, production techniques, research and development information, specifications, designs, proposals, technical data, financial and marketing plans, schematics, and customer and supplier lists and information, (f) the internet domain names used by SMA Technologies or its Affiliates, and (g) the goodwill symbolized by all of the foregoing and connected therewith throughout the world.

1.11. “**Legacy Software**” means products or services that were owned, developed, licensed or sold by SMA Technologies (i) for use by a customer in an on-premise, non-subscription basis, or (ii) that are not, as of the date hereof, licensed, sold, or otherwise distributed by SMA Technologies, but are either (1) in use by certain customers of SMA Technologies pursuant to which SMA Technologies has outstanding service obligations (e.g., technical support and maintenance obligations, implementation, development or other professional service obligations) or (2) held as part of SMA Technologies’ product inventory.

1.12. “**Order**” means one or more mutually agreed upon purchase schedules, purchase orders, or order forms (whether online or electronic) that set forth the specific Subscription Service or Legacy Software to be purchased by you and provided by us under this Agreement. An Order is considered “mutually agreed upon” either (a) when executed by both parties in writing or (b) when you affirm your electronic acceptance to an Order that we have presented to you via electronic means. The parties acknowledge and agree that each Order will be governed by and incorporated by reference into the terms of this Agreement.

1.13. “**Personal Data**” means any information contained in the Customer Content relating to an identified or identifiable individual and is protected under applicable Data Protection Law (as such term is defined in our DPA).

1.14. “**Preview**” means the Subscription Service, or other products or features made available by us to you on an unpaid trial or free basis.

1.15. “**Professional Services**” means the professional services provided to you by us, which may include implementation services, training services, workflow automation best practices, integration, or other

similar services specified in a statement of work or another written document (each a “**SOW**”). Such Professional Services are subject to this Agreement as expressly modified by any applicable SOW.

1.16. “**Security Measures**” means, as to the Cloud Service, the information security policies and programs we have implemented, and will maintain throughout the Subscription Term, based on and consistent with industry guidelines and all applicable statutes, rules or regulations, which include commercially reasonable administrative, physical and technical safeguards designed to (a) protect the privacy, confidentiality, integrity, and availability of the Customer Content against any reasonably foreseeable threats or hazards; and (b) reasonably protect against accidental, unlawful, or unauthorized access, disclosure, or use of such Customer Content. Our current Security Measures are described more fully in our DPA.

1.17. “**SMA Offerings**” means Legacy Software, Subscription Service, and Professional Services.

1.18. “**Subscription Service**” means (a) our web-based workflow automation applications, tools, and offerings that are developed, operated, and maintained by or on behalf of us and accessible by you and your Users via the Internet (the “**Cloud Service**”); (b) our on-premise workflow automation applications, tools, and offerings that are developed by or on behalf of us and installed on the Customer Systems (the “**Premises Service**”); and (c) as to both (a) or (b) offered to you on a subscription basis. Unless stated otherwise in an Order, the Subscription Service includes any updates thereto made commercially available by us to similar customers at no charge.

1.19. “**Task**” means each unique set of instructions executed (successfully or not) in the Subscription Service and Legacy Software. For clarification purposes, a Task that runs (i) one time on one machine or (ii) multiple times on the same machine using the same parameters, counts as a single Task; however, (iii) a Task that runs on multiple machines or using multiple parameters counts as multiple Tasks.

1.20. “**Taxes**” means taxes, levies, duties, or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of SMA Technologies.

1.21. “**Third-Party Integrations**” means products, services, websites, links, content, material, integrations, bots, and applications from independent third parties (companies or people who are not SMA Technologies), which host, interoperate, integrate, or otherwise work with or are used in connection with the Subscription Service or Legacy Software. A current listing of Third-Party Integrations is available [here](#).

1.22. “**Usage Data**” means data and information related to your or your Users’ use of the Subscription Service used by us in an aggregate or anonymized manner, including to compile statistical and performance information related to the provision and operation of the Subscription Service or other SMA Offerings as the case may be.

1.23. “**User**” or “**Users**” means Customer and your Affiliates, and any individual (such as employees or consultants) that you or an Affiliate authorizes or allows to access or use the Subscription Service or Legacy Software.

## **2. ACCESS, USE, OR PROVISION OF SMA OFFERINGS; CUSTOMER RESPONSIBILITIES.**

2.1. **Access and Use.** We agree, during the Term, that we (or our Affiliates in conjunction with our service providers) to provide you a limited, non-exclusive, non-sublicensable, non-transferable, and term-based right for you and your Users to access and use the Subscription Service and Legacy Software; *provided, that:* (i) you, subject to Section 3 herein, timely submit payment to us for any Fees; (ii) you and your Users accessing, and use of the Subscription Service and Legacy Software is (1) solely for your internal business purposes; (2) in accordance with applicable law; and (3) in compliance with this Agreement and

the then-current Documentation; and (iii) you make your Users aware of the terms and conditions applicable to – and you remain responsible for – their accessing and use of the Subscription Service or Legacy Software.

## 2.2. Provision of Subscription Service.

2.2.1. **Availability.** The Cloud Service or other services offered through the Cloud Service (e.g., Third-Party Integrations) may be unavailable from time to time, or the availability of the above may be for a limited time or vary depending on your region or device. While we strive to keep the Cloud Service up and running, all online services (regardless of provider) suffer occasional disruptions which may result in the inability to retrieve Customer Content or access the Cloud Service. Except as provided herein, we are not liable for any such disruptions or loss you may suffer because of such disruptions, and we recommend that you regularly backup your Customer Content.

2.2.2. **Changes.** There may be times when we need to modify the Subscription Service, including, but not limited to, adding, removing, or changing certain features or functions (each a “**Change**”), to improve the quality, performance, marketability, or effectiveness of the Subscription Service. Any Change will apply to our customers equally. Prior to making a Change, we will make reasonable efforts in providing advance notice to you by posting a notice on our website or in the user interface of the Subscription Service.

2.2.3. **Technical Support.** Certain versions of the Subscription Service include technical support services (“**Technical Support**”). For information concerning the availability of – and which Subscription Services are covered – please visit [here](#).

2.2.4. **Security Measures.** We maintain a global privacy and security program designed to protect Customer Content and any associated Personal Data we may process on your behalf. You can review our DPA and other information security and privacy disclosures [here](#).

2.2.5. **Open Source.** The Subscription Service provided may contain components or items that were developed using open source code (“**Open Source Software**”). Open Source Software is provided to you under one or more open source license agreements that contain important information concerning ownership, terms of use, rights and restrictions. You agree that you have read, understood, and will comply with, the terms and conditions of the applicable open source licenses in addition to all other the terms applicable to the Subscription Service under this Agreement. Any Open Source Software is not subject to the terms and conditions of this Agreement.

2.3. **Third-Party Integrations.** The Subscription Service and Legacy Software may allow you to access, integrate, acquire, or interact with **Third-Party Integrations, including integrations that may** allow you to store or transmit Customer Content. We do not license any intellectual property to you as part of Third-Party Integrations and we are not responsible or liable to you or others for information or services provided by any third party unless otherwise expressly stated in an Order. You should review the third-party terms and privacy policies before acquiring, using, requesting, or linking the Subscription Service or Legacy Software to Third-Party Integrations; further, any such third-party terms do not modify this Agreement.

2.4. **Professional Services.** We shall control the manner by which the Professional Services are performed and may use subcontractors in the performance of the Professional Services (and the Subscription Services). We reserve the right to make all staffing decisions in our sole and reasonable discretion. We warrant that we shall perform the Professional Services in a professional and workperson-like manner, and we expressly disclaim all other warranties as set forth under Section 6.1. You shall make available at no charge all technical data, computer facilities, programs, files, documentation, test data, sample output, office space, equipment and other assistance as reasonably requested by us in the performance of Professional Services. We retain sole and exclusive ownership of all materials created in connection with our performance of the Professional Services, including but not limited to: methodologies;

know-how; source and object code; specifications; configurations; designs, architecture; processes; techniques; concepts; discoveries; inventions made or developed; and, all derivative works of the foregoing. To the extent, and for any reason the foregoing statement of ownership is not effective, we shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use all of the above, including by the incorporation of any of the above into the Services. Unless otherwise set forth in the SOW, you are hereby granted a license to use the above solely in connection with, and under the same provisions as, its use of the SMA Offerings.

### 2.5. Customer Responsibilities.

**2.5.1. Use Restrictions.** You shall not, and shall not permit any other person to, access or use the SMA Offerings or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Integrations, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of the SMA Offerings; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any SMA Offerings to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Subscription Service or Legacy Software, in whole or in part; (d) bypass or breach any security device or protection used by the SMA Offerings or access or use the Subscription Service or Legacy Software other than by a User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit, or otherwise provide to or through the Subscription Service or any information technology systems operated or controlled by us or our service providers, any information or materials that are unlawful or injurious, or contain, transmit, or activate any viruses, worms, time bombs, Trojan horses and any other harmful or malicious code, scripts, agents, files or any other similar software that may damage the operation of the Subscription Service or the information technology systems operated or controlled by us or our service providers; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the SMA Offerings or the information technology systems operated or controlled by us or our service providers, or our provision of SMA Offerings to any third party, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, Documentation, or disclaimers, or any IP Rights notices from any SMA Offerings, including any copy thereof; (h) access or use the SMA Offerings in any manner or for any purpose that infringes, misappropriates, or otherwise violates any IP Rights or other rights of any third party, or that violates any applicable law; (i) access or use the Subscription Service or other SMA Offerings for purposes of competitive analysis of the Subscription Service or such other SMA Offering, the development, provision, or use of a competing software service or product or any other purpose that is to our detriment or commercial disadvantage; or (j) access or use the Subscription Service or Legacy Software in a way intended to avoid Fees or exceeding usage limits or using any other means to avoid any other use limitations placed on the Subscription Service or Legacy Software.

**2.5.2. Customer Control and Responsibility.** You have and will retain sole responsibility for: (a) all Customer Content, including its use; (b) all information, instructions, and materials provided by or on behalf of you or any User in connection with the SMA Offerings; (c) the **Customer Systems**; (d) the security and use of your and your Users' Access Credentials; and (e) all access to and use of the SMA Offerings directly or indirectly by or through the Customer Systems or its or its Users' Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

**2.5.3. Access and Security.** You shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer

the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Subscription Service or Legacy Software; and (b) control the content and use of Customer Content, including the uploading or other provision of Customer Content for processing by the Subscription Service or Legacy Software.

If you become aware of any violation of this Agreement, you will promptly contact us at [legal@smatechnologies.com](mailto:legal@smatechnologies.com). We investigate and respond to any reports in a manner we consider appropriate given the nature of the violation and our applicable legal obligations. Amongst others, we may remove, disable access to, or modify any Customer Content or other data that violates this Agreement, or report any activity that potentially violates any law or regulation to appropriate law enforcement officials, regulators, or other third parties, which may include disclosing appropriate Customer Content where necessary.

### **3. ORDERS; PAYMENT; DISPUTES; TAXES.**

**3.1. Orders.** Each Order shall: (i) be treated as a separate and independent order; and (ii) become effective on the date we receive payment from you of the applicable Fees as stated in each applicable Order (the “**Effective Date**”).

**3.2. Payment.** Subject to this Section 3.2, you will pay all applicable, undisputed Fees no later than thirty (30) days from the invoice date, in the amount set forth in the applicable Order or SOW in the currency reflected in each Order or SOW, and if no currency is reflected, in United States currency. We may charge you interest on any undisputed, overdue amounts at the lower of (i) the highest permissible rate; or (ii) 18% per annum, charged at 1.5% per month from thirty (30) days past the due date until the date of payment. You acknowledge that any delay in payment may result in termination or interruption of our provision of the SMA Offerings.

**3.3. Payment Disputes.** You may withhold from payment any Fees disputed by you in good faith solely if you: (i) timely pay all Fees not subject to dispute; (ii) notify us in writing of the dispute prior to the due date, specifying in such notice (1) the amount in dispute, and (2) the reason for the dispute; (iii) work with us in good faith to resolve the dispute promptly; and (iv) promptly pays any amount determined to be due by resolution of the dispute; *provided, however*, if any dispute lasts longer than thirty (30) days, we may terminate our provision of the SMA Offerings. For clarity, nothing in this Section 3.3 precludes us from the exercise of any of our available rights at law or equity (including, without limitation, termination for material breach).

**3.4. Taxes.** Payment of all sales tax, use tax, VAT, foreign, state, or federal taxes, and any other taxes in any form, offsets, withholding or currency control associated with an Order or SOW will reside solely with, and be the financial responsibility of, you, excluding taxes based on our income which will be paid by us. Domestic sales and use taxes will be included on invoices where applicable unless you provide us with reasonable evidence of your exemption from such taxes.

**3.5. Measurement of Usage Fees.** You will enable certain functionality that tracks and accounts for the number of Tasks performed using the in the Subscription Service or Legacy Software for the purpose of accurately calculating any Usage Fees. If you are unable to enable the use of this functionality, you will be required to provide any reports and queries requested by us for this purpose. We will, within 90-days prior to expiration of each rolling 12-month period during the Term (an “**Annual Period**”), audit your Task usage for each such Annual Period (each a “**Task Audit**”). If a Task Audit determines that you have exceeded, or will exceed, the average number of daily Tasks permitted in the applicable Order, then (i) the Order will be modified to reflect the number of Tasks performed in the most recent Annual Period, and (ii) at our option, we may invoice you for any Task usage exceeding 150% of the permitted number of Tasks in the prior Annual Period.

3.6. **Fee Changes.** We may increase Fees no more than once annually for any contract year after the first contract year of the Term, including any contract year of any renewal term, by providing written notice to Customer at least 60 calendar days prior to the commencement of that contract year, and any affected Order will be deemed amended accordingly. Fees for new or additional SMA Offerings beyond a current Order will be billed at our then-current Fees for such SMA Offerings and increased in accordance with Section 3.6.

#### 4. TERM AND TERMINATION.

4.1. **Term.** The applicable Order or SOW will set forth the beginning and end dates for provision of the applicable SMA Offerings, and, if applicable, any available automatic renewal term (collectively, the “**Term**”). This Agreement continues until all applicable Orders or SOWs expire or are earlier terminated (as provided herein).

4.2. **Termination for Non-Renewal.** Excluding any non-recurring Professional Services and except as otherwise provided in an Order, you may submit a notice of non-renewal no less than 60 days prior to expiration of the then-current Term. Such notice should be submitted as per Section 8.11 herein.

4.3. **Termination for Cause.** Either party may terminate one or more Orders or SOWs (i) if the other party breaches its material obligations and fails to cure such material breach within thirty (30) days of receipt of written notice, or (ii) where permitted by applicable law, if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business.

4.4. **Effect of Expiration or Termination.** On expiration or early termination of an Order or SOW, (i) you will immediately discontinue all use of the SMA Offerings subject to the expired or terminated Order or SOW, and (ii) all earned and unpaid Fees as to such Orders or SOWs become immediately due. At expiration or early termination of the last outstanding Order or SOW, (a) you will immediately discontinue all use of the remaining SMA Offerings; (b) all remaining earned and unpaid Fees become immediately due; and (c) each party will return or, if requested, destroy any Confidential Information belonging to the other party in its possession, and if required by applicable Data Protection Law and pursuant to our DPA, we will (1) provide you with all Customer Content then in our possession or control in a commonly accessible data format, or (2) delete all Customer Content in our possession or otherwise in our control.

4.5. **Survival.** The provisions of this Section 4.5 (Survival) along with Section 1 (Definitions); Section 2.5.1 (Use Restrictions); Section 3.2 (Payment); Section 3.3 (Payment Disputes); Section 3.4 (Taxes); Section 3.5 (Measurement of Usage Fees); Section 4.4 (Effect of Expiration or Termination); Section 5 (Proprietary Rights; Confidentiality); Section 5.1.3 (Customer Content); Section 6.1 (Disclaimer of Warranties); Section 6.2 (Limitation of Liability); Section 7 (Indemnification); and Section 8 (General) will survive the expiration or termination of this Agreement.

4.6. **Suspension.** We may suspend or otherwise deny your or your User's, or any other person's access to or use of all or any part of the Subscription Service, without incurring any resulting obligation or liability, if: (a) we receive a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires us to do so; or (b) we believe, in good faith and in our reasonable discretion, that you or any User has (i) failed to comply with any material term of this Agreement, (ii) accessed or used the Subscription Service beyond the scope of the rights granted or for a purpose not authorized under this Agreement or (iii) in any manner that does not comply with any material instruction or requirement contained in the written documentation available to Customer; or (b) this Agreement expires or is terminated. This Section 4.6 does not limit any of our other rights or remedies, whether at law, in equity, or under this Agreement.

#### 5. PROPRIETARY RIGHTS; CONFIDENTIALITY.

### 5.1. Proprietary Rights.

5.1.1. **SMA Offerings.** We and our licensors retain ownership of the SMA Offerings and their associated design, software, documentation, processes, algorithms, and user interfaces, and all IP Rights embodied therein. You may not remove or modify any proprietary marking or restrictive legends from the SMA Offerings. We reserve all rights not expressly granted in this Agreement.

5.1.2. **Feedback.** If you or your Users give to us any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("**Feedback**"), you give to us, without charge, royalties, or other obligation to you, the right to make, have made, create derivative works, use, share and commercialize your Feedback in any way and for any purpose. You will not give Feedback that is subject to a license that requires us to license our software, technologies, or documentation to any third party because we include your Feedback in them.

5.1.3. **Customer Content.** As between you and us, you are and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Content, including all IP Rights relating thereto, subject to the rights and permissions granted herein.

5.1.4. **License Grant.** You grant us a worldwide and royalty-free intellectual property license to use Customer Content to generate Usage Data. To the extent such Customer Content is collected and used in creating Usage Data, we will only use such Customer Content in an aggregated or anonymized manner so as not to identify you or any User.

5.2. **Confidential Information.** In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to this Section, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing: the financial terms of this Agreement are the Confidential Information of SMA. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

5.2.1. **Safeguarding of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party will for three (3) years following the expiration or termination of this Agreement: (a) except as may be permitted by and subject to its compliance with this Section, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section; and (b) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect



its similarly sensitive information and in no event less than a reasonable degree of care. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 5 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

**5.2.2. Compelled Disclosures.** If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this Section; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's outside legal counsel, the Receiving Party is legally required to disclose.

## **6. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.**

**6.1. DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED HEREIN, WE, AND OUR AFFILIATES, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO YOUR USE OF THE SMA OFFERINGS. YOU UNDERSTAND THAT THE USE OF SMA OFFERINGS IS AT YOUR OWN RISK AND THAT WE PROVIDE THE SAME ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." WE DO NOT GUARANTEE THE ACCURACY OR TIMELINESS OF THE SMA OFFERINGS, AND, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE SMA OFFERINGS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

**6.2. LIMITATION OF LIABILITY. IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES (INCLUDING BREACH OF THIS AGREEMENT), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT YOUR EXCLUSIVE REMEDY IS TO RECOVER, FROM SMA OR ANY OF OUR AFFILIATES DIRECT DAMAGES UP TO AN AMOUNT EQUAL TO ANY FEES ACTUALLY PAID BY YOU DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT FOR THE SMA OFFERINGS GIVING RISE TO THE CLAIM. YOU CANNOT RECOVER ANY OTHER DAMAGES OR LOSSES, INCLUDING DIRECT, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE.** These limitations and exclusions apply even if this remedy does not fully compensate you for any losses or fails of its essential purpose or if we knew or should have known about the possibility of the damages. To the maximum extent permitted by law, these limitations and exclusions apply to any claims arising from or related to this Agreement.

## **7. INDEMNIFICATION.**

**7.1. Procedure.** The party seeking indemnification hereunder (as the "**Indemnified Party**"): (a) will promptly provide written notice to the party from whom indemnification is sought (as the "**Indemnifying Party**") of any third-party claim, demand, lawsuit, notice of violation, or proceeding (collectively, "**Claim(s)**"); *provided, however,* that the failure to give prompt written notice will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party was actually and materially

prejudiced by such failure; (b) will reasonably cooperate with the Indemnifying Party in connection with the defense of a Claim, at the Indemnifying Party's expense, and (c) may, at its own expense, participate in the defense of a Claim. An Indemnifying Party will have the sole and exclusive authority to defend or settle any such Claim; *provided, however*, neither the Indemnifying Party nor an Indemnified Party may settle any Claim under this Agreement where such settlement includes: (x) an admission of liability or fault on behalf of the other party or (y) the creation of an obligation or imposition or forbearance of an act (including injunctive or other equitable relief) on the other party, without the other party's prior written consent.

**7.2. SMA Indemnification.** We will defend you and your officers, directors, employees, successors, and permitted assigns (each, a "**Customer Indemnitee**") against a Claim (other than a Claim brought by an Affiliate of a Customer Indemnitee) (a "**Customer Indemnity Claim**") arising out of or relating to an allegation that your or their use of a SMA Offering in accordance with this Agreement infringes or misappropriates a third-party's United States IP Right and we will indemnify you from and against any liability, damages, judgments, settlements, interest, fines, penalties, fines, or awards (including reasonable attorneys' fees) (collectively, "**Losses**") resulting from such Claim. If the SMA Offering is enjoined in any manner due to such infringement or if we believe an injunction materially affecting your use of the SMA Offering is likely, we may in our discretion and at no cost to you: (a) procure for you the right to continue to use the SMA Offering as contemplated under this Agreement, (b) modify or replace the allegedly infringing features or components to the SMA Offering with a non-infringing equivalent, or (c) if we determine that neither (a) nor (b) are practicable, we may terminate this Agreement or the Order pertaining to allegedly infringing SMA Offering and refund any Fees paid in respect of such terminated SMA Offering for the remainder of the relevant Term starting with the termination date designated by us. The above indemnification obligation does not apply if you: (x) use the SMA Offering in combination with data, software, applications, hardware, equipment, products, services, or other technology where the SMA Offering would not by itself, and without modification, be infringing; (y) fail to use the SMA Offering in accordance with the then-applicable Documentation; (z) continue the allegedly infringing activity after being notified or informed of modification that would have avoided the alleged infringement, or (aa) use the SMA Offering in a manner not strictly in accordance with this Agreement.

**7.3. Customer Indemnification.** You will defend SMA and our officers, directors, employees, successors, and permitted assigns (each, a "**SMA Indemnitee**") against a Claim (other than a Claim brought by an Affiliate of SMA) (a "**SMA Indemnification Claim**") and you will indemnify such SMA Indemnitee from and against any Losses arising out of or relating to: (a) violations of your or your Users' obligations under Section 2; and (b) allegations that the Customer Content (i) infringes a third-party's IP Right or (ii) when used with the SMA Offerings or as contemplated under this Agreement violates applicable law.

**7.4. SECTION 7 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF THE INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR THE INDEMNIFIED PARTY FOR ANY LOSSES COVERED UNDER SECTION 7.**

## **8. GENERAL.**

**8.1. Governing Law and Forum.** This Agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these Terms. The UN Convention on Contracts for the International Sale of Goods does not apply. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the jurisdiction of the main address of the defendant in such proceedings, and each party submits to this personal jurisdiction and venue.

**8.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership,

joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**8.3. Interpretation.** The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

**8.4. Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**8.5. Entire Agreement.** This Terms and associated Order(s) constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The provisions of this Agreement will control over any conflicting provisions in an Order, unless the Order indicates the clear intent of the parties that such conflicting provision prevail over a term or condition of this Agreement for that particular Order. Further, any purchase order, work order, or similar document provided by or on your behalf is expressly rejected by us and any terms and conditions included therein are not part of this Agreement.

**8.6. Assignment.** Neither party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, that*, a party, with Notice to the other party, may assign their rights or delegate their obligations to any successor of such party. For purposes of this Section, "successor" means any person, firm, or corporation or other legal or business entity which, at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all, or substantially all, of the assets or business of the assigning or delegating party. No assignment, delegation, or transfer will relieve a party of any of its obligations or performance under this Agreement. Any assignment, delegation, or transfer in violation of Section 8.6 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

**8.7. Amendment.** Unless you have a separately negotiated and signed agreement stating otherwise, we may modify this Agreement by posting a revised version at <https://smatechnologies.com/terms-conditions> and such revised version will become effective as to your use of the SMA Offerings as of the next business day following its posting. Prior to such posting, we will provide you with notice of any material revision by contacting your designated administrator(s) at the contact information provided in the SMA Offerings. If you do not agree with a material modification to this Agreement, you must notify us in writing within thirty (30) days after we send notice of the revision. If you give us this notice, then your subscription will continue to be governed by the terms and conditions of the Agreement prior to modification until your next renewal date, after which the current terms posted at the above webpage will apply. However, if we can no longer reasonably provide the SMA Offerings to you under the terms prior to modification (for example, if the modifications are required by law or result from general product changes), then the Agreement and/or affected SMA Offerings will terminate upon our notice to you and we will promptly refund any prepaid but unused fees covering use of the SMA Offerings after termination.

**8.8. Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

8.9. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect or invalidate any other term or provision of this Agreement or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

8.10. **Export Control Laws.** Customer will not import, export, re-export, or transfer, directly or indirectly, any part of the Subscription Service or Legacy Software or any underlying information or technology, except in full compliance with all applicable laws and regulations.

8.11. **Notices.** Unless otherwise agreed to by the parties, all notices required under this Agreement (except those relating to SMA Offerings pricing, changes and upgrades) will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, (iii) overnight mail, addressed and sent to the address in the Order, or (iv) electronic mail to the contact listed in the Order.

8.12. **Public Announcements.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, Service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided; however, we may include your name and logo in our promotional and marketing materials where we list our current or former customers.

8.13. **Force Majeure.** In no event will either party be liable to the other, or be deemed to have breached this Agreement, for any failure or delay in performing our obligations under this Agreement, if and to the extent such failure or delay is caused by any of the following events (each a "**Force Majeure Event**"): flood, fire, earthquake, explosion, pandemic, war, terrorism, cyber terrorism or other comparable criminal or willful acts (including third-party hackers or other third-party malicious acts), invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns, our suppliers failure to supply necessary goods or services to us, passage of applicable law, any action taken by a government authority or other public authority (such as imposing an embargo), or international, national, or regional shortage of adequate power, telecommunications capacity, or transportation. In allocating the risk of delay or failure of performance of a party's respective obligations under this Agreement, the parties have not considered the possible occurrence of any of the events listed herein or any similar or dissimilar events beyond their control, irrespective of whether such listed, similar, or dissimilar events were foreseeable as of the date of this Agreement.

8.14. **Actions Permitted.** Except for actions for nonpayment of Fees or breach of a party's proprietary rights, no action, regardless of form, arising directly or indirectly out of this Agreement may be brought by either party more than one (1) year after the cause of action accrued.

8.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.