

WHITE LABEL SAAS AGREEMENT

BETWEEN: textLIVING, LLC (the “Company”), a company organized and existing under the laws of the State of Tennessee with its head office located at 2006 Lindell Avenue Nashville, Tennessee 37203; and

AND: White Label Partner (the “Customer”)

(The Company and the Customer shall individually be referred to as “Party” and collectively as “Parties”).

WHEREAS, the Company has developed software which provides text marketing, loyalty, kiosk, and mobile web app solutions (the “Software”) and licenses and otherwise makes available such Software to its customers as a subscription-based software-as-a-service; and

WHEREAS, the Customer wishes to engage the Company to create a customized, branded version of the Software as further described herein, to be licensed to and made available to the Customer and its Clients (defined below) on a subscription basis (the “Services”) in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY AGREED AND ACKNOWLEDGED, THE PARTIES AGREE TO BE BOUND AS FOLLOWS:

1. DEFINITIONS

- 1.1 “Authorized Users” means the end users authorized by the Customer or its Clients to use and access the Services.
- 1.2 “Client(s)” means individuals or entities to which the Customer has sub-licensed the Services.
- 1.3 “Confidential Information” with respect to the Disclosing Party (herein defined), means any information or materials, that is of any value or significance to the Disclosing Party, not generally known to competitors of the Disclosing Party, nor intended by the Disclosing Party for general dissemination, which is marked “Confidential”, “Proprietary” or with a legend of similar import or with respect to which the Recipient (herein defined) otherwise at any time knows, or has reason to know, that the Disclosing Party intends or expects the secrecy or confidentiality thereof to be maintained.
- 1.4 “Customer Data” shall mean all data, records and information (including electronic and hard copy information and data) that is (i) owned or controlled by the Customer or its Clients; (ii) provided to or by the Services and entered into or processed by the Services in connection with the Customer or its Client’s use and license (or sub-license, as in the case of Client) of the Services or otherwise under this Agreement.
- 1.5 “Documentation” shall mean the document made available to the Customer, Client, or any Authorized Users by the Company regarding the Services, which sets out a description of the Services and the user instructions for the Services.
- 1.6 “Intellectual Property Right(s)” means any intellectual property rights which may exist or be created under the laws of any country or other jurisdiction anywhere in the world, whether arising under statutory or common law or otherwise, and whether or not perfected, including, without limitation, all (i) patents and patent applications whether owned or licensed; (ii) industrial property rights; (iii) rights associated with works of authorship, including copyrights, copyright applications,

copyright registrations; (iv) sui generis database rights, moral rights, or rights of publicity; (v) rights relating to the protection of trade secrets or Confidential Information; (vi) rights of privacy or publicity; (vii) rights associated with trademark, service mark, trade dress, or trade name, including any common law rights and any state or federal trademark or service mark applications or registrations; (viii) divisionals, continuations, renewals, reissues and extensions of any of the foregoing whether in whole or in part (as and to the extent applicable) now existing, hereafter filed, issued or acquired; and (ix) any right analogous to those set forth in this definition; and (x) any other proprietary rights relating to intangible property.

2. LICENSE AND AUTHORIZATION TO ACCESS AND USE OF THE SERVICES

2.1 The Company hereby grants to the Customer, during the Term, the following:

- 2.1.1 a limited, non-exclusive, non-transferrable right and license to use and access the Services, and the right to authorize and provide access to the Services for Authorized Users;
- 2.1.2 a limited, non-exclusive, non-transferrable right to grant sublicenses to Clients to enable such Clients to authorize and provide access to the Services for Authorized Users; and
- 2.1.3 the right to prepare, reproduce, print, download and use copies of Documentation as may be useful for any use of the Services under this Agreement during the Term.

2.2 Authorized Users. The Customer may authorize Authorized Users to access or use the Services. Each Authorized User must agree to terms and conditions of an end user license agreement as may be provided by the Company and made available through the Services or otherwise, from time to time, and as may be updated from time to time (“**Company EULA**”). Agreement to and acknowledgment of the Company EULA is at all times a condition of becoming an Authorized User. Use of the Services by Authorized Users will be governed by the Company EULA as well as the terms of this Agreement. Upon the Customer’s request or any breach of the Company EULA, the Company may discontinue or otherwise lock out an Authorized User.

2.3 Authorization Limitations and Restrictions. The Customer shall not permit any other person to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, the Customer shall not (and shall not permit any Client or any Authorized User), except as this Agreement expressly permits, to:

- 2.3.1 modify, alter, tamper with, or interfere with any feature, functionality or proper working of the Services, or any part thereof;
- 2.3.2 reverse engineer, decompile, disassemble or otherwise attempt to discern or derive the source code or any underlying algorithm or any database or other structure thereof, or create any derivative, of the Services or any part thereof, or to violate, misappropriate or infringe any of Company’s Intellectual Property Rights in and to the Services;
- 2.3.3 download, upload, reproduce, copy, post, distribute, display or in any other way transmit or otherwise process any information, data, or materials, from or to or otherwise utilizing the Services, unless (and then only to the extent) such activities are expressly permitted by, and comply with of the terms, conditions, and restrictions of this Agreement;
- 2.3.4 use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithms or methodology to access, acquire, copy or monitor the Services for any purpose except that the Customer may monitor whether the Services is operational and provide internal alerts regarding the same;
- 2.3.5 bypass or breach any security feature, device or protection used for or contained in the Services, or the Documentation;

- 2.3.6 rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Services or Documentation in whole or in part, 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;
- 2.3.7 use the Services for purposes of: (i) benchmarking or competitive analysis of the Services; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that could be to the Company's detriment or commercial disadvantage; or
- 2.3.8 otherwise access or use the Services beyond the scope of the authorization granted in this Agreement.

3. SERVICE DESCRIPTION

3.1 Responsibilities of the Company; Disclaimers

- 3.1.1 The Services shall be made available by the Company subject to any unavailability caused by circumstances beyond the Company's reasonable control, including any force majeure events, as contemplated in Section 11.1, and any computer, communications, internet service or hosting facility failures or delays involving hardware, software, power or other systems not within the Company's possession or reasonable control, and denial of service attacks.
- 3.1.2 The Services may be temporarily limited, interrupted, or curtailed due to maintenance, repair, modifications, upgrades or relocation. The Company shall attempt to notify the Customer of scheduled and unscheduled network outages that are expected to last more than four (4) hours and that may affect the Services. The Company shall be entitled to change the Services during the Term, provided that the Company will not materially reduce the capabilities provided by the Services.
- 3.1.3 The Company shall ensure that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 3.1.4 The provisions of this clause shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Company's instructions, or modification or alteration of the Services by any party other than the Company or the Company's duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, the Company will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause.
- 3.1.5 The Company does not warrant that the Customer's use of the Services will be uninterrupted or error-free, nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements, and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.1.6 This Agreement shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 3.1.7 The Company warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

3.1.8 The Company warrants that it is hosted on a secure and well-maintained cloud platform. The Company performs automated database backups overnight.

3.2 **Responsibilities of the Customer**

3.2.1 The Customer shall maintain marketing and customer service standards that are appropriate to maintain high-quality Services and to reflect favorably on the Customer's and the Company's reputation. The Customer shall provide Clients with prompt, courteous, and efficient service, shall take every reasonable precaution not to disclose any Company information, other than as permitted by any applicable privacy or personal health information legislation, and shall deal with Clients honestly and fairly.

3.2.2 The Customer shall be responsible for all activities of all Authorized Users, its Clients, and its personnel and the Customer shall: (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall notify the Company promptly of any such unauthorized access or use; and (ii) comply with all applicable local, state, provincial, federal and foreign laws in respect to the promotion and re-sale of the Services.

3.2.3 The Customer shall provide the Company with all necessary co-operation in relation to this Agreement.

3.2.4 The Customer shall provide the Company with all necessary information as may be required by the Company.

3.2.5 The Customer shall comply and ensure that the Clients comply with all applicable laws and regulations with respect to its activities under this Agreement.

3.2.6 The Customer shall carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Company may adjust any agreed timetable or delivery schedule as reasonably necessary.

3.2.7 The Customer shall ensure that the Clients obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under this Agreement, including, without limitation, the Services.

3.2.8 The Customer shall ensure that its network and systems comply with the relevant specifications provided by the Company from time to time.

3.2.9 The Customer shall ensure that the Clients take reasonable steps to prevent unauthorized access to the Software, including, without limitation, by protecting its passwords and other log-in information. The Customer shall notify the Company immediately of any known or suspected unauthorized use of the Company software or breach of its security and shall use best efforts to stop said breach.

4. **FEES AND PAYMENT.**

4.1 Except as otherwise specified in this Agreement, all payments under this Agreement shall be made with credit card on file immediately upon the receipt of the invoice from the Company, as applicable. Any amounts not paid when due shall accrue interest at the lesser of 5% per month or the maximum rate allowed by law.

4.2 If any amount owing by the Customer under this or any other agreement for the Services is thirty (30) or more days overdue, the Company may, without limiting the Company's other rights and remedies, accelerate the Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend provision of the Services to the Customer and the Clients until such amounts are paid in full. The Company will give the Customer at least seven (7) days' prior notice that its account is overdue, before suspending the Services.

4.3 Unless otherwise stated, the fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, goods and services, harmonized sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “**Taxes**”). The Customer is responsible for paying all Taxes associated with fees paid by the Customer to the Company this Agreement. If the Company has the legal obligation to pay or collect Taxes for which the Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by the Customer, unless the Customer provides the Company with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, the Company is solely responsible for Taxes assessable against the Company, based on its income, property and employees.

5. CUSTOMER DATA.

5.1 **Customer Data and Information Rights.** The Customer shall own and control all rights, title, and interest in and to Customer Data, including all Intellectual Property Rights therein. The Customer grants to Company, subject to retained ownership of certain information of Customer’s Clients and other Authorized Users, a non-exclusive license to Customer Data hereunder to provide the Services, including recording, transmitting, processing, maintaining, and displaying the Customer Data necessary to provide the Services and ensure continuity of services. The Company shall maintain the security and confidentiality of such Customer Data pursuant to Section 6 of this Agreement. The Company shall only use the Customer Data for the agreed purposes of these Agreements and shall remove and return all such Customer Data upon the expiration and termination of this Agreement, except that the Customer grants to the Company a non-exclusive, worldwide, perpetual license to retain and use such Customer Data in anonymized, de-identified form for the Company’s internal business purposes.

5.2 **Backup and Disaster Recovery.** The Company shall, in accordance with this agreement maintain or cause to be maintained disaster avoidance procedures designed to safeguard the Customer Data, the Company’s processing capability and the availability of the Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder.

6. **CONFIDENTIALITY AND NON-DISCLOSURE.** The Parties acknowledge that certain confidential and/or proprietary information regarding a respective Party (as the case may be the “**Disclosing Party**”) may be from time to time be disclosed to the other Party, its affiliates, or representatives (as the case may be the “**Recipient**”) in order for each Party to further the purpose and intent of this Agreement.

6.1 **Confidentiality Obligations.** Each Party, as a Recipient, must hold all of the Disclosing Party’s Confidential Information in the strictest confidence, and must not at any time, directly or indirectly without in each case first obtaining the Disclosing Party’s express prior written consent (which consent may be delayed, conditioned, or withheld in the Disclosing Party’s sole and absolute discretion) disclose or use for the benefit of the Recipient or any third Party whatsoever, any of the Confidential Information or trade secrets of the Disclosing Party. The Recipient must at all times use reasonable precautions to ensure that the Disclosing Party’s Confidential Information is properly protected and kept from unauthorized persons, entities, use or disclosure, and must advise each of the Recipient’s officers, directors, employees, consultants, contractors and advisors of all restrictions on disclosure and use of the Disclosing Party’s Confidential Information imposed by this Agreement. Nothing herein shall prevent the disclosure or use of any material, data or information: (i) that has been lawfully and independently developed and publicly disclosed by third Parties not under an obligation of confidentiality to the Disclosing Party; (ii) that otherwise enter the public domain through lawful means and not due to any breach by Recipient of any obligations hereunder; or (iii) that comprises written records that are shown to have been actually in the Recipients possession before the disclosure by or through the Disclosing Party without any obligation of confidentiality or non-use to the Disclosing Party; provided however that the unauthorized appropriation, use or disclosure of trade secrets or Confidential Information by the Recipient directly or indirectly will not affect the protection and relief afforded by this Agreement regarding such information.

- 6.2 **Rights in Confidential Business Information.** All right, title and interest of Disclosing Party in and to the Disclosing Party's Confidential Information or trade secrets, including all Intellectual Property Rights therein, shall be and remain vested in the disclosing Party.
- 6.3 **Return/Destruction of Information.** Except as otherwise provided by this Agreement, upon the Disclosing Party's written request, the Recipient shall (at the Recipient's election) promptly return or destroy (provided that any such destruction shall be certified by a duly authorized representative of the Recipient) all Confidential Information of the Disclosing Party and all copies, reproductions, summaries, analyses or extracts thereof or based thereon (whether in hard-copy form or in intangible media, such as electronic mail or computer files) in the Recipient's possession; provided, however that the Recipient shall not be obligated to return or destroy Confidential Information of the Disclosing Party to the extent the Recipient is required to retain a copy pursuant to applicable law. All Confidential Information, if any, so returned shall continue to be subject to all restrictions on disclosure and use thereof as set forth in this [Section 6](#).
- 6.4 **Remedies.** Because unauthorized use, disclosure or transfer of the Confidential Information will substantially diminish the value of such Confidential Information and cause irreparable harm, the Company and the Customer agree that any breaches or threatened breach by Recipient of the provisions of this [Section 6](#) shall entitle the Disclosing Party to seek equitable relief (including but not limited to preliminary and/or permanent injunctive relief) in addition to any other remedies available hereunder or that may be afforded by law.
- 6.5 **Survival of Confidentiality.** Notwithstanding anything in this Agreement to the contrary, the obligations hereunder with respect to Confidential Information shall commence upon the Effective Date of this Agreement and shall terminate five (5) years after expiration or earlier termination of this Agreement in accordance with the provisions hereof. The obligations hereunder with respect to any Confidential Information constituting trade secrets shall commence upon the Effective Date of this Agreement and shall continue for as long as such information constitutes trade secrets.

7. **TERM AND TERMINATION**

- 7.1 The initial Term of this Agreement shall commence on the Effective Date noted above and continue thereafter for a period of one (1) month (the "**Initial Term**").
- 7.2 Thereafter, this Agreement shall automatically renew for additional periods of one (1) month (the "**Renewal Term(s)**"); the Initial Term together with any Renewal Terms are collectively referred to as the "**Term**"). In the event the Company provides notice of termination or ceases operation, the Customer shall have the right to continue providing software support services to its Clients using its own or a third-party content management interface.
- 7.3 The Company reserves the right to modify this Agreement and any of its other policies at any time at its sole discretion with no prior notice to the Customer.
- 7.4 This Agreement may be terminated: (i) by either Party upon seven (7) days written notice to the other party; (ii) by the Company, if the Customer fails to make any payment due hereunder within thirty (30) days after receiving written notice from the Company that such payment is delinquent; (iii) if either Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching Party may terminate this Agreement on written notice at any time following the end of such thirty (30) day period; or (iv) if either Party becomes insolvent (i.e., becomes unable to pay its debts in the ordinary course of business as they come due) or makes an assignment for the benefit of creditors, then the other Party may terminate this Agreement immediately upon notice. In no event shall a termination of this Agreement relieve the Customer of any due and outstanding payments owed to the Company.

8. **INTELLECTUAL PROPERTY**

- 8.1 As between the Company and the Customer, all right, title and interest, including all Intellectual Property Rights, in and to the Software, Services, Documentation and all other Company materials (“**Company Materials**”) are reserved by and shall belong solely to the Company, except for the limited, non-exclusive rights specifically licensed to the Customer hereunder. The Customer must not use the Company Materials or any part thereof, nor permit any use of the Company Materials other than as expressly permitted under this Agreement. The Customer must not under any circumstance ever represent or assert that it has any right, title or interest in or to Company Materials, other than those expressly licensed to the Customer under this Agreement. There are no implied licenses granted by Company to the Customer under this Agreement.
- 8.2 The Customer hereby grants to the Company, for the Term of this Agreement, a non-exclusive, limited, royalty-free, non-transferable license to use Customer’s trademarks, trade dress, graphics, packaging designs and artwork and other Customer branding as the Customer may specify from time to time (collectively, the “**Customer Brand Attributes**”) solely in connection with providing the Services. The Company shall have the right to grant a sublicense of the Customer Brand Attributes to its authorized contractors and affiliates for the Services for the sole purpose of performing or facilitating the performance of the Services hereunder. The Company acknowledges that its use of the Customer Brand Attributes inures to the benefit of the Customer and that the Company shall not acquire any rights therein, other than as expressly set forth in this Agreement.
9. **SUPPORT AND MAINTENANCE SERVICES.** The Support and Maintenance Services will be such as provided by the Company to the Customer and as mentioned in “**Schedule A**” attached to the present Agreement.
10. **RELATIONSHIP OF THE PARTIES.** Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership, or other form of joint enterprise between the Parties. Neither Party shall have authority to contract for or bind the other in any manner whatsoever.
11. **DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY**
- 11.1 The Company expressly disclaims any representation or warranty that the Services will be error-free, timely, secure or uninterrupted. No oral advice or written information given by the Company, its employees, licensors or agents will create a warranty, nor should the Customer rely on any such information or advice.
- 11.2 Under no circumstances will the Company, or its affiliates be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Service, including but not limited to reliance on any information obtained from the Service; or that result from mistakes, omissions, interruptions, deletion of files or email, loss of or damage to data, errors, defects, viruses, delays in operation or transmission, or any failure of performance, whether or not limited to act of God, communication failure, theft, destruction or unauthorized access to the Company records, programs or Services.
- 11.3 The Customer hereby acknowledges that this provision will apply whether or not the Company is given notice of the possibility of such damages and that this provision will apply to all Services available from the Company and its affiliates.
- 11.4 Under no circumstances, under the terms of this Agreement, shall damages include loss of business, or loss of profits, whether based on breach of Agreement, breach of warranty, product liability, or otherwise, to any Party in privity to this Agreement, or any third party not so situated.
- 11.5 The terms of this section shall survive the termination of this Agreement for whatever reason.
12. **FORCE MAJEURE.** If by reason of failures of telecommunications or Internet service providers, labour disputes, riots, inability to obtain labour or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, earthquake, act of God, pandemic, epidemic or other causes beyond the control of the Company, the Company is unable to perform in whole or in part its obligations as set forth in this Agreement, then the Company shall be relieved of those obligations to the extent it is so unable to perform, and such inability to perform shall not make the Company liable to the Customer or third parties.

13. **SEVERABILITY AND CONSTRUCTION**

- 13.1 Except as expressly provided to the contrary herein, each article, term, condition and provision of this Agreement shall be considered severable, and if, for any reason whatsoever, any such article, term, condition or provision herein is deemed to be invalid, illegal or incapable of being enforced as being contrary to, or in conflict with any existing or future law or regulation by any court or agency having valid jurisdiction, such shall not impair the operation or have any other effect upon such other articles, terms, conditions and provisions of this Agreement, and the latter shall continue to be given full force and effect by the Parties hereto, and shall be construed as if such invalid, illegal or unenforceable article, term, condition or provision were omitted.
- 13.2 All captions, titles, headings and article numbers herein have been inserted and are intended solely for the convenience of the Parties, and none such shall be construed or deemed to affect the meaning or construction of any provisions hereof, nor to limit the scope of the provision to which they refer.
- 13.3 All references herein to the masculine gender shall include the feminine and neuter genders, and all references herein to the singular shall include the plural, where applicable.
- 14. **NOTICES.** All notices required or submitted under this Agreement shall be given in writing and shall be personally delivered or mailed by registered mail, postage prepaid and return receipt requested, except in the event of a postal disruption, to the respective Parties at the following addresses, unless and until a different address has been designated by notice in writing to the other Party:

To the Company:

textLIVING, LLC
2006 Lindell Avenue Nashville, Tennessee 37203

To the Customer:

Billing Address On File

15. **LANGUAGE; GOVERNING LAW; SUBMISSION TO JURISDICTION**

- 15.1 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee, which law shall prevail in the event of any conflict of the Parties.
- 15.2 The Parties hereby agree that any suit, action or proceeding seeking to enforce, interpret, or challenge the enforceability of any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought exclusively in the in the United States District Court, or in the Circuit Court of the State of Tennessee, in each case situated in Davidson County.
- 16. **NON-SOLICITATION.** During the Term and continuing for one (1) year following the expiration or termination of this Agreement, the Customer shall not, without the Company’s prior written consent, directly or indirectly: (i) solicit for employment or otherwise induce, influence, or encourage to terminate employment with the Company or its affiliates; (ii) hire, on behalf of the Customer or any other person, any person who has left the employment or any consultancy within the one (1) year period following the termination of that person’s employment with Company or its affiliates; or (iii) induce, influence, or encourage, any client, customer, supplier, or other similar third party of the Company to alter, terminate, or breach its contractual or other business relationship with the Company or its affiliates.
- 17. **NON-COMPETE.** In consideration of the Customer’s relationship with the Company pursuant to this Agreement, which the Customer acknowledges to be good and valuable consideration for the Customer’s obligations under this Agreement, the Customer agrees that, since the Customer will have access to and learn about the Company’s Confidential Information, during the Term and continuing for three (3) years following

the expiration or termination of this Agreement, the Customer shall not: (i) directly or indirectly market, promote, or solicit customers or subscriptions for or supply, sell or resell any product or service that competes directly with the Services within the United States; (ii) have any interest in excess of five percent (5%), nor have any controlling voting interest, in any entity that markets, promotes, sells or provides any product or service in competition with the Services within the United States; (iii) enter into any agreements with any provider to resell, redistribute, sub-license or otherwise commercialize any product or service that competes with the Services within the United States; or (iv) display on its website or elsewhere any advertising or marketing materials of any provider of any product or service that compete with the Services within the United States. The Company shall have the continuing right to market and sell the Services and any other products or services to any third parties, including but not limited to current, future, and potential Clients of the Customer.

18. **RIGHT TO CONTRACT DIRECTLY WITH CLIENTS.** Notwithstanding anything to the contrary set forth elsewhere in this Agreement, if any amount owing by the Customer under this or any other agreement for the Services is ninety (90) or more days overdue, the Company may, without limiting the Company's rights and remedies provided for in this Agreement or under applicable law, suspend or terminate provision of the Services to the Customer and directly contract with the Customer's Clients until such amounts are paid in full, the full payment of which shall not impair any then-existing contracts with the Customer's Clients. The Company will give the Customer at least seven (7) days' prior notice that its account is ninety (90) or more days overdue, before suspending or terminating the Services under this section
19. **RIGHT OF FIRST REFUSAL.** If, at any time during the Term, the Customer receives a bona fide offer (a "**Third-Party Offer**") from a third party to acquire all or substantially all of its assets or its line of business relating to Clients (the "**Offered Assets**"), Company and provide details of the material terms of such Third-Party Offer (the "**ROFR Notice**"). The Company shall have thirty (30) days from the date of its receipt of such notice and details to notify (the "**Acceptance Notice**") the Customer if it, on behalf of itself or any of its affiliates or sublicensees, wishes to elect to purchase the Offered Assets on the same or substantially similar terms as provided for in the ROFR Notice. Upon receipt of the Acceptance Notice, (i) the Customer and the Company shall take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 19 on the same or substantially similar terms as the Third-Party Offer (and in any event on terms no less favorable to the Company as to such third-party offeror), including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate, and (ii) the Customer shall not, and shall ensure that none of its affiliates shall, discuss, communicate, or negotiate with any other person regarding such rights during such time. If, prior to the date that is ninety (90) days from the receipt of the Acceptance Notice, the Customer and the Company have not executed a binding agreement regarding the acquisition that is the subject of such Third-Party Offer, and the Customer has acted in good faith and in compliance with this Section 19 throughout such exclusive negotiation period, then the Customer shall thereafter be free to negotiate an agreement with such third-party offeror.
20. **INDEMNIFICATION**
- 20.1 **Indemnification by the Company.** If a third party makes a claim against the Customer or a Client that the Services infringes any patent, copyright or trademark, or misappropriates any trade secret, or that the Company's negligence or wilful misconduct has caused bodily injury or death, the Company shall defend the Customer or the Client and its directors, officers and employees against the claim at the Company's expense, and the Company shall pay all losses, damages and expenses (exclusive of attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by the Company, to the extent arising from the claim. The Company shall have no liability for any claim based on (i) the Customer Data, (ii) modification of the Services not authorized by the Company, or (iii) use of the Services other than in accordance with the Documentation and this Agreement. The Company may, at its sole option and expense, procure for the Customer the right to continue use of the Services, modify the Services in a manner that does not materially impair the functionality, or terminate this Agreement.
- 20.2 **Indemnification by the Customer.** The Customer shall defend and/or settle at its expense, any claims, actions or proceedings against the Company and its affiliates and its and their officers, directors, employees

and contractors to the extent arising out of or relating to (i) bodily injury or damage to tangible or real property, including death, caused by or arising out of any negligent act or omission of the Customer or those for whom the Customer is responsible for at law; (ii) the provision, use or failure of any product or service provided by the Customer; (iii) any representations or warranties made by the Customer in respect to the Services or any portions thereof beyond those authorized in this Agreement; (iv) any infringement or misappropriation of any intellectual property or other rights by any client data; (v) any violation of any law or regulation by the Customer or any of its affiliates or any of its or their officers, directors, employees, contractors or agents; or (vi) real or tangible property damage or bodily injury or death caused by the negligent or willful acts or omissions of the Customer or any of its affiliates or any of its or their officers, directors, employees, contractors or agents in connection with this Agreement, and the Customer shall pay all damages finally awarded by a court of competent jurisdiction to such third party against any of the Company, or any settlement amounts agreed by the Customer in writing; subject to the conditions that, the Company shall notify the Customer promptly of any claims, permit the Customer to control the defense and settlement of such claims (provided that the Company may participate with counsel of its own choosing, at its own expense), and assist the Customer, at the Customer's expense, in defending or settling such claims. The Customer shall not be liable for any settlement amounts entered into by the Company without the Customer's prior written approval.

21. **WAIVER.** The failure of the Company to enforce a provision of this Agreement shall not be construed as a waiver or limitation of the Company's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
22. **ASSIGNMENT OF AGREEMENT.** This Agreement may not be assigned or otherwise transferred by any Party in whole or in part without the express prior written consent of the other Party. In the event any Party shall change its corporate name or merge with another corporation, assignment shall be mutually agreed upon by all Parties and the surviving or new corporation and any subsidiaries shall be similarly subject to the rights and obligations of this Agreement.
23. **ENTIRE AGREEMENT.** This Agreement constitutes the complete and exclusive statement of this Agreement between the Parties regarding the products and services provided hereunder and supersedes any prior Agreements between the Parties with respect thereto.
24. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or other transmission method, and may bear signatures affixed through .pdf or other software including without limitation any electronic signature platform complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com); any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and shall be valid and effective for all purposes.

SCHEDULE A
SUPPORT AND MAINTENANCE SERVICES

1. SUPPORT AND MAINTENANCE SERVICES

- 1.1 Support and Maintenance Services are included in the White label SaaS pricing in Schedule B and entitle the Customer to the following:
- 1.1.1 Telephone or electronic support to help the Client locate and correct problems with the Software. Business hours our 8-5 CST, Monday to Friday, except holidays.
 - 1.1.2 Bug fixes and code corrections to correct Software malfunctions to bring such Software into substantial conformity with the operating specifications.
 - 1.1.3 All extensions, enhancements, and other changes that the Company, at its sole discretion, makes or adds to the Software and which the Company furnishes, without charge, to all other subscribers of the White label SaaS Service.