

**Thank you for choosing SPS Commerce!** By clicking a box indicating acceptance, by using SPS's Services, or by signing a written document offering SPS's Services to Customer, Customer and its Affiliates agree to be bound by these General Terms & Conditions ("Terms").

## Select Definitions

**"Customer Data"** means any and all data, information and/or materials provided or made available by or on behalf of Customer for use in connection with the Services or otherwise relating to any SPS Agreement.

**"Derived Data"** means (i) Customer Data that has been processed, anonymized, aggregated and/or manipulated by or on behalf of SPS to such a degree that it cannot be identified by visual inspection as originating directly from Customer Data; and (ii) any general information or insight that is derived by or on behalf of SPS in connection with the Services.

**"Documentation"** means all formal documentation and materials published or provided in writing by SPS related to the Services, including data insights and reports generated from Derived Data, user manuals, help files and any other instructions, specifications, documents, and materials that describe the functionality, installation, testing, operation, use, maintenance, support, technical features, or requirements of the Services.

**"Order Form"** means a written document offering SPS Services to Customer and signed by Customer including, but not limited to, a scope and proposal, quote, or statement of work.

**"Services"** means the online, Web-based services, associated interfaces or other hosted data connections, applications, Software, or other products provided by SPS as described on the Order Form(s), including any updates, upgrades, enhancements, releases, improvements, and any other adaptations or modifications made to thereto and any supplemental consulting, configuration, educational or other professional services provided by SPS to Customer as described in an Order Form.

**"Software"** (also referred to herein as "Services") means the software program(s) owned by SPS, and any updates, upgrades, enhancements, releases, improvements, and any other adaptations or modifications made to such software programs that are delivered by SPS to Customer as more fully described in Documentation. SPS is not obligated to update, upgrade, enhance or improve Software.

## 1. General

**1.1** These Terms govern Customer's ("Customer", "You", "Your") access to and use of SPS's Services. These Terms, together with the Order Form, if any, constitute the full agreement between Customer and SPS ("Agreement"). In the event of a conflict between these Terms and any such Order Form, the applicable terms in the Order Form shall control. In these Terms, SPS Commerce, Inc. or any of its Affiliates, shall be referred to as "SPS." "Affiliate(s)" means an entity that directly or indirectly controls, is controlled by or is under common control with SPS Commerce, Inc. The term "control" shall mean the ownership, directly or indirectly, of shares possessing more than fifty percent (50%) of the voting power of a legal entity.

**1.2** SPS may modify the Terms at any time. Modifications to the Terms are posted online at: <http://www.spscommerce.com/terms-and-conditions>.

**1.3** All terms and conditions contained in any prior or subsequent oral or written communication between Customer, on one hand, and SPS, on the other hand, including, without limitation, terms and conditions contained in any purchase order which are different from or in addition to the terms set forth in these Terms, are hereby expressly rejected and shall not be binding on SPS, and SPS hereby objects thereto. Any action by Customer in furtherance of a purchase of SPS Services shall constitute acceptance of these Terms.

**1.4** All deliveries of SPS are subject to the export laws and regulations of the United States. Customer represents that Customer or Customer's trading partners are not named on any U.S. government denied-party or restricted-party list during the execution of the Agreement. Customer shall not require, encourage or solicit the attendance of any events or other use of deliveries by individuals in a U.S. embargoed country or region or use the Services in violation of any U.S. export law or regulation. Customer affirms that it has not and agrees that it will not, in connection with the purchase of and the use of the deliveries contemplated by the relevant Agreement or in connection with any other business transactions involving SPS, make or

promise to make any payment or transfer anything of value, directly or indirectly: (i) to any governmental official or employee (including employees of government corporations or instrumentalities); (ii) to any officer, director or employee of SPS; or (iii) to any other person or entity, if such payment or transfer would violate the laws of the country or jurisdiction in which Customer or SPS operates or conducts commerce, or the laws of the United States, including but not limited to the U.S. Foreign Corrupt Practice Act ("FCPA"), 15 U.S.C. § 78m, 78dd-1, 78dd-2, and 78dd-3. In case of Customer's violation of this clause, SPS is entitled to terminate this Agreement with immediate effect, without any obligation or being liable for any damage or loss that may occur.

**1.5** Parties agree to comply with all applicable laws, regulations, and ordinances of the jurisdictions in which it operates or does business. This includes adhering to all local, state, national, and international laws that may apply to the Customer's use of SPS's Services or any other business transactions involving SPS. Should any conflict arise between these Terms and applicable law, the requirements of the applicable law shall prevail.

## 2. SPS Services

**2.1** The Services are described in the relevant Order Form.

**2.2** All Services, including, without limitation, all copyrights, trademarks, artwork, images, and other elements are protected by intellectual property rights owned and controlled by SPS or by entities that have licensed or otherwise provided their material to SPS, as described in further detail in Section 4. Customer shall not delete any proprietary, confidential, or intellectual property rights notices.

**2.3** The intellectual property rights of Customer Data that will be processed via the Services are owned and controlled by You or third parties You have involved (such as Customer's trading partners). You are responsible for securing the rights from third parties You have involved to provide Customer Data and warrant that SPS is entitled to use Customer Data for the execution and delivery of SPS Services. SPS shall not delete any proprietary, confidential, or intellectual property rights notices. SPS will never be responsible for the content, the correctness or completeness of Customer Data.

**2.4** Tasks, timelines, data types, volumes, and/or pricing committed to by SPS are based upon Customer's representations and descriptions. In the event SPS determines that the representations and descriptions made by Customer are materially different than those found when providing the Services (a "Change"), SPS reserves the right to adjust the tasks, timelines, data types, volumes, and pricing. Any changes to timelines or pricing will be subject to Customer's written approval (email to suffice), which may not be unreasonably withheld. Customer is responsible for timely cooperation and provision of required information of Customer internal departments, Customer's trading partners, and Customer's suppliers, such as its enterprise resource planning supplier(s). SPS is not liable for impacts to SPS's ability to provision the Services resulting from delays caused by, or originating with, Customer, its trading partners, or Customer's suppliers.

## 3. Use of the Services

**3.1** For so long as Customer remains in compliance with these Terms, SPS grants Customer a limited, non-transferable, non-exclusive, revocable right and license to access and use the Services, any reports SPS provides or makes available to Customer as part of the Services, their associated documentation, and other proprietary materials, solely for Customer's own internal business purposes.

**3.2** With written permission, which won't be unreasonably withheld, the Customer authorizes SPS to use their trademarks, service marks, and logos as needed to provide the Services and to reference the Customer as a user of these Services.

**3.3** Customer represents and warrants that (i) Customer has received the consent necessary to collect and provide the Customer Data (including personal information or personal data, as those and similar terms may be defined by applicable law) to SPS, and that Customer has no reason to believe Customer may not do so, (ii) Customer is only transmitting Customer Data to SPS which is necessary for SPS to provide Services to Customer, (iii) the Customer Data does not contain credit or debit card information and (iv) that the Customer Data, or Customer's transmission of the Customer Data, does not violate (a) Customer's obligations to any third party or individual, (b) any third party's intellectual property rights, or (c) any

laws or regulations. SPS acknowledges and agrees that Customer owns and retains all right, title, and interest in and to Customer Data. Subject to this Agreement, Customer grants to SPS, and its Affiliates, a perpetual, nonexclusive, worldwide, royalty-free, transferable, sublicensable license to use, copy, store, process, manipulate, modify, change, configure, perform, display and transmit Customer Data as necessary to provide the Software, Services, including any Documentation, to Customer and to incorporate Customer Data into aggregated and anonymized data sets including, without limitation, for the purpose of improving the Software, Documentation, Services of SPS and its Affiliates and for creating Derived Data. Without limiting any Customer Data ownership rights described herein, SPS shall have the right to create Derived data, which may include: (i) compiling statistical and other information related to the performance, operation and use of the Software, Documentation, Services and Customer Data, and (ii) use data from the Software, Documentation, Services and Customer Data in aggregated form for security and operations management, to create statistical analyses, for research and development purposes and to incorporate Customer Data into aggregated and anonymized data sets for the purpose of business operations, improving and commercializing products, software, technology and services of SPS, which may include sharing of such sets and/or Derived Data (clauses (i) and (ii) are collectively referred to as "Service Analysis"). Customer grants to SPS an irrevocable, non-exclusive, worldwide, royalty-free, transferable, sublicensable, perpetual right to aggregate Customer Data with other data and to use in any way, including, without limitation, to create Derived Data. SPS retains all rights to such Service Analysis and will take reasonable steps not to incorporate Customer Data in a form that could serve to identify Customer. Customer acknowledges and agrees that SPS owns and retains all right, title and interest in and to Derived Data.

**3.4** Customer agrees to provide SPS with (i) all information, access to systems, and Data required by SPS to provide the Services to Customer in a format reasonably specified by SPS, (ii) reasonable assistance in the implementation of the Services, and (iii) permission to provide information regarding Customer's use of the Services and / or Customer Data to third parties. Customer acknowledges that any of Customer's delays will directly impact SPS's ability to implement the Services. Customer understands that the internet by which access to the Services may be subject to system delays and failures beyond either Party's reasonable control. Customer acknowledges that SPS is not responsible for delays, delivery failures or other damages resulting from Customer's access to the internet. Customer shall have sole responsibility for procuring the hardware and internet connectivity in order to access the Services as well as for complying with SPS's technical requirements to upload Customer Data. SPS shall not be responsible or liable in any manner for any equipment provided by Customer or any third party appointed by Customer, and Customer shall be the sole and responsible Party to support and maintain its own equipment. Customer shall employ all physical, administrative, and technical controls, screening and security procedures, and other safeguards necessary to, in accordance with these Terms: (a) securely administer the distribution and use of the Services, and protect against any unauthorized access to or use of the Services; and (b) control the content and its use of Customer Data, including the uploading or other provision of appropriate Customer Data. SPS is not responsible for the security of the Customer's network, hardware and IT systems, including without limitation, any possible, suspected or actual breach of Customer's physical or IT security defenses and resultant disclosure of any Customer Data.

**3.5** In some cases, Customer or the Services to be delivered to Customer may be integrated with SPS's Universal Network. In addition to other general requirements outlined in the Agreement about Customer systems and security, SPS's successful integration relies on Customer's and its third-party providers' full cooperation. SPS may delay or discontinue integrating Customer or its third-party providers if (i) Customer or its third-party providers are not responsive to SPS's reasonable requests, (ii) Customer provides written notice to SPS that the integration services do not need to be completed, or (iii) after twelve (12) months if Customer does not indicate to SPS that SPS should continue integrating Customer.

**3.6** Access to the Services may be password controlled and accessible to registered users only ("Account(s)"). Each individual Account access the Services must have a unique username and password ("Authorized User"), and Authorized Users must only access the Services through their own Accounts. Customer and each Authorized User is responsible for

maintaining the confidentiality of Customer's and Authorized User's account information including, without limitation, Customer's or Authorized User's username(s), password(s) and other security measures as the case may be. Customer agrees to notify SPS immediately of any actual or suspected unauthorized disclosure or use of Customer's or an Authorized User's username(s), password(s), or account(s), or any other breach of security. Customer and SPS has no responsibility for (i) unauthorized access to Customer Data or content as a result of Customer making usernames and passwords available to an unauthorized party or (ii) Customer's inability to adhere to the information security requirements that apply to use of the Services.

**3.7** Customer is solely responsible for all activity occurring within Customer's Account(s), regardless of whether it was authorized by Customer, third parties that were acting Customer's behalf, or any other party that has gained access to Customer Account(s). Customer agrees to use the Services only for their intended purposes. Customer is responsible for its and its Authorized Users' compliance with the terms and conditions of this Agreement. Customer will not nor will Customer allow any third party or user to (i) attempt to gain unauthorized access to the Services, or its related systems and networks; (ii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services; (iii) use the Services to post, transmit or store material or information in violation of any local, state, federal or foreign law, regulation or treaty, or any third party privacy or intellectual property rights, including without limitation those related to privacy, electronic communications and anti-spam legislation; (iv) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, exfiltrate or expropriate any systems, data, personal information or property of another; (v) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Services (vi) modify, reverse engineer, disassemble, decrypt, decompile, create a patent based on, make derivative works of, or attempt to discover or modify in any way the underlying source code of Services; or (vii) sublicense, resell, lease, rent, copy, distribute or permit access to Services or operate a software service bureau, outsourcing, time-sharing, application service provider, hosting, or similar business using them or otherwise use them for the benefit of another party (other than Customer Affiliates as expressly permitted in this Agreement)

**3.8** Customer agrees to use commercially reasonable efforts to prevent: (i) activities conducted through Customer's Account(s) that may negatively affect other users' use of, or SPS's ability to manage, the Services; or (ii) the impersonation of any other person or entity, or misrepresentation of Customer's affiliation with any other person or entity, by Customer's users.

**3.9** SPS may revoke any rights or licenses, suspend SPS's provision of Services, or terminate this Agreement if SPS determines that Customer's (i) breach of the Agreement is harmful or disruptive to SPS, SPS's customers or vendors, or another user or (ii) SPS believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the Services or SPS's network.

**3.10** The Services and any updates or upgrades as the case may be made available on an "as is" basis, without any form of guarantee or warranty on the Services, either implicitly or explicitly. SPS does not guarantee or provide any warranty that the operation of the Services will be uninterrupted or free of failures, viruses or defects that the functions or performance of Services will comply with the requirements of the Customer or that the Services are suitable for a particular purpose. Furthermore, SPS is not liable for any costs or damages caused by interruptions or delays in the Services.

**3.11** SPS reserves the right to review Customer's use of the Services to ensure compliance with the terms of this Agreement. Such reviews may be conducted during normal business hours and upon reasonable notice to the Customer. The Customer agrees to cooperate fully with SPS during such reviews, including providing access to records, systems, and personnel as reasonably required by SPS. If a review reveals that the Customer has exceeded any usage limits or has otherwise breached the terms of this Agreement, the Customer agrees to promptly remedy such breach and reimburse SPS for the reasonable costs of the review.

#### 4. Confidential Information

**4.1** "Confidential Information" means any non-public information that either Party acquires from the other, whether or not such information is designated or marked as confidential, excluding any information that is publicly available when provided or thereafter becomes publicly available, other than by reason of that Party's breach of this Agreement. Each Party agrees that Confidential Information does not include any information or other data, however marked, that: (i) is or becomes publicly available without a breach of these Terms, (ii) is received by a Party from another source who can disclose it without an obligation to keep it confidential, (iii) is independently developed by a Party without the use of Confidential Information, or (iv) is considered Derived Data.

**4.2** Customer acknowledges that SPS's Software, Documentation, Services, information about such Services, business plans, trade secrets, discoveries, ideas, designs, drawings, specifications, techniques, models, data, code, programs, documentation, processes, lists, know-how, marketing plans, customer information, and financial and technical information and other information known to be or should be known to be confidential information or designated by SPS as confidential information are confidential information of SPS, and Customer will not disclose such Confidential Information or any of Customer's use thereof to any third party, or use such Confidential Information for any purpose not authorized herein. Except for certain Customer Data as described herein, all material included in the Services, including (without limitation) the text, software, scripts, graphics, photos, sounds, music, videos, interactive features and the like ("Content") are owned by or licensed to SPS, subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. You acknowledge and agree that SPS is and shall remain the exclusive owner of the Services; all associated Software, Documentation, and Content; and all patent, copyright, trade secret, trademark and other intellectual property rights therein. In addition, the compilation and presentation of the Content in the Services is subject to copyright owned exclusively by SPS. Content in the Services may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without our prior written consent. You agree to not engage in the use, copying, or distribution of any of the Content, Software, Documentation, and Services other than expressly permitted herein, including any use, copying, or distribution Content. If you download or print a copy of the Content for personal use, you must retain all copyright and other proprietary notices contained therein. You agree not to circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Services. You shall not challenge or assist any third party to dispute or challenge SPS's or its licensors' ownership of such rights or the validity or enforceability of such rights.

**4.3** Each Party agrees (i) to hold any Confidential Information of the other in the strictest confidence, (ii) not to make use of any Confidential Information of the other Party other than for the performance of this Agreement and any related agreements with such Party or with Customer's trading partners, (iii) to release Confidential Information of the other party only to employees requiring such material or information, and (iv) not to release or disclose Confidential Information of the other party to any other Party at any time, except as may be specifically agreed upon in this or any other agreement between the Parties. The confidentiality obligations under this provision shall survive for a period of five (5) years after the termination of this Agreement; provided, however, that the confidentiality obligations as they relate to trade secrets shall survive for as long as such information remains a trade secret under applicable law. Each Party will use commercially reasonable efforts to prevent its employees from using or disclosing Confidential Information to any unauthorized party. For purposes of this Section, "employees" of each Party shall be deemed to include authorized agents and subcontractors of that party. In the event either Party is required (by law, court, administrative proceeding, or similar process) to disclose any of the other Party's Confidential Information ("Compelled Party"), it shall notify the other of the request and assist in seeking a protective order or other appropriate remedy, at the Compelled Party's own expense. In the absence of a protective order, the Compelled Party may disclose only that portion of the Confidential Information that is legally required to be disclosed.

## 5. Data Security and Privacy

**5.1** Parties shall use commercially reasonable efforts to maintain industry standard administrative, technical, and physical safeguards designed to prevent unauthorized or unlawful access, use, or deletion of the Data. SPS's safeguards will be no less rigorous than those maintained by SPS for its own data of a similar nature.

**5.2** SPS, its subcontractors, and its Affiliates will not assert any lien or other property right against Customer's Data, except as may be specifically agreed upon in this or any other agreement between the Parties.

**5.3** The Customer is aware that the Services are intended for processing of business-related data only. Although the content can contain limited personal data (such as contact information), SPS advises the Customer to exclude personal data from the content when reasonably possible. In case personal data is registered by Customer, its employees, contractors or trading partners (for example upon 1<sup>st</sup> registration), the Customer ensures that all relevant individuals have provided consent for such registration and processing of their personal data. The Customer ensures the Content will not contain any sensitive personal data or any credit card related information.

**5.4** The Customer warrants that the processing of personal Data is based on appropriate legal grounds for processing and that it has made and shall maintain throughout the term of the Agreement all necessary rights, permissions, registrations and consents in accordance with and as required by Data Protection Laws with respect to SPS's processing of the Personal Data under this Agreement. Customer represents and warrants that Customer Data will not include any information deemed to be sensitive under any law or regulation, including but not limited to health information, financial account numbers, or other similarly sensitive personal information. Customer assumes all risk arising from use of any such sensitive information in connection with the Services, including the risk of inadvertent disclosure or unauthorized access or use thereto.

**5.5** If required by applicable law or upon Customer's request, the Parties shall enter into a separate amendment or Addendum (such as a Data Processing Agreement or addendum outlining the obligations and responsibilities of each Party concerning the processing of Personal Data.

**5.6** If this Agreement is terminated, SPS shall provide Customer a reasonable opportunity to remove Customer Data from within Customer's Account at Customer's sole cost; provided, that if Customer fails to remove such Customer Data within a reasonable time, not to exceed sixty (60) days following such termination, then SPS may retain or destroy such Customer Data without liability with respect thereto. Destruction of Customer Data shall not include Derived Data, which SPS may retain in perpetuity, so long as said Derived Data does not identify Customer.

## 6. Payments

**6.1** If applicable, Customer agrees to pay one-time fees upon and recurring fees beginning on the date Customer signs the Order Form. All fees are due upon receipt. Fees may be changed by SPS upon written notice to Customer.

**6.2** Customer must provide SPS with valid payment information including, but not limited to, Customer's complete and accurate billing information. If any of the information changes, Customer agrees to update it within thirty (30) days of the change. Customer shall be charged a \$15 non-electronic payment fee if non-electronic payments are made.

**6.3** Customer must contact SPS within fifteen (15) days of the date of the invoice to be eligible for an adjustment or credit. Balances for open invoices exceeding thirty (30) days are considered past due. All past due invoices will accrue interest at the rate of 1 ½ % per month, or a lesser rate if required by law. Customer shall pay all costs of collection, including reasonable attorney's fees, incurred by SPS when trying to collect Customer's past due amounts.

**6.4** SPS may limit the Services Customer receives, suspend Customer's access to the Services, or terminate the Agreement if Customer's balance is past due. Customer will continue to be invoiced for the Services during a period of suspension. Services will be resumed upon payment of the total past due balance and a reactivation fee of \$100.00.

**6.5** If SPS, at the request of Customer, or with prior consent of the Customer, has performed additional Services outside of the scope identified in the Order Form ("additional services"), such additional services will be

invoiced by SPS and will be paid in accordance with the agreed rates. In the event no rates are described in the Agreement, the SPS standard rates will apply.

**6.6** Customer is responsible for all Taxes related to fees or charges under this Agreement, including sales, use, value-added, and similar taxes, excluding Taxes on SPS's income. If required by law, Customer must withhold these Taxes from payments to SPS and remit them to the appropriate authorities. Upon request, Customer shall provide SPS with documentation proving the amount, timely payment, and remittance of the Taxes, allowing SPS to claim any deductions or credits.

## 7. Warranty

**7.1** SPS REPRESENTS AND WARRANTS THAT SPS WILL PERFORM ALL SERVICES IN A WORKMANLIKE AND REASONABLY DILIGENT MANNER, CONSISTENT WITH PROFESSIONAL STANDARDS OF PERFORMANCE GENERALLY ACCEPTED WITHIN THE INDUSTRY. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES, AND SPS DOES NOT MAKE ANY OTHER WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, DATA ACCURACY, QUIET ENJOYMENT, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGES TO ITS OPERATIONS CAUSED BY DEFECTS, ERRORS, INTERRUPTIONS, OR MALFUNCTIONS, IN THE SERVICES.

**7.2** If the Data is lost, destroyed, or impaired ("Loss") through the sole negligence of SPS, and SPS is notified by Customer of the Loss within sixty (60) days of the Loss, then SPS's liability and Customer's sole remedy shall be that SPS will either, to the extent reasonably possible, (i) restore the Data from SPS's archives or (ii) provide Customer a credit for the charges paid in connection with the transmission of the lost Data. The remedies set forth above are the exclusive remedies for any breach of warranty.

## 8. Indemnification

**8.1** If any Service made by SPS and sold to Customer becomes subject to a third party claim of infringement of any United States copyright or patent, and such third party claim directly relates to SPS's Services, SPS shall, at its option and expense, either: (i) modify it to make it non-infringing; (ii) settle such claim by procuring for Customer the right to continue using the Service; or (iii) defend Customer against such claim. For the avoidance of doubt, a Claim will be understood to directly relate to SPS's Services if the essence of the Claim relates to SPS's Services. If SPS elects to defend Customer against such claim, SPS will pay Customer for any direct damages actually incurred which are awarded by a court of final jurisdiction, provided Customer gives SPS prompt written notice of all facts and circumstances necessary or desirable for a proper defense of the same, SPS is given sole control over the defense of such claim, and Customer cooperates fully with SPS in the defense of such claim. SPS shall not be responsible for any settlement made without SPS's written consent. If, in SPS's opinion, none of the foregoing alternatives are reasonably available to SPS, then SPS may discontinue the sale of the Service.

**8.2** SPS shall have no liability for any claim of patent or copyright infringement that is based upon: (i) use of the Service in a manner other than for which it was intended; (ii) modifications or changes made to the Service which were not authorized by SPS; (iii) operation of the Service in combination with other products selected or supplied by Customer; (iv) SPS's compliance with Customer's designated designs, material usage or specifications; (v) Customer's use of the Service after notification by SPS to discontinue use of such Service; or (vi) Customer's use of the Service that is not the latest or current supported version of the Service. In the case of (i) - (vi) above, Customer shall defend, indemnify, and hold SPS harmless against any claim of infringement of any copyright or patent.

**8.3** This section and section 8 state SPS's full liability arising out of or related to infringement of any patent, copyright, trade secret, or other intellectual property right.

## 9. Limitation of Liability.

**9.1** IN NO EVENT WILL EITHER PARTY OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, CHARGEBACKS, LOSS OF USE

LOSS OR DATA OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL), PUNITIVE OR OTHER DAMAGES RESULTING FROM OR IN CONNECTION WITH ANY SERVICES PROVIDED TO CUSTOMER UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE PARTIES HAVE RELIED ON THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS AGREEMENT IN DETERMINING WHETHER TO ENTER INTO IT.

## 10. Term and Termination

**10.1** These Terms are effective as of the date Customer indicates acceptance by using SPS's Services, signing a written document offering SPS's Services to Customer, or checking a box indicating Customer's acceptance, whichever is first to occur ("Effective Date"). Unless indicated otherwise in the Order Form, these Terms shall remain in full force and effect for an initial term of 12 months (Initial Term). After the Initial Term, these Terms shall continue in effect as described in the relevant Order Form until one Party provides the other Party with at least 60 days advance written notice of non-renewal of this Agreement in whole or for a portion of the Services prior to the end of the applicable term. Customer must pay fees due prior to termination.

**10.2** Unless stated otherwise by mandatory local law, each of the Parties may terminate the Agreement with immediate effect in whole or in part, if the other Party a) has been granted a moratorium, a bankruptcy petition (including but not limited to chapter 7 and chapter 11 protection regulations in the US) has been filed for the other Party or b) if the other Party's company has been dissolved or terminated or c) if the other Party, even after a detailed, written demand stating a reasonable period, still fails to fulfill its obligation.

**10.3** Customer or SPS may terminate this Agreement if the other Party becomes the subject of any international sanctions or export control restrictions.

**10.4** All of Customer's rights and licenses shall expire upon termination of the Agreement.

## 11. Miscellaneous

**11.1** If any portion of the Terms are held invalid, such invalidity shall not affect the remaining portions of the Terms. Any provisions that by their nature should survive termination of the Terms, shall survive. Such provisions include, but are not limited to, those concerning proprietary rights, disclaimers of warranty and liability, governing law, payments, and termination.

**11.2** Customer may not transfer or sublicense its rights and/or obligations the Agreement without SPS's prior written consent. Neither Party may assign the Agreement without the other's prior written approval, except in connection with the sale of significantly all of the stocks or assets of the business providing or receiving the Services.

**11.3** Other than the obligation to make payments, neither party will be liable for its inability to perform to the extent that such inability or failure was caused by factors beyond its reasonable control, including, but not limited to, internet unavailability, power failures, or acts of God.

**11.4** Failure or delay by either Customer or SPS to exercise any right, power, privilege, or remedy will not constitute a waiver of that right, power, privilege, or remedy.

**11.5** Nothing contained in this Agreement will be deemed to be construed by the Parties or any third party as creating a partnership, an agency relationship or joint venture between the Parties or any of their respective employees, representatives or agents.

**11.6** During the term of the Agreement(s) and for one (1) year after termination thereof, the Customer shall not hire or otherwise have directly or indirectly work for them, employees or (sub)contractors of SPS, unless prior written consent of SPS is provided. This consent may be granted or

withheld at the sole discretion of SPS and, if granted, may include conditions to be agreed upon in writing prior to the hire of the employee or (sub)contractor. Customer shall ensure that all its affiliated organizations will comply with this clause.

**11.7** SPS is entitled to declare specific versions of the Services as End-of-Life. In general, such End-of-Life will be decided upon subject to outdated security qualifications, (changed or new) legislation or limited availability of specific development tools and resources. Each End-of Life statement will be communicated in advance by SPS and will never result in any liability of SPS. Where possible, SPS will propose an alternative for the version or the Services that was declared End-of-Life.

**11.8** The Terms shall be governed and construed according to the laws of the State of Minnesota, without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for any litigation arising out of or related to this Agreement shall be in the federal or state courts located in Hennepin County, Minnesota.