

# Application terms

## 1. DEFINITIONS.

Certain capitalized terms, not otherwise defined on the Cover Page, have the meanings set forth in this Section 1.

1.1 “Access Protocols” has the meaning set forth in Section 2.2.

1.2 “Access Term” has the meaning set forth in Section 2.1.

1.3 “Addendum” means any addendum to this Agreement executed by both Parties, if any, and may include, without limitation, ANCILE’s standard form of Professional Services Addendum.

1.4 “Application Documentation” means the end-user text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Application Services, which materials are designed to facilitate use of the Application Services and which are provided by ANCILE to Customer from time to time in accordance with the terms of this Agreement.

1.5 “Application Services” means the services and ANCILE content ordered by Customer through an Order Form and made accessible by ANCILE to Customer and its Authorized Users by means of access to certain content and use of the features and functionality of software applications available and accessible within the ANCILE web sites, solely to the extent set forth and further described in, and as limited by, the Order Forms executed by the Parties. Application Services may also include the hosting of the Customer Site.

1.6 “Authorized User” shall mean User.

1.7 “Capacity” means the amount of data storage, data transmission and number of page views and/or registered Users capacity for the Customer Site ordered under a given Order Form.

1.8 “Confidential Information” will mean all written or oral

information, including but not limited to the terms of this Agreement and information exchanged under this Agreement, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the foregoing, for purposes of this Agreement, the Application Documentation will be deemed Confidential Information of ANCILE.

1.9 “Customer Brand” shall mean any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by Customer as of the Effective Date.

1.10 “Customer Content” will mean the data, media and content provided by Customer for use with the Application Service and access through the Application Services.

1.11 “Customer URL” will mean the customer url(s) identified in an Order Form through which Users may gain access to the Customer Site.

1.12 “Key Users” Customer shall appoint individuals who are knowledgeable in the operation of the Application Services to serve as primary contacts between Customer and ANCILE regarding support inquiries.

1.13 “Order Form” shall mean a document signed by both Parties identifying the type of Application Services to be made available by ANCILE pursuant to this Agreement, substantially in the same form as Schedule A attached hereto. The Parties shall agree upon each Order Form as set forth in Section 2.1.

1.14 “User” shall mean an individual employee, contractor, or agent of Customer for whom Customer has paid the appropriate access fees and has assigned an identification number for access to the Application Services for Customer’s own internal

business purposes. If and when a User no longer has access to the Application Services, Customer may allow an alternate User to assume the initial User's identification number and access the Application Services in place of the initial User.

1.15 "Customer Site" shall mean the website hosted by ANCILE containing the Customer Content accessed through the Customer URL based on a portion of the Application Services.

1.16 "Term" will have the meaning set forth in Section 10.1.

## 2. ORDERING; ACCESS AND USE.

2.1 Order Forms. The Application Services to be provided by ANCILE under this Agreement will be set forth in one or more Order Forms executed by the Parties from time to time during the Term. The Parties shall negotiate and sign each Order Form separately. Each Order Form shall set out a description of the applicable Application Services, the costs associated with such Application Services, the period of time Customer will have access to the ordered Application Services (the "Access Term"), the Capacity Level for such Application Services, the schedule of payments for the performance of such Application Services, and any unique additional terms. Each Order Form shall be attached to this Agreement and incorporated in this Agreement by reference. In the event there is a conflict between the terms of this Agreement and an Order Form or Addendum, the terms of this Agreement shall control unless otherwise specifically stated in the applicable Order Form or Addendum; and in the event of a conflict between an Order Form and related Addendum, the Addendum relating to such Order Form shall govern.

2.2 Provision of Access for Users. Subject to the terms and conditions contained in this Agreement, including applicable Access Term(s), ANCILE hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Application Services during the Term, solely for use by Users in accordance with the terms and conditions of this Agreement. On or as soon as reasonably practicable after the Effective Date, ANCILE shall provide to Customer the necessary passwords, security and privacy protocols and policies and network links or connections (the "Access Protocols") to allow Customer to access the Application Services. Customer shall ensure that all access to the Application Services by Users complies with ANCILE's privacy policies and terms of use provided to Customer or posted on the ANCILE website from time-to-time by ANCILE. Customer acknowledges and agrees

that, as between Customer and ANCILE, Customer shall be responsible for all acts and omissions of Users, and any act or omission by such Users which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall undertake reasonable efforts to make all such Users are aware of the provisions of this Agreement as applicable to such User's use of the Application Service, and shall cause Users to comply with such provisions.

2.3 Application Documentation License. Subject to the terms and conditions contained in this Agreement, ANCILE hereby grants to Customer a non-exclusive, non-transferable right and license to use the Application Documentation during the Term for Customer's internal purposes in connection with its access and use of the Application Services as contemplated in this Agreement.

2.4 Provision of Capacity for Customer Site. Subject to the terms and conditions contained in this Agreement, ANCILE agrees to provide Customer the Capacity for the Customer Site set forth in the applicable Order Form. In the event that Customer exceeds the ordered Capacity, ANCILE shall use commercially reasonable efforts to provide such additional Capacity as may be required by Customer. In the event ANCILE provides such additional Capacity, Customer agrees to pay ANCILE for such additional Capacity provided by ANCILE in accordance with the terms of Section 5.

2.5 Usage Restrictions. Customer will not (i) copy, duplicate, reproduce, publicly perform, publicly display, sublicense or distribute the Application, except as expressly permitted herein; (ii) decompile, disassemble, translate, reverse engineer or otherwise attempt to obtain or perceive, cause or allow the discovery of the source code from which any software component of the Application is compiled or interpreted; (iii) modify the Application Service or the Application Documentation, or create any derivative product from any of the foregoing, except with the prior written consent of ANCILE; (iv) assign, sublicense, sell, resell, lease, rent, timeshare or otherwise transfer or convey, or pledge as security or otherwise encumber, ANCILE's rights under Sections 2.2 and 2.3. Customer will ensure that its use of the Application Service and the Application Documentation and all Customer Content complies with all applicable laws, statutes, regulations or rules. Customer shall notify ANCILE immediately of any unauthorized use of any password or account or any other

known or suspected breach of security. Customer will only allow Users who have been assigned a unique user identification to access the Application Services.

**2.6 Retained Rights; Ownership.**(a) Customer retains all right, title and interest in and to the Customer Brand and Customer Content, and ANCILE acknowledges that it neither owns nor acquires any additional rights in and to the Customer Brand or Customer Content not expressly granted by this Agreement; provided that ANCILE may use and disclose Customer Content derived from Authorized Users' use of the Application Services solely (i) as necessary for ANCILE to perform its obligations under this Agreement, (ii) as part of its business operations, to disclose aggregate statistics about the Application Services in a manner that prevents individual identification of Customer's and Authorized Users' information; (iii) to the extent necessary to operate, manage, maintain and enhance the Application Services or Customer Site; and (iv) if required by court order, law or governmental agency. Customer is solely responsible for all Customer Content. ANCILE further acknowledges that Customer retains the right to use the Customer Brand and Customer Content for any purpose in Customer's sole discretion. Subject to the foregoing, Customer hereby grants to ANCILE a non-exclusive, non-transferable right and license to use the Customer Brand during the Term for the limited purposes of performing ANCILE's obligations under this Agreement.(b) Subject to the rights granted in this Agreement, ANCILE retains all right, title and interest in and to the Application Service and the Application Documentation, and Customer acknowledges that it neither owns nor acquires any rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that ANCILE retains the right to use the foregoing for any purpose in ANCILE's sole discretion.

### **3. ANCILE OBLIGATIONS.**

**3.1 Professional Services.** In the event that Customer desires that ANCILE perform professional services, the Parties will mutually agree upon and prepare and execute Professional Services Addendum incorporating an appropriate Statement of Work. Notwithstanding the foregoing, Customer acknowledges that ANCILE will have no obligation to perform any services unless and until engaged to perform such services in a mutually agreed upon Professional Services Addendum to this Agreement or in a separate Order Form.

**3.2 Technical Support and Service Levels.** ANCILE provides certain limited service levels as part of the Application Services

to Customer, as set forth in the Service Level Addendum attached as Schedule B. ANCILE also provides certain support services to Customer and its Users as part of the Application Services. Customer will be solely responsible for the support of all Authorized Users who are Customer's Users accessing the Application Services through the Customer URL via Customer's Key Users.

**3.3 Training.** Customer may request for ANCILE to provide training services related to Customer's use of the Application Services. ANCILE agrees to provide such training services as are set forth in a Statement of Work. Until the Customer has ordered training services pursuant to an Order Form, ANCILE shall have no obligation to provide training services to Customer

**3.4 Communication with Users.** As part of the provision of the Customer Site, ANCILE may need to communicate with Users from time-to-time. Customer hereby grants ANCILE the limited right to communicate with Users as may be necessary as part of the performance of the Application Services, at ANCILE's reasonable discretion.

### **4. CUSTOMER OBLIGATIONS.**

**4.1 Authorized User Access to Services.** Subject to the terms and conditions herein, Customer may permit any User to access and use the features and functions of the Application Services only through the Access Protocols. Customer will ensure that any such User will be bound by a contractual, enforceable agreement, which agreement, will, by its terms, provide substantially the same or greater protections for ANCILE's Confidential Information, the Application Service, and the Application Documentation as are provided by the terms hereof.

**4.2 Customer Assistance.** Customer shall make available in a timely manner at no charge to ANCILE all content, graphic files, Customer Content, Customer Brand information or other information and resources of Customer required by ANCILE for the performance of its obligations under this Agreement. Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such content, materials and information supplied by Customer.

**4.3 Customer Content.** Customer and its Users shall have access to the Customer Content and shall be responsible for all changes to and/or deletions of Customer Content and the security of all passwords and other access protocols required in

order for all Authorized Users to access the Application Services and the Customer Site. Customer will be solely responsible for the accuracy and completeness of the Customer Content.

**4.4 Use of the Application Services.** Customer agrees that Customer and its Authorized Users will not use the Applications Services in any manner for spamming, sending chain letters, junk mail, or using a distribution list to communicate with a person who has not given Customer specific permission to contact them in such a manner. Customer agrees not to use, and to cause its Authorized Users not to use the Application Services to display, transmit or otherwise provide access to any unlawful, infringing, libelous, obscene or harassing content of any kind, including, but not limited to Customer Content. Customer agrees to use, and to cause its Authorized Users to use, the Application Services only in a lawful manner and to not process and store credit card information or social security numbers. Customer acknowledges that it is the collector of the Customer Content and ANCILE is the processor of the Customer Content. Customer will be solely responsible for (a) sending or storing material and/or Customer Content containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (b) any act that may interfere with or disrupt the integrity or performance of the Service or the data contained therein; or © any attempt by any Authorized User or other Customer employee, contractor or agent to gain unauthorized access to the Service or its related systems or networks. Customer shall indemnify ANCILE for all damages resulting from such Customer responsibilities.

**4.5 Support to Users.** Customer will provide all support services as may be required by its Users via its Key Users and in the event that any User contacts ANCILE directly for purposes of requesting any such support services, ANCILE will decline to provide such services and, at Customer's expense, will redirect and/or refer such User to Customer at such named Key Users as Customer may hereafter designate in writing to ANCILE.

**4.6 Assistance to ANCILE.** Customer will, at its own expense, provide assistance to ANCILE, including, but not limited to, by means of access to, and use of, Customer facilities and equipment, as well as by means of assistance from Users, to the limited extent any of the foregoing may be reasonably necessary to enable ANCILE to perform its obligations hereunder, including, without limitation, any obligations with respect to support services performed pursuant to Section 3 or in case of security breaches or other emergency situations. In the event that

ANCILE use such Customer facilities and equipment, ANCILE agrees to comply with Customer's policies, procedures and requirements as may be adopted by Customer from time to time.

## **5. FEES AND EXPENSES; PAYMENTS.**

**5.1 Fees.** In consideration for the access rights granted to Customer and the Services performed by ANCILE under this Agreement, Customer will pay to ANCILE, without offset or deduction, all fees required by a particular Order Form. ANCILE will either charge Customer as set forth in Section 5.3 or submit invoices to Customer with respect to such fees according to the relevant payment schedules indicated on the applicable Order Form under General Payment Terms.

**5.2 Additional Capacity Fees.** In the event ANCILE provides Customer with additional Capacity as contemplated by Section 2.4, ANCILE may invoice Customer ANCILE's then-current fees for such additional Capacity for the month for which such additional Capacity was provided and Customer shall pay such amounts within thirty (30) days after receipt of such an invoice.

**5.3 Suspension of Services.** Customer may authorize ANCILE to charge an amount equal to the monthly fees set forth in the Order Form and any additional capacity fees to the credit card and/or bank account specified in the Service Registration Profile in advance of provision of services to Customer. Upon authorization by Customer, ANCILE shall deduct amounts payable by Customer hereunder, including, without limitation, applicable taxes, if any, from Customer's account as such amounts become due. In the event that Customer fails to make the payments in accordance with the terms of this Article 5, Customer acknowledges that ANCILE may suspend all services hereunder until payment is made or until ANCILE terminates this Agreement, and such remedy will be in addition to any other right or remedy which ANCILE may have against Customer in law or equity.

**5.4 Customer Operating Expenses.** Customer will bear all expenses incurred in performance of its obligations hereunder, including, without limitation, through use by Customer and/or any Authorized User of the Application Service, and/or through provision of support to Authorized Users with respect to such use of the Application Service.

**5.5 Taxes.** Customer will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than

taxes based on ANCILE's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Customer will make all required payments to ANCILE free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to ANCILE will be Customer's sole responsibility, and Customer will, upon ANCILE's request, provide ANCILE with official receipts issued by the appropriate taxing authorities, or such other evidence as ANCILE may reasonably request, to establish that such taxes have been paid.

**5.6 Late Payments; Interest; Payment in Dollars.** Any portion of any amount payable hereunder that is not paid when due will accrue interest at one and one-half (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. All payments to be made under this Agreement shall be made in US dollars.

**5.7 Invoice Disputes.** If Customer disputes any portion of an invoice or any other amount due under this Agreement, Customer shall notify ANCILE within thirty (30) days after receipt of the invoice or from the payment due date with an explanation of the nature of the dispute. Unless a written notice of a dispute as to invoiced or due amounts is received by ANCILE within such thirty (30) day period, the invoice or amount due shall be deemed correct and payable in full by Customer.

## **6. TREATMENT OF CONFIDENTIAL INFORMATION.**

**6.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

**6.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (i) to use Confidential Information disclosed by the other Party only for the purposes described herein; (ii) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work

from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy, pursuant to Section 10.5, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, Customer agrees that ANCILE may collect aggregated statistical data regarding Customer's use of the Service and provide such aggregated statistical data to third parties. In no event shall ANCILE provide to third parties specific data regarding Customer or Customer's Authorized Users.

**6.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do. Customer also acknowledges and agrees that ANCILE may freely use any comments, ideas and/or error reports provided by Customer to ANCILE and such comments, ideas and/or error reports shall not be considered proprietary to Customer.

## **7. REPRESENTATIONS AND WARRANTIES.**

**7.1 General Representations.** Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of



this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

**7.2 Application Warranty.** ANCILE warrants that the Application Services will, for a period of sixty (60) days from the date of first access by Customer's Authorized Users (the "Warranty Period") perform substantially in accordance with the applicable Application Documentation.

**7.3 Remedies for Breach of Warranty.** Customer agrees to report to ANCILE, in writing, during the applicable Warranty Period, any non-conformance with the warranty set forth in Section 7.2 (Application Warranty). ANCILE will use reasonable commercial efforts to provide a workaround for or correct any reproducible error in the Application Services promptly. Errors will be reported to ANCILE in the form reasonably requested by ANCILE with supporting information and materials so as to enable ANCILE to reproduce, verify, diagnose, and correct the reproducible error. If ANCILE is unable to provide a workaround for or correct the error, ANCILE may refund any fees paid by Customer for the Application Services. The remedies set forth in this Section 7.3 are the sole and exclusive remedies of Customer for a breach of the warranty set forth in this Section 7.3.

**7.4 Customer Warranties.** Customer hereby represents and warrants that it owns or otherwise has sufficient right to grant ANCILE access to and use the Customer Content in accordance with the terms of this Agreement and that it shall not use the Application Services in a way or for any purpose that infringes or misappropriates any third party's intellectual property or personal rights.

## **8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.**

**8.1 Disclaimer.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 7, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES AND INTELLECTUAL PROPERTY RIGHTS RELATED THERETO, THE APPLICATION DOCUMENTATION, AND ALL SERVICES PERFORMED BY ANCILE ARE PROVIDED "AS IS," AND ANCILE DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ANCILE DOES NOT WARRANT THAT THE APPLICATION SERVICE OR ANY OTHER SERVICES PROVIDED BY ANCILE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. ANCILE'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ANCILE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**8.2 Exclusions of Remedies; Limitation of Liability.** IN NO EVENT WILL ANCILE BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF ANCILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE AND EVEN IF ANCILE HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE IN ADVANCE, AND WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. ANCILE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY ANCILE SOFTWARE, APPLICATION SERVICES, APPLICATION DOCUMENTATION OR OTHER SERVICES WHICH ARE THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO ANCILE BY CUSTOMER FOR THE TWELVE MONTH PERIOD PRECEDING THE DATE ANY CLAIM IS MADE. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

# **ANCILE**

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8.3 Essential Basis of the Agreement. Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 8 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

## 9. INDEMNIFICATION.

9.1 Indemnification of Customer. ANCILE agrees to indemnify, defend and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Application Services and/or the Application Documentation as made accessible by ANCILE and used by Customer and its Authorized Users within the scope of this Agreement infringes such third party's U.S. patents or U.S. copyright(s) issued as of the Effective Date, provided that (i) Customer notifies ANCILE in writing within thirty (30) days of its receipt of notice of any claim; (ii) ANCILE has sole authority to control the defense and related settlement negotiations of any such claim; (iii) Customer cooperates with, and provides reasonable assistance, information and authority necessary for ANCILE to perform its obligations under this Section 9.1; and (iv) Customer agrees not to enter into any settlement or compromise of any such claim without ANCILE's prior written approval. If such a claim is made, Customer agrees to permit ANCILE, at ANCILE's sole discretion, to enable it to continue to use the Application Services or the Application Documentation, as applicable, or to modify or replace any such material alleged to be infringing to make it non-infringing. If ANCILE determines that none of these alternatives is reasonably available, Customer shall, upon written request from ANCILE, cease access to, use of, and, if applicable, return, such materials as are the subject of the infringement claim. This Section 9.1 shall not apply, and ANCILE, shall not indemnify Customer, if the alleged infringement arises, in whole or in part, from (i) modification of the Application Service or the Application Documentation by Customer or anyone other than ANCILE, (ii) combination, operation, use or interface of the Application Services with other software, hardware or technology not provided by ANCILE, (iii) use of a superseded or altered release of the Application Services or the Application Documentation, or (iv) the Customer Content (any of the foregoing circumstances under clauses (i), (ii), (iii), or (iv) a "Customer Indemnity

Responsibility"). IN NO EVENT SHALL ANCILE'S LIABILITY UNDER THIS SECTION 9 EXCEED THE CAP ON LIABILITY SET FORTH IN SECTION 8.2. THIS SECTION STATES ANCILE'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

9.2 Customer's Indemnity Obligations. Customer agrees to hold, harmless, indemnify, and, at ANCILE's option, defend ANCILE from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from (i) a Customer Indemnity Responsibility, (ii) any claim by any third party that any Customer Brand or Customer Content infringes a third party's intellectual property rights; (iii) any claim that the Customer Content or use in connection with the Application Services violates applicable law; (iv) any claim related to Customer's and/or its Authorized Users' misuse of the Application Services or its failure to respect the Access Protocols, or (iii) a breach by Customer of its covenants, representations and warranties under this Agreement, provided that ANCILE promptly notifies Customer in writing of the claim, cooperates with Customer, and allows Customer sole authority to control the defense and settlement of such claim. Customer agrees that it will not settle any third-party claim against ANCILE unless such settlement completely and forever releases ANCILE from all liability with respect to such claim or unless ANCILE consents to such settlement in writing, and further provided that ANCILE will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

## 10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement will commence on the Effective Date and will continue until the expiration of all Access Terms under all outstanding Order Forms and Addenda (the "Term," as may be renewed from time to time as provided herein), unless earlier terminated in accordance with this Section 10. The Agreement will automatically renew for successive one (1)-year terms, unless either Party provides written notice of its desire not to renew at least ninety (90) days prior to the expiration of the then-current Term. The Access Term specified in any given Order Form Agreement will automatically renew for successive one (1)-year terms after the expiration of the initial Access Term specified in the applicable Order Form, unless either Party provides written notice of its desire not to renew at least ninety (90) days prior to the expiration of the then-current Access Term specified in any given Order Form.

10.2 Termination for Breach. Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party, if such other Party fails to cure such breach upon thirty (30) days prior written notice by the non-breaching Party specifying the nature of the breach and the actions required to cure the breach (except that any failure by Customer to pay any amount due hereunder to ANCILE shall constitute a material breach of this Agreement and shall require only ten (10) days prior written notice).

10.3 Suspension of Access. At its election, ANCILE may suspend access to the Application Services and/or the Customer Site in the event any amount due under this Agreement is not received by ANCILE within ten (10) days after it was due. The exercise of ANCILE's right to suspend access under this Section 10.3 shall in no way affect ANCILE's right to terminate this Agreement in accordance with the terms of Section 10.2. ANCILE may also suspend access to the Application Services and/or the Customer Site immediately upon written notice to customer in the event of a material breach by customer or any of its Authorized Users of the security provisions of this Agreement that comprises the integrity of ANCILE's computer systems or networks until any such issue is fully resolved to ANCILE's satisfaction.

10.4 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (i) that the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (iii) the other Party discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

10.5 Effect of Termination. Upon any termination of this Agreement: (i) Customer will immediately discontinue all use of the Application Services, the Application Documentation, and any ANCILE Confidential Information; (ii) Customer will delete any ANCILE Confidential Information from Customer's computer storage or any other media including, but not limited to, online and off-line libraries; (iii) ANCILE will delete any Customer Confidential Information and Customer Content from ANCILE's computer storage or any other media including, but not limited to, online and off-line libraries (iv) return to ANCILE or, at ANCILE's option, destroy, all copies of the Application Documentation and any ANCILE Confidential Information then in Customer's

possession; and (v) promptly pay to ANCILE all amounts due and payable hereunder.

10.6 Survival. The provisions of Sections 2.5, 6, 7.1, 8, 9, 10.5, 10.6, and 11 will survive the termination of this Agreement.

## 11. MISCELLANEOUS.

11.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

11.2 Independent Contractors. In making and performing this Agreement, Customer and ANCILE act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

11.3 Modifications. The terms of this Agreement are subject to change from time to time at the sole discretion of ANCILE, and any updates or additions can be found online at: [https://www.ancile.com/index.php/Application\\_terms](https://www.ancile.com/index.php/Application_terms), or by contacting ANCILE directly.

11.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

11.5 Assignment; Delegation. Customer shall not assign or otherwise transfer any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of ANCILE, and, absent such consent, any attempted assignment, transfer or delegation will be null, void and of no effect.

11.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will



confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.8 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, Internet access outside of ANCILE's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

11.10 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. FOR PURPOSES OF ALL CLAIMS BROUGHT UNDER THIS AGREEMENT, EACH

OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS IN THE STATE OF MARYLAND, USA.

11.11 U.S. Government End-Users. Each of the Application Documentation and the software components that constitute the Application Service is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Application Service and the Application Documentation with only those rights set forth therein.

11.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

11.13 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

11.14 Publicity. In consideration for the rights granted under the terms of this Agreement, Customer hereby grants ANCILE the right to reference the Customer as a customer of ANCILE on the ANCILE web site and issue a press release to that effect.

11.15 Injunctive Relief. The Parties understand and agree that (1) violation in any material respect of any of the provisions of this Agreement by either party may cause immediate and irreversible harm to the other Party; (2) the Parties may in such event have no adequate remedy at law; and (3) the Parties may in such event be entitled to seek immediate restraint, as well as preliminary and other injunctive relief, without any requirement to post bond, against any material violation of this Agreement by the other Party. Any injunctive relief sought will be in addition to, and in no way in limitation of, any and all remedies or rights to recover damages which such Party may have at law or in equity for the enforcement of this Agreement.