



Terms of Service

1. SERVICE LEVEL AND SUPPORT

1.1. Subject to the terms of this Agreement, Shepherd will use commercially reasonable efforts to provide Customer the Service.

1.2. Subscriber shall be due performance credits in the amount of 5% of any fees paid for the Service for a given month to the extent the Shepherd's cloud hosted Service is not available for at least 99.0% of the scheduled uptime for that month.

1.3. Subject to the terms hereof, Shepherd will provide Customer with reasonable technical support in accordance with Shepherd's standard practice.

2. CUSTOMER RESPONSIBILITIES

2.1. Customer represents, covenants, and warrants that Customer will use the Service in compliance with this Agreement and all applicable laws and regulations. Shepherd may monitor Customer's use of the Service and may prohibit any use of the Service it believes may be in violation of the foregoing.

2.2. Customer shall be responsible for obtaining and maintaining any equipment and/or ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, modems, hardware, servers, software, operating systems, network equipment and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer accounts, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer accounts or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY

3.1. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information"). Confidential Information of Shepherd includes, but is not limited to, information regarding features, functionality and performance of the Service. Confidential Information of Customer includes all non-public business, operational, user and client data provided by Customer to Shepherd ("Customer Data"). The Receiving Party agrees to: (i) take reasonable precautions to protect such Confidential Information, and (ii) not use (except in performance of the Service or as otherwise permitted herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without

restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2. Customer shall own all right, title and interest in and to the Customer Data. Shepherd shall own and retain all right, title and interest in and to (a) the Service and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3. Shepherd shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Service and related systems and technologies (including, without limitation, Customer Data and data derived therefrom), and Shepherd will be free during and after the Term to (i) use such information and data to improve and enhance the Service and for other development purposes in connection with the Service and other Shepherd offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

4. PAYMENT OF FEES

4.1. Customer will pay Shepherd the fees described in the Order Form for the Service and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Service exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Shepherd reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes it has been charged incorrectly, Customer must notify Shepherd within 60 days for an adjustment.

4.2. Shepherd may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Shepherd thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Service other than U.S. taxes based on Shepherd's net income.

5. TERM AND TERMINATION

5.1. Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed thereafter on a month-to-month basis (collectively, the "Term"). Either party may request termination at least thirty (30) days prior to the end of the then-current term.

5.2. In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Service up to and including the last day on which the Service are provided. Upon any termination, Shepherd will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Shepherd may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Shepherd shall use reasonable efforts consistent with prevailing industry standards to maintain the Service in a manner which minimizes errors and interruptions in the Service and shall perform the Implementation Services in a professional and workmanlike manner. Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Shepherd or by third-party providers, or because of other causes beyond Shepherd's reasonable control, but Shepherd shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Shepherd does not warrant that the Service will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Service. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICE AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND SHEPHERD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. LIMITATION OF LIABILITY

NOT WITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, SHEPHERD AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDI-

RECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND SHEPHERD'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO SHEPHERD FOR THE SERVICE UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SHEPHERD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Shepherd's prior written consent. Shepherd may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. Any waivers or modifications to this Agreement must be in writing and signed or electronically executed by both parties, except as otherwise provided herein. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be deemed to have been duly given when received, if physically delivered; or when receipt is electronically confirmed, if transmitted e-mail. This Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.