

TERMS AND CONDITIONS

These Terms and Conditions are entered into as of the Effective Date and are incorporated as part of the Agreement between CLOCworks and Customer. Capitalized terms used in this Agreement will have the meanings set forth herein or as otherwise specified in the applicable Order Form.

1. Definitions. In addition to the capitalized terms defined throughout this Agreement, the following defined terms will have the following meanings:

1.1 “Application Services” means CLOCworks’ software-as-a-service applications as further described in an Order Form.

1.2 “Authorized User” means an employee or contractor of Customer that has been authorized by Customer to access the CLOCworks Solutions and is bound by confidentiality terms at least as protective of the CLOCworks Solutions and CLOCworks’ Confidential Information as this Agreement.

1.3 “Building” means a single structure with a single electric utility meter or combined meters for the same structure and a unique mailing address.

1.4 “CLOCworks Materials” means the CLOCworks Solutions, Documentation, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by CLOCworks or any subcontractor in connection with the CLOCworks Solutions, Professional Services, or otherwise comprise or relate to the CLOCworks Solutions or Professional Services. CLOCworks Materials includes Resultant Data and any information, data, or other content derived from CLOCworks’ monitoring of Customer’s access to or use of the CLOCworks Solutions, but does not include Customer Data.

1.5 “CLOCworks Report” means a CLOCworks’ proprietary energy optimization report containing Licensed Data for a Building, as further described in an Order Form.

1.6 “CLOCworks Solutions” means, individually and collectively, the Application Services, the Licensed Data, the CLOCworks Report and/or the API provided by CLOCworks to Customer pursuant to an Order Form.

1.7 “Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and

all similar or equivalent rights or forms of protection, in any part of the world.

1.8 “Customer Data” means, other than Resultant Data, any content, data, and other information in any form or media provided by Customer or an Authorized User that is stored, transmitted, or processed in connection with the CLOCworks Solutions.

1.9 “Documentation” means any manuals, instructions, or other documents or materials that CLOCworks provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Professional Services or CLOCworks Solutions, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.10 “Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

1.11 “Licensed Data” means CLOCworks’ propriety information, including the CLOCworks database, and portions thereof provided to Customer in a CLOCworks Report and through the Application Services.

1.12 “Professional Services” means any design, installation, integration and configuration services, and any other services related to the CLOCworks Solutions as may be set forth in an Order Form.

1.13 “Resultant Data” means data and information related to Customer’s use of the CLOCworks Solutions and any data derived by processing Customer Data, in each case, that is used by CLOCworks in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of a CLOCworks Solutions.

1.14 “Third Party Products” means information and materials, in any form or medium, including without limitation, any products, software, documents, data, content, specifications, products, equipment, or components of or relating to the CLOCworks Solution that are not proprietary to CLOCworks.

2. Order Forms. In accordance with the terms and conditions of this Agreement, CLOCworks shall provide to Customer the CLOCworks Solutions, the Professional Services and/or the Third Party Products as set out in one or more order forms to be issued by CLOCworks and accepted by Customer (each, an “Order Form”). The initial accepted Order Form is attached hereto (the “Initial Order Form”). Additional Order Forms, substantially in the same form as the Initial Order Form, shall be deemed accepted and incorporates all terms and conditions of this Agreement only if signed by both Parties. Each Order Form will, at a minimum, set forth the subscription term of the CLOCworks Solutions; the amounts payable by Customer for the CLOCworks Solutions, Professional Services, and/or Third-Party Products; the schedule for payment of those amounts; and such additional terms as the Parties agree will be applicable to that Order Form.

3. CLOCworks Solutions.

3.1 Application Services. Unless otherwise agreed in an Order Form, the Application Services will be provided on a subscription fee basis. If the subscription fees are calculated on a per Building basis, as indicated in an Order Form, Building subscriptions are for the Building designated on an Order Form and cannot be transferred or shared with any other Building or location; however, Customer can add additional Buildings by notifying CLOCworks and paying the corresponding additional fees for such Buildings.

3.2 CLOCworks Reports and Licensed Data. CLOCworks shall deliver CLOCworks Reports on a frequency set forth in the Order Form and other Licensed Data through the Application Services, electronically, on tangible media, or by other means as agreed upon by the Parties. Information provided as part of any CLOCworks Reports or Licensed Data may be updated on an ongoing basis and provided according to the criteria used to define the scope of the subscribed Application Service. All updates to the CLOCworks Reports and Licensed Data will substantially conform to the requirements of this Agreement and any applicable Order Form. Customer understands and acknowledges that the contents of a CLOCworks Report and the Licensed Data will change over time as the data is updated. Certain portions of a CLOCworks Reports and the Licensed Data may be provided by CLOCworks’ third-party licensors, and CLOCworks’ ability to provide such information may be subject to the willingness of such licensors to continue to contract with CLOCworks. CLOCworks shall have no liability to Customer for any modification to any of the CLOCworks Solutions, provided that the product or service provided is substantially similar in core functionality as the impacted component of the CLOCworks Solutions.

3.3 Professional Services. Customer may require Professional Services from CLOCworks relating to the implementation of the CLOCworks Solutions. Unless otherwise agreed to in an Order Form, Professional Services will be provided on a time and materials basis at the rates set forth in the applicable Order Form with approved out-of-pocket expenses billed to the Customer in addition to those rates. Customer acknowledges and agrees that CLOCworks may, at its sole discretion, use subcontractors to provide portions of the Professional Services.

4. Third-Party Products. CLOCworks may make Third-Party Products available to Customer for use or incorporation into the CLOCworks Solutions. Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third- Party Products.

5. Access and Use.

5.1 Provision of Access. Subject to the terms and conditions of this Agreement, CLOCworks hereby grants to Customer a non-exclusive, non-transferable right for Customer to access and use the CLOCworks Solutions during the term set forth in the Order Form, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use. CLOCworks reserves the right to enhance or modify features of the CLOCworks Solutions but will not materially reduce the core functionality or discontinue any CLOCworks Solutions without providing prior written notice to Customer. Customer will receive standard updates to the CLOCworks Solutions that are made generally available by CLOCworks during the term specified in the Order Form. However, CLOCworks reserves the right to offer additional functionality or premium feature improvements for an additional cost. Customer acknowledges and agrees that CLOCworks may, at its sole discretion, use subcontractors to provide portions of the CLOCworks Solutions.

5.2 Documentation License. Subject to the terms and conditions contained in this Agreement, CLOCworks hereby grants to Customer a non- exclusive, non-sublicensable, non-transferable license to use the Documentation during the term set forth in the Order Form solely for Customer’s internal business purposes in connection with its use of the CLOCworks Solutions.

5.3 API License. CLOCworks may provide Customer with the Licensed Data through an application programming interface (“API”). Subject to the terms and conditions contained in this Agreement, in addition to those rights granted by CLOCworks to Customer pursuant to Section 5.1, CLOCworks hereby grants to Customer a

non-exclusive, non-sublicensable, non-transferable license during the term set forth in an Order Form to make calls to, reproduce, perform, and display the API as necessary to access the Licensed Data or integrate with the CLOCworks Solutions.

5.4 Restrictions. Except as otherwise expressly set forth in this Agreement, Customer shall not, and shall not permit a third party to, (i) copy, modify, or create derivative works or improvements of the CLOCworks Solutions or Documentation; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any CLOCworks Solutions or Documentation to any third-party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the CLOCworks Solutions or Documentation, in whole or in part (except and only to the extent permitted by applicable Law); (iv) bypass or breach any security device or protection used by the CLOCworks Solutions or access or use the CLOCworks Solutions or Documentation other than by an Authorized User through the use of his or her own then valid user credentials; (v) input, upload, transmit, or otherwise provide to or through the Application Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any virus, worm, malware, or other malicious computer code; (vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Application Services or CLOCworks' provision of services to any third party, in whole or in part; (vii) remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the CLOCworks Solutions or Documentation, including any copy thereof; (viii) access or use the CLOCworks Solutions or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable Law; (ix) access or use the CLOCworks Solutions or Documentation or any portion thereof, for purposes of competitive analysis of the CLOCworks Solutions or Documentation, or to build any commercially available product or service, or incorporate the CLOCworks Solutions or Documentation or any portion thereof into Customer's own products or services; (x) access or use the CLOCworks Solutions or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the CLOCworks Solutions could lead to personal injury or severe physical or property damage; or (xi) otherwise access or use the CLOCworks Solutions or Documentation beyond the scope of the authorization

granted under this Section 5.4. THE CLOCWORKS SOLUTIONS AND PROFESSIONAL SERVICES ARE INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF A HEATING, VENTILATION, AND AIR CONDITIONING PROFESSIONAL.

5.5 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the CLOCworks Solutions, Documentation, CLOCworks Materials or Third-Party Products, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the CLOCworks Solutions, Documentation, CLOCworks Materials and the Third-Party Products are and will remain with CLOCworks and the respective rights holders in the Third-Party Products.

5.6 Suspension. Notwithstanding anything to the contrary in this Agreement, CLOCworks may temporarily suspend Customer's and any Authorized User's access to any portion or all of the CLOCworks Solutions if: (i) CLOCworks reasonably determines that (a) there is a threat or attack on any of the CLOCworks Materials; (b) CLOCworks' or any Authorized User's use of the CLOCworks Materials disrupts or poses a security risk to the CLOCworks Materials or to any other customer or vendor of CLOCworks; (c) Customer, or any Authorized User, is using the CLOCworks Materials for fraudulent or illegal activities; (d) subject to applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (e) CLOCworks' provision of the CLOCworks Solutions to Customer or any Authorized User is prohibited by applicable Law; (ii) any vendor of CLOCworks has suspended or terminated CLOCworks' access to or use of any third-party services or products required to enable Customer to access the CLOCworks Solutions; or (iii) in accordance with Section 10.1 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). CLOCworks shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the CLOCworks Solutions following any Service Suspension. CLOCworks shall use commercially reasonable efforts to resume providing access to the CLOCworks Solutions as soon as reasonably possible after the event giving rise to the Service Suspension is cured. CLOCworks will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

5.7 Resultant Data. Notwithstanding anything to the contrary in this Agreement, CLOCworks may monitor Customer's use of the CLOCworks Solutions and collect and compile Resultant Data. As between CLOCworks and Customer, all right, title, and interest in Resultant Data, and all Intellectual Property Rights therein, belong to and are retained solely by CLOCworks. Customer acknowledges that CLOCworks may compile Resultant Data based on Customer Data input into the CLOCworks Solutions. Customer agrees that CLOCworks may (i) make Resultant Data publicly available in compliance with applicable Law, and (ii) use Resultant Data to the extent and in the manner permitted under applicable Law; provided that such Resultant Data does not identify Customer or Customer's Confidential Information.

6. Customer Obligations.

6.1 General. Customer is responsible and liable for all uses of the CLOCworks Solutions, and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the CLOCworks Solutions and Documentation, and shall cause Authorized Users to comply with such provisions. Customer agrees to cooperate with CLOCworks in its performance of the Professional Services and provide access to Customer's premises, employees, contractors, and equipment as required to enable CLOCworks to provide the Professional Services. In the case of Third-Party Products, Customer is responsible and liable for all uses of such Third-Products in accordance with the applicable third-party license agreement.

6.2 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 5.4, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the CLOCworks Solutions and Documentation); and (b) notify CLOCworks of any such actual or threatened activity.

7. Security and Backup.

7.1 Security. During the term of this Agreement, CLOCworks shall maintain a security program materially

in accordance with generally accepted industry standards that is designed to: (i) ensure the security, confidentiality and integrity of Customer's Confidential Information; and (ii) prevent unauthorized access to Customer Data. CLOCworks is not responsible for the transfer of any data, including Customer Data, over telecommunications facilities, including the internet. CLOCworks does not warrant secure operation of the CLOCworks Solutions or that security technologies will be able to prevent disruption to any CLOCworks Solutions. CLOCworks will notify Customer if it becomes aware of unauthorized access to Customer Data. CLOCworks will not access, use or process Customer Data except (a) as provided for in this Agreement; (b) as authorized or instructed by Customer, (c) as required to perform its obligations under this Agreement; or (d) as required by Law. CLOCworks has no other obligations with respect to Customer Data.

7.2 Privacy. In connection with the provision of the CLOCworks Solutions and Professional Services, the Parties agree to comply with all applicable Laws relating to data privacy, data security, or personal information. To the extent required under applicable Law, the Parties shall execute and/or shall cause its affiliate(s) or contractor(s) to execute supplemental privacy and security terms, including but not limited to a data processing addendum, as required for the processing and/or transfer of personal data in accordance with applicable Law.

7.3 Backup. Customer acknowledges that the Application Services are not intended to be used for purposes of archiving or backing-up data or Customer Data and Customer will not use the Application Services for those purposes. If Customer notifies CLOCworks that it is unable to access Customer Data within the Application Services and CLOCworks determines, in its sole discretion, that the data was corrupted or deleted from the Application Services by an error within the Application Services, CLOCworks will follow its standard process to attempt to restore from CLOCworks' archive, maintained in accordance with its then current back-up policy. CLOCWORKS HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY DATA, INCLUDING BUT NOT LIMITED TO, LICENSED DATA AND CUSTOMER DATA.

8. Intellectual Property.

8.1 CLOCworks Materials. Customer acknowledges that, as between Customer and CLOCworks, CLOCworks owns all right, title, and interest, including all Intellectual Property Rights, in and to the CLOCworks Materials. Customer has no right, license, or authorization with respect to any of the CLOCworks Materials except as expressly set forth in Section 5.1, Section 5.2, and Section 5.3, subject to

Section 5.4 or the applicable third-party license. With respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Products. All other rights not expressly granted herein are reserved by CLOCworks and its licensors.

8.2 Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to CLOCworks by mail, email, telephone, or otherwise, suggesting or recommending changes to the CLOCworks Materials, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“Feedback”), CLOCworks is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to CLOCworks on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and CLOCworks is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although CLOCworks is not required to use any Feedback.

9. Customer Data.

9.1 Ownership of Customer Data. CLOCworks acknowledges that, as between CLOCworks and Customer, Customer owns all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. Customer hereby grants to CLOCworks a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for CLOCworks to provide the CLOCworks Solutions and Professional Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Resultant Data and Energy Consumption Data, which may include, but is not limited to, CLOCworks’ sharing of Energy Consumption Data with third parties for the purpose of marketing products and services to Customer. “Energy Consumption Data” means Customer Data consisting of a Building’s location and the energy consumed by said Building.

9.2 Required Customer Data. In addition to other Customer Data as may be requested by CLOCworks from time to time, the Order Form shall identify the Customer Data that is required for CLOCworks to provide the CLOCworks Solutions and Professional Services. Customer will provide, cause to be provided, or authorize its third party data providers (“Customer Data Providers”) to provide to CLOCworks the Customer Data. Customer must obtain all necessary authorizations required by the

Customer Data Providers to provide the Customer Data directly to CLOCworks. Customer will direct the Customer Data Providers to cooperate fully with CLOCworks. If Customer fails to obtain the required authorizations from the Customer Data Provider or if the Customer Data Provider is unwilling or unable to provide the applicable Customer Data to CLOCworks, then Customer must provide that Customer Data directly to CLOCworks. CLOCworks will not be obligated to perform the Professional Services or deliver the CLOCworks Solutions to Customer until CLOCworks has received and loaded all Customer Data. CLOCworks will not be responsible or liable for any failure or delay of Customer or Customer Data Provider in providing the Customer Data.

9.3 Customer Responsibility for Customer Data.

As between CLOCworks and Customer, Customer is solely responsible for the use of the Customer Data and compliance with all Laws pertaining to the Customer Data, including, but not limited to, Laws requiring Customer to obtain the consent of a third party to use the Customer Data and to provide appropriate notices of third-party rights. Customer represents and warrants that it has the right to upload and transfer the Customer Data to CLOCworks and that such use does not violate or infringe on any rights of any third party. Under no circumstances will CLOCworks be liable in any way for any (a) Customer Data that is transmitted or viewed while using the CLOCworks Solutions, (b) errors or omissions in Customer Data, or (c) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to Customer Data.

10. Fees and Payment.

10.1 Fees. Customer shall pay CLOCworks the fees (“Fees”) set forth in the relevant Order Form without offset or reduction. Except as otherwise set forth in an Order Form, all Fees and approved out-of-pocket expenses due hereunder shall be due and payable within thirty (30) days after the invoice therefor. Customer shall make all payments in US dollars to the address or account specified in the Order Form or such other address or account as CLOCworks may specify in writing from time to time. If Customer fails to make any payment when due, without limiting CLOCworks’ other rights and remedies: (i) CLOCworks may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (ii) Customer shall reimburse CLOCworks for all reasonable costs incurred by CLOCworks in collecting any late payments or interest, including attorneys’ fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) days or more, CLOCworks may suspend performance of the Professional Services and suspend Customer’s and its Authorized Users’ access to any

portion or all of the CLOCworks Solutions until such amounts are paid in full.

10.2 Non-cancelable & non-refundable. Except as specifically set forth to the contrary under Section 13.1 “Indemnification by CLOCworks”, all payment obligations under any and all Order Forms are non-cancelable and all payments made are non-refundable.

10.3 Taxes. All Fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with this Agreement, and the CLOCworks Solutions and Professional Services, excluding any taxes based on the revenue, property or income of CLOCworks. If CLOCworks has a legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides CLOCworks with a valid tax exemption certificate authorized by the appropriate taxing authority.

10.4 Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles with respect to matters necessary for accurately determining amounts due hereunder. CLOCworks may, at its own expense, on reasonable prior notice to Customer, periodically inspect and audit Customer’s records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid CLOCworks with respect to any amounts due and payable to CLOCworks, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 10.1. Customer shall pay for the costs of the audit if the audit determines that Customer’s underpayment equals or exceeds 25% for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement.

11. Confidentiality.

11.1 Confidential Information. From time to time during the Term, either Party may disclose or make available (as the “Disclosing Party”) to the other Party (as the “Receiving Party”) information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media whether or not marked, designated, or otherwise identified as “confidential” (collectively, “Confidential Information”).

11.2 Exclusions. Confidential Information does not include information that, at the time of disclosure is: (i) in the public domain or generally known to the public other than by Receiving Party’s noncompliance with this Agreement; (ii) known to the Receiving Party at the time of disclosure without restriction on use or disclosure; (iii) rightfully obtained by the Receiving Party on a non-confidential basis from a third party that was not under any obligations of confidentiality; or (iv) independently developed by the Receiving Party without reference to or use of any the Disclosing Party’s Confidential Information as can be demonstrated by the Receiving Party with written records.

11.3 Protection of Confidential Information. The Receiving Party will safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own confidential information and in no event less than a reasonable degree of care. The Receiving Party shall not disclose the Disclosing Party’s Confidential Information to any person or entity, except to the Receiving Party’s employees, contractors or agents who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under this Agreement and who are contractually bound by confidentiality obligations that are at least as protective as those in this Agreement.

11.4 Compelled Disclosures. Each Party may disclose Confidential Information to the limited extent required 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 Receiving Party shall (i) promptly provide the Disclosing Party with prior written notice so that the Disclosing Party may seek a protective order and (ii) provide reasonable assistance to the Disclosing Party in opposing such an order.

11.5 Return or Destruction of Confidential Information. On the expiration or termination of this Agreement or at the Disclosing Party’s written request, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding the foregoing, (i) the Receiving Party may retain a copy of the Disclosing Party’s Confidential Information solely to the extent and for so long as required by applicable Law and (ii) CLOCworks may also retain Customer’s Confidential Information in its backups, archives, and disaster recovery systems until such Confidential Information is deleted in the ordinary course; provided however that any such retained information and materials described in this Section will remain subject to all confidentiality, security, and other applicable requirements of this Agreement.

11.6 Continuing Obligations. Each Party's obligations of non-disclosure with regard to Confidential Information continue throughout the Term and for a period of five (5) years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable Law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable Law.

12. Warranties and Disclaimers.

12.1 Mutual Warranties. Each Party represents and warrants that (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (ii) it has the full power and authority to enter into this Agreement; (ii) the person signing this Agreement on behalf of that Party has the full authority to do so; and (iii) its performance of this Agreement does not violate or conflict with any agreement to which it is a party.

12.2 CLOCworks Warranties. CLOCworks represents, warrants, and covenants to Customer that CLOCworks will perform the Professional Services and Application Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. The foregoing warranty does not apply to any Third-Party Products and CLOCworks makes no representations or warranties regarding any Third-Party Product. CLOCworks agrees, to the extent applicable and permissible, to pass through to Customer any manufacturers' or suppliers' warranties that accompany the Third-Party Products.

12.3 DISCLAIMER. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 12.1 AND 12.2, CLOCWORKS MATERIALS ARE PROVIDED "AS IS" AND CLOCWORKS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CLOCWORKS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CLOCWORKS MAKES NO WARRANTY OF ANY KIND THAT THE CLOCWORKS MATERIALS, OR ANY PRODUCTS OR SERVICES OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE

ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, DISRUPTION FREE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY PRODUCT IS STRICTLY BETWEEN CUSTOMER AND THE OWNER OF THE THIRD-PARTY PRODUCT.

13. Indemnification.

13.1 Indemnification by CLOCworks. CLOCworks shall defend, indemnify and hold Customer and its directors, officers, employees, agents, successors and permitted assigns against any loss, damage or costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, demand, suit, or proceeding ("Third-Party Claim") alleging that the CLOCworks Solutions, or any use of the CLOCworks Solutions in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights provided, however, that Customer: (i) promptly gives written notice of the Third-Party Claim to CLOCworks; (ii) gives CLOCworks sole control of the defense and settlement of the Third-Party Claim; and (iii) provides to CLOCworks reasonable assistance. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) use of the CLOCworks Solutions in combination with data, software, hardware, equipment, or technology not provided by CLOCworks or authorized by CLOCworks in writing; (b) modifications to the CLOCworks Solutions not made by CLOCworks; (c) Customer Data; or (d) Third-Party Products.

13.2 Indemnification by Customer. Customer shall indemnify, hold harmless, and defend CLOCworks and its directors, officers, employees, agents, successors and assigns from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the CLOCworks Solutions in a manner not authorized by this Agreement; (iii) use of the CLOCworks Solutions in combination with data, software, hardware, equipment, or technology not provided by CLOCworks or authorized by CLOCworks in writing; or (iv) modifications to the CLOCworks Solutions not made by CLOCworks, provided that Customer may not settle any Third-Party Claim against CLOCworks unless CLOCworks consents to such settlement (which shall not be unreasonably withheld), and further provided that CLOCworks will have the right, at its option, to defend itself against any such Third- Party

Claim or to participate in the defense thereof by counsel of its own choice. CLOCworks shall promptly provide Customer written notice of the Third-Party Claim and provide reasonable assistance to Customer.

13.3 Mitigation. If any of the CLOCworks Solutions or CLOCworks Materials are, or in CLOCworks' opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the CLOCworks Solutions or CLOCworks Materials is enjoined or threatened to be enjoined, CLOCworks may, at its option and sole cost and expense: (i) modify or replace the CLOCworks Solutions, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Customer to continue use. If CLOCworks determines that neither alternative is reasonably available, CLOCworks may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer and provide Customer with a pro-rata refund of any prepaid fees.

13.4 Sole Remedy. THIS SECTION 13 SETS FORTH CUSTOMER'S SOLE REMEDIES AND CLOCWORKS' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE CLOCWORKS SOLUTIONS AND CLOCWORKS MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

14. Limitation of Liability.

14.1 Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF CLOCWORKS AND ITS LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO CLOCWORKS UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14.2 Exclusion of Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL CLOCWORKS OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS

AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE CLOCWORKS SOLUTIONS; (iii) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (iv) COST OF REPLACEMENT GOODS OR SERVICES; (v) LOSS OF GOODWILL OR REPUTATION; OR (vi) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.3 Exceptions. The exclusions and limitations in Section 14.1 and Section 14.2 do not apply to CLOCworks' obligations under Section 13.1 or liability for CLOCworks' gross negligence or willful misconduct.

15. Term and Termination.

15.1 Term of Agreement. The term of this Agreement commences on the Effective Date and continues until the stated term, including any renewal terms, in all Order Forms has expired or has otherwise been terminated (the "Term"). If no renewal term is specified, a repeating 2-year auto renewal will be applied with 30-day notice to opt out.

15.2 Termination for Cause. In addition to any other express termination right set forth in this Agreement:

- i. Either Party may terminate this Agreement, (a) upon thirty (30) days prior written notice to the other Party of a material breach by the other Party if such breach remains uncured at the expiration of such notice period, and (b) immediately, if the other Party (A) becomes insolvent, (B) makes a general assignment for the benefit of creditors, (C) suffers or permits the appointment of a receiver for its business or assets, (D) becomes subject to any proceeding under any bankruptcy or insolvency Law whether domestic or foreign, (E) ceases doing business in the ordinary course, or (F) has wound up, dissolved or liquidated, voluntarily or

otherwise, or makes an assignment or delegation in violation of this Agreement; or

- ii. CLOCworks may terminate this Agreement, effective on written notice to Customer, if Customer (a) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after CLOCworks' delivery of written notice thereof; or (b) breaches any of its obligations under Section 5.4 or Section 11;

In the event this Agreement is terminated pursuant to this Section 15.2, all Order Forms are simultaneously terminated.

15.3 Termination for Convenience. Either Party may terminate this Agreement without cause upon thirty (30) days' prior written notice; provided however, such termination shall not terminate any existing Order Form, and the terms of this Agreement shall survive for the purposes of governing such Order Form.

15.4 Effect of Termination. Upon any termination of an Order Form, Customer shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable CLOCworks Solutions obtained under that Order Form and CLOCworks Confidential Information. Termination for any reason shall not relieve Customer of the obligation to pay any fees accrued or due and payable to CLOCworks prior to the effective date of termination. Upon termination for cause by CLOCworks, all future amounts due under all Order Forms shall be accelerated and become due and payable immediately.

15.5 Surviving Terms. Any right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

16. General Provisions.

16.1 Relationship of the Parties. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

16.2 U.S. Government Entities. Each of the Documentation and CLOCworks Solutions is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "technical data", "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.211 and 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the CLOCworks Solutions and Documentation as are granted to all other end users under license, in accordance with (a)

48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

16.3 Public Announcements. Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other Party, provided, however, that CLOCworks may, without Customer's consent, include Customer's name and other indicia in its lists of CLOCworks' current or former customers of CLOCworks on its website, social media and in other promotional and marketing materials.

16.4 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

16.5 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16.6 Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited

to acts of God, flood, fire, earthquake, pandemics, quarantines, epidemics, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo (each, a "Force Majeure Event"). In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

16.7 Assignment. Neither this Agreement, nor any of Customer's rights or obligations hereunder may be assigned by Customer, directly or indirectly, whether by operation of law or otherwise, without the prior written consent of CLOCworks (which consent shall not be unreasonably withheld). Any attempt to assign any rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

16.8 Governing Law; Venue. This Agreement shall be governed exclusively by the internal laws of the State of Wisconsin, without regard to its conflicts of laws rules. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Wisconsin in each case located in the city of Madison and County of Dane, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16.9 Jurisdiction. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

16.10 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 11 or, in the case of Customer, Section 5.4 or Section 5.6, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

16.11 Export. Customer shall comply with all applicable federal Laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the CLOCworks Solutions or any Customer Data outside the US.

16.12 Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any third-party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

16.13 Counterparts. This Agreement may be executed electronically, by facsimile and in counterparts, which taken together shall form one binding legal instrument.

16.14 Interpretation. The terms defined in this Agreement include the plural as well as the singular and the derivatives of such terms. The words "include" and "including" will not be construed as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year.

16.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this Agreement and over any other Schedule, Exhibit or Attachment. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to Law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by Law, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

*****End of Terms and Conditions*****