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TOPdesk Software as Service and Services Terms and Conditions

1. DEFINITIONS. For purposes of this document:

1.1 **“Authorized User”** means an employee of Customer authorized to use the Service and who has been approved by Provider and assigned the Authorized User ID.

1.2 **“Confidential Information”** means any information, whether disclosed orally, in writing, electronically, visually or otherwise, by one party (the **“Disclosing Party”**) to the other (the **“Recipient”**) of, relating to or in connection with this Agreement; provided that in each case the same is clearly identified to the Recipient as confidential in either written, oral or machine readable form or under the circumstances should reasonably be considered to be confidential.

1.3 **“Customer Information”** means any information, records, data, or any other materials (in whatever form) that are provided by Customer to Provider and/or that is are entered into the Software by Customer and its Authorized Users.

1.4 **“Intellectual Property Rights”** means, on a worldwide basis, any and all: (i) rights associated with works of authorship, including copyrights, moral rights, mask-works and database rights; (ii) trade name, trademarks and service marks; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) other intellectual and proprietary rights of every kind and nature, however designated, whether arising by operation of law, contract, license, or otherwise; and (vi) registrations, initial applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

1.5 **“Implementation Service”** means configuration, technical mapping, installation, implementation, data import/export, set-up of the Service, backup, implementation of upgrades, and/or training of Customer personnel regarding use of the Service.

1.6 **“Service”** shall mean the access to Software provided by Provider to Customer, other than Third Party Services.

1.7 **“Software”** means the application software and modules to which Customer will be given access as part of the Service, as such software and modules are listed on Exhibit 1.

1.8 **“Third Party Services”** means third party products, applications, services, software, networks, systems, directories, websites, databases and information which the Service links to, or which Customer may connect to or enable in conjunction with the Service, including, without limitation, certain other Services which may be integrated directly into the Service.



2. GENERAL CONDITIONS; ACCESS TO AND USE OF THE SERVICE; IMPLEMENTATION SERVICES.

2.1 **Access to the Service.** Subject to the terms of this Agreement and during the term of this Agreement, as specified in the quote document, Customer shall have the limited right to access and use the Service for Customer's internal business purposes. The access granted in this Section 2.1 is limited to the specific number of Authorized Users as permitted by Provider and specified on Exhibit 1 to access and use the Service. Customer acknowledges and agrees that Customer is responsible for compliance of this Agreement by all Authorized Users and Customer shall be responsible for any breach of this Agreement by an Authorized User or any other employee, agent, customer or contractor of Customer.

2.2 **Restrictions on Use of Software and Service.** Customer shall make no attempt to, and shall not permit any affiliate, Authorized User, or third party to make any attempt to: (a) remove or modify any markings or any notice of Provider or its licensors' proprietary rights; (b) make the Software, Service or any materials resulting from the Service available in any manner to any third party for use in the third party's business operations; (c) download, reproduce, copy, republish, alter, adapt, modify, improve, translate or create derivative works from any part of the Service or Software or reverse engineer, disassemble, decompile, or otherwise attempt to reveal the trade secrets, know-how or other Intellectual Property Rights underlying the Service or Software, or access or use the Service in order to build or support, or assist a third party in building or supporting, products, or services competitive with Provider or the Service; (d) interfere in any manner with the hosting of the Software or provision of the Service; (e) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing, provide as a service bureau, or otherwise commercially exploit or make the Service or Software available to any third party, other than Authorized Users; (f) use the Service to store or transmit any "protected health information" as that term is defined in 45 C.F.R. 160.103; (g) use the Service to knowingly post, transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software ("**Malicious Software**"); and (h) otherwise use the Service or Software not in accordance with this Agreement. Customer further agrees not to use or permit use of the Service, including by uploading, mailing, posting, publishing or otherwise transmitting any material, for any purpose that may (i) be obscene, indecent, offensive, defamatory, threatening, menacing, or harassing to any person or cause damage or injury to any person or property, (ii) involve the publication of any material that is false, defamatory, harassing or obscene, (iii) violate privacy rights or promote bigotry, racism, hatred or harm, (iv) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (v) constitute an infringement of intellectual property or other proprietary rights of a third party, or (vi) otherwise violate applicable laws, ordinances or regulations. Provider reserves the right to remove or disable access to any such material, and/or Customer Information that violates the foregoing restrictions. Provider shall have no liability to Customer in the event that Provider takes such action.

2.3 **Connectivity; Third Party Systems.** Customer at its own cost, shall (i) provide its own connection to the Internet through one or more Internet services providers of its choice in order to access the Service, and (ii) purchase or license any third-party technology, software, or hardware that may be appropriate or necessary for use with the Service, including any third party system and software as specified in system requirement document referenced in Exhibit 1 ("System Requirement Document").

2.4 **Compliance.** Customer agrees to comply with the requirements of any applicable law, statute, rule, directive, regulation, order, decree, judgment or other governmental act of any domestic or foreign, federal, state, county or local governmental entity or regulatory agency with jurisdiction over Customer, Customer's affiliates and Authorized Users or their activities in connection with their use of the Service and Customer Authorized Data, including but not limited to all export control laws and regulations of the United States. Customer also maintains all responsibility for determining whether the Service or the information generated thereby is accurate or sufficient for Customer's purposes.

2.5 **Data Collection.** Provider shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools to extract, compile, synthesize, and analyze any Customer Information or any other data or information resulting from Customer and Authorized Users' use of the Service and Software ("**Blind Data**"). To the extent that any Blind Data is collected by Provider, such Blind Data shall be solely owned by Provider and may be used by Provider for any lawful business purpose without a duty of accounting to Customer therefor; provided that the Blind Data is used only in an aggregated form, without specifically identifying any personally identifiable data or the source of the Blind Data or identifying.

2.6 **Connectivity.** Customer shall be responsible for procuring and maintaining the system requirements and network connections as specified in the System Requirement Document. Provider is not responsible for notifying Customer and/or any Authorized Users of any upgrades, fixes or



enhancements to any such software or for any compromise of data, including Customer Information, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Provider. Provider assumes no responsibility for the reliability or performance of any connections as described in this section. Customer specifically acknowledges that certain aspects of the Service are provided or controlled by third parties. At times, actions or inactions caused by third parties can produce situations in which connections to the Service may be impaired or disrupted and Provider cannot and does not guarantee that such impairment or disruptions will not occur. Customer agrees to cooperate with Provider in the performance of Service and to provide to Provider with access to all necessary files, network, hardware and other information and assistance as required by Provider to render the Services.

2.7 Availability. Provider reserves the right, in Provider's reasonable discretion, to temporarily suspend Customer's access to and use of the Service: (a) during planned or emergency downtime for upgrades and maintenance to the Service; (b) during any unavailability caused by circumstances beyond Provider's reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond Provider's reasonable control (including, without limitation, inability to access the Internet), or acts undertaken by third parties, including without limitation, distributed denial of service attacks ("**Force Majeure Event(s)**"); or (c) if Provider suspects or detects any Malicious Software connected to Customer's account or use of the Service by Customer or Authorized Users.

2.8 Use of the Service. Each Authorized User will be assigned a unique user name and password to be used by such Authorized Users to access and use the Service ("**Authorized User ID**"). Customer shall be responsible for ensuring the security and confidentiality, and proper use, of the Authorized User ID. Customer acknowledges that it will be responsible for all losses and damages arising from the use by the Authorized User ID (whether proper, improper, lawful or unlawful). Customer must immediately inform Provider if there is any reason to believe that the Authorized User ID, password, or any other security device issued by Provider has or is likely to become known to someone not authorized to use it or is being or is likely to be used in an unauthorized way. Customer and Authorized Users must immediately inform Provider of any changes to the information Customer supplied when registering for the Service. Provider reserves the right to suspend access to the Service if at any time Provider considers that there is or is likely to be a breach of security or if Customer fails to comply with Provider's instructions or requests in relation to security matters. Both parties acknowledge that all publicly available and privately built networks are inherently insecure. Provider will use commercially reasonable efforts to implement and deploy reasonable security features, procedures and technologies that will, in Provider's opinion, provide reasonable protection to data hosted in connection with the Service from unauthorized access. Provider cannot and does not guarantee that unauthorized access or insecurities will not occur. Accordingly, Provider shall not be liable for any losses or damages to Customer or any of its Customer Information arising from Customer and its Authorized Users use of the Service.

2.9 Right to Use Customer Information. Customer grants to Provider the right to use the Customer Information for purposes of providing the Services. Customer represents and warrants that Customer has the right to grant to Provider the right to use Customer Information for purposes of providing the Services to Customer.

2.10 Third Party Services. In the event Customer enables, accesses or uses any Third Party Services, such access and use of such Third Party Services shall be governed solely by the terms and conditions of such Third Party Services, and Provider does not endorse, and shall not be responsible or liable for, and makes no representations as to any aspect of such Third Party Services, including, without limitation, third party content or the manner in which the third party handle data (including any Customer Information) or any interaction between Customer and the provider of such Third Party Services. Customer irrevocably waives any claim against Provider with respect to such Third Party Services. Provider shall not be liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. Customer and its Authorized Users may be required to register for or log into such Third Party Services on their respective websites. By enabling any Third Party Services, Customer expressly permits Provider to disclose Authorized User ID as well as Customer Information as necessary to facilitate the use or enablement of such Third Party Services.

2.11 Implementation Services. Subject to the terms of this Agreement, Customer may request that Provider provide certain Implementation Services related to Customer's use of the Service. Any Implementation Services to be provided will be included in a statement of work, which shall describe



the fees, costs and expenses payable by the Customer in connection with the performance of such Implementation Services, and which shall describe the scope of such Implementation Services. Statement of works shall be binding upon the parties only after mutual execution. Provider shall be under no obligation to perform the proposed Implementation Services until a statement of work has been mutually executed. Each mutually executed statement of work shall be considered an integral part of this Agreement.

3. CONFIDENTIALITY.

3.1 Duty of Confidentiality. The Recipient agrees that, at all times during the term of this Agreement and after its termination, it shall not, nor permit any other person or entity to, disclose, copy, reproduce, transmit or otherwise use, directly or indirectly, for its own benefit or for the benefit of others, the Confidential Information of the other party, except as expressly authorized by this Agreement or the written consent of the Disclosing Party or to the extent necessary for performance of this Agreement. The Recipient shall maintain the confidentiality of the Disclosing Party's Confidential Information using the same degree of care as it takes to preserve and safeguard the confidentiality of its own confidential information of like nature, but in no event less than reasonable care. The Recipient agrees that it will disclose Confidential Information only to those of its employees and contractors who need to know such information, and, with respect to such contractors, who have previously agreed to be bound by the non-disclosure terms and conditions of this Agreement or a similar non-disclosure agreement, and, with respect to Provider, to its resellers, distributors, suppliers and third-party service providers and vendors and their employees who have a need to know the information in connection with the Service. However, the Recipient bears no responsibility for safeguarding the Confidential Information of the Disclosing Party that Recipient can document is: (a) publicly available other than through breach of this Agreement by the Receiving Party; (b) already in the Recipient's possession prior to disclosure by the Disclosing Party and not subject to an obligation of confidentiality; (c) obtained by the Recipient from a third party who has full right of disclosure; or (d) independently developed by the Recipient without any reference to the Confidential Information of the Disclosing Party. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent any Confidential Information is required to be disclosed by the Recipient pursuant to a valid order of a court or other governmental, administrative or regulatory body; provided, however, that the Recipient shall, as applicable: (A) provide prior written notice to the Disclosing Party of any such obligation to disclose; (B) provide the Disclosing Party, at the Disclosing Party's sole cost and expense, a reasonable opportunity to interpose an objection or obtain a protective order requiring that the Disclosing Party's Confidential Information so disclosed be used only for the purposes for which the order was issued; and (C) cooperate with the efforts of the Disclosing Party and provide assistance as reasonably requested by the Disclosing Party. The Software and Authorized User ID, and the terms and conditions of this Agreement shall be deemed Confidential Information of Provider.

3.2 Remedies; Survival. Any failure by either party to comply with the requirements of this Section 3 may cause irreparable injury to the other party without an adequate remedy at law. Accordingly, each party agrees that the other party shall be entitled, in addition to any other remedies that may be available in law, equity or otherwise, to obtain specific performance of, or an injunction against any breach or threatened breach of, this Section 3, or the continuation of any such breach, in each case, without the necessity of posting a bond or other security, as remedies for any such breach. The provisions of this Section 3 shall survive the termination of this Agreement.

4. OWNERSHIP. Provider and its third-party suppliers retain all worldwide right, title and interest in and to the Service and all Intellectual Property Rights embodied in the Service and all software, materials, data and Confidential Information of Provider or its third party suppliers made available to Customer via the Internet or otherwise in connection with the Service, including, without limitation, the Software (both object and source code), and any and all improvements, derivative works, updates and modifications thereto, whether or not made in conjunction with this Agreement.

5. TERM AND TERMINATION.

5.1 Term. Unless earlier terminated as provided herein, this Agreement shall commence as of the Effective Date and remain in effect for a period of the amount of years specified in the quote document (the "**Initial Term**"). The Initial Term shall be automatically renewed for successive 1 year periods (each a "**Renewal Term**"), unless either party notifies the other party in writing of its intention not to renew this Agreement at least thirty (30) days prior to the end of the Initial Term or any Renewal Term, as the case may be. The Initial Term and each Renewal Term shall be collectively referred to as the "**Term.**"



5.2 Termination for Cause. This Agreement may be terminated at any time during the Term by either party upon the material breach by the other party of any of such other party's obligations hereunder, which material breach has not been cured within thirty (30) days after the breaching party has received written notice thereof.

5.3 Effect of Termination. For up to thirty (30) days following any termination or expiration of this Agreement, Provider shall use commercially reasonable efforts to permit Customer to export Customer Information, at Customer's expense, in a Provider supplied format using standard encoding. Following such thirty (30) day period, Provider reserves the right to delete all Customer Information in the normal course of operation. In the event Customer requires assistance from Provider in exporting or downloading any Customer Information, such assistance shall be provided at Provider's then current hourly rate. Upon termination of this Agreement for any reason, any amounts owed to Provider under this Agreement before such termination, if any, will be immediately due and payable, all licenses and access rights granted herein shall immediately terminate and Customer shall purge from its electronic or other storage facilities or records, all property (including any Confidential Information) of Provider in its possession or control. In addition, upon any termination, all Customer and Authorized User access to the Service, Customer Information, and Software shall be immediately terminated. The following Sections shall survive the termination or expiration of this Agreement: 3 (Confidentiality), 4 (Ownership), 5.3 (Effect of Termination), 7 (Disclaimer of Warranties), 8 (Limitation of Liability), and 9 (Miscellaneous).

6. FEES AND PAYMENT.

6.1 Fees. In consideration of the Services provided to Customer under this Agreement, Customer shall pay to Provider the fees and charges set forth in the quote document and as provided herein when due.

6.2 Payment Terms. The subscription fees for the first 12 months shall be due upon execution of this Agreement by both parties. Thereafter subscription fees shall be due and payable each year during the Term. Unless otherwise provided for in Exhibit 1, Provider charges and collects in advance for use of the Service. All fees and expenses reimbursable by Customer to Provider shall be due and payable within thirty (30) days of the invoice date. Customer will reimburse Provider for reasonable expenses related to providing any on-site portion of the Services. Fees for Services are exclusive of taxes and expenses. All fees due under this Agreement are non-cancelable and the sums paid nonrefundable. Provider shall have the right to increase (not more than once annually) the subscription fees payable by Customer by giving thirty (30) days' notice of such increase to Customer.

6.3 Taxes. Customer shall be responsible for and agrees to timely pay all sales, use and any other taxes imposed by a federal, state, provincial, local or other government entity that are based on the Services provided herein or on the fees paid by Customer to Provider, excluding taxes based on Provider's income (collectively, "Taxes"). If Provider is obligated by to collect any such Taxes from Customer, then the appropriate amount will be added to Customer's invoice, and such Taxes shall be timely paid by Customer.

6.4 Late Interest Charges. Any fees or charges not paid in full when due shall bear daily interest at the rate equal to one and a half percent (1.5%) above the prime rate.

7. DISCLAIMER OF WARRANTIES.

7.1 The Service, Software, and all other data, information, reports and materials made available by Provider or accessed by Customer and its Authorized Users in connection with this Agreement are provided "AS IS" and "As AVAILABLE" without representations or warranties of any kind. PROVIDER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE RELATED TO MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. PROVIDER AND ITS SUPPLIERS DO NOT WARRANT OR PROVIDE ANY WARRANTY THAT THE SERVICE, CUSTOMER INFORMATION, AND/OR SOFTWARE WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, SECURE, OR VIRUS-FREE. CUSTOMER ACKNOWLEDGES THAT PROVIDER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE, SOFTWARE, CUSTOMER INFORMATION AND/OR ANY DATA, REPORTS AND/OR INFORMATION PROVIDED BY PROVIDER MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PROVIDER AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE TO CUSTOMER



AND/OR ANY CUSTOMER INFORMATION RESULTING FROM SUCH PROBLEMS. Neither Provider, nor its resellers, distributors or suppliers shall have any liability whatsoever for the accuracy, completeness, or timeliness of any data, reports, materials and/or information, or for any decision made or action taken by Customer, any Authorized User, or any third party in reliance upon any Customer Information or any other data, materials, reports or information that is generated from the use of the Service, or provided by Provider.

8. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. PROVIDER'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO PROVIDER DURING THE SIX (6) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. ANY DAMAGE IN CUSTOMER'S FAVOR AGAINST PROVIDER SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CUSTOMER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

9. GENERAL PROVISIONS.

9.1 Independent Contractors. Provider shall provide the Service as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a partnership, joint venture, principal-agent or employment relationship between the parties. Neither party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other party and shall have no power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on the other party's behalf or in its name, nor shall such party represent to any one that it has such power or authority.

9.2 Assignment. Customer shall not assign, delegate, or subcontract any portion of its rights, duties, or obligations under this Agreement without the prior written consent of Provider and any attempt to do so shall be void. Customer agrees that Provider may subcontract certain services to be performed in connection with this Agreement; provided that any such subcontracting arrangement will not relieve Provider of any of its obligations hereunder. In addition, Provider may assign this Agreement, including its rights and duties hereunder, without the prior consent of Customer.

9.3 Audit. Provider may audit Customer's use of the Service. Customer agrees to cooperate with Provider's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Service in excess of Customer's rights. If Customer does not pay, Provider may terminate the Service and this Agreement. Customer agrees that Provider shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

9.4 Entire Agreement; Waiver. This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. This Agreement may be amended, modified or changed only by a writing signed by both parties. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

9.5 Force Majeure. If performance hereunder (other than payment) is interfered with by any condition beyond a party's reasonable control, such as exceptionally severe weather, fire, explosion, war, acts of terrorism, civil disorder, labor disputes (whether or not involving employees of either party) or acts of local or central government or other competent authorities, the affected party, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such condition. In the event of a refusal or delay by a third party to supply any service (including, without limitation, hosting, co-location or telecommunications service) to Provider and where there is no alternative service available at reasonable cost, Provider will have no liability to Customer for failure to supply the Service.

9.6 Governing Law. This Agreement will for all purposes be solely and exclusively governed, construed and enforced in accordance with the laws of the State of Florida (without regard to the conflicts of law provisions thereof). Customer agrees that any lawsuit filed by either party arising from or related to this Agreement shall be brought in the state or federal courts in and for Orange County, Florida.



9.7 No Uniform Computer Information Transactions Act (“UCITA”). The UCITA does not apply to this Agreement. Customer understands that any third parties retained by Customer to provide any portion of the Services and/or Implementation Services, are independent of Provider and are not Provider agents. Provider is not liable for nor bound by any acts of any such third party.

9.8 No Implied Licenses. There are no implied licenses under this Agreement, and any rights not expressly granted hereunder are reserved. Customer shall not exceed the scope of the licenses granted hereunder.

9.9 Notice. Any notice under this Agreement will be in writing and delivered by personal delivery, overnight courier, confirmed facsimile, confirmed email, or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, one (1) day after deposit with an overnight courier, five (5) days after deposit in the mail, or upon confirmation of receipt of facsimile or email. All notices hereunder shall be delivered to the addresses as set forth below on the signature page, provided that either party may, by notice to the other party, change the address or fax number to which such notices are to be given.

9.10 Severability. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

9.11 Customer Reference. Customer agrees (i) that Provider may identify Customer as a recipient of Service and use Customer’s name and logo in sales presentations, and with prior Customer approval in marketing materials and press releases, and (ii) with prior Customer approval to develop a brief customer profile for use by Provider for promotional purposes on any websites owned and/or controlled by Provider.

9.12 No Third-Party Beneficiary. Except as expressly set forth in this Section 9.12, no third party shall be deemed a third-party beneficiary of this Agreement. Certain components of the Service are provided by affiliates and third-party suppliers of Provider and Customer acknowledges that Provider’s affiliates and third-party suppliers shall be deemed a third-party beneficiary of this Agreement with the ability to enforce this Agreement against Customer.