

The following describes the terms (“Terms & Conditions” or “Terms”) under which Ungerboeck Systems International, LLC (“we”, “us” or “USI”) provides access to USI’s software for products or services (“the Services”) purchased through any Order Form by you (“Customer”). PLEASE READ THESE TERMS & CONDITIONS CAREFULLY as they govern your use of the Services, and by ordering and using the Services, you agree to be bound by these Terms. If you are ordering the Services on behalf of an entity, you represent that you have the authority to bind such entity, its successors, assigns, subsidiaries, and its affiliates to these Terms & Conditions, in which case the terms “you” and “Customer” refer to such entity, its successors, assigns, subsidiaries, and affiliates.

NOTICE: COMPETITORS OF USI MAY NOT ACCESS THE SERVICES WITHOUT USI’S PRIOR WRITTEN CONSENT FOR ANY PURPOSE, INCLUDING MONITORING AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR OTHER BENCHMARKING OR COMPETITIVE PURPOSE(S).

These Terms & Conditions are effective between you and USI as of the date you place an order for the Services. These Terms & Conditions shall be fully executed by an authorized signatory for both Customer and USI and will continue until terminated.

1. DEFINITIONS

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with Customer.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.

“**Non-Ungerboeck Applications**” means only online applications and offline software products and/or services that are provided by entities or individuals other than USI and are interoperated with the Services.

“**Order Form**” means the documents signed by Customer or an Affiliate placing an order for the Services, including any addenda or supplements thereto.

“**Services**” refers to Cloud Software Services which are provided by USI and are accessible and can be used by Customer for its internal business operations. The term “Services” does not include any third party or custom developments. The pricing, warranty, SLA, maintenance and deliverables of professional and technical services, as well as third party or custom developments are not defined in this Agreement and will be quoted separately per engagement.

“**Users**” means individuals for whom the Services have been ordered and who are authorized by you to use the Services, by virtue of having obtained user identifications and passwords from you, or from USI at your request. Users may include but are not limited to your employees, consultants, contractors, agents, and third parties with whom you transact business.

“**We**”, “**us**”, “**our**”, or “**USI**” refers to the Ungerboeck Systems International entity described in **Section 16** (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

“**You**”, “**your**”, or “**Customer**” refers to the company or legal entity using the Services, and any Affiliates of that company or entity.

“**Your data**”, or “**Customer’s data**” means all electronic data or information submitted by you in the course of your use of the Services.

“**Days**” means business days, unless specifically stated otherwise.

“**Parties**” means USI and Customer.

“Legal Proceeding” means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“Losses” means any amount awarded in, or paid in settlement of, any Indemnifiable Proceeding (Direct Claim or Third-Party Claim), including any interest accrued, but excluding any Litigation Expenses.

“Litigation Expenses” means any reasonable out-of-pocket expense incurred in defending an Indemnifiable Proceeding (Direct Claim or Third-Party Claim) or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.

“Intellectual Property” means trademarks, copyrights, trade secrets, patents and patent applications, websites and internet domain name registrations, and other intellectual property and related proprietary rights, interests, and protections.

2. ENTIRE AGREEMENT

These Terms & Conditions and the other documents that are referenced herein constitute the entire agreement between Customer and USI (the “Agreement”) regarding your use of the Services, and together they supersede all prior and contemporaneous agreements, proposals, representations, written or oral, between you and USI. No modification, amendment, or waiver of any provision in this Agreement will be applicable to USI unless in writing and signed by the parties. Any clickwrap or click-through or other agreements found electronically on Customer’s website or portal, or sent through Customer’s automated processes, even when USI has clicked “I agree” or similar button, or if there is deemed acceptance of any such agreement for any reason, shall be considered as null and void.

3. ORDER FORMS

These Terms & Conditions are incorporated by reference into each Order Form submitted by Customer. Together, these Terms and the Order Form comprise a binding agreement between you and USI, effective as of the date specified in the Order Form and only as it pertains to services undertaken pursuant to this specific Order Form and continuing for the term stated in the Order Form. These Terms govern your right to access the Services and use USI’s software and information, which may be updated periodically. USI may amend these Terms at any time in its sole discretion by posting the amended terms using the following URL:

<https://ungerboeck.com/documents/terms/language/>

or by providing fifteen (15) days prior written notice to you. If there is any conflict between these Terms and the provisions of your Order Form, the provisions contained in your Order Form shall control, provided that the appearance of a particular provision in these Terms which is not contained in your Order Form, or vice versa, shall not constitute conflict for purposes of this Section. Any changes to the Agreement intended to have a general effect shall only be made by an amendment of the Agreement signed by both parties hereto. No party shall withhold without cause any amendments requested in good faith.

4. THE SERVICES

4.1 Provision of the Services.

Subject to these Terms, during the term of the applicable Order Form, USI will provide you with a non-exclusive, non-transferable license to access and use USI's software ("the Services") as upgraded from time to time. You may use the Services only for purposes of performing your internal business operations. Except for the foregoing license, no other rights in the Services are granted to you, and the Services remain the sole and exclusive property of USI and its licensors, if any, whether the Services are separate or integrated with any other products, services, or deliverables. Access to data in USI's software for known individuals (including but not limited to volunteers, contractors, employees, business partners) via APIs or direct database access requires USI's license.

4.2 Purchase of Services as Currently Configured.

You agree that your purchase of the Services is not contingent on the delivery of any future functionality or features, nor is it dependent on any public statements made by USI regarding future functionality or features. However, the Services may be upgraded from time to time. Should USI make new functionalities and modules available for sale to Customer, USI will make them available to Customer for purchase.

5. PAYMENT SERVICES

Notwithstanding anything to the contrary herein, the following terms and conditions shall apply solely to Ungerboeck Payment Services:

5.1 Payment Processing.

We offer the ability to process payments through the Services ("Payment Processing Services"). Payment Processing Services are provided by our third-party payment processing partners and any procurement by you or your Affiliates will be subject to a separate merchant agreement which will be solely between you (or your Affiliate) and the third-party processor. If you use Payment Processing Services you agree that you and your Affiliates will comply with the terms and conditions of any applicable merchant agreements and all applicable card network rules, policies, laws, and regulations, at all times while using such Payment Processing Services.

At our sole discretion, you may be offered Payment Processing Services provided by Stripe ("Ungerboeck Payments"). Ungerboeck Payments are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the "Stripe Services Agreement") and subject to certain fees and surcharges communicated to you during the enrollment process and as may be updated by us from time to time at our discretion. By enrolling in Ungerboeck Payments, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of us enabling Payment Processing Services through Stripe, you agree to provide us with accurate and complete information about you and your business, and you authorize us to share it and transaction information related to your use of the Payment Processing Services provided by Stripe pursuant to Stripe's [Privacy Policy](#). To the extent permitted by law, we may collect any obligations you owe us under this Agreement by deducting the corresponding amounts from funds payable to you arising from the settlement of card transactions through Ungerboeck Payments. Fees will be assessed at the time a transaction is processed and will be first deducted from the funds received for such transactions. If the settlement amounts are not sufficient to meet your obligations to us, we may charge or debit the bank account or credit card registered in your account for any amounts owed to us. Your failure to fully pay amounts that you owe us on demand will be a breach of this Agreement. You will be liable

for our costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, costs of any arbitration or court proceeding, collection agency fees, and any applicable interest. Additionally, we may require a personal guaranty from a principal of a business for funds owed under this Agreement. If we require a personal guarantee we will specifically inform you. In addition to the amount due, delinquent accounts may be charged with fees that are incidental to the collection of delinquent accounts and chargebacks including, but not limited to, collection fees and convenience fees, and other third parties' charges. You hereby explicitly agree that all communication in relation to delinquent accounts will be made by electronic mail or by phone, as provided to us by you. Such communication may be made by us or by anyone on its behalf, including but not limited to a third-party collection agent. We reserve the right to terminate Payment Processing Services at any time in our sole discretion.

We may offer special pricing, credits, and/or discounts to you or your Affiliates for the Services contingent upon timely procurement, and continued material usage, of the Payment Processing Services and/or Ungerboeck Payments. In the event you or your Affiliate stop utilizing the Payment Processing Services and/or Ungerboeck Payments, we may, in our sole discretion, revoke the special pricing, credits, and/or discounts being applied to the Services.

5.2 Reserves.

We may withhold funds from payments (including payment processor payouts) to you and/or designate an amount of funds that you must maintain in a reserve account held by us ("Reserve") to pay any actual or potential Losses we believe we may incur related to your transactions, your use of the Services, your business, or to secure the performance of your obligations under any agreement between you and us, including these Terms & Conditions. The Reserve will be in an amount determined by us in our sole discretion to cover actual or potential Losses we may incur and current, past, and future obligations you may owe us. The Reserve may be raised, reduced, or removed at any time by us, in our sole discretion. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any payment method we have on file for you. You grant us a security interest in and lien on any and all funds held in the Reserve, and also authorize us to make any withdrawals or debits from the Reserve and charge any payment method we have on file for you, to cover any Losses, obligations and amounts you owe us. You will execute any documents required by us to perfect our security interest in any funds in the Reserve or requested by us in connection with the Reserve.

6. UNGERBOECK RISK MANAGER SERVICES

Notwithstanding anything to the contrary herein, the following terms and conditions in this Section shall apply solely to Ungerboeck Risk Manager Services:

6.1 Ungerboeck Risk Manager Services' Process.

We offer the ability to conduct risk assessments, report and analyze incidents, assess crowd safety profiles, benchmark risks and incidents from year to year, benchmark incident data across the industry, generate reports on different elements of risk assessment and incidents reported, and any other purpose agreed to in writing ("Ungerboeck Risk Manager Services" or "Program"). By enrolling in Ungerboeck Risk Manager Services, you agree to be bound by the applicable Order Form(s) and this Agreement. As a condition of us enabling Ungerboeck Risk Manager Services, you agree to provide us with accurate and complete information about you and your business.

The number of authorized users for Ungerboeck Risk Manager Services shall be set out in the applicable Order Form(s).

Maintenance and Support for Ungerboeck Risk Manager Services are included within the license fee as described in the applicable Order Form(s), and all system upgrades during the license period are included in the cost as described in the applicable Order Form(s). Support Services shall be provided per the Service Level Agreement for Ungerboeck Software, available at <https://ungerboeck.com/documents/terms/sla>.

Any other Ungerboeck Risk Manager Services specifications shall be detailed in the applicable Order Form(s).

We may offer special pricing, credits, and/or discounts to you or your Affiliates for the Services contingent upon timely procurement, and continued material usage, of Ungerboeck Risk Manager Services. In the event you or your Affiliate stop utilizing Ungerboeck Risk Manager Services, we may, in our sole discretion, revoke the special pricing, credits, and/or discounts being applied to the Services.

6.2 License to use Customer Intellectual Property and Systems.

Customer grants to USI a non-exclusive, irrevocable, perpetual, worldwide, royalty-free, transferable license to use, reproduce, sublicense, display, maintain, communicate to the public, adapt, modify, or develop Customer's information or documentation supplied for Ungerboeck Risk Manager Services during the term of this Agreement to the extent that they are incorporated in or provided to Ungerboeck Risk Manager Services in connection with the Program and any derivative of the Program.

Customer permits Ungerboeck Risk Manager Services to use, and ensure that Ungerboeck Risk Manager Services has legitimate access to use, any of Customer's systems to the extent required for Ungerboeck Risk Manager Services to perform its obligations under this Agreement.

6.3 Liability.

Customer acknowledges and agrees that Customer is responsible for carrying out any suggested risk assessment action/plan resulting from any risk assessment obtained through Ungerboeck Risk Manager Services. Customer acknowledges and agrees that the use of the Ungerboeck Risk Manager Services does not in any way release Customer of any liability in case of any incident, loss, or event related to information obtained through the use of Ungerboeck Risk Manager Services.

USI SHALL NOT BE LIABLE FOR ANY INCIDENT, LOSS, OR OTHER EVENT IN CONNECTION WITH CUSTOMER'S USE OF THE INFORMATION OBTAINED FROM UNGERBOECK RISK MANAGER SERVICES. USI SHALL BE LIABLE TO THE EXTENT STATED IN **SECTION 14** (LIMITATION OF LIABILITY).

7. USE OF THE SERVICES

7.1 USI's Responsibilities.

USI shall:

- (i) Provide support for Services to Customer per the Ungerboeck Service Level Agreement on the Support website at:
<https://ungerboeck.com/documents/terms/sla>;
- (ii) Use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:

- a) Planned downtime (in which case USI shall give at least 48 hours' notice via the Services or email. USI shall schedule planned downtime to the extent practicable during the weekend hours (between 10:00 p.m. Friday and 5:00 a.m. Monday, U.S. Central Time); and
 - b) Any unavailability caused by circumstances beyond USI's reasonable control, including without limitation, events of force majeure, malicious attacks on the system, issues associated with Customer's computing devices or local area networks, USI's inability to deliver Services because of Customer's acts or omissions, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving USI's employees), Internet service provider connection failures or delays; and
- (iii) Provide the Services in accordance with applicable laws and government regulations.

7.2 Customer Data.

USI shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of your data. Subject to the limited rights granted by you pursuant to these Terms, we acquire no right, title, or interest from you or your licensors under these Terms in or to your data, including any intellectual property rights therein. USI may de-identify and aggregate Customer data, provided that USI de-identifies such data in compliance with applicable law. For the avoidance of doubt, de-identified information does not constitute Customer data. USI shall perform a daily backup of all of your data, but in no event shall USI be liable to you or any third party for loss, destruction, or corruption of your data other than USI's costs for reloading the backup. You agree and acknowledge that you are in a better position to foresee and evaluate any potential damage or loss you may suffer in connection with a loss of your data, and that the fees payable under these Terms have been calculated by taking into account the liability limitation contained in this Section.

If during the provision of the Services USI has access to personal data of the EU Customer and Users, USI as data processor will always comply with applicable data protection laws; in particular USI shall process such personal data solely for the purpose of providing the Services, to oblige its employees to maintain personal data confidential, and to instruct its employees about the individual privacy provisions to adhere to. USI shall maintain the technical and organizational measures required under the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") for protection of the security, confidentiality, and integrity of Customer's personal data. USI in its role as data processor acquires no right, title, or interest from you or your licensors under these Terms in or to your data, including any Intellectual property rights therein.

The Parties undertake at all times to comply with the applicable data protection laws and regulations, in particular the GDPR with regard to the collection, storage, use, and disclosure of any personal or sensitive information and data they collect, use or otherwise access in connection with the Services. Both parties shall oblige their personnel to observe those data secrecy requirements pursuant to the relevant applicable laws and regulations. Legitimate data protection obligations of the Parties pertaining to possible commissioned data processing are set forth in the data processing agreement in accordance with Art. 28 GDPR between Customer (data controller) and USI (data processor). Said agreement must be signed by both parties and shall be attached to the applicable Order Form and forms an integral part of the Agreement. The statutory and applicable data protection provisions, in particular Art. 82 GDPR, apply in the event of compensation of liability claims.

USI shall not:

- (i) Modify your data;
- (ii) Disclose your data except as compelled by law in accordance with **Section 11.3** (Compelled Disclosure) or as expressly permitted in writing by you; or
- (iii) Access your data, except in order to provide the Services and prevent or address service or technical problems, or at your request in connection with customer support matters.

7.3 Customer's Responsibilities.

Customer shall:

- (i) Be responsible for the Users' compliance with these Terms and for any activities that occur under Users' accounts;
- (ii) Be responsible for the accuracy, quality and legality of your data and of the means by which you acquired your data;
- (iii) Use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify USI promptly of any unauthorized access or use. Furthermore, in the event that Customer discovers any such unauthorized use or access, Customer shall immediately stop the unauthorized use or access. Customer acknowledges and agrees that in such cases, USI may seek injunctive relief and any other remedies that may be available to it at law or in equity;
- (iv) Use the Services only in accordance with these Terms and applicable state laws, ordinances, and federal laws and regulations;
- (v) Work cooperatively with USI in receiving, approving, and accepting the Services. Customer shall access and use the Services with secured environment as per the guidelines provided by USI;
- (vi) Be on a supported version of USI's software and plan upgrades accordingly. Failure to do so may result in USI upgrading Customer environment to a supported version as soon as their existing version ceases to be supported;
- (vii) Implement, maintain, and update all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties; and
- (viii) Comply with USI usage policy at

<https://ungerboeck.com/documents/terms/UsagePolicy>

Customer shall not:

- (i) Make the Services available to anyone other than authorized Users;
- (ii) Permit any third party to access the Services except as permitted by these Terms or in an Order Form;
- (iii) Customer shall not upload, post, reproduce, or distribute any data or material protected by privacy rights without first obtaining the permission of the owner of such rights;
- (iv) Sell, resell, rent or lease the Services;

- (v) Modify, alter, or create derivative works based on the Services except as authorized by these Terms;
- (vi) Copy, frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes;
- (vii) Reverse engineer the Services except to the extent permitted by law;
- (viii) Access the Services in order to:
 - a) Build a competitive product or service, or
 - b) Copy any features, functions or graphics of the Services;
- (ix) Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- (x) Use the Services to store or transmit Malicious Code;
- (xi) Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
- (xii) Attempt to gain unauthorized access to the Services or their related systems or networks;
- (xiii) Use the services in violation of any applicable state laws, ordinances, and federal laws and regulations; and
- (xiv) Unreasonably withhold or delay any consent, approval or acceptance required by the Order Form.

7.4 Usage Limitations and Audits.

USI reserves the right to limit the usage of API if Customer's interfaces or programs negatively impact the performance or Hosting Services.

Upon request by USI, Customer undertakes to allow USI to audit (inspections of compliance with the rights of usage for the provided Services) whether Customer's use of the Services is consistent with the rights granted to Customer under **Section 4.1** (Provision of the Services), provided there is a legitimate interest. A legitimate interest exists in the event of a reasonable suspicion that Customer has exceeded its usage rights. Customer has to be notified by USI in writing prior to the audit. Likewise, the choice of the date of the audit and the nature of the execution must be coordinated between the Parties in advance. Customer undertakes to fully cooperate with USI during the audit.

7.5 Performance and Usage Data.

Customer acknowledges that the service transmits usage data to USI's system. This data is used for licensing, monitoring, and statistical purposes. Customer shall indemnify USI against third-party claims related to or arising out of Customer's failure to comply with USI's usage policy. USI's system will report usage data to USI, and USI reserves the right, based upon those reports or other profile data, to offer to you and your Users upgrades and additional services via email or other direct communication. Neither you nor your Users are obligated to purchase any such upgrades or additional services.

8. NON-UNGERBOECK APPLICATIONS

8.1 Acquisition of Non-Ungerboeck Products and Services.

USI or third parties may from time to time make available to you third-party products or services, including but not limited to Non-Ungerboeck Applications and implementation, customization and other consulting services. Any acquisition by you of such Non-Ungerboeck Applications, and any exchange of data between you and any Non-Ungerboeck provider, is solely between you and the applicable Non-Ungerboeck provider. USI does not warrant or support Non-Ungerboeck products or services, whether or not they are designated by USI as “certified” or otherwise, except as specified in an Order Form. No purchase of Non-Ungerboeck Applications is required to use the Services. If you install or enable Non-Ungerboeck Applications for use with the Services, you acknowledge that USI may allow providers of those Non-Ungerboeck Applications to access your data as required for the interoperation of such Non-Ungerboeck Applications with the Services. USI shall not be responsible for any disclosure, modification or deletion of your data resulting from any such access by Non-Ungerboeck Application providers. If the third-party provider of any such Non-Ungerboeck Application ceases to make the Non-Ungerboeck Application available for interoperation with the corresponding Service features on reasonable terms, USI may cease providing such Service features without providing any refund, credit, or other compensation to Customer.

9. FEES AND PAYMENT FOR SERVICES

9.1 Fees.

You shall pay all fees specified in the applicable Order Form(s). Except as otherwise specified:

- (i) Fees are based on Services purchased and not actual usage;
- (ii) Payment obligations are non-cancellable, and fees paid are non-refundable except as expressly provided under **Section 15.3** (Termination for Cause); and
- (iii) The number of Users for whom the Services are purchased cannot be decreased during the relevant term stated on the Order Form(s).

9.2 Invoicing and Payment.

Unless otherwise stated in your Order Form(s), Customer shall make timely payment of all undisputed invoiced charges within thirty (30) days of the invoice date. You are responsible for providing complete and accurate billing and contact information to USI and for notifying USI of any changes to such information.

9.3 Overdue Charges and Suspension of Service.

If any payments are not received by the due date, (a) the unpaid balance may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is higher, from the date such payment was due until the date paid; and/or (b) We may condition future Service renewals and Order Form(s) on payment terms shorter than those specified in **Section 9.2** (Invoicing and Payment). If any amount owed by you pursuant to the applicable Order Form or any other agreement for USI services is thirty (30) or more days overdue we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under this Agreement and any other such agreements so that all of your fee obligations become immediately due and payable. We may suspend all services to you until such amounts are paid in full. We will give you at least 7 days’ prior notice that your account is overdue before suspending services.

9.4 Payment Disputes.

USI shall not exercise its rights under **Section 9.3** (Overdue Charges and Suspension of Service) if such charges are the subject of a good faith dispute which you are cooperating diligently to resolve with USI.

9.5 Taxes.

Unless otherwise stated, our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases of the Services. If we have the legal obligation to pay or collect Taxes for which you are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by you, unless you have provided USI with a valid tax exemption certificate authorized by the appropriate taxing authority.

10. OWNERSHIP, PROPRIETARY RIGHTS AND USE OF DATA

10.1 Reservation of Rights – Services.

Subject to the limited rights expressly granted according to these Terms, USI reserves all rights, title, and interest in and to the Services and related software, including all related intellectual property rights.

10.2 Reservation of Rights – Publicity.

USI may include Customer's name, logos and trademarks in its customer lists and on its presentations, websites, press releases, and marketing materials. Upon signing this agreement, USI may issue a press release announcing the relationship and the manner in which Customer will use the Service. Each party may require the other to withdraw any use of the other's name, logos, and trademarks if the party reasonably considers that such use is derogatory, defamatory, detrimental, or in any way damages the party's business or reputation.

10.3 Enhancements.

USI reserves the right to use and incorporate into the Services any suggestions, enhancement requests, recommendations, or other feedback provided by you, including your Users, relating to the operation of the Services. Any software modifications or enhancements performed by USI, whether paid for by you or not, remain the property of USI and may at our sole discretion be incorporated into or withheld from the software generally made available to USI's customers.

11. CONFIDENTIALITY

11.1 Definition of Confidential Information.

- (i) As used in these Terms, "Confidential Information" includes all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include your data; USI's Confidential Information shall include the Services; and Confidential Information of each party shall include any and all Order Form(s), as well as business and marketing plans, technology and technical information, product plans and designs, business processes and other proprietary information disclosed by either party.

- (ii) Confidential Information (other than your data) shall not include any information that:
 - a) Is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
 - b) Was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
 - c) Was received from a third party without breach of any obligation owed to the Disclosing Party; or
 - d) Was independently developed by the Receiving Party.

11.2 Protection of Confidential Information.

The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and hereby agrees:

- (i) To keep strictly confidential and take reasonable precautions to protect against the unauthorized access, use or disclosure of all Confidential Information;
- (ii) Electronic data format confidential information shall be maintained and secured using security measures that meet information security controls standard;
- (iii) Not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms; and
- (iv) To limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality (and or other nondisclosure) agreement(s) with the Receiving Party, except as otherwise authorized by the Disclosing Party in writing.

11.3 Compelled Disclosure.

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party promptly gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information. The Parties shall cooperate in seeking reasonable protective arrangements before the Confidential Information is produced and at all times (to the extent legally permitted), the Receiving Party agrees to furnish only that portion of the Confidential Information which is legally required in the reasonable opinion of its counsel (after consultation with the Disclosing Party's counsel).

12. WARRANTIES AND DISCLAIMERS

12.1 Our Warranties.

EXCEPT AS EXPRESSLY PROVIDED, THE SERVICES ARE PROVIDED **"AS-IS"** WITHOUT WARRANTY OF ANY KIND. USI DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, CORRESPONDENCE TO

DESCRIPTION, OR FITNESS FOR A PARTICULAR PURPOSE. USI DOES NOT REPRESENT OR WARRANT BUT WILL MAKE COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT THE SERVICES ARE UNINTERRUPTED, CRUCIAL DEFECTS ARE CORRECTED, AND THE SERVERS USED FOR THE SERVICES ARE REGULARLY UPDATED AND MAINTAINED.

12.2 Your Warranties.

You warrant that you have validly accepted these Terms & Conditions and any obligations contained in the applicable Order Form(s) and have the legal authority to do so.

12.3 Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OUTLINED IN **SECTION 12.1**(OUR WARRANTIES) ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12.4 Services in Development.

SERVICES IN DEVELOPMENT (“Services in Development”) ARE NOT CONSIDERED AS “SERVICES UNDER THESE TERMS & CONDITIONS AND ARE PROVIDED “AS IS” WITH NO EXPRESS OR IMPLIED WARRANTY. In addition, from time to time we may invite you to try USI products or Services in Development that are not generally available to Customers. You may accept or decline any such trial in your sole discretion. Any Services in Development may contain bugs or errors and Customer acknowledges that USI has no obligation to make any Services in Development generally available to its customers.

13. INDEMNIFICATION

13.1 Indemnification by USI.

We shall defend you against any claim, demand, suit, or proceeding made or brought against you by a third party alleging that the use of the Services infringes or misappropriates the intellectual property rights of said third party, and shall indemnify you for any damages, attorney’s fees and costs finally awarded against you as a result of, and for amounts paid by you under a court-approved settlement of such claim, provided that you: (a) promptly give USI written notice of the claim; (b) allow USI sole control of the defense and settlement of the claim (provided that USI may not settle any claim unless the settlement unconditionally releases you of all liability); and (c) provide to USI all reasonable assistance, at USI’s expense. In the event of a such claim, or if we reasonably believe the Services may infringe or misappropriate, we may in our sole discretion and at no cost to you: (a) modify the Services so that they no longer infringe or misappropriate, (b) obtain a license for your continued use of the Services in accordance with these Terms, or (c) terminate your use of such Services upon thirty (30) days’ written notice and refund to you any prepaid fees covering the remainder of the term.

13.2 Indemnification by Customer.

You shall defend USI against any claim, demand, suit or proceeding made or brought against USI by a third party alleging that your data or your use of the Services infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify USI for any damages, attorney’s fees and costs finally awarded against USI as a result of, or for any amounts paid by USI under a court-approved settlement of such claim, provided that we (a) promptly give you written notice of the claim; (b) allow your sole control of the defense and settlement of the claim (provided that you may not settle any claim unless the settlement

unconditionally releases USI from all liability); and (c) provide to you all reasonable assistance, at your expense. Without limiting or otherwise abrogating Customer's other obligations stated elsewhere in the Agreement or the Order Form, Customer at its own expense shall defend, indemnify, and hold USI harmless from and against any and all damage, loss, expense, claim, lawsuit, judgment, and / or other liability (including without limitation attorney's fees or court costs) arising from failure of Customer, its agents, employees, contractors, or licensees, to protect confidential and/or personal information of third parties. USI shall have the right but not the obligation to participate in defending against such claim.

13.3 Failure to Notify Remedy.

If either party fails to notify the other party of indemnification proceedings, then the unnotified party will be relieved of its obligations under this Section, to the extent it was prejudiced by the party's failure to notify.

13.4 Exclusive Remedy.

Section 13 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

14. LIMITATION OF LIABILITY

14.1 Limitation of Liability.

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY INCIDENT ARISING OUT OF OR RELATED TO USE OF THE SERVICES (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY YOU ACCORDING TO THESE TERMS AND THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO USE OF THE SERVICES (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU PURSUANT TO THE APPLICABLE ORDER FORM. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER **SECTION 9** (FEES AND PAYMENT FOR SERVICES). NEITHER PARTY WILL BE LIABLE FOR BREACH-OF-CONTRACT DAMAGES SUFFERED BY THE OTHER PARTY THAT ARE REMOTE, SPECULATIVE, OR THAT COULD NOT HAVE REASONABLY BEEN FORESEEN ON ENTRY INTO THIS AGREEMENT.

14.2 Exclusion of Consequential and Related Damages.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO: (A) ANY DAMAGES CAUSED BY YOUR FAILURE OR THAT OF YOUR USERS, CLIENTS, (B) ANY CLAIMS OR DEMANDS OF THIRD PARTIES (EXCEPT AS PROVIDED IN **SECTION 13** (INDEMNIFICATION)); OR (C) ANY LOST PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, COST OF COVER, LOSS OF USE, LOSS OF DATA, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE.

THIS LIMITATION APPLIES TO USI AND ANY PERSON OR ENTITY INVOLVED IN THE CREATION, MANUFACTURE OR DISTRIBUTION OF ANY SOFTWARE, SERVICES OR OTHER MATERIALS PURSUANT TO THE PROVISION OF THE SERVICES.

THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

15. TERM OF SERVICE AND TERMINATION

15.1 Service Term.

The application of these Terms commences on the date specified in the applicable Order Form and continues for the term stated therein or until Termination pursuant to this Section.

15.2 User Access.

Access for Users purchased by you commences on the start date specified in the applicable Order Form and continues for the term specified therein. Any renewals and pricing shall be set by USI at its sole discretion.

15.3 Termination for Cause.

Either party may terminate the Agreement for cause: (i) upon thirty (30) days' prior written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Upon any termination for cause by Customer, USI shall refund to you any prepaid fees covering the remainder of the Service Term or Renewal Term after the effective date of termination. Upon any termination for cause by USI, you shall pay any unpaid fees covering the remainder of the Service Term or Renewal Term of any Order Form(s) after the effective date of termination. In no event shall any termination relieve you of the obligation to pay any fees payable to USI for any period prior to the effective date of termination.

15.4 Return of Your Data.

Upon written request by you made within thirty (30) days after the effective date of termination of the Services and at your cost, USI will return your data in the format used by USI. After such 30-day period, USI shall have no obligation to maintain or provide any of your data and shall thereafter, unless legally prohibited, delete all of your data in USI's systems or otherwise in USI's possession or under USI's control.

15.5 Surviving Provisions.

The Parties' rights and obligations which, by their nature, would continue beyond the termination of this Agreement shall survive such termination, including the rights and obligations created by the following clauses: Fees and Payment for Purchased Services, Ownership, Proprietary Rights and Use of Data, Confidentiality, Disclaimer, Indemnification, Limitation of Liability, Refund or Payment upon Termination, Return of Your Data, Who You Are Contracting With, Notices, Governing Law and Jurisdiction, and General Provisions.

16. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

16.1 Who You are Contracting With.

Who you are contracting with under these Terms, who you should direct notices to, what law will apply in any lawsuit arising out of or in connection with use of the Services, and which courts can adjudicate any such lawsuit, depend on where you are domiciled.

If you are domiciled in:	You are contracting with:	Notices should be sent to:	The governing law is:	The courts having exclusive jurisdiction are:
The United States, Canada, Mexico, or a country in Central or South America or the Caribbean	Ungerboeck Systems International, LLC	100 Ungerboeck Park O'Fallon, MO 63368 Attn: General Counsel Fax: +1-636-300-5607	Missouri state law and applicable United States federal law	St. Charles County, Missouri, USA
In Asia or the Pacific Region (other than Mainland China, Hong Kong, Macau, and Taiwan)	Ungerboeck Systems International Pty Ltd.	Level 1, Suite 7 924 Gympie Road Chermside, QLD 4032 Australia	Australian law	Brisbane, Queensland, Australia
China	Guangzhou Ungerboeck Software Limited	Unit 814-817, 8/F, The Place No. 620 Xin Gang East Road, Haizhu District Guangzhou, 510030 China	P.R. China law	P.R. China
Hong Kong, Macau or Taiwan	Ungerboeck Systems International Ltd	1501-08 Millennium City 5 418 Kwun Tong Road Kwun Tong, Kowloon, Hong Kong	Hong Kong law	Hong Kong
A country in Europe, the Middle East Region or Africa	Ungerboeck Systems International GmbH	Kaiserstrasse 72 76133 Karlsruhe Germany	German law	Germany

16.2 Agreement to Governing Law and Jurisdiction.

You and USI agree to the designated governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.

17. GENERAL PROVISIONS

17.1 Export Compliance.

The Services, and any derivative content and technology we make available to you may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied party list. You shall not permit Users to access or use any Service or related content in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

17.2 Assignment.

Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate the Agreement upon written notice. In the event of such termination, we will refund to you any prepaid fees covering the remainder of the term of the Agreement or any other agreements with USI. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

17.3 Relationship of the Parties.

You agree that USI is an independent contractor. Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner. No partnership, franchise, joint venture, agency, fiduciary or employment relationship between you and USI is created by virtue of these Terms.

17.4 Third-Party Beneficiaries.

USI's licensors shall have the benefit of the protections and rights reserved herein with respect to the Services and related content. No other third-party beneficiaries are contemplated under this Agreement, and therefore none exist.

17.5 Force Majeure.

USI will not be deemed in default of any provision of these Terms or otherwise be held liable for any delay in or failure of its performance under these Terms if such delay or failure arises due to any event beyond its reasonable control, including without limitation acts of God, malicious or criminal acts, acts of the common enemy, weather conditions, earthquakes, floods, fires, labor disputes, changes in law, regulation or government policy, war, epidemics, riots, failures, difficulties or delays in transportation or communications, acts or omissions of vendors or suppliers, equipment failures, or any act or failure to act by Customer, its employees, agents, or contractors. The parties will promptly inform and consult with each other as to any event which in their judgment, may or could be the cause of a substantial delay in performance under these Terms. USI is not liable for excusable delay.

17.6 No Waiver.

No failure, neglect, or delay by you or USI in exercising any right under these Terms shall constitute a waiver of that right. A waiver or extension is only effective if it is in writing and signed by the party granting it.

17.7 Severability.

In the event that a court of competent jurisdiction holds that a particular provision or requirement of these Terms is in violation of any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of such law or is not otherwise unenforceable and all other provisions and requirements contained in these Terms shall remain in full force and effect.

17.8 Attorney's Fees.

You agree to pay any and all reasonable attorney's fees and/or collection costs incurred by USI in order to collect any fees or charges due to USI following your breach of **Section 9.2** (Invoicing and Payment).