

## ACCLIMATE TERMS AND CONDITIONS

These ACCLIMATE TERMS AND CONDITIONS apply to all ACCLIMATE services and software including SaaS, DATA TRANSFORMATION SERVICES, APPLICATIONS, and APPROVED STATEMENTS OF WORK and will be provided via a link to the applicable ACCLIMATE webpage, provided to CUSTOMER, or via e-mail. Collectively, each such PROPOSAL MEMORANDUM, STATEMENT OF WORK, these ACCLIMATE TERMS AND CONDITIONS, and all applicable PRICING SCHEDULES provided by ACCLIMATE represent the entire agreement (the "AGREEMENT") between ACCLIMATE and the applicable ACCLIMATE customer (each, a "CUSTOMER"). By making payment of the SETUP FEE, as provided in the applicable PROPOSAL MEMORANDUM, the CUSTOMER thereby acknowledges and agrees to be bound by the AGREEMENT.

### A. DEFINITIONS:

1. **ACCLIMATE** refers to Acclimate Technologies, Inc., an Ohio registered company with its principal office currently located at 8565 Gander Creek Drive Dayton, OH 45342, and an email designated for electronic correspondence relating to this AGREEMENT: [Agreement-Correspondence@acclimate.com](mailto:Agreement-Correspondence@acclimate.com);
2. **ACCLIMATE SUPPORT** refers to those departments within ACCLIMATE that are responsible for receiving customer calls for the assistance, management services, and PROFESSIONAL SERVICES contracted by the CUSTOMER;
3. **ACTIVITY SEQUENCE SERVICES** refer to the workflow-like routing and/or staging of DATA TRANSFORMATION SERVICES provided;
4. **APPLICATIONS** refer to those functional services (e.g. Shipping Module) that ACCLIMATE offers and the CUSTOMER may elect to have provided by ACCLIMATE;
5. **APPROVED** refers to an authorization provided by CUSTOMER;
6. **AUDIT REPORT** refers to the basic reporting and or publication of data that enables the operator of DATA TRANSFORMATION SERVICES to review the status of operations and outcomes of operations;
7. **ACCNet** refers to the Value-Added Network (VAN) communication service offered by ACCLIMATE to manage the staging and communication of data;
8. **CATASTROPHIC ERROR** refers to a condition that results in the related software service not operating and considered fully halted;
9. **CUSTOMER** refers to the organizational entity (or individual if no organizational entity exists) that has requested ACCLIMATE provide any deliverable by ACCLIMATE contemplated by this AGREEMENT, that acknowledges and agrees to be bound by the AGREEMENT, and has initiated the process of receiving these deliverables by paying the SETUP FEE invoice identified in the PROPOSAL MEMORANDUM;
10. **CHARGE** refers to those additional expenses to CUSTOMER that are APPROVED and defined in a STATEMENT OF WORK.
11. **DATA ENRICHMENT SERVICES** refer to those arithmetic or optional value added manipulation of processed data (e.g. algorithmic trending), which may be published in QUICK VIEWS, included basic reporting, and or other optional outputs and may be processed according to the ACTIVITY SEQUENCE SERVICE;
12. **DATA BUSINESS RULES** refer to optional code scripts implemented for CUSTOMER specific DATA TRANSFORMATION SERVICE requirements to enhance the standard TRANSLATION outcomes by discrete source or destination;
13. **DATA TRANSFORMATION SERVICES** refer to the ACCLIMATE interoperability software platform service offerings, some of which are selected by the CUSTOMER as additional chargeable services;

- 14. DATA TRANSFORMATION SERVICES DELIVERY OPTIONS include:**
- a. ONSITE PROVISIONING OF SERVICE** requires that the Customer purchase physical servers to execute ACCLIMATE software products for execution at the CUSTOMER premises. This is usually done to comply with a formal requirement of some governing Regulatory Body or Corporate Governance. The CUSTOMER will continue to incur the applicable RE-OCCURRING SERVICE FEES and VARIABLE SERVICE FEES. VARIABLE SERVICE FEES may be eliminated if the CUSTOMER selects UNLIMITED TRANSLATION which is listed in the PRICING SCHEDULE; or
  - b. OFFSITE PROVISIONING OF SERVICE**, also known as “in the cloud computing” provides the Services described in this AGREEMENT through communication bandwidth, related hardware and software provided by the CUSTOMER;
- 15. DATA VALIDATION RULES** refer to optional code scripts implemented for CUSTOMER specific data verification requirements that may be located in one or many TARGET SYSTEM(s);
- 16. DATA VALIDATION SERVICES** refer to that software programming logic that ACCLIMATE provides to enable DATA TRANSFORMATION SERVICES to interact with TARGET SYSTEM(S) for the purpose of acquiring DATA VALIDATION RULE(S) attributes and values to be applied against the data being processed for at least the purposes of determining a true or false state of acceptability for further processing;
- 17. DATA VALIDATION TARGET SYSTEM** refers to that system (e.g. ERP Server), which the CUSTOMER has designated to collaborate in the process of DATA VALIDATION SERVICES;
- 18. DOCUMENT TRANSLATION FEE** refers to the financial amount charged to a CUSTOMER for every document processed by the ACCLIMATE SaaS DATA TRANSFORMATION SERVICES (e.g. transaction purchase order, invoices, shipping notices). The DOCUMENT TRANSLATION FEE is a variable fee and is calculated from the total amount of monthly document volume processed;
- 19. FEE(S)** refer to those expense amounts that are associated with services provided to CUSTOMER and are typically defined in PRICING SCHEDULES, PROPOSAL MEMORANDUM or subsequently defined in a STATEMENT OF WORK;
- 20. FIRST MONTHLY INVOICE** refers to the invoice that the Customer receives and pays, that details the FEE(S) for the commencement of DATA TRANSFORMATION SERVICE;
- 21. GRATIS** refers to an allowance of non-chargeable time provided to CUSTOMER for two (2) activities:
- a.** Implementation of DATA BUSINESS RULES and DATA VALIDATION RULES whereby ACCLIMATE is providing an allowance of sixty (60) minutes to implement each distinct said rule and if CUSTOMER specific said rules do require more than the typical time (30 minutes) or does not exceed the said allowance, then CUSTOMER shall experience no additional implementation charges excluding the RECURRING SERVICE FEES;
  - b.** Implementation of DATA TRANSFORMATION SERVICES whereby ACCLIMATE is providing an allowance of sixty (60) hours per TARGET SYSTEM INTEGRATION and if CUSTOMER specific implementation does not require more than the typical time which is approximated to be the same as the stated allowance then CUSTOMER shall experience no additional implementation charge excluding the RECURRING SERVICE FEES;
- 22. MAINTENANCE FEES** refer to those FEES that CUSTOMER has agreed to be charged for supporting software that has been licensed to the CUSTOMER pursuant to a traditional ONE TIME LICENSE FEE.
- 23. MESSAGING SERVICES** refer to formats such as those provided to move transactional data and may include AS2, HTTP, FTP, Email, and/or VAN Services. The CUSTOMER may choose to pay ACCLIMATE to provide its VAN Service, termed ACCNet or self-manage messaging through FTP, FTPS with no additional FEE from ACCLIMATE;
- 24. META MAPS** refer to the robust design methods employed by ACCLIMATE for TRANSLATION which enables one to one, one to many, and many to one relationships of data with a single instantiation of data;

25. **ONE TIME LICENSE FEE** refers to the one-time payment of a FEE for the traditional licensing of software whereby CUSTOMER is required to pay, in advance, the total price associated with the anticipated life of that software and MAINTENANCE FEES, which includes minor updates, but not major upgrades;
26. **PRICING SCHEDULE** refers to the current FEES in force as per this AGREEMENT;
27. **PROFESSIONAL SERVICES** refer to the process and operational level definition and/or guidance provided by a vendor such as ACCLIMATE and are chargeable services;
28. **PROPOSAL MEMORANDUM** refers to the offer of services to a prospective customer and that delineates the DATA TRANSFORMATION SERVICES and or APPLICATIONS requested by such customer along with a proposed SETUP FEE;
29. **QUICK VIEW** refers to the potential publication of data processed by ACCLIMATE for the CUSTOMER and can include inputs from any service the CUSTOMER chooses. There are at least two (2) status related QUICK VIEWS provided by ACCLIMATE and the CUSTOMER has the option to generate additional QUICK VIEWS through ACCLIMATE PROFESSIONAL SERVICES;
30. **RE-OCCURRING SERVICE FEES** are those invoiced expenses that represent the established monthly service provisions, including, but not limited to, DATA TRANSFORMATION SERVICES, DATA BUSINESS RULES, DATA VALIDATION RULES, DATA ENRICHMENT SERVICES, SUPPORT PHONE OPTIONS, and TARGET SYSTEM INTEGRATION;
31. **REASONABLE TIMEFRAME** refers to a period of time qualified by the severity of an issue (system totally halts requires immediate attention and resolution in hours, while non-halts of system require attention and potential resolution over days) that is typically required to resolve a reported issue resolution;
32. **SaaS** refers to an industry pricing model whereby software is licensed to the CUSTOMER as a subscription service;
33. **SELF-MANAGE FTP, FTPS COMMUNICATION** refers to the CUSTOMER'S ability to transfer files to DATA TRANSFORMATION SERVICES to the TARGET SYSTEM (e.g. TRADING PARTNER) without the need for a chargeable Value Added Network (VAN) service (e.g. ACCNet);
34. **SERVICES INITIATION DATE** refers to that date associated with the chargeable period of the FIRST INVOICE indicating that DATA TRANSFORMATION SERVICES are now being provided in either parallel or production runs;
35. **SERVICE INITIATION PROCESS** refers to those activities required to ready the Customer for SERVICE INITIATION DATE. The SETUP PACKET will delineate the activities and information required of the CUSTOMER which will differ depending upon the SUPPORT PHONE OPTION selected;
36. **SETUP FEE** refers to the charge to the CUSTOMER for the initiating activities and services incurred by ACCLIMATE to originate the related service;
37. **SETUP PACKET** refers to the set of directions and requirements that ACCLIMATE will provide to a CUSTOMER after receiving payment of the SETUP FEE;
38. **STATEMENT OF WORK ("SOW")** refers to those additional services that the Customer may from time to time request of ACCLIMATE, and ACCLIMATE may agree to provide. All work specified as a SOW is considered chargeable at the then going rate charged by ACCLIMATE for such extra work. A SOW may be applicable to that work that is required beyond the GRATIS provided for each rule that is implemented for the Customer by ACCLIMATE in support of either or both DATA BUSINESS RULES and DATA VALIDATION RULES. Any SOW may also specify PROFESSIONAL SERVICES requested by the CUSTOMER;

39. **SUNSET PERIOD** refers to that period of time after which ACCLIMATE will cease to provide maintenance of related software or service and shall not be less than six (6) months nor greater than twelve (12) months from notification as described in SECTION V: NOTICE;
40. **SUPPORT HOURS** refer to the hours of support that ACCLIMATE offers to CUSTOMERS. There are three (3) alternatives that apply to either SELF-MANAGE or ACCLIMATE-MANAGE Service Options:
- a. Hours of 8:00AM to 5:00PM Eastern Time Zone; or
  - b. Hours of 8:00AM to 12:00AM Eastern Time Zone; or
  - c. Twenty-four (24) Hours of the Day and seven (7) days a week;
41. **SUPPORT PHONE OPTIONS** refer to the phone support that ACCLIMATE offers to CUSTOMERS. All SUPPORT PHONE OPTIONS are chargeable as stated in the PRICING SCHEDULE and include the following:
- a. **SELF-MANAGE SUPPORT**, considered applicable to those organizations that have well versed operators and available IT support personnel. When you SELF-MANAGE SUPPORT, you limit ACCLIMATE involvement to resolving only Service Outage Conditions. SELF-MANAGE SUPPORT indicates that your firm is self-sufficient and will only involve ACCLIMATE in operational and or process questions as an additional PROFESSIONAL SERVICE; or
  - b. **ACCLIMATE-MANAGE SUPPORT**, also referred to in the Industry as Outsource, provides for complete process, operator, system fault, outage, or Trading Partner Support;
42. **TARGET SYSTEMS** refer to the system or server involved in the DATA TRANSFORMATION SERVICES processing activities;
43. **TARGET SYSTEM INTEGRATION** refers to the method of exchanging data and or interrogating TARGET SYSTEMS:
- a. Flat File Input / Output typical of limited data exchange processing (e.g. EDI); and
  - b. Software interrogation and real time interaction with targeted Server (e.g. ERP System), for DATA VALIDATION SERVICES and or ERP Systems that require additional support for EDI or other services due to design of these TARGET SYSTEMS;
44. **TRADING PARTNER** refers to the CUSTOMER's designated "other participant" in an ongoing relationship with whom it has chosen to exchange data;
45. **TRADING PARTNER KIT** refers to all the existing DATA TRANSFORMATION MAPS required to exchange data with a TRADING PARTNER; ACCLIMATE will develop additional DATA TRANSFORMATION MAPS at no additional CHARGES if said DATA TRANSFORMATION MAPS are determined by ACCLIMATE in their sole and absolute discretion to be typically required by the market served by ACCLIMATE;
46. **TRAINING** refers to operator training of the TRANSFORMATION SERVICES, for which three (3) alternatives are provided by ACCLIMATE to CUSTOMERS to acquire this TRAINING:
- a. Two (2) Live Webinars held by ACCLIMATE for which the CUSTOMER must register; or
  - b. Available at your leisure access to past TRAINING VIDEOS on the ACCLIMATE WEBSITE; or
  - c. Schedule a TRAINING Session through ACCLIMATE Professional Services;
47. **TRANSLATION** generally refers to the process of ACCLIMATE transforming data from the CUSTOMER's definition of the transaction to the TARGETED SYSTEM definition of that transaction (e.g. TRADING PARTNER) or in reverse and utilizes META MAPS;

48. **TRANSACTION HISTORY** refers to the ability of ACCLIMATE to store all data input, DATA ENRICHMENT states, and data output; (Upon request from CUSTOMER, ACCLIMATE will provide ninety (90) days of TRANSACTION HISTORY at no CHARGE or FEE to CUSTOMER.)
49. **VARIABLE SERVICE FEES** refer to those expenses associated with the volume of activity processed such as documents subject to TRANSLATION or kilobytes transmitted through ACCNet. (See applicable FEES in the PRICING SCHEDULE.)
50. **VIRTUAL PRIVATE NETWORK** (“VPN”) service provided through standard telecommunication services acquired by CUSTOMER. This service may be required by some TARGETED SYSTEMS.

## **B. INITIAL TERM and RENEWAL TERMS:**

1. **INITIAL TERM:** This AGREEMENT shall be effective beginning on the date that the CUSTOMER makes payment of the initial SETUP FEE and shall continue thereafter until the first-year anniversary of the SERVICES INITIATION DATE (the “INITIAL TERM”);
2. **RENEWAL TERMS:** After expiration of the INITIAL TERM, this AGREEMENT shall automatically renew for additional consecutive one (1) year terms (each, a “RENEWAL TERM”), unless and until either party hereto may elect, with or without cause, not renew this AGREEMENT by providing written notice of such election not to renew to the party at least (60) days prior to the end of the then current INITIAL TERM or subsequent RENEWAL TERM.
3. **SUNSET PERIOD:** ACCLIMATE will decide at its sole discretion when to establish a SUNSET PERIOD for a software or service it has or is licensing with the following limitations:
  - a. No SUNSET PERIOD shall begin less than three (3) years after ONE TIME LICENSE FEE has been paid, unless ACCLIMATE vacates the related business space, and
  - b. No SUNSET PERIOD shall be established until after the second major release of replacement software or service.

## **C. SETUP:**

1. **SETUP PACKET:** Upon receiving the SETUP PACKET which shall be provided by ACCLIMATE after the SETUP FEE Invoice has been paid, CUSTOMER agrees to perform the following actions, pursuant to the SETUP PACKET, in a timely manner:
  - a. Provide the data specified;
  - b. Perform the activities specified;
  - c. Schedule a date for initiation of DATA TRANSFORMATION SERVICES, which date may be altered by the CUSTOMER without an additional CHARGE, if ACCLIMATE is provided at least seventy-two (72) hours advance written notice.

Depending upon the SUPPORT PHONE OPTION selected by the CUSTOMER, the level of involvement by ACCLIMATE SUPPORT will vary.

2. **SET UP FEE:** The SETUP FEE will be charged by ACCLIMATE, and be payable by CUSTOMER, for the initial installation or activation of a service (e.g. DATA TRANSFORMATION, DATA VALIDATION TARGET SYSTEM). In two (2) situations, another SETUP FEE will be charged by ACCLIMATE and will be due and payable by CUSTOMER. Those situations are as follows:
  - a. When CUSTOMER’s failure to comply with this AGREEMENT, including, without limitation, CUSTOMER’s failure to make timely payments, results in a discontinuance or termination of service(s); or
  - b. When CUSTOMER’s TARGET SYSTEM integration has undergone a significant change due to a vendor-required or elected software upgrade, which requires ACCLIMATE to provide migration services to re-integrate the applicable TARGET SYSTEM.

## D. STATEMENTS OF WORK:

1. **Additional Services:** CUSTOMER may request of ACCLIMATE, and ACCLIMATE may choose to perform, services outside the scope of the PROPOSAL MEMORANDUM, such as developing additional extensions and or functionality for CUSTOMER services. Such additional services shall be described in a STATEMENT OF WORK;
2. **Preparation for Additional Work:** ACCLIMATE may request that the CUSTOMER pay for some limited time to adequately define and describe such additional work, which will be done on behalf of the CUSTOMER. CUSTOMER agrees that it will authorize such expenditures or CUSTOMER agrees that work performed on its behalf may not meet expectations or take longer than anticipated by ACCLIMATE due to lack of up front definition or scoping.

## E. COOPERATION.

CUSTOMER and ACCLIMATE acknowledge and agree that CUSTOMER's cooperation with ACCLIMATE is imperative in order for ACCLIMATE to perform services pursuant to this AGREEMENT. CUSTOMER shall cooperate with ACCLIMATE in the performance of all services provided by ACCLIMATE hereunder, including, without limitation, providing ACCLIMATE with all system access, information, data, and reasonable assistance from CUSTOMER personnel necessary for ACCLIMATE's performance. In the event that CUSTOMER fails to cooperate with ACCLIMATE or the assumptions acknowledged and agreed to by CUSTOMER in the applicable proposal are not accurate, in each situation as reasonably determined by ACCLIMATE, ACCLIMATE's obligation to perform the Services may be, in ACCLIMATE's sole and absolute discretion, suspended or terminated without incurring any liability to CUSTOMER.

## F. INDEPENDENT CONTRACTOR.

CUSTOMER and ACCLIMATE shall each act at all times under this AGREEMENT as independent contractors, and neither party shall have any right or authority, express or implied to create or to assume any obligation on behalf of the other party hereto. CUSTOMER and its personnel shall not be considered to be employees of ACCLIMATE for any purpose and ACCLIMATE and its personal shall not be considered to be employees of CUSTOMER for any purpose.

## G. CONFIDENTIALITY.

ACCLIMATE agrees not to disclose, and to cause its employees, agents and representatives not to disclose, to anyone other than CUSTOMER, CUSTOMER's business practices, CUSTOMER DATA, or other trade secrets or confidential information of CUSTOMER, except as required to perform the Services or as otherwise legally required. ACCLIMATE acknowledges that CUSTOMER is the sole and exclusive owner of such information. CUSTOMER acknowledges that the processes, procedures, manner of operations, materials, software, proprietary information, and other such items licensed to CUSTOMER or employed by ACCLIMATE in performing the services (the "ACCLIMATE INFORMATION") is confidential and that ACCLIMATE is the sole owner of the ACCLIMATE INFORMATION. CUSTOMER agrees not to disclose, and to cause its employees, agents and representatives not to disclose, to anyone the terms of this AGREEMENT, the ACCLIMATE INFORMATION, ACCLIMATE's business practices or other trade secrets or confidential information of ACCLIMATE, except as legally required. Each party also agrees not to use the other party's confidential information for any purpose other than as set forth in this AGREEMENT. Each party agrees that the other party does not have an adequate remedy at law to protect its rights under this section and agrees that the non-defaulting party will have the right to seek injunctive relief from any violation or threatened violation of this section. Upon the termination or expiration of this AGREEMENT, each party will, upon receipt of written request from the other party, each party will return the other party's confidential information disclosed under this AGREEMENT within ten (10) business days of receipt of such request.

ACCLIMATE acknowledges that technical data and defense service information related to defense articles listed on the US Munitions List, which ACCLIMATE may have access or which may be disclosed to ACCLIMATE in the course of its provision of services to CUSTOMER pursuant to this AGREEMENT, may be subject to export control under the International Traffic in Arms Regulations (22 C.F.R. 120-130) and/or under the Export Administration Regulations (15 C.F.R. 730-774). CUSTOMER shall notify ACCLIMATE, in writing and prior to each specific instance where such technical data or defense service information will be disclosed to ACCLIMATE in the course of its provision of services to CUSTOMER, of the specific export control laws, rules, regulations, and requirements applicable to ACCLIMATE. Notwithstanding anything to the contrary herein, ACCLIMATE shall not be liable to CUSTOMER for any damages, costs, expenses, fees, fines, or other costs that CUSTOMER may incur due to a violation of any such export control laws, rules, regulations, or requirements not specifically disclosed to ACCLIMATE as provided above.

## **H. SOFTWARE LICENSE; RESTRICTIONS.**

ACCLIMATE hereby grants to CUSTOMER a non-exclusive, non-transferable, non-sublicensable, limited license to use the software, provided pursuant to this AGREEMENT, during the term of this AGREEMENT, and solely in accordance with this AGREEMENT. The software licensed to CUSTOMER is to be used solely in connection with business of CUSTOMER and not in connection with the business of any other company, entity, firm, person, organization, or other commercial use. CUSTOMER must not, and must not request or authorize any third party to: (i) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the software licensed by ACCLIMATE or any intellectual property owned by ACCLIMATE; (ii) modify, translate, or create derivative works based on the software licensed by ACCLIMATE or any intellectual property owned by ACCLIMATE; (iii) copy, rent, lease, distribute, assign, or otherwise transfer any rights whatsoever to the software licensed by ACCLIMATE; (iv) use, or make available for use, the software licensed by ACCLIMATE either on a wide area network or for off-site access without prior, express, written approval from ACCLIMATE; (v) access the software licensed by ACCLIMATE on more computers or workstations than are expressly authorized by ACCLIMATE; (vi) remove any proprietary notices or labels on the software licensed by ACCLIMATE.

## **I. OWNERSHIP OF SOFTWARE AND INTELLECTUAL PROPERTY.**

CUSTOMER acknowledges and agrees that all software and intellectual property provided by ACCLIMATE is being licensed, not sold, to CUSTOMER, that CUSTOMER shall not acquire any ownership interest in any such software and/or intellectual property under this AGREEMENT, and that CUSTOMER's only right to the software or intellectual property is the limited right to use the same as set forth in this AGREEMENT. CUSTOMER further acknowledges and agrees that ACCLIMATE expressly reserves and shall retain all right, title and interest in and to all software and intellectual property provided to CUSTOMER and all intellectual property rights arising out of or relating to such software or intellectual property, whether in its current form or as modified from time to time. CUSTOMER shall promptly notify ACCLIMATE if CUSTOMER becomes aware of any possible third party infringement of ACCLIMATE's intellectual property rights arising out of or related to any software licensed to CUSTOMER and shall fully cooperate with ACCLIMATE in any legal action taken to enforce ACCLIMATE's intellectual property rights. CUSTOMER shall safeguard the software licensed to it by ACCLIMATE from infringement, misappropriation, theft, misuse, or unauthorized access.

CUSTOMER is the sole and exclusive owner of all CUSTOMER DATA, and ACCLIMATE acquires no rights in the CUSTOMER DATA. Neither ACCLIMATE nor any of its employees, agents, or consultants shall have any rights in the CUSTOMER DATA or to use any of the CUSTOMER DATA in any form, including but not limited to, raw data, blended data, stripped data, aggregated data or cumulated data, except such right to use the CUSTOMER DATA as is necessary for ACCLIMATE to fulfill its obligation under the AGREEMENT.

## **J. SECURITY MEASURES.**

The software licensed to CUSTOMER may contain technological measures designed to monitor its use and to prevent unauthorized or illegal use by CUSTOMER or third parties. CUSTOMER agrees that ACCLIMATE may use these measures to verify the CUSTOMER's compliance with the terms of this AGREEMENT and enforce ACCLIMATE's rights, including all intellectual property rights, in and to such software. CUSTOMER acknowledges and agrees that ACCLIMATE and its representatives and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including information about the CUSTOMER's computers, systems and software, that ACCLIMATE may gather periodically to improve the performance of such software or develop updates and modifications.

## **K. AUDIT.**

No more than once in any rolling twelve (12) month period and upon at least ten (10) business days' prior written notice to CUSTOMER, ACCLIMATE or its representatives or agent may, in ACCLIMATE's sole and absolute discretion, audit the CUSTOMER's use of any software and intellectual property licensed under this AGREEMENT at any time during the term and for one (1) year following the expiration or termination of this AGREEMENT. Any agents or representatives that conduct an audit must sign a confidentiality agreement that is acceptable to CUSTOMER prior to be allowed access to CUSTOMER's facilities. The CUSTOMER shall fully cooperate with ACCLIMATE's audit and provide complete access to records, equipment, information and personnel requested by ACCLIMATE. If the audit determines that the CUSTOMER's usage of such software exceeded the usage permitted by this AGREEMENT, the CUSTOMER shall pay to ACCLIMATE all fees due for such excess usage, plus any costs incurred by ACCLIMATE in conducting the audit, within ten (10) days of the date of written notification of the audit results.

## **L. COMPLIANCE.**

ACCLIMATE agrees that it will comply with all applicable laws, rules and regulations related to the services. CUSTOMER agrees that it will comply with all applicable laws, rules and regulations, including, without limitation, those laws, rules, and regulations governing and/or related to CUSTOMER's business operations.

## **M. PAYMENTS, INTEREST, AND COLLECTIONS.**

CUSTOMER will be notified of payment alternatives in the SETUP PACKET and will be required to choose and validate a form of remittance method. Each invoice will separate RE-OCCURRING SERVICE FEES from VARIABLE SERVICE FEES. CUSTOMER acknowledges and agrees that:

- i. ACCLIMATE will commence invoicing, for services that CUSTOMER receives, beginning with prorated FEES to reflect partial months, if applicable.
- ii. CUSTOMER is responsible for identifying and maintaining a valid email address by which to receive electronic invoicing from ACCLIMATE. Failure to maintain a valid email address for receipt of invoices may cause a breach by CUSTOMER.
- iii. CUSTOMER agrees to timely pay all ACCLIMATE invoices, for FEES incurred pursuant to this AGREEMENT, within thirty (30) days of the date of each such invoice or such lesser time or on such specific date as is indicated in this AGREEMENT or on a particular invoice.
- iv. That travel expenses are not included in proposals and that CUSTOMER shall pay all ACCLIMATE invoices for APPROVED travel expenses within ten (10) days of the date of each such invoice.
- v. All applicable MAINTENANCE FEES are billed annually, quarterly, or monthly at an amount equal to twenty percent (20%) of the current list price. Such maintenance and support fees shall be due and payable in thirty (30) days of the date of each annual, quarterly, or monthly invoice.
- vi. If requested by ACCLIMATE, and agreed to by CUSTOMER, CUSTOMER will establish an automatic electronic funds debit arrangement for paying ACCLIMATE.
- vii. All delinquent payments by CUSTOMER will result in an ongoing late payment interest charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum monthly rate allowed by applicable law.
- viii. CUSTOMER agrees to reimburse ACCLIMATE for all costs and expenses, including reasonable attorneys' fees, incurred by ACCLIMATE in enforcing collection of any monies due to it under this AGREEMENT.
- ix. In addition to the foregoing and without waiver of its rights under this AGREEMENT, ACCLIMATE may suspend the performance of the Services and/or the operability of any licensed software during any period in which any invoices are past due without incurring any liability to CUSTOMER.

## **N. CHANGES IN PAYMENTS.**

ACCLIMATE may request a change in the applicable FEES in the event of:

- i. A material change in legislation, CUSTOMER's or ACCLIMATE's business or other market conditions which results in a material change in either the cost associated with ACCLIMATE's provision of the Services or ACCLIMATE's anticipated revenues under this AGREEMENT.
- ii. Specifically, and not in limitation of the preceding sentence, ACCLIMATE may request such a change in the event: (i) CUSTOMER fails to disclose to ACCLIMATE, at or prior to the time this AGREEMENT is executed, information relating to CUSTOMER's business, which information, if disclosed, would have led ACCLIMATE to propose higher FEES or additional services; or (ii) any of the information provided by CUSTOMER to ACCLIMATE upon which the services are based is or becomes inaccurate.

In the event ACCLIMATE requests such a change, ACCLIMATE will provide CUSTOMER with thirty (30) days' prior written notice (the "Notice Period") of the requested change (the "Notice") and such payment change will be effective at the end of the Notice Period. If CUSTOMER refuses such a change in writing within the Notice Period, this AGREEMENT will terminate sixty (60) days after receipt by ACCLIMATE of such written refusal from the CUSTOMER.



## **O. CUSTOMER REPRESENTATIONS AND WARRANTIES.**

CUSTOMER and ACCLIMATE represent and warrant to each other: (i) that it has full power and authority to enter into this AGREEMENT, to perform its obligations hereunder, and that this AGREEMENT has been duly authorized executed, and delivered by such party and constitutes a legally enforceable agreement of such party; (ii) that it is not bound or in any way limited by the terms and conditions of any other agreement such that it is not able to fully comply with the terms and conditions of this AGREEMENT; (iii) that by entering into this AGREEMENT and performing its obligations hereunder it is not in breach of any covenant or other agreement with any other party; and (iv) that it shall take all necessary actions to ensure that all of its employees and agents shall comply with the provisions of this AGREEMENT applicable to it.

## **P. LIMITED ACCLIMATE WARRANTY.**

ACCLIMATE warrants that:

- i. Software licensed to CUSTOMER by ACCLIMATE pursuant to a ONE-TIME LICENSE FEE, when delivered, will substantially conform to the then current specifications for a period of thirty (30) days from the date the software is delivered to CUSTOMER, and that the media, if any, on which the software is delivered will be free of defects. In the event that such software or media is defective within the terms of this limited warranty, CUSTOMER's sole and exclusive remedy shall be ACCLIMATE's replacement or correction of the defective software or media; and
- ii. Software provided as SaaS will substantially conform to the then current specifications during the term of this AGREEMENT. In the event that such software is defective, CUSTOMER's sole and exclusive remedy shall be ACCLIMATE's correction of the defective software in a REASONABLE TIMEFRAME. If such defect is a CATASTROPHIC ERROR, and ACCLIMATE is unable to resolve such CATASTROPHIC ERROR within three (3) business days, then CUSTOMER shall have the right to request a prorated credit for related FEES
- iii. The services performed by ACCLIMATE will be performed in a timely, competent, professional, and workmanlike manner.
- iv. Neither the software nor the performance of the services by ACCLIMATE does or will knowingly infringe or otherwise violate any copyright, trade secret, trademark, patent, non-disclosure or other rights of any third party.

## **Q. DISCLAIMER.**

EXCEPT AS EXPLICITLY SET FORTH HEREIN, ALL SOFTWARE AND OR SOFTWARE PROVIDED AS SAAS IS PROVIDED "AS IS" AND ACCLIMATE EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO SUCH SOFTWARE (INCLUDING ALL OPEN-SOURCE COMPONENTS), DOCUMENTATION, MEDIA AND ANY OTHER SERVICES AND MATERIALS PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

WITHOUT LIMITATION TO THE FOREGOING, ACCLIMATE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT SUCH SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, IS CORRECT, WILL ACHIEVE ANY INTENDED RESULTS, WILL BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES (EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION), WILL OPERATE WITHOUT INTERRUPTION, WILL MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR WILL BE ERROR FREE. ACCLIMATE DOES NOT WARRANT THAT YOUR USE OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

## **R. NON-EMPLOYMENT.**

During the term of this AGREEMENT and for a period of twelve (12) months following the termination of the AGREEMENT, CUSTOMER agrees not to employ, contract with for services, solicit for employment on its own behalf or on behalf of any third party, or have ownership in any entity which employs or solicits for employment, any individual who: (i) was an employee of ACCLIMATE or its owner(s), affiliates or subsidiaries at any time during the preceding twelve (12) months; and/or (ii) was materially involved in the provision of the Services hereunder without the prior written consent of ACCLIMATE. CUSTOMER agrees that ACCLIMATE and its owner(s), affiliate or subsidiaries do not and will not have an adequate remedy at law to protect their rights under this Section R. and CUSTOMER agrees that such party will have the right to injunctive relief from any violation or

threatened violation of this Section R. For the sole purpose of enforcing its rights under this Section R., ACCLIMATE' owner(s), affiliates, and subsidiaries shall be third party beneficiaries to this AGREEMENT.

## **S. TERMINATION.**

Either party may terminate the AGREEMENT upon thirty (30) days prior written notice of termination to the other party if the other party defaults on any of its obligations under this AGREEMENT (other than CUSTOMER's payment obligations) and such party has not materially cured such default within such thirty (30) day notice period. ACCLIMATE may terminate the AGREEMENT upon five (5) days prior written notice of termination to CUSTOMER if the CUSTOMER defaults on its payment obligations under this AGREEMENT and has not materially cured such default within such five (5) day notice period. Notwithstanding the preceding sentence, ACCLIMATE may terminate the AGREEMENT immediately if CUSTOMER defaults on its payment obligations under this AGREEMENT for a second time in any twelve (12) month period. To the extent permitted by applicable law, either party may terminate the AGREEMENT upon thirty (30) days prior written notice of termination to the other party if: (a) a court having appropriate jurisdiction enters a decree or order for relief in respect of the other party in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) the other party commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect. In the event of a termination of the AGREEMENT by ACCLIMATE, the CUSTOMER shall remain obligated to make all incurred amounts, plus penalties and interest if applicable, to ACCLIMATE pursuant to this AGREEMENT.

## **T. INDEMNIFICATION.**

CUSTOMER shall indemnify, defend and hold harmless ACCLIMATE and its owner, directors, officers, trustees, employees, and agents from and against all third party claims, suits, and demands, and all damages, liabilities, costs, charges, losses and other expenses (including, but not limited to, attorneys' fees) to the extent: (a) attributable to, arising out of, or resulting in whole or in part from any negligent or intentionally wrongful act or omission of CUSTOMER, its employees or any other party acting under CUSTOMER's supervision or control, including, without limitation, any and all agents of CUSTOMER; (b) arising from or related to any breach of this AGREEMENT by CUSTOMER; (c) arising from or related to CUSTOMER's failure to comply with any applicable law, rule or regulation; (d) attributable to, arising out of, or resulting in whole or in part from any combination of the software, licensed pursuant to this AGREEMENT, with any hardware, system or other software not provided or authorized in writing by the ACCLIMATE; or (e) attributable to, arising out of, or resulting in whole or in part from any modification of the software, licensed pursuant to this AGREEMENT, which is not provided or authorized in writing by ACCLIMATE, or the CUSTOMER's or any third party's negligence, abuse, misapplication or misuse of such software.

## **U. LIMITATION OF LIABILITY; CLAIMS PERIOD; SOLE REMEDY.**

CUSTOMER AND ACCLIMATE AGREE THAT THE LIABILITY OF ACCLIMATE UNDER THIS AGREEMENT FOR ALL LOSS OR DAMAGE INCURRED BY CUSTOMER, ARISING FROM ANY CAUSE OR CAUSES CAUSED BY ACCLIMATE IS LIMITED TO THE SUM OF PAYMENTS ACTUALLY PAID BY CUSTOMER TO ACCLIMATE PURSUANT TO THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS AND SHALL EXCLUDE, AMONG OTHER DAMAGES, ANY AND ALL PENALTIES INCURRED BY CUSTOMER ("LIMITATION OF LIABILITY"). IN NO EVENT SHALL ACCLIMATE'S AGGREGATE LIABILITY EXCEED SUCH LIMITATION OF LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY CLAIM FOR DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO A CLAIM FOR RECURRING DAMAGES ARISING OUT OF THE SAME CAUSE OR EVENT, MUST BE BROUGHT NO LATER THAN SIX (6) MONTHS AFTER THE CAUSE OF ACTION FIRST ARISES ("CLAIMS PERIOD"). ACCLIMATE SHALL IN NO EVENT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR SIMILAR LOSSES OR DAMAGES SUFFERED BY CUSTOMER OR ANY THIRD PARTY, EVEN IF CUSTOMER OR SUCH THIRD PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The limitations set forth above reflect a deliberate and bargained for allocation of risks between ACCLIMATE and CUSTOMER, constitute the basis of the parties' bargain, and sets forth the entire liability and obligation of ACCLIMATE without which ACCLIMATE would not have agreed to enter this AGREEMENT.

## **V. NOTICE.**

Any notice, payment, demand or communication required or permitted to be given by the provisions of this AGREEMENT will be effective on the date of receipt if sent or delivered by certified/return receipt mail or by national overnight delivery service to

ACCLIMATE, at the address provide for ACCLIMATE above, Attention: President; and if to CUSTOMER, at the address first provided above, to the attention of the party executing this AGREEMENT on behalf of CUSTOMER, or at such other address(es) or to the attention of such other persons as the parties may from time to time designate in writing by notice as set forth above.

## **W. FORCE MAJEURE.**

Neither party shall be liable for any failure or delay in performing its obligations under this AGREEMENT due in whole or in material part to any cause beyond its sole control, including but not limited to fire, accident, labor dispute or unrest, flood, riot, war, rebellion, insurrection, sabotage, terrorism, transportation delays, shortage of raw materials, energy or machinery, acts of God or of the civil or military authorities of a state or nation, or the inability, due to the aforementioned causes, to obtain necessary labor or facilities.

## **X. WAIVER.**

The failure of either party to enforce any term or condition of this AGREEMENT shall not be construed as a waiver by such party of such term or condition, nor shall a waiver of any breach of a term or condition of this AGREEMENT on any one occasion constitute a waiver of any subsequent breach of the same or similar term or condition.

## **Y. ASSIGNMENT.**

Neither party may assign this AGREEMENT without the prior written consent of the other, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that each party hereby consents to any assignment to any successor of the other due to acquisition, merger, consolidation or reorganization, provided that any such assignment shall not alter the terms of the AGREEMENT without the written consent of the non-assigning party; and each party further agrees to cause any successor of such party due to acquisition, merger, consolidation or reorganization to agree to the assignment of this AGREEMENT to such successor, provided that any such assignment shall not alter the terms of the AGREEMENT without the written consent of the non-assigning party.

## **Z. APPLICABLE LAW, VENUE & JUDGMENT.**

This AGREEMENT and the relationship of the parties shall be governed in all respects by the laws of the State of Ohio, and all applicable U.S. laws. Each of the parties hereby specifically consents to the jurisdiction of the courts of the State of Ohio and the jurisdiction of any U.S. federal court, the jurisdiction of which includes the State of Ohio or any portion thereof, for the adjudication of any dispute arising hereunder. In the event that ACCLIMATE should obtain a judgment against CUSTOMER, then CUSTOMER: (i) authorizes ACCLIMATE to file the judgment with any court or legal authority, as applicable, located in any country where CUSTOMER has a presence, for the enforcement and collection of the judgment; and (ii) agrees that it shall not dispute or protest the filing of, enforcement of or collection on the judgment.

## **AA. TAXES.**

Any excise, sales, duties, use or other taxes, which result from the provision of services by ACCLIMATE and/or CUSTOMER's use of the software or intellectual property licensed pursuant to this AGREEMENT, shall be paid exclusively by the CUSTOMER and may be collected by ACCLIMATE pursuant to invoices submitted as provided in this AGREEMENT. In the event that ACCLIMATE must make any such payments, and has not already collected such payment amount from CUSTOMER, then the CUSTOMER shall reimburse ACCLIMATE for all such amounts immediately upon demand. CUSTOMER shall notify ACCLIMATE if any such amounts should be collected by ACCLIMATE, but are not included in ACCLIMATE invoices received by CUSTOMER.

## **BB. SURVIVAL.**

The provisions of Sections A, B, F, G, I, J, K, M, O, Q, R, T, U, V, Z, AA, BB, and CC hereof will survive the termination or expiration of the AGREEMENT for any reason, in addition to any obligations to make payments of amounts that are due under this AGREEMENT and any other provisions which, by their express terms, survive termination or expiration of the AGREEMENT.

## **CC. MISCELLANEOUS.**

This AGREEMENT contains the entire agreement of the parties relative to any proposal or quote executed by the parties and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this AGREEMENT will be of any force or effect. This AGREEMENT specifically supersedes any prior written or oral agreements, understandings, negotiations and proposals between the parties relating to the proposal or quote to which it is attached. The section headings used herein are for convenience only and shall not be used in the interpretation of this AGREEMENT. If any provision of this AGREEMENT is determined to be invalid or unenforceable, such provision shall be deemed severable from the remainder of this AGREEMENT and shall not cause the invalidity or unenforceability of the remainder of this AGREEMENT. This AGREEMENT has been mutually negotiated by the parties who each had the opportunity to receive the advice of legal counsel and other professional advisors and shall be interpreted in accordance with its terms, without favor to either party. Nothing expressed or implied in this AGREEMENT is intended, or shall be construed, to confer upon or give any person, firm or corporation other than the parties hereto, and their successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this AGREEMENT, or result in such person, firm or corporation being deemed a third-party beneficiary of this AGREEMENT. Any changes to this AGREEMENT will be made by a written amendment to the AGREEMENT and will not be effective until such amendment is signed in ink by authorized representatives of both parties. ACCLIMATE and CUSTOMER represent and warrant that they have the full power and authority to enter into this AGREEMENT, that there are no restrictions or limitations on their ability to perform this AGREEMENT, and that the person executing this AGREEMENT has the full power and authority to do so.

## **END OF TERMS AND CONDITIONS**

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