

GENERAL TERMS AND CONDITIONS FOR CLOUD SERVICES (“GTC”)

1. DEFINITIONS

- 1.1. **“Affiliate”** means any legal entity in which SMB or Customer, directly or indirectly, holds more than 50% of the entity’s shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2. **“Agreement”** means the agreement as defined in the SMB Order Form.
- 1.3. **“Authorised User”** means any individual to whom Customer grants access authorisation to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer’s Affiliates, or Customer’s and Customer’s Affiliates’ Business Partners.
- 1.4. **“Business Partner”** means a legal entity that requires use of a Cloud Service in connection with Customer’s and its Affiliates’ internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer and its Affiliates.
- 1.5. **“Cloud Service”** means any distinct, hosted, supported and operated on-demand solution provided by SMB under an Order Form agreement.
- 1.6. **“Confidential Information”** means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its representatives designates as confidential, internal and/or proprietary at the time of disclosure, should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.
- 1.7. **“Customer Data”** means any content, materials, data and information that Authorised Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SMB’s Confidential Information.
- 1.8. **“Documentation”** means SMB’s then-current technical and functional documentation relating to the Cloud Services located at [SMB Solutions Cloud Services](#) or which SMB makes available to Customer as part of the Cloud Service, including technical and functional specifications as updated from time to time in accordance with the Agreement.
- 1.9. **“Export Laws”** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.
- 1.10. **“Feedback”** means input, comments or suggestions regarding SMB’s business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Cloud Service.
- 1.11. **“Intellectual Property Rights”** means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or

common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

- 1.12. **"Order Form"** means the ordering document for a Cloud Service that references the GTC.
- 1.13. **"Professional Services"** means implementation services, consulting services or other related services provided under an Order Form and may also be referred to in the Agreement as "Consulting Services".
- 1.14. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.
- 1.15. **"SMB Materials"** means any materials or information (including statistical reports and usage measurements of the Cloud Service) provided, developed, derived, or made available by SMB (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Professional Services to Customer. SMB Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service. SMB materials may also be referred to in the Agreement as "Cloud Materials".
- 1.16. **"SMB"** means SMB Solutions Cloud Services Pty Ltd,
- 1.17. **"Subscription Term"** means the initial subscription term and if applicable any renewal subscription term of a Cloud Service identified in the Order Form.
- 1.18. **"Taxes"** means all transactional taxes, levies and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, property tax, excise tax, service tax or similar taxes.
- 1.19. **"Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

2. **USAGE RIGHTS AND RESTRICTIONS**

2.1. **Grant of Rights**

SMB grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), SMB Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Customer may use the Cloud Service world-wide, except Customer shall not use the Cloud Service from countries where such use is prohibited by Export Laws. Permitted uses and restrictions of the Cloud Service also apply to SMB Materials and Documentation.

2.2. **Authorised Users**

Customer may permit Authorised Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer may allow individuals employed by its outsourced service providers to be Authorised Users solely to the extent such providers are required to access the Cloud Service in the course of providing outsourced services to Customer. Customer is

responsible for breaches of the Agreement caused by Authorised Users.

2.3. Verification of Use

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. SMB may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.4. Suspension of Cloud Service

SMB may suspend or limit use of the Cloud Service:

- a) if continued use may result in material harm to the Cloud Service or its users; or
- b) to comply with laws and regulations applicable to SMB, its Affiliates' or subcontractors.

SMB will promptly notify Customer of the suspension or limitation. SMB will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.5. Third Party Web Services

The Cloud Service may include integrations with web services made available by third parties (other than SMB SE or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third-party web services are not part of the Cloud Service and the Agreement does not apply to them. SMB is not responsible for the content of these third-party web services.

2.6. Mobile Access to Cloud Service

Authorised Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app stores. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

2.7. On-Premise Components

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. Customer may only use the on-premise components during the Subscription Term.

3. SMB RESPONSIBILITIES

3.1. Provisioning

SMB provides access to the Cloud Service as described in the Agreement. SMB makes the Cloud Service available and is responsible for its operation for the duration of the applicable Subscription Term.

3.2. Support

SMB provides support for the Cloud Service as referenced in the Order Form.

3.3. Security

SMB will protect Customer Data in accordance with the Security Measures. "Security

Measures” means the technical and organisational measures for the relevant Cloud Service published on [SMB Solutions Cloud Services](#).

3.4. Modifications

3.4.1. Scope

SMB may modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows), provided that SMB shall not materially degrade the core functionality of the Cloud Service during the Subscription Term.

3.4.2. Modification Notices

SMB shall provide Customer with reasonable advance notice of modifications to the functionality of the Cloud Service in accordance with Section 13.5, except for any change to a Maintenance Window or Major Upgrade Window which shall be in accordance with the Service Level Agreement.

3.4.3. Customer Termination

If the modification materially degrades the Cloud Service and SMB does not provide equivalent functionality, Customer may terminate its subscription to the affected Cloud Service by providing written notice to SMB within 1 month of SMB’s notice. If SMB does not receive timely notice, Customer is deemed to have accepted the modification.

4. **CUSTOMER AND PERSONAL DATA**

4.1. Customer Ownership

As between the parties, Customer owns all right and interest in and to Customer Data. SMB may use Customer-provided trademarks solely to provide and support the Cloud Service.

4.2. Customer Data

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to SMB (including SMB SE, its Affiliates and subcontractors) a non-exclusive right to process and use Customer Data to provide and support the Cloud Service and as set out in the Agreement.

4.3. Personal Data

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.4. Security

Customer will maintain reasonable security standards for its Authorised Users’ use of the Cloud Service. Customer will not conduct or authorise penetration tests of the Cloud Service without advance approval from SMB.

4.5. Access to Customer Data

4.5.1. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SMB and Customer will find

a reasonable method to allow Customer access to Customer Data.

- 4.5.2. Before the Subscription Term expires, Customer may use SMB's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.
- 4.5.3. At the end of the Agreement, SMB will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- 4.5.4. In the event of third-party legal proceedings relating to the Customer Data, SMB will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES

5.1. Fees and Payment

Customer shall pay fees as stated in the Order Form. If Customer does not pay fees in accordance with the terms of the Agreement then, in addition to any other available remedies, SMB may suspend Customer's use of the applicable Cloud Service until payment is made. SMB shall provide Customer with prior written notice before any such suspension. Any fees not paid when due shall accrue interest at the maximum legal rate. Purchase orders are for administrative convenience only. SMB may issue an invoice and collect payment without a corresponding purchase order. Customer may not withhold, reduce or set-off fees owed. Customer may not reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable. All fees are non-refundable except per Sections 6.3 or 7.3.2.

5.2. Taxes

Fees and other charges imposed under an Order Form will not include Taxes, all of which will be for Customer's account. Customer is responsible for all Taxes. Customer must provide to SMB any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If SMB is required to pay Taxes, Customer will reimburse SMB for those amounts and indemnify SMB for any Taxes and related costs paid or payable by SMB attributable to those Taxes.

6. TERM AND TERMINATION

6.1. Term

The Subscription Term is as stated in the Order Form.

6.2. Termination

A party may terminate:

- a) the Agreement (i) for cause upon 30 days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within 30 days of the payment due date) unless the breaching party has cured the breach during such 30 day period; and (ii) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 13.6; or

- b) the affected Cloud Service as permitted under Sections 3.4.3, 7.2.4, 7.3.3, 8.1.4, or 13.4 (with termination effective 30 days after receipt of notice in each of these cases).

6.3. Refund and Payments

For termination by Customer (including but not limited to Sections 3.4.3, 6.2(a)(i), 7.2.4 or 7.3.3 or termination under Sections 8.1.4 or 13.4 Customer will be entitled to:

- a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and
- b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4. Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

- a) Customer's right to use the Cloud Service and all SMB Confidential Information will end;
- b) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law; and
- c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5. Survival

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

7. **WARRANTIES**

7.1. Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- a) in the case of SMB, the operation of SMB's business as it relates to the Cloud Service; and
- b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

7.2. SMB Warranties and Customer Remedies

7.2.1. Good Industry Warranty

SMB warrants that it will provide the Cloud Service:

- a) in material conformance with the Documentation; and
- b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services materially similar to the nature and complexity of the Cloud Service.

7.2.2. Authorisation Warranty

Each party warrants that: (a) it is duly organised and validly existing under the laws of the state or country of its incorporation or formation and has full corporate power and authority

to enter into and carry out its obligations in this Agreement; (b) this Agreement is enforceable; and (c) the execution, delivery and performance of this Agreement does not conflict with any written agreement to which a party may be bound.

7.2.3. Warranty Against Viruses

SMB warrants that it shall exercise commercially reasonable efforts to keep the Cloud Service, as provided by SMB, free of all viruses, trojan horses, and comparable malicious code intended to harm the Customer's systems, provided, however, SMB shall not be responsible for any malicious code placed on the Cloud Service by Customer, its Authorised Users, or any third party.

7.2.4. Remedy

Customer's sole and exclusive remedies and SMB's entire liability for breach of the warranty under Section 7.2 will be:

- a) correction of the deficient Cloud Service; and
- b) if SMB fails to correct the deficient Cloud Service, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within 3 months of SMB's failure to correct the deficient Cloud Service.

7.3. SMB System Availability Warranty and Customer Remedy

7.3.1. SMB warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable Service Level Agreement or Supplement ("SLA").

7.3.2. Customer's sole and exclusive remedy for SMB's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow SMB's posted credit claim procedure. When the validity of the service credit is confirmed by SMB in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

7.3.3. In the event SMB fails to meet the SLA (i) for 4 consecutive months, or (ii) for 5 or more months during any 12 month period, or (iii) at a system availability level of at least 95% for 1 calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SMB with written notice within 30 days after the failure.

7.4. Warranty Exclusions

The warranties in Sections 7.2 and 7.3 will not apply if:

- a) the Cloud Service is not used in accordance with the Agreement or Documentation;
- b) any non-conformity is caused by Customer, or by any product or service not provided by SMB; or
- c) the Cloud Service was provided for no fee.

7.5. Disclaimer

Except as expressly provided in the Agreement, neither SMB nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use

or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SMB or product roadmaps in obtaining subscriptions for any Cloud Service.

8. THIRD PARTY CLAIMS

8.1. Claims Brought Against Customer

8.1.1. SMB will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. SMB will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SMB enters into) with respect to these claims.

8.1.2. SMB's obligations under Section 8.1 will not apply if the claim results from:

- a) use of the Cloud Service in conjunction with any product or service not provided by SMB;
- b) use of the Cloud Service provided for no fee;
- c) Customer's failure to timely notify SMB in writing of any such claim if SMB is prejudiced by Customer's failure to provide or delay in providing such notice; or
- d) any use of the Cloud Service not permitted under the Agreement.

8.1.3. If a third party makes a claim or in SMB's reasonable opinion is likely to make such a claim, SMB may at its sole option and expense:

- a) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement; or
- b) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality.

8.1.4. If these options are not reasonably available, SMB or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

8.1.5. SMB expressly reserves the right to cease such defence of any claim(s) if the applicable Cloud Service is no longer alleged to infringe or misappropriate the third party's rights.

8.2. Claims Brought Against SMB

Customer will defend SMB against claims brought against SMB, its Affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify SMB against all damages finally awarded against SMB, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3. Third Party Claim Procedure

All third party claims under Section 8 shall be conducted as follows:

- a) The party against whom a third party claim is brought (the "**Named Party**") will timely notify the other party (the "**Defending Party**") in writing of any claim. The Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to Section

8.3b).

- b) The Defending Party will have the right to fully control the defense.
- c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

8.4. Exclusive Remedy

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

9. LIMITATION OF LIABILITY

9.1. No Cap on Liability

Neither party's liability is capped for damages resulting from:

- a) the parties' obligations under Section 8.1.1 and 8.2 (excluding SMB's obligation under Section 8.1.1 where the third party claim(s) relates to Cloud Services not developed by SMB);
- b) death or bodily injury arising from either party's gross negligence or wilful misconduct; and / or
- c) Customer's unauthorised use of any Cloud Service and / or any failure by Customer to pay any fees due under the Agreement.

9.2. Liability Cap

Except as set forth in Section 9.1, the maximum aggregate liability of either party (or its respective Affiliates or SMB's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any 12 month period will not exceed the annual subscription fees paid for the applicable Cloud Service associated with the damages for that 12 month period. Any "12 month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3. Exclusion of Damages

In no case will:

- a) either party (or its respective Affiliates or SMB's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages; and
- b) SMB be liable for any damages caused by any Cloud Service provided for no fee.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. SMB Ownership

10.1.1. Except for any rights expressly granted to Customer under the Agreement, SMB, their Affiliates or licensors own all Intellectual Property Rights in and derivative works of:

- a) the Cloud Service;
- b) SMB Materials;
- c) Documentation; and
- d) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

10.1.2. Customer shall execute such documentation and take such other steps as is reasonably necessary to secure SMB's title over such rights.

10.2. Acceptable Use Policy

10.2.1. With respect to the Cloud Service, Customer will not:

- a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or SMB Materials (or attempt any of the foregoing);
- b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- c) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove SMB's copyright and authorship notices.

11. CONFIDENTIALITY

11.1. Use of Confidential Information

11.1.1. The receiving party shall:

- a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own Confidential Information, which shall not be less than a reasonable standard of care;
- b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11;
- c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and
- d) retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions.

11.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

11.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.

11.2. Compelled Disclosure

The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

11.3. Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- b) has become generally known or available to the public through no act or omission by the receiving party;
- c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions;
- d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or
- e) the disclosing party agrees in writing is free of confidentiality restrictions.

11.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it. The obligation to destroy or return Confidential Information shall not apply:

- a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or
- c) to Confidential Information the receiving party is legally entitled or required to retain.

12. **FEEDBACK**

- 12.1. Customer may at its sole discretion and option provide SMB with Feedback. In such instance, SMB and its Affiliates may in their sole discretion retain and freely use, incorporate or otherwise exploit such Feedback without restriction, compensation or attribution to the source of the Feedback.

13. MISCELLANEOUS

13.1. Severability

If any provision of the Agreement is held to be wholly or in part invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

13.2. No Waiver

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

13.3. Counterparts

The Agreement may be signed in counterparts, each of which is an original and together constitute one Agreement. Electronic signatures via DocuSign or any other form as determined by SMB are deemed original signatures.

13.4. Trade Compliance

13.4.1. SMB and Customer shall comply with Export Laws in the performance of this Agreement. SMB Confidential Information is subject to Export Laws. Customer, its Affiliates, and Authorised Users shall not directly or indirectly export, re-export, release, or transfer Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorisations for Customer Data. Customer shall not use the Cloud Service from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea), the so-called Luhansk Peoples Republic (LNR) and Donetsk Peoples Republics (DNR) or Syria.

13.4.2. Upon SMB's request, Customer shall provide information and documents to support obtaining an export authorisation. Upon written notice to Customer SMB may immediately terminate Customer's subscription to the affected Cloud Service if:

- a) the competent authority does not grant such export authorisation within 18 months; or
- b) Export Laws prohibit SMB from providing the Cloud Service or Professional Services to Customer.

13.5. Notices

All notices will be in writing and given when delivered to the address set forth in an Order Form. Notices from SMB to Customer may be in the form of an electronic notice to Customer's authorised representative or administrator. SMB may provide notice of modifications to the Cloud Service under Section 3.4.2 via Documentation, release notes or publication. System notifications and information from SMB relating to the operation, hosting or support of the Cloud Service can also be provided within the Cloud Service, or made available via the SMB Support Portal.

13.6. Assignment

Without SMB's prior written consent, Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations) to any party.

13.7. Subcontracting

SMB may subcontract parts of the Cloud Service to third parties. SMB is responsible for

breaches of the Agreement caused by its subcontractors.

13.8. Relationship of the Parties

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

13.9. Force Majeure

Neither party shall be held responsible (other than for the payment of amounts due hereunder) if the fulfilment of any terms or provisions of this Agreement are delayed or prevented by revolutions or other disorders, wars, acts of enemies, strikes, fires, floods, acts of God, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which exercise of reasonable diligence, the party is unable to prevent, whether of the class of causes herein enumerated or not.

In the event conditions beyond the performing party's reasonable control render the Cloud Service unavailable for more than 30 consecutive days, the other party may terminate the Agreement upon written notice to the performing party (in which case Customer will receive a refund of prepaid unused fees starting from the beginning of the period of unavailability due to such conditions).

13.10. Governing Law

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed by and construed under the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

13.11. Jurisdiction and Mandatory Venue

The parties submit to the exclusive jurisdiction of the courts located in New York, New York. The parties waive any objections to the venue or jurisdictions identified in this provision. The mandatory, sole and exclusive venue, place or forum for any disputes arising from the Agreement (including any dispute regarding the existence, validity or termination of the Agreement) shall be New York, New York.

13.12. Waiver of Right to Jury Trial

Each party waives any right it may have to a jury trial for any claim or cause of action arising out of or in relation to the Agreement.

13.13. Statute of Limitation

Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

13.14. Entire Agreement

The Agreement constitutes the complete and exclusive statement of the agreement between SMB and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under the Agreement. Terms and conditions of any Customer-issued purchase order shall have no force and effect, even if SMB accepts or does not otherwise reject the purchase order.

END
