

## ONLINE TERMS OF SERVICE

Please read this agreement carefully. By accessing or using all or any portion of the service, or by paying for the service by any means offered by Bromelkamp Company LLC, you accept all the terms and conditions of this agreement. You agree that this agreement is enforceable like any written negotiated agreement signed by you. If you do not agree, do not use the service.

The terms and conditions of this agreement (“Terms & Conditions”) apply to any and all use of the service by you, whether you are using the service pursuant to any demo period, or the term of this agreement and you agree to be bound by these terms and conditions regardless of the type of use of the service by you. These Online Terms of Service, as amended from time to time (the “Agreement”) are entered into by Bromelkamp Company LLC (“Bromelkamp” or “Provider”) and you (“Client” or “User”) (collectively, the “Parties”).

### 1. DESCRIPTION OF AGREEMENT

- **Grant of Access:** Provider hereby grants application service (hereinafter, the “Application Service”) to User to access a Foundation software system (the “Software”), a cloud-based software as a service.
- **Authorized Use:** User shall maintain an internet connection with sufficient bandwidth to support the use of the Application Service. Maintenance and support of equipment located at User site to support Application Service are the sole responsibility of User.
- **Preservation of Data and Storage:** All User data is housed within Microsoft's Azure platform. As such, preservation of data and backups are handled through Microsoft and User shall receive all the benefit of all protections provided by Microsoft pursuant to all agreements between Microsoft and Provider.

### 2. SERVICES

- **Application Service:** Provider shall provide certain technical Support Services to User regarding the performance of Software as requested by User and approved by Provider. The personnel assigned to perform the Support Services shall be determined solely by Provider. The User agrees that the successful performance of the Application Services by Provider requires that User cooperate with Provider in good faith and to provide information as requested by Provider from time to time.
- **Quality Control:** User agrees that Provider may access certain Data weekly to maintain the quality and performance standards of the Software. “Data” includes but is not limited to, software errors, user errors, audit tracking, and other pertinent information. Provider acknowledges the confidential nature of any Data from the User and agrees to not disclose in any form specific Data about the User. User is the sole owner of the Data and Provider does not claim ownership over any of the Data.
- **Installation:** Provider shall install and setup the Application Service, including but not limited to, production database, sandbox database when applicable, API connections and additions specific to Provider’s software integrations.
- **Service Level Agreement:** Provider establishes and publishes a “Service Level Agreement” and periodically updates such with written notice to clients, including User. In the event of inconsistency, this Agreement shall supersede Provider’s published and current Service Level Agreement, which can be found on Provider’s website.

### **3. PAYMENTS AND FEES**

- **Fees:** User shall pay the Fee to Provider by the payment terms outlined in the Price Schedule. For purposes of this Agreement, the "Price Schedule" is the schedule of fees, the Term (duration of the Application Service Agreement), and payment terms charged by Provider for the Application Service as published by Provider from time to time. Provider reserves the right to renegotiate certain fees in connection with the Software where this is permitted by the Price Schedule. Any such increase will be limited to not more than five percent (5%) annually on the calendar year and with ninety (90) days' notice.
- **Renewal:** User's Term will automatically renew at the expiration of the current Term.
- **Taxes and Incidental Charges:** User shall pay any applicable taxes (municipal, state, and federal) including sales or use tax which may now or hereafter be imposed on accessing the Software or use of the Services by User.
- **Refunds:** All Fees are non-refundable unless expressly stated otherwise, or otherwise provided by law.
- **Late Payments:** Except to the extent prohibited by law, Bromelkamp may assess a late charge if the Customer does not pay on time, or as otherwise provided for in this Section. Customers must pay these late charges as and when billed. The late charge will be the lesser of one- and one-half percent (1.5%) of the unpaid amount each month or the maximum rate that is permitted by law. Client may withhold payment for disputed billed amounts by providing written notice. If the Client disputes a portion of its bill, the parties will work to mutually resolve the issue. If the issue is resolved in Bromelkamp's favor, the customer will immediately pay the portion of the bill that was disputed. If the issue is resolved in Client's favor, such amount shall not be paid to Bromelkamp and no late charge shall be assessed. Bromelkamp may suspend or cancel the Service without notice if the Customer does not pay in full and on time unless Customer has registered a dispute in writing.

### **4. INTELLECTUAL PROPERTY**

- **Ownership and Title:** Provider shall own all rights, title and interests in the Application Service and Software, including ownership rights to all patents, copyrights, trademarks, and trade secrets in connection therewith without limitation.
- **Confidential Information:** The parties to this Agreement shall take all reasonable steps to ensure that any material or information identified by either party to be confidential ("Confidential Information"), which the other party has possession or knowledge of in connection with this Agreement, will not be disclosed to others, in whole or in part, without the prior written permission of the other party. Neither party will have the obligation to maintain the confidentiality of any data or information which (i) was in the receiving party's lawful possession before receipt from the other party is later lawfully obtained by the receiving party from a third party having no obligation of secrecy to the other party, (ii) is available to the public through no act or failure of the receiving party, (iii) is readily available in the public domain, and (iv) is independently developed by the receiving party. The receiving party will immediately return or destroy any or all Confidential Information that has been provided to it by the other party, upon the other party's request.
- **Continuation:** The terms and provisions of this Section (4) shall survive termination and cancellation of this Agreement.

### **5. WARRANTY**

- **Software Warranty:** Provider represents and warrants that the Application shall perform substantially as represented in this agreement and in accordance with user documentation provided by Provider including but not limited to user guides, online help, release notes, training materials, and (if additional) statements of functionality made in writing by the Provider to the User. The Provider does not promise that the Software will be error-free or will operate without interruption.
- **Express Warranties:** User hereby acknowledges and agrees that Provider (including officers, associates, agents, and, directors of Provider) has not made or granted any express warranties concerning the Services and the Software except for the Software Warranty outlined above.

- **Warranty Limitation:** The warranties outlined above are limited to the software and instead of all other warranties express or implied, including but not limited to, implied warranties of fitness for a particular purpose and warranties of merchantability. User shall make every effort to ensure ability to use provider services and to access the software.
- **Force Majeure:** Provider shall not be liable for any failure to perform its obligations or for any failure of the Services because of circumstances beyond the control of the Provider. Such circumstances shall include (without limitation) any acts or omissions of any government or governmental authority, natural disaster, power failure, delays in transportation or deliveries of supplies or materials, laws, court orders, computer failure, network downtime, electronic mail failure, telecommunication failure, failure of User to cooperate with the reasonable requests of Provider, misuse of the Service by User or a third party, misuse of the Software by User or a third party, breach of this Agreement by User, or any other events reasonably beyond the control of Provider.

## 6. INDEMNIFICATION

- **Limitation of Damages:** In no event shall Provider or its owners, officers, directors, employees, agents, representatives, partners, contractors, consultants, suppliers, affiliates, or their respective successors and assigns be liable to User for any lost profits or consequential, exemplary, incidental, indirect, or punitive damages or impaired goodwill, intangible losses, delay or business interruption under this Agreement including, without limitation, where such losses or damage arise in connection with (i) use or performance of Provider Services; (ii) use, performance or operation of the Software; and (iii) loss of Data, regardless of the form of action, whether in contract or tort, including negligence, regardless of whether Provider has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.
- **Limitation of Liability:** The liability of provider for any reason and any cause of action whatsoever in connection with this agreement, the software or support services, regardless of the form of action, whether in contract or tort, including negligence, shall not exceed the total amount of money paid by user to provider within the preceding twelve (12) months from the date which such claimed damage or injury arose.

## 7. TERMINATION

- **Termination:** User may terminate this Agreement at will at any time, subject to limitations of access based on Access to the Application outlined below. The Provider may terminate this agreement at will with ninety (90) day written notice.
- **Nonpayment:** User failure to pay any amount or an invoice when due shall be sufficient cause for cancellation of this Agreement by Provider as provided in this Agreement. Provider shall exercise such right of cancellation by submitting Nonpayment Notice to User. Upon receipt of Nonpayment Notice, the User shall have fourteen (14) days to cure the Nonpayment. If the User fails to cure the nonpayment within such fourteen (14) days, the Provider shall have the right to cancel the Agreement as of the date established by Provider in the Nonpayment Notice.
- **Access to the Application Service:** Upon termination of this Agreement, Provider may elect to terminate User's ability to access the Application Service. The Provider shall nevertheless preserve the User's Data and allow the User to access such Data for at least one-hundred and eighty (180) days or the end of any arbitration period (if applicable) whichever is the later, and the Provider must not unreasonably withhold User's data from the User. Provider will, upon request from User and at the User's expense for time and materials, return all such data to User in a format that is then standard and uniform and mutually agreed upon. The User is solely responsible for taking the necessary steps to back up its data and ensure that it maintains its primary means of business.
- **Retention of Payments:** Upon termination or cancellation of this Agreement, Provider shall be entitled to retain all payments rendered to Provider by User under this Agreement, including (without limitation) all Fees rendered to Provider by User in anticipation of the Services before the termination or cancellation date (as the case may be). Termination or cancellation of this Agreement shall not terminate or cancel any payment obligation of User under this Agreement.

- **Waiver of Rights and Obligations:** To the extent necessary to implement the termination of this Agreement, each party waives any right and obligation under any applicable law or regulation to request or obtain the intervention of the courts to terminate this Agreement.
- **No Liability for the Deletion of Data:** The User acknowledges that, other than as expressly described in these terms, Provider will have no obligation to continue to hold, export, or return User's data after termination. The User acknowledges that Provider will have no liability whatsoever for the deletion of User Data pursuant to these terms.

## 8. MISCELLANEOUS

- **Notices:** User agrees to assign one (1) Primary Contact to receive official communications; changes can be made as necessary. Termination of the Agreement should be made by the Primary Contact. User agrees to designate a maximum of two (2) Designated Technical Contacts. User agrees that only their Designated Technical Contacts can make support requests, either via email, phone, or any other method, to Provider. The Designated Technical Contacts must be able to communicate efficiently with the Provider and have an acceptable working knowledge of the Services. Bromelkamp may communicate notice of any changes to pricing, discounts, and other terms to Client using e-mail. Other communications from Bromelkamp sent via e-mail include billing notifications, notices of promotions, invitations to events, and any other matters regarding the administration of the Services.
- **Confidentiality:** Bromelkamp and Client shall treat the terms and conditions of this Agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other. For government customers, this Section is subject to the requirements of applicable trade secrets, public records, or similar laws.
- **Entire Agreement:** This Agreement contains the entire understanding of the Parties and supersedes previous verbal and written agreements between the Parties concerning the subject matter herein.
- **Amendments and Modifications:** Alterations, modifications, or amendments of a provision of this Agreement by User and Provider shall not be binding unless such alterations, modifications, or amendments are in writing and signed by authorized representatives of Provider and User.
- **Severability:** If a court holds any provision of this Agreement to be illegal, invalid, or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- **Waiver:** A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- **Governing Law and Exclusive Venue:** This Agreement shall be governed by the laws of the State of Minnesota. All disputes arising under or related to this Agreement shall be brought solely in the federal and state courts situated in the County of Hennepin, State of Minnesota.
- **Arbitration:** Parties agree to mediate any dispute or claim arising out of or relating to this Agreement unless suit must be filed to avoid the expiration of a statute of limitations. The parties voluntarily, unconditionally, and irrevocably agree to waive their right to a jury trial in the event of any legal proceeding arising out of this agreement, or the performance or interpretation thereof.
- **User Liability:** The User's liability to the Provider is limited to the payment schedule agreed. There will be no damages payable by the User for User misuse of the software.
- **Assignment:** The User may assign this Agreement to any third party.