



**MASTER SOFTWARE SUBSCRIPTION, PROFESSIONAL SERVICES AND HARDWARE PURCHASE AGREEMENT**

THIS MASTER SOFTWARE SUBSCRIPTION, PROFESSIONAL SERVICES AND HARDWARE PURCHASE AGREEMENT (“**AGREEMENT**”) GOVERNS A CUSTOMERS ACQUISITION AND USE OF PRODUCTS. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR TRIAL SERVICES OF PRODUCTS, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT TRIAL SERVICES TERM. BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING TRIAL SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” WILL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE PRODUCTS.

BSM’s direct competitors are prohibited from accessing Products, except with BSM’s prior written consent. In addition, Products may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on March 5, 2019. The “**Effective Date**” of this Agreement is the date on which Customer first indicates its assent to the terms of this Agreement.

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## 1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** For the purposes of this Agreement, except as otherwise defined herein, the following words and phrases will have the following meanings:

- (a) “**Acceptable Use Policy**” means the BSM policy described in Section 16.1 – Additional Terms of Service.
- (b) “**Additional Terms of Service**” has the meaning ascribed to it in Section 16.1 – Additional Terms of Service.
- (c) “**Administrative User**” means any individual who is an employee or independent contractor of Customer, its Affiliates, or its or their Customer Service Providers, and who is authorized by Customer to use the administrative features and functions of Subscription Services.
- (d) “**Affiliate**” means any Person that directly or indirectly controls, is controlled by, or is under common control with the subject Person. “**Control**”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject Person.
- (e) “**Agreement**” means this Master Software Subscription, Professional Services and Hardware Purchase Agreement.
- (f) “**Authorized User**” means, subject to the Entitlements, any Person who has been authorized by Customer to use the Subscription Services. Authorized Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.
- (g) “**BSM**” means the applicable BSM Technologies Inc. company described in Section 17.11 – BSM Contracting Entity, Notice, Governing Law and Venue.
- (h) “**BSM Platform**” means the computer software applications, tools, application programming interfaces (APIs), connectors, programs, networks and equipment that BSM and/or its licensors uses to make the Subscription Services available to Customers.
- (i) “**Channel Partner**” mean a Person that BSM has authorized as a “reseller” of Products.
- (j) “**Channel Partner Sale Agreement**” means the order, agreement or other document between Customer and a Channel Partner for Customer’s purchase of Products. Terms that apply to Customer’s use of Products when purchased from a Channel Partner are specified in Section 15 – Purchases Through Channel Partners.
- (k) “**Confidential Information**” has the meaning ascribed to it in Section 10.1 – Definition of Confidential Information.
- (l) “**Content**” means information obtained by BSM from publicly available sources or its third party content providers and made available to Customer through Products or pursuant to an Order Form.
- (m) “**Customer**” means the Person identified as such in the applicable Order Form, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Form(s).
- (n) “**Customer Data**” means Customer Hardware Data and Customer Submitted Data.
- (o) “**Customer Hardware Data**” means the Equipment data collected by a Hardware Device from the Equipment upon which it has been installed, including, without limitation, vehicle identification number (VIN) and Hardware Device location information, such as latitude and longitude.
- (p) “**Customer Service Provider**” means a third party, to the extent the third party is providing services to Customer.

- (q) **“Customer Submitted Data”** the electronic data and information submitted or inputted by or for Customer to the BSM Platform, excluding Content and Non-BSM Applications.
- (r) **“Customer Third Party Application”** means third party software applications or web-based services that Customer may use to interoperate with the BSM Platform and/or receive data from Products (for example, when Customer requests that BSM provide Customer Data to a third party software application). Customer Third Party Applications are selected by Customer and provided by third parties, but not by BSM.
- (s) **“Documentation”** means the applicable Product documentation, and their usage guides and policies, as updated from time to time, and/or login to the BSM Platform through a Subscription Plan.
- (t) **“Entitlements”** means the license metrics and other scope limitations applicable to Customer’s license rights to access and use the Subscription Services, as specified in the applicable Order Form.
- (u) **“Equipment”** means a truck, car, railcar or other vehicle or any other asset that BSM may approve from time to time in which Hardware has been installed.
- (v) **“Force Majeure Event”** has the meaning ascribed to it in Section 14.7 – Force Majeure Event.
- (w) **“Governmental Authority”** means any government, parliament, legislature, regulatory authority, agency, commission, board or court or other law, rule, or regulation-making entity having or purporting to have jurisdiction on behalf of any nation or state or province or other subdivision thereof including any municipality or district.
- (x) **“Hardware”** means Hardware Device(s) and Hardware Accessories.
- (y) **“Hardware Accessories”** means accessories and add-on hardware for Hardware Devices, as described in an Order Form.
- (z) **“Hardware Device”** means BSM or its third party providers telematics hardware devices or BSM or its third party provider mobile data terminals, as described in an Order Form.
- (aa) **“Hardware Device Software”** means the software installed on Hardware Devices, including any modifications, enhancements and improvements thereto and derivative works thereof.
- (bb) **“Initial Term”** has the meaning ascribed to it in Section 14.4(a) – Subscription Term.
- (cc) **“Intellectual Property Rights”** means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.
- (dd) **“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- (ee) **“Managed Services Subscription”** means a type of subscription plan where Customer receives a Hardware Device as a part of its Subscription Services, which are provided as a single product offering to the Customer.
- (ff) **“Marketplace”** means an online directory, catalog or marketplace of applications that interoperate with Products, including, for example, the Geotab marketplace at <https://marketplace.geotab.com>, and any successor websites.
- (gg) **“Network Provider”** means (i) a cellular data network provider used to send current position and other data associated with Hardware Devices, including, GPRS/GSM, 3G, 4G and LTE networks;

and/or (ii) a satellite data network provider used to send current position and other data associated with Hardware Devices.

- (hh) “**Non-BSM Application**” means a Web-based, mobile, offline or other software application functionality that interoperates with a Product, that is provided by Customer or a third party and/or listed on a Marketplace. Non-BSM Applications, other than those obtained or provided by Customer, will be identifiable as such.
- (ii) “**Order Form**” means an ordering document specifying Products and Professional Services to be provided hereunder that is entered into between Customer and BSM or any of their Affiliates (or in the case of a sale of Products under a Channel Partner Agreement, executed on behalf of BSM and the Channel Partner), including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- (jj) “**Person**” means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, joint venture, body corporate, a government or any department or agency thereof, and a natural person in such person's capacity as trustee, executor, administrator or other legal representative.
- (kk) “**Products**” means Hardware and Subscription Plans that are purchased by Customer under an Order Form. “Products” exclude Content and Non-BSM Applications.
- (ll) “**Professional Services**” means the professional services (typically project management, consulting, Hardware Device installation, coordination and configuration, and Subscription Services training) to be performed by BSM that are specified in the applicable Order Form.
- (mm) “**Renewal Term**” has the meaning ascribed to it in Section 14.4(a) – Subscription Term.
- (nn) “**Service Plan**” means the cellular airtime data plan or satellite data plan from a Network Provider required for use in connection with Hardware Devices.
- (oo) “**Standby Subscription Plan**” means a Subscription Plan that BSM has agreed to reduce the monthly fees for a period of time while the Subscription Plan is inactive.
- (pp) “**Subscription Plan**” means the subscription plan specified in the applicable Order Form for Subscription Services or Managed Services Subscription.
- (qq) “**Subscription Services**” means the Software service offerings to which Customer subscribes, together with the applicable Service Plan for Hardware Devices, as applicable, each as specified in the applicable Order Form, and the Documentation.
- (rr) “**Subscription Start Date**” means, with respect to each Order Form, the later to occur of the “Contract Start Date” specified in the Order Form, or the date on which Customer (or, if applicable, a Channel Partner) executes the Order Form.
- (ss) “**Subscription Term**” has the meaning ascribed to it in Section 14.4(a) – Subscription Term.
- (tt) “**Software**” means the BSM Platform and any software provided to Customer under this Agreement, including, Hardware Device Software (including any software made available by BSM for use by Customer on a website or mobile application hosted by or on behalf of BSM).
- (uu) “**Taxes**” means any consumption, excise, goods and services, harmonized sales, retail sales, social services, use, value added taxes and any other tax, duty, governmental fee or other like assessment or charge of any kind whatsoever imposed by any federal, provincial, state, territorial, municipal or other Governmental Authority in any jurisdiction.
- (vv) “**Third Party and Product Specific Terms and Condition(s)**” has the meaning ascribed to it in Section 16.1 – Additional Terms of Service.

(ww) “**Trial Services**” means Products that BSM makes available to Customer for trial purposes (paid or unpaid) pursuant to an Order Form that specifies that Customer’s use of Products is for a trial purpose.

(xx) “**Trial Services Term**” has the meaning ascribed to it in Section 5.1 – Trial Services.

(yy) “**User**” means any Administrative User or Authorized User.

**1.2. Interpretations.** Section headings in this Agreement are included herein for convenience of reference only and will not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, will not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

**1.3. Currency.** All currency or dollar references will be as specified in the associated Order Form.

**1.4. Conflict of Terms.** In the event of a conflict or any inconsistency between, or an omission or ambiguity with respect to following documents, the following documents will apply and prevail in the following successive order of priority to the extent of such conflict, inconsistency, omission or ambiguity: (a) this Agreement; (b) the Additional Terms of Service; and (c) Order Forms.

## **2. BSM RESPONSIBILITIES**

**2.1. Provision of Products and Content.** During Subscription Terms, BSM and/or its licensors will (a) make Products and Content available to Customer pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) provide applicable BSM and/or its licensors standard support for Products to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make Products available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which BSM will give advance electronic notice), and (ii) any unavailability caused by circumstances beyond BSM’s reasonable control, including, for example, Force Majeure Events, issues related to Non-BSM Applications, or denial of service attacks, and (d) provide Products in accordance with laws and government regulations applicable to BSM’s provision of its Products to its customers generally (i.e., without regard for Customer’s particular use of Products), and subject to Customer’s use of Products in accordance with this Agreement, Documentation and applicable Order Forms.

**2.2. Protection of Customer Data.** BSM and/or its licensors will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users).

**2.3. Retention of Customer Data.** Subject to Section 14.8 – Customer Data Portability and Deletion below, BSM and/or its licensors will retain Customer Data for at least one year (365 days) from the current date, after which time BSM and/or its licensors may delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited, without prior notice to Customer.

**2.4. Standard of Performance.** BSM will use commercially reasonable efforts to perform any Professional Services specified in an Order Form.

## **3. PROPRIETARY RIGHTS AND LICENSES**

**3.1. License by BSM.** Subject to the terms and conditions of this Agreement, BSM hereby grants to Customer a non-exclusive, non-transferable (except in accordance with Section 17.10 – Assignment below), limited, royalty-free license, without right to sub-license, for the Subscription Term, solely to access and use, and to

permit its Users to access and use, Products, in accordance with Documentation, solely for Customer's operations in its ordinary course of business, and subject to Entitlements.

- 3.2. **BSM's Intellectual Property and Ownership Rights**. As between Customer and BSM, BSM and BSM's licensors retain and own all right, title and interest and all Intellectual Property Rights in and to Products, BSM's Confidential Information, Content, Documentation, and all enhancements or improvements to, or derivative works of any of the foregoing created or developed by or on behalf of BSM, including any application programming interface created or developed by or on behalf of BSM between a Product and a Non-BSM Application (collectively, "**BSM Intellectual Property**"). Nothing in this Agreement transfers or conveys to Customer any ownership interest in or to the BSM Intellectual Property. To the extent any interest of any kind whatsoever in the BSM Intellectual Property becomes vested in Customer, Customer hereby assigns, and further automatically assigns upon creation, any and all such interests in or to the BSM Intellectual Property to BSM, and agrees that it shall execute any documents BSM requires in its sole and absolute discretion to give full effect to this Section.
- 3.3. **Access to and Use of Content**. Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.
- 3.4. **License by Customer to BSM**. Customer grants BSM, its Affiliates, BSM's licensors and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-BSM Applications and program code created by or for Customer using a Product or for use by Customer with Products, and Customer Data, each as appropriate for BSM and/or its licensors to provide and ensure proper operation of, Products and associated systems in accordance with this Agreement (the "**Customer License**"). Customer hereby represents and warrants to BSM that it is entitled to grant to BSM the Customer License under the terms of all applicable agreements. If Customer chooses to use a Non-BSM Application with a Product, Customer grants BSM permission to allow the Non-BSM Application and its provider to access Customer Data and information about Customer's usage of the Non-BSM Application as appropriate for the interoperation of that Non-BSM Application with Products. Subject to the limited licenses granted herein, BSM acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-BSM Application or such program code
- 3.5. **Customer License to Use Feedback**. Customer grants to BSM, its Affiliates, its licensors and applicable contractors a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its products and services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of BSM, its Affiliates' and/or its licensors Products.
- 3.6. **Aggregated Data**. BSM and/or its licensors compile, store and use aggregate data and system usage information to monitor and improve Products and for the creation of new products. The aggregated data that BSM and/or our licensors use in this manner is no longer associated with a Hardware Device and, as such, is not considered Customer Hardware Data ("**Aggregated Data**"). BSM and/or its licensors have ownership of Aggregated Data and will not attempt to disaggregate the data or re-associate it with a Hardware Device without Customer's consent or unless legally compelled to do so or for safety, troubleshooting or preventative maintenance purposes. For the sake of clarity, Aggregated Data is not Confidential Information of Customer.
- 3.7. **U.S. Federal Government End Use Provisions**. BSM and/or its licensors provides Products, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to Products, including related software and technology, include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.
- 3.8. **Equitable Relief**. Each of Customer and BSM acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a party's Intellectual Property Rights, or Confidential Information. Accordingly, each party has the right, in addition to any other rights each

of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

#### **4. NON-BSM PRODUCTS AND SERVICES**

- 4.1. Non-BSM Products and Services.** BSM or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-BSM Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-BSM provider, product or service is solely between Customer and the applicable Non-BSM provider. BSM does not warrant or support Non-BSM Applications or other Non-BSM products or services, whether or not they are designated by BSM as “certified” or otherwise, unless expressly provided otherwise in an Order Form. BSM is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-BSM Application or its provider.
- 4.2. Integration with Non-BSM Applications.** Products may contain features designed to interoperate with Non-BSM Applications. BSM cannot guarantee the continued availability of such Product features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-BSM Application ceases to make the Non-BSM Application available for interoperation with the corresponding Product features in a manner acceptable to BSM.

#### **5. TRIAL SERVICES**

- 5.1. Trial Services.** If Customer registers, receives or purchases Trial Services, BSM will make the applicable Trial Services available to Customer on a trial basis until the earlier of (a) the end of the trial period outlined in the Order Form; (b) the start date of any subscriptions ordered by Customer for such Trial Services; or (c) the date of termination by BSM in its sole discretion (the “**Trial Services Term**”). Additional terms and conditions for Trial Services may appear on the Order Form. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.
- 5.2. Trial Services Data.** ANY CUSTOMER DATA AND ANY CUSTOMIZATIONS MADE TO PRODUCTS BY OR FOR CUSTOMER, DURING THE TRIAL SERVICES TERM WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION PLAN TO THE SAME PRODUCTS AS THOSE COVERED BY THE TRIAL SERVICES, PURCHASES APPLICABLE UPGRADED PRODUCTS, OR EXPORTS SUCH CUSTOMER DATA, BEFORE THE END OF THE TRIAL SERVICES TERM. NOTWITHSTANDING SECTION 12 - INDEMNIFICATIONS AND SECTION 13 – LIMITATIONS AND EXCLUSIONS OF LIABILITY BELOW, DURING THE TRIAL SERVICES TERM THE TRIAL SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND BSM WILL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO PRODUCTS FOR THE TRIAL SERVICES TERM UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE BSM’S LIABILITY WITH RESPECT TO TRIAL SERVICES PROVIDED DURING THE TRIAL SERVICES PERIOD WILL NOT EXCEED THE GREATER OF: (1) \$1,000.00; OR (2) THE AMOUNT RECEIVED BY BSM FOR THE TRIAL SERVICES. WITHOUT LIMITING THE FOREGOING, BSM AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER’S USE OF TRIAL SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, (B) CUSTOMER’S USE OF TRIAL SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE TRIAL SERVICES TERM WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 13 – LIMITATIONS AND EXCLUSIONS OF LIABILITY BELOW, CUSTOMER WILL BE FULLY LIABLE UNDER THIS AGREEMENT TO BSM, ITS AFFILIATES AND ITS LICENSORS FOR ANY DAMAGES ARISING OUT OF CUSTOMER’S USE OF TRIAL SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER.

#### **6. HARDWARE; INSTALLATION**

- 6.1. Title of Hardware Devices.**

- (a) **Title to Hardware Device(s) under Managed Services Subscription.** If Customer receives Hardware Device(s) under a Managed Services Subscription, title to the Hardware Devices will remain at all times with BSM. Customer will not encumber or otherwise permit any claims or liens to be levied against the Hardware Devices. Customer will not take or permit any action inconsistent with BSM's ownership or allow any third party to modify, service or repair the Hardware Devices without BSM's prior written consent. If Customer pays BSM the Failed to Return Fee (as defined in Section 6.4 – Return of Hardware Devices under Managed Services Subscriptions below), title to the applicable Hardware Device will transfer to Customer once BSM receives the Failed to Return Fee.
- (b) **Title to Hardware Device(s) for Purchased Hardware Devices.** If Customer purchases Hardware Device(s), title to the Hardware Devices will transfer Customer once BSM receives full payment for the Hardware Devices.

**6.2. Shipment and Risk of Loss of Hardware.** BSM will select the method of carriage for Hardware and all costs of shipping and handling will be borne by Customer. Unless otherwise stated in an Order Form, BSM may deliver Hardware in one or more shipments. Delivery of Hardware will be made EXW (Ex Works), as defined by *Incoterms 2010*, except as otherwise specified in an Order Form. BSM will use reasonable efforts to fulfil an Order Form within the applicable time indicated; however, BSM will not be liable for any delays or any failure to fulfill an Order Form within the aforementioned time period.

**6.3. Installation of Hardware.**

- (a) **BSM Installation and Scheduling.** If installation Professional Services are purchased by Customer, the installation of Hardware will be completed by BSM's personnel or subcontractors. The parties will each make commercially reasonable efforts to schedule and complete BSM's "standard installation" of Hardware within thirty (30) days following receipt of Hardware by Customer.
- (b) **Installation Environment.** Customer will arrange for Equipment to be available and provide a safe and climate controlled environment (such as an install bay) so that installations can be performed efficiently. BSM's "standard installation" includes installation of Hardware in authorized Equipment.
- (c) **Access and Equipment Alterations and Modifications.** If installation Professional Services are purchased by Customer, Customer hereby authorizes BSM and/or its assignees, agents and contractors to enter or have access to such Equipment and Customer's property in order to install, maintain, inspect, repair, remove, replace, modify, upgrade or improve the operation of Hardware. Customer acknowledges that, in connection with the installation and any maintenance of Hardware, BSM or BSM's assignees, agents and contractors may modify or alter, including, without limitation, drill holes, cut panels or rewire Equipment in which Hardware is installed. BSM and/or its assignees, agents and contractors will not be responsible for, and make no assurances regarding, the restoration of such Equipment to their unmodified or unaltered condition. Customer will be responsible for confirming the effect (if any) of any such installation work on any Equipment manufacturer's warranty, and BSM will have no responsibility or liability and Customer hereby releases and forever discharges, and will indemnify and hold harmless, BSM, BSM's Affiliates, resellers, agents and contractors and their directors, officers, employees and representatives from any responsibility or liability, in connection therewith.
- (d) **Installation Warning.** Certain Equipment configurations may require professional installation, additional equipment or modifications to Equipment. If Customer is uncertain that Customer has the requisite skills and understanding to install Hardware, Customer must consult with BSM. Improper installation can lead to short circuits and the risk of fire, leading to personal injury or significant damage to Equipment. Installation or servicing may also require modifications to Equipment. Failure to comply with procedures specified in the installation instructions for Hardware, or attempting to install Hardware without adequate knowledge of Hardware, proper installation, configuration, servicing, repair or removal procedures, or Equipment, may result in damage to Hardware or Equipment, which may cause malfunctions of Equipment controls or vehicular environmental systems and result in personal injury. Customer understands that any such activities not performed by BSM will be at Customer's sole risk. Customer hereby releases and forever discharges, and will indemnify and hold harmless, BSM, BSM's Affiliates, resellers and agents and their directors, officers,



employees and representatives from any and all losses, actions, causes of action, liability, claims, demands, penalties, costs, expenses (including legal fees and disbursements on a full indemnity basis), judgments and damages of any nature or kind whatsoever, whether under contract, tort, or any other theory of law or equity, which Customer or any other third party has or will have, arising or accruing from, as a result of, in relation to, or in connection with, same.

- (e) **De-installation of Hardware Devices**. The deinstallation of any Hardware is Customer's absolute responsibility and Customer hereby releases and forever discharges, and will indemnify and hold harmless, BSM, BSM's Affiliates, resellers and agents and their directors, officers, employees and representatives from any responsibility or liability, in connection therewith. Notwithstanding the foregoing, Customer may purchase de-installation Professional Services from BSM.

**6.4. Return of Hardware Devices under Managed Services Subscriptions**. If Customer receives Hardware Device(s) under a Managed Services Subscription, within thirty (30) days from the expiration or termination of the applicable Subscription Term (the "**Hardware Device Return Deadline**"), Customer will return (at Customer's expense) the Hardware Devices to BSM in good condition, less ordinary wear and tear, in accordance with BSM's Return Policy then in effect. If Customer does not return the Hardware Device prior to the Hardware Device Return Deadline, Customer will pay BSM a non-return fee of \$75.00 per Hardware Device that is not returned (the "**Failed to Return Fee**"). In addition, if BSM determines, acting reasonably, that a returned Hardware Device is not in good condition, less ordinary wear and tear, then Customer will be required to pay BSM the Failed to Return Fee.

## **7. CUSTOMERS OBLIGATIONS**

**7.1. Customer Responsibilities**. Customer will (a) be responsible for Users' compliance with this Agreement, Acceptable Use Policy, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Submitted Data, the means by which Customer acquired Customer Submitted Data, Customer's use of Customer Submitted Data with Products, and the interoperation of any Non-BSM Applications or Customer Third Party Applications with which Customer uses Products or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Products and Content, and notify BSM promptly of any such unauthorized access or use, (d) use Products and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-BSM Applications with which Customer uses Products or Content. Customer will not remove or alter any proprietary notice of any kind from Hardware.

**7.2. Customer Accounts**. Customer will designate one or more of its employees to be the point of contact with BSM for the management and support of Products, and who will be responsible for establishing and managing Customer's use of Products ("**Account**"), including the creation of authentication credentials to access Customer's Account. Customer is solely responsible for maintaining the status of its User base. Customer is responsible for all activities that occur under its Account. If Customer believes the security of its Account is compromised, or Customer suspect unauthorized use, Customer will promptly notify BSM. If BSM suspects, in BSM's reasonable opinion, fraudulent or unauthorized activity on Customer's Account, BSM reserves the right to terminate or suspend Customer and its Users access to BSM's website(s) and Products or any applicable services or both and will use reasonable efforts to contact Customer.

**7.3. Customer Information Forms**. At BSM's request, Customer will complete, or update existing, customer information forms in a timely manner.

**7.4. Customer Third Party Applications**.

- (a) **Access Rights**. The BSM Platform is capable, in certain circumstances, of enabling interoperation between the BSM Platform and Customer Third Party Applications. Customer acknowledges and agrees that, in order to do so, Customer may be required to obtain rights to access such Customer Third Party Applications from their providers, and may be required to grant BSM access to Customer accounts on the Customer Third Party Applications. It is Customer's sole responsibility to obtain such rights and access.
- (b) **Access Permissions**. If Customer enables a Customer Third Party Application for use with Products, then Customer hereby grants BSM permission to allow the Customer Third Party Application provider to

access Customer Data to enable interoperability between the Customer Third Party Application and the applicable Product. BSM is not responsible for any disclosure, modification or deletion of Customer Data that results from or arises out of access by any Customer Third Party Application or its provider to the applicable Product.

- (c) **Changes to Customer Third Party Applications**. If a Customer Third Party Application provider modifies a Customer Third Party Application so that it no longer interoperates with a Product, or imposes requirements on interoperability that BSM determines are unreasonable for BSM then, upon such notice to Customer as BSM determines reasonable in the circumstances, BSM may, without liability to Customer, cease or suspend its provision of interoperability between such Product and the affected Customer Third Party Application.
- (d) **Acquisition and Operation of Third Party Applications**. BSM has no responsibility for the acquisition, development implementation, operation, support, maintenance or security of any Customer Third Party Applications.

**7.5. Customer Usage Restrictions**. Customer will not (a) make any Product or Content available to anyone other than Customer or Users, or use any Product or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Product or Content, or include any Product or Content in a service bureau or outsourcing offering, (c) use a Product or Non-BSM Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Product or Non-BSM Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Product or third-party data contained therein, (f) attempt to gain unauthorized access to any Product or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Product or Content in a way that circumvents a contractual usage limit, or use any Product to access or use any of BSM Intellectual Property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Product or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Product or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Product or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of Products, (3) copy any ideas, features, functions or graphics of Products, or (4) determine whether Products are within the scope of any patent.

**7.6. Removal of Content and Non-BSM Applications**. If Customer receives notice that Content or a Non-BSM Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in BSM's judgment continued violation is likely to reoccur, BSM may disable the applicable Content, Product and/or Non-BSM Application. If requested by BSM, Customer will confirm such deletion and discontinuance of use in writing and BSM will be authorized to provide a copy of such confirmation to any such third party claimant or Governmental Authority, as applicable. In addition, if BSM is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, BSM may discontinue Customer's access to Content through Products.

**7.7. Customer Acknowledgements**. Customer acknowledges and agrees that (a) Customer Hardware Data collected while out of wireless network coverage or without calling connectivity may not be stored and retrieved by Customer until connectivity is restored with the Network Provider; (b) Customer Hardware Data is not collected or provided in real time and delays in receipt of data are normal; (c) the antennae on Hardware Devices should have an unobstructed view of the sky; (d) Hardware Devices may not operate in enclosed spaces, in buildings, between tall buildings, underground or in canyons; and (e) Hardware Devices will go into a "sleep" mode and Hardware Devices in sleep mode will not operate until the Equipment in which Hardware Devices are installed is subsequently powered on.

7.8. **Future Functionality.** Customer acknowledges and agrees that Customer's purchase of Products are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by BSM regarding future functionality or features.

## 8. NON-BSM PROVIDERS

8.1. **Digital Maps.** Customer acknowledges and agrees that map data, satellite imagery and other information or content that may be included as part of Products are provided by BSM or BSM's third party provider(s), and additional terms and conditions may apply. Customer acknowledge and agrees that map data may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.

8.2. **Hosting Services.** Customer acknowledges and agrees that the hosting of the Software, and the maintaining and storage of Customer Data, is provided by BSM and/or its licensors, including their third party provider(s). As such, Customer acknowledges and agrees that additional terms and conditions may apply. Customer acknowledges and agrees that, notwithstanding any security precautions, use of or connection to the internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Software and Customer Data. Accordingly, BSM cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over the internet.

8.3. **Service Plan.** Customer acknowledges and agrees that a Service Plan is required for Hardware Devices to operate correctly. If requested by Customer, Customer acknowledges and agrees that such Service Plan will be subject to the Additional Terms of Service.

## 9. FEES; PAYMENT FOR PRODUCTS

9.1. **Quotes.** Any written price quotation, either pursuant to an Order Form or any other form, will become void unless accepted by Customer, upon the later of: (i) within thirty (30) days of the issuance of an Order Form; or (ii) the offer expiry date indicated in an applicable Order Form, unless sooner revoked or rejected by BSM.

9.2. **Subscription Plans.** Customer may not reduce the number of Subscription Plans purchased in an Order Form during the Subscription Term. Customer is not entitled to any refund of fees paid or relief from fees due if the number of Subscription Plans Customer actually uses is less than the number of Subscription Plans Customer ordered.

9.3. **Fees.** Customer will pay BSM the fees for all Products and Professional Services as specified in the applicable Order Form. Except as otherwise specified herein or in an Order Form, (i) fees are based on Products and Professional Services purchased; and (ii) payment obligations are noncancelable and fees paid are non-refundable.

9.4. **Request to Place a Subscription Plan in Standby Mode.** If Customer requests that an applicable Subscription Plan be switch to a Standby Subscription Plan, such request shall be evaluated in BSM's sole and absolute discretion.

9.5. **Credit Verification.** BSM may perform credit verifications on Customer, as BSM deems necessary, and Customer hereby authorizes BSM to obtain information about Customer's credit history from credit reporting agencies and credit grantors. The delivery of Products purchased pursuant to an Order Form will be subject to BSM's credit approval of Customer, in BSM's sole and absolute discretion. Notwithstanding any other provisions herein, based upon BSM's review of Customer's credit history, BSM may, in BSM's sole and absolute discretion, require Customer to prepay any amount of fees set forth on an Order Form for Products in advance of any delivery of Products which are subject to the Order Form.

9.6. **Credit Card Payments.** If Customer desires to pay by credit card, Customer will provide BSM with a credit card authorization form. Customer agrees to provide BSM with valid and updated credit card information from time to time. If Customer provides credit card information to BSM, Customer authorizes BSM to charge such credit card for all Products listed in the Order Form for Subscription Term.

- 9.7. Invoicing.** BSM invoices for Products and Professional Services in arrears, unless otherwise stated on an Order Form. Unless otherwise stated on an Order Form, BSM will invoice Customer for Products and Professional Services as follows:
- (a) **Hardware Invoices.** Invoices for Hardware purchased by Customer will be issued by BSM on the shipping date for applicable Hardware.
  - (b) **Managed Services Subscription Invoices.** Fees for Managed Services Subscriptions purchased by Customer will be effective beginning on the shipping date of the applicable Hardware associated with the Managed Services Subscription. Fees for Managed Services Subscriptions will be invoiced monthly on the last day of each month for the duration of the Subscription Term.
  - (c) **Subscription Plan Invoices.** Subscription Plans fees, excluding Managed Services Subscriptions fees, purchased by Customer will be effective beginning at the earlier of: (i) the installation date for Hardware Devices associated with a Subscription Plan, if applicable; or (ii) six (6) months from the shipment date for Hardware Devices associated with a Subscription Plan, if applicable. Fees for Subscription Plans will be invoiced monthly and will be issued on the last day of each month for the duration of the Subscription Term. If a Hardware Device is not associated with a Subscription Plan, BSM will begin invoicing for the Subscription Plan on the Subscription Start Date.
  - (d) **Professional Services Invoices.** Invoices for Professional Services purchased by Customer will be issued by BSM upon the completion of applicable Professional Services or at times throughout the period that Professional Services are completed in accordance with an Order Form or Statement of Work.
  - (e) **Aggregated Invoices.** If possible, BSM will combine the invoices in Section 9.7(a)-(d) above into one invoice for Customer.
- 9.8. Payment Terms.** Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to BSM and notifying BSM of any changes to such information.
- 9.9. Overdue Charges; Void Cheques.** If any invoiced amount is not received by BSM by the due date, then without limiting BSM's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. BSM may charge Customer a fee of \$50.00 for any cheque or other form of payment returned due to insufficient funds.
- 9.10. Suspension of Products and Acceleration.** If any charge owing by Customer under this or any other agreement for Products is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized BSM to charge to Customer's credit card), BSM may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under Order Forms so that all such obligations become immediately due and payable, and suspend Products until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, BSM will give Customer at least 10 days' prior notice that its account is overdue, in accordance with Section 17.12 - Manner of Giving Notice below for billing notices, before suspending services to Customer.
- 9.11. Payment Disputes.** BSM will not exercise its rights under Section 9.9 - Overdue Charges; Void Cheques above or Section 9.10 - Suspension of Products and Acceleration above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 9.12. Taxes.** Customer will be responsible for any applicable Taxes payable with respect to its acquisition of Products and Professional Services, or otherwise arising out of or in connection with this Agreement, other than Taxes based upon BSM's personal property ownership or net income. Unless expressly specified otherwise in any Order Form, all Fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence, such as with a valid tax exemption certificate authorized by the appropriate taxing authority, of such status.
- 9.13. Withholding.** If Customer is required to withhold Taxes imposed upon BSM for any payment under this Agreement by virtue of any Governmental Authority in which any Products or Professional Services are

delivered or obtained, then such payments will be made by Customer on behalf of BSM by deducting them from the payment then due BSM and remitting such Taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that BSM actually receives the full amount of the fees set forth in the applicable Order Form. Customer will provide BSM with official documentation or tax receipts on such withholdings supporting such Taxes and such payments as may be required by BSM for its tax records as soon as reasonably possible following payment to the applicable tax authority, and in any event no later than when required by applicable law.

## 10. CONFIDENTIALITY

**10.1. Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of BSM includes Products and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional BSM services.

**10.2. Protection of Confidential Information.** Except as otherwise outlined in this Agreement, as between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, BSM may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-BSM Application provider to the extent necessary to perform BSM’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**10.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 11. REPRESENTATION, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

**11.1. Mutual Representations.** Each party represents to the other that: (i) it has validly entered into this Agreement and has the legal power to do so; and (ii) neither it nor its Affiliates, nor any of its or their Users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from

dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order, including Canada or US export control laws, and names appearing on the Canada Special Economic Measures Act, the Canada Justice for victims of Corrupt Foreign Officials Act or the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

- 11.2. Hardware Device Warranties.** BSM warrants to Customer, the original purchaser of Hardware Devices, that, during the Standard Warranty Period or the Extended Warranty Period, as applicable, the Hardware Devices will be free from material defects in materials and workmanship and operate in accordance with the Documentation. Hardware Devices not meeting the warranty above will be, at BSM's sole option: (a) repaired, (b) replaced, or (c) BSM will refund the depreciated amount of the price Customer paid for such Hardware Device, calculated on a straight-line, five-year basis. For purposes of this Section 11.2 – Hardware Device Warranties, “**Standard Warranty Period**” means the one year period commencing on the date that a Hardware Device is shipped to the original customer and “**Extended Warranty Period**” means (a) if Customer has received a Hardware Device under a Managed Services Subscription, the Subscription Term; or (b) if Customer has purchased certain Subscription Plans which have an extended warranty in accordance with the applicable Documentation, the Subscription Term. BSM may announce additional Subscription Plans that are eligible for the Extended Warranty Period from time to time. The remaining warranty period for any Hardware Devices that BSM repairs or replaces under the Standard Warranty Period is deemed to be the greater of: (aa) the actual remaining Standard Warranty Period for the replaced or repaired Hardware Device; and (bb) 90 days following the completion of such repair or replacement. This Section 11.2 – Hardware Device Warranties is BSM's sole liability and Customer's sole remedy for any breach of warranty by BSM.
- 11.3. Hardware Device Warranties Exclusion(s).** The limited warranties under Section 11.2 – Hardware Device Warranties above does not apply in the case of: (a) non-conformities, defects or errors in Hardware Devices due to accident, abuse, tampering, misuse or negligent use of Hardware Devices, use of Hardware Devices in a manner other than as intended by BSM, use of Hardware Devices in environmental conditions not conforming to BSM's instructions, or failure to follow operating maintenance procedures prescribed by BSM with respect to Hardware Devices; (b) damage to Hardware Devices caused by force of nature or act of any third party; (c) any third party equipment or equipment that are otherwise not considered by BSM to be BSM's standard equipment, which BSM may supply from time to time to Customer, or source for Customer from a third party, upon Customer's request; or (d) any installation or other services that are not considered by BSM to be BSM's standard services (including the “Engine Alternator” installation), which BSM may supply from time to time to Customer, upon Customer's request. The Hardware Device warranties in Section 11.2 – Hardware Device Warranties above are subject to BSM Product End-of-Life Policy.
- 11.4. Hardware Device Warranties Claim Procedure.** In order to make a warranty claim under Section 11.2 – Hardware Device Warranties above, Customer may be required to prove that the installation did not cause the defects or failures of Hardware Device(s), unless the installation was performed by a BSM-certified installer. Any Hardware Device warranty claims must be submitted promptly after the date when Customer noticed the defect. For any warranty claim under Section 11.2 – Hardware Device Warranties above, Customer must follow and adhere to BSM's then-current return policy available.
- 11.5. BSM Software Warranties.** BSM warrants to Customer that during Subscription Terms:
- (a) **Performance Warranty**. Subscription Services will conform in all material respects to its applicable specifications set forth in Documentation.
  - (b) **Viruses**. BSM and/or its licensors will use commercially reasonable efforts, using applicable current industry practices, to ensure that Subscription Services, in the form provided by BSM to Customer under this Agreement, contains no Malicious Code.
- 11.6. Performance Remedy**. If Subscription Services fail to conform to the warranty set forth in Section 11.5(a) – Performance Warranty above and Customer provides written notice of the non-conformance to BSM within the applicable Subscription Term then, as Customer's exclusive remedy and BSM's sole obligation: BSM and/or its licensors will either repair or, at its option, replace the non-conforming Subscription Service or, if BSM and/or its licensors are unable to correct the non-conformance within 30 days of receipt of such written

notice from Customer, Customer may terminate the applicable Subscription Services, and BSM will refund to Customer a pro-rata amount of any Subscription Services fees prepaid to BSM and applicable to the unutilized portion of the Subscription Term for the terminated Subscription Services.

- 11.7. Bugs and Abatement: Scope.** Without limiting the express warranties in this Section 11 – Representation, Warranties, Exclusive Remedies and Disclaimers, BSM does not warrant that Products are completely free from all bugs, errors, or omissions, or will ensure complete security. The warranties in this Agreement are for the sole benefit of Customer, and may not be extended to any other Person.
- 11.8. Disclaimers of Implied Warranties.** BSM makes no representation or warranty in connection with Products or Professional Services, except as expressly warranted in this Agreement or the Additional Terms of Service. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE ADDITIONAL TERMS OF SERVICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT IS PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. BSM CANNOT AND DOES NOT REPRESENT, WARRANT OR COVENANT THAT: (A) ANY PRODUCTS WILL MEET CUSTOMER’S BUSINESS OR OTHER REQUIREMENTS; (B) PRODUCTS WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION; (C) PRODUCTS WILL BE ERROR-FREE, VIRUS-FREE OR THAT THE RESULTS OBTAINED FROM THEIR USE WILL BE ACCURATE, RELIABLE OR CURRENT (D) ANY ERRORS IN PRODUCTS CAN BE CORRECTED OR FOUND IN ORDER TO BE CORRECTED.**

## **12. INDEMNIFICATIONS**

- 12.1. Customer Indemnity.** Customer shall, at Customer’s sole cost and expense, indemnify and hold harmless BSM and BSM’s Affiliates, directors, officers, agents, representatives, employees, contractors and other personnel from and against all claims, losses, damages, harm, or other liabilities of any kind, including legal fees on an solicitor-client basis, arising from or as a result of Customer’s: (i) breach of this Agreement; (ii) negligence or willful misconduct; (iii) infringement of any BSM Intellectual Property or any Intellectual Property Rights of any third party; or (iv) breach of any applicable law or other order or regulation validly enacted by a Governmental Authority.

### **12.2. BSM’s Infringement Indemnification.**

- (a) **Defense and Indemnity.** BSM will, at BSM’s sole cost and expense, defend and indemnify or, at BSM’s option, settle, any claim, assertion or action brought against Customer or Customer’s Affiliates, successors or assigns to the extent that it is based on a claim (an “**Infringement Claim**”) that any Products which BSM has supplied to Customer directly infringes or misappropriates any Intellectual Property Rights of any third party (excluding Customer or any Customer Affiliates) and indemnify Customer against damages awarded against Customer by a court of competent jurisdiction by final order from which no appeal is taken or after the time for appealing has expired, provided that Customer: (i) notify BSM promptly and within no more than ten (10) calendar days after Customer’s receipt of notice of such Infringement Claim in writing; and (ii) permit BSM to defend, compromise or settle the Infringement Claim and provide all available information, assistance and authority to enable BSM to do so. BSM will not be liable to reimburse Customer for any compromise or settlement made by Customer without BSM’s prior written consent, or for any legal fees or expenses incurred by Customer in connection with such Infringement Claim.
- (b) **BSM’s Mitigation Rights.** If any Products become, or in BSM’s opinion are likely to become, the subject of any Infringement Claim, BSM may, and if Customer’s use of Products is enjoined, BSM must, at its sole option and expense, either: (i) procure for Customer the right to continue using the relevant Products; (ii) replace or modify the relevant Products or infringing part thereof with non-infringing equivalents, at no cost to Customer; or (iii) if none of the foregoing alternatives are reasonably practical in BSM’s sole judgement, BSM may: (A) in the case of Subscription Plan, terminate such Subscription Plans or the licenses for such Subscription Plan and refund or issue a credit for any prepaid but unused fees for such Subscription Plan paid to BSM, if any; and/or (B) in the case of Hardware Devices, require Customer to return such Hardware

Devices and refund or issue a credit for the purchase price paid to BSM for the Hardware Devices returned, depreciated on a straight-line basis over a 36 month period from the date of purchase.

- (c) **Exclusions.** Notwithstanding the foregoing, BSM will have no obligation or liability whatsoever in respect to any Infringement Claim to the extent based upon any of the following: (i) in the case of Subscription Plans, the use of other than the latest release and version of such Software resulting from Customer interference with or disabling of the automatic software update process; (ii) the use of any Products in breach of this Agreement; (iii) non-BSM products, software, data or services, (iv) the use, association or combination of any of Products with, or the incorporation or integration into Products of, any non-BSM product, software, service, data, information or other material (including Customer or Customer's Affiliates own) that is not supplied by BSM or expressly identified by BSM in BSM and/or its licensors written specifications or documentation as being required for the use and operation of Products; (v) the use or operation of any Products, in any manner or for any purpose other than as expressly specified in the Documentation for same; (vi) any modification, alteration, change, enhancement, customization or derivative work of Products made by anyone other than BSM or BSM's agents; (vii) changes BSM makes to Products to comply with Customer's instructions or specifications; (viii) Customer's use or alleged misuse of data Customer collects through the operation of Products; (ix) for User-based vehicle insurance purposes, the use of Products in association with driving, driver or vehicle activity or performance; or (x) any reselling or distribution of Products. This Section 12.2 states BSM's entire liability and Customer's sole and exclusive remedies with respect to any Infringement Claim.

### 13. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 13.1. Limitation of Liability.** EXCEPT IN RELATION TO CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER SECTION 9 – FEES; PAYMENT FOR PRODUCTS ABOVE, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS OR THE PROFESSIONAL SERVICES EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR PRODUCTS OR PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE, PROVIDED THAT: (I) A CLAIM CONTINUING OVER A PERIOD OF GREATER THAN TWELVE MONTHS SHALL BE DEEMED TO HAVE OCCURRED SOLELY IN THE TWELVE MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE; AND (II) WHERE THE INCIDENT OUT OF WHICH THE LIABILITY AROSE OCCURS AFTER THE TERMINATION OF THIS AGREEMENT, IT SHALL BE DEEMED TO HAVE OCCURRED ON THE LAST DAY IN WHICH THIS AGREEMENT WAS IN FORCE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.
- 13.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 13.3. Exceptions.** Sections 13.1 – Limitation of Liability above and Section 13.2 – Exclusion of Consequential and Related Damages above do not apply to either party's (i) willful misconduct or gross negligence; (ii) infringement or misappropriation of any of the other's Intellectual Property Rights; (iii) Customer's indemnity obligations under Section 12.1 – Customer Indemnity above; or (iv) liability or loss which may not be limited by applicable law. Any amounts payable by an indemnified party to a third party pursuant to a judgment or to a settlement agreement approved in writing by an indemnifying party, liability for which falls within the indemnifying party's indemnification obligations under this Agreement, and all fees payable by Customer under this Agreement, will be deemed direct damages for purposes of this Section 13 – Limitations and Exclusion of Liability. Section 13.1 – Limitation of Liability above does not apply to (i) Customer's obligations



to pay fees and expenses when due and payable under this Agreement, nor (ii) either party's obligations under Section 10 - Confidential Information above.

**13.4. General.** Customer agrees that the exclusions and limitations contained in this Section 13 – Limitations and Exclusion of Liability apply even if the remedies are insufficient to cover all of the losses or damages of Customer or its Affiliates, or fail of their essential purpose and that without these limitations the fees for Products and Professional Services would be significantly higher. Accordingly, to the extent a court rules that any of the exclusions or limitations contained in this Section 13 – Limitations and Exclusion of Liability are unenforceable by BSM as against Customer, Customer shall pay to BSM an equitable adjustment to compensate BSM for the fees that it would have charged for Products and Professional Services had the parties not bargained for and agreed to the exclusions and limitations contained in this Section 13 – Limitations and Exclusion of Liability. Neither party may commence any action or proceeding under this Agreement more than two years after the occurrence of the applicable cause of action.

## 14. TERM AND TERMINATION

**14.1. Term of Agreement.** This Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Section 14.2 – Termination on Material Breach or Section 14.3 Termination for Convenience below.

**14.2. Termination On Material Breach.** In the event of a material breach of the Agreement by either party, the nonbreaching party may terminate the Agreement or any Order Form affected by the material breach by giving the breaching party written notice of the material breach and the non-breaching party's intention to terminate. If the material breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then this Agreement or any such Order Form will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, Customer's failure to pay any overdue fees and expenses within 30 days of BSM notifying Customer of the overdue payment will constitute a material breach of this Agreement. If Customer has not cured a material breach within the applicable cure period, then BSM may, on not less than 5 business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of BSM's obligations to provide Products under this Agreement.

**14.3. Termination for Convenience.** The parties acknowledge and agree that each Subscription Term is priced as a minimum term, and may not be terminated for convenience. Customer may terminate any Professional Services for convenience at any time, upon not less than 30 days' prior notice to BSM.

### 14.4. Subscription Term and Renewal.

- (a) **Subscription Term.** Each subscription term for Subscription Plans will commence on the Subscription Start Date (as defined below) and will continue for the period specified in the Order Form or, if not so specified, three years (an "**Initial Term**"). Upon expiration of the Initial Term, Subscription Plans will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter) (each, a "**Renewal Term**"), at such rates as may be mutually agreed in writing between them, unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. Where a fee increase is contemplated, BSM will provide Customer with notice of its proposed fees for renewal at least 90 days prior to the expiration of the then-current subscription term. The Initial Term and each Renewal Term are individually referred to in this Agreement as the "**Subscription Term**".
- (b) **Subscription Term Renewal Pricing.** Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced Subscription Plans will be at BSM's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which the number of Subscription Plans has decreased from the prior subscription term will result in repricing at renewal without regard to the prior subscription term's pricing.
- (c) **Upgraded Subscriptions or Additional Subscriptions.** If Customer upgrades any Subscription Plans during a Subscription Term, then the Subscription Term for the upgraded Subscription Plan will be

coterminous with the current Subscription Term and BSM will invoice Customer an amount equal the upgraded subscription fee. If Customer subscribes to an additional Subscription Plan, the Subscription Term for that additional Subscription Plan will begin on the Subscription Start Date for that additional Subscription Plan in accordance with the corresponding Order Form.

- 14.5. Refund of Prepaid Subscription Fees if Customer Terminates for Material Breach.** If Customer terminates this Agreement or any Order Form for material breach in accordance with Section 14.2 – Termination on Material Breach above, then BSM will refund to Customer a pro-rata amount of any affected Subscription Plan fees prepaid to BSM and applicable to the unutilized portion of the Subscription Term for terminated Subscription Plan, and any affected unutilized Professional Services fees prepaid to BSM.
- 14.6. Fulfillment of Obligations on Termination.** Except as otherwise specified in this Agreement or any Additional Terms of Service, termination of this Agreement or of any Subscription Plans will not, in any event, entitle Customer to any refund of or relief from payment of any Subscription Plans or Professional Service fees paid or payable under this Agreement.
- 14.7. Force Majeure Event.** In the event that BSM is delayed in or prevented from performing BSM's obligations under this Agreement or applicable Order Forms due to a Force Majeure Event then, upon written notice to Customer: (a) the affected obligations under this Agreement and applicable Order Forms will be suspended to the extent necessary during the period of the Force Majeure Event, and (b) BSM will not have any liability to Customer or any other Person in connection with such suspended obligation. For purposes of this Agreement, a "**Force Majeure Event**" means an event beyond its reasonable control, including an act of God, fire, flood, explosion, public health emergencies, communicable disease outbreak, general Internet outages, outages caused by the wireless network data providers, civil disorder, strike, lockout or other labour trouble, material shortages of utilities, delay in transportation, destruction or damage to production facilities breakdown or accident, any law, ruling, judgment, demand or requirement of any Governmental Authority, riot, war, or other cause beyond the reasonable control of BSM.
- 14.8. Customer Data Portability and Deletion.** Upon request by Customer within 30 days after the effective date of termination or expiration of this Agreement, BSM and/or its licensors will make Customer Data available to Customer for export or download as provided in Documentation. After such 30-day period, BSM will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation may thereafter delete or destroy all copies of Customer Data in BSM's systems or otherwise in BSM's possession or control, unless legally prohibited.
- 14.9. Suspension of Products.** BSM and/or its licensors may suspend Customer's Subscription Plans or any User's right to access or use any portion of Products, or to connect Products to Customer Third Party Applications, if BSM determines that Customer's or Users' use of Products, or Customer Third Party Applications, (i) pose a security risk to Products or any third party, (ii) may adversely impact Products, or the networks or data of any other BSM customer, business partner or service provider, (iii) do not comply with the Acceptable Use Policy or applicable law, or (iv) may subject BSM, or any third party, to liability. BSM will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension, and to reinstate such Products as soon as reasonably practicable following correction of the issue.
- 14.10. Survival.** The provisions of Sections 3, 5, 6, 7, 8, 9, 10, 13, 14, 16, and 17 of this Agreement will survive any termination or expiration of this Agreement.

## **15. PURCHASES THROUGH CHANNEL PARTNERS**

- 15.1. Applicability.** This Section 15 – Purchases Through Channel Partners only applies to Customers purchasing Products through a Channel Partner. If Customer is uncertain as to the applicability of this section to its purchase of Products, Customer should contact BSM for further information.
- 15.2. Channel Partners.** If Customer acquired Products from a Channel Partner, then this Agreement is not exclusive of any rights Customer obtains under the Channel Partner Sale Agreement; however, if there is any conflict between the provisions of this Agreement and the Channel Partner Sale Agreement, then the provisions of this Agreement prevail. If a Channel Partner has granted Customer any rights that BSM does

not also directly grant to Customer in this Agreement, or that conflict with this Agreement, then Customer's sole recourse with respect to such rights is against the Channel Partner.

**15.3. Channel Partners.** If Customer ordered Products through a Channel Partner, then Section 14.4 Subscription Term and Renewal above is inapplicable, and the Subscription Term will begin on the Subscription Start Date and, subject to the remainder of Section 14 – Term and Termination above, it will expire, renew and terminate in accordance with the terms of the Channel Partner Sale Agreement.

**15.4. Fees and Payment.** If Customer ordered Products through a Channel Partner, then the provisions of Sections 9.2 – 9.9 above do not apply to Customer, and Customer's billing and payment rights and obligations are governed by the Channel Partner Sale Agreement. However, if the Channel Partner from whom Customer purchased Products fails to pay BSM any amounts due in connection with Customer's use of Products, then BSM may suspend Customer's rights to use Products without liability, upon notice to Customer. Customer agrees that Customer's remedy in the event of such suspension is solely against the Channel Partner.

## **16. ADDITIONAL TERMS OF SERVICE**

**16.1. Additional Terms of Service.** The following additional terms and conditions ("**Additional Terms of Service**") apply to Customer's use of Products, and are incorporated into this Agreement by reference. The Additional Terms of Service are published at [www.bsmtechnologies.com/company/legal/agreements](http://www.bsmtechnologies.com/company/legal/agreements), and any successor websites, and include:

- Beta Agreements
- Third Party and Product Specific Terms and Condition(s)
- Order Form Supplement(s)
- Additional Product Specific Terms and Conditions(s)
- Policies, including Acceptable Use Policy

## **17. GENERAL PROVISIONS**

**17.1. Export Compliance.** Products, Content, other BSM and/or its licensors technology, and derivatives thereof may be subject to export laws and regulations of the United States, Canada and other jurisdictions. BSM and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Product or Content in Canada's Area Control List (including, Belarus and North Korea) or in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any Canada or U.S. export law or regulation.

**17.2. Legal Expenses.** If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief arising out of this Agreement, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

**17.3. Publicity.** Unless otherwise specified in the applicable Order Form, BSM may refer to Customer as one of BSM's customers and use Customer's logo as part of such reference, provided that BSM complies with any trademark usage requirements notified to it by Customer.

**17.4. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify BSM's Legal Department at [legal@bsmtechnologies.com](mailto:legal@bsmtechnologies.com).

**17.5. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between BSM and Customer regarding Customer's use of Products and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among

the following documents, the order of precedence will be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and will not affect the construction of any provision of this Agreement.

**17.6. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**17.7. Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**17.8. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**17.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

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

**17.11. BSM Contracting Entity, Notice, Governing Law and Venue.** The BSM entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled.

If Customer is domiciled in:	The BSM entity entering into this Agreement is:	Notices should be addressed to:	The governing law is:	Courts having exclusive jurisdiction are:
Canada	BSM Technologies Ltd., an Ontario corporation	75 International Blvd., Suite 100  Toronto, Ontario, Canada M9W 6L9  Attn: Legal Department, with a copy to attn: General Counsel	The Province of Ontario and controlling Canadian federal law	The provincial and federal courts located in Toronto, Ontario, Canada, and appeal courts therefrom.
The United States of America, Mexico or a Country in Central or South America or the Caribbean	BSM Analytics Inc. d/b/a Mobi, a Delaware corporation	75 International Blvd., Suite 100  Toronto, Ontario, Canada M9W 6L9  Attn: Legal Department, with a	The State of Texas and controlling United States federal law	The State courts of Texas located in Austin, Texas or the U.S. federal courts located in Austin, Texas, U.S.A. and appeal courts therefrom.

If Customer is domiciled in:	The BSM entity entering into this Agreement is:	Notices should be addressed to:	The governing law is:	Courts having exclusive jurisdiction are:
		copy to attn: General Counsel		

- 17.12. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“**Legal Notices**”), which will clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Product system administrator designated by Customer.
- 17.13. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.
- 17.14. United Nations Convention on Contracts for the International Sale of Goods.** The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to applicable Order Forms and this Agreement and its application is strictly excluded.
- 17.15. No Agency.** For the avoidance of doubt, BSM is entering into this Agreement as principal and not as agent for any other BSM Technologies Inc. company. Subject to any permitted Assignment under Section 17.10 – Assignment above, the obligations owed by BSM under this Agreement will be owed to Customer solely by BSM and the obligations owed by Customer under this Agreement will be owed solely to BSM.
- 17.16. Independent Legal Advice.** The parties acknowledge that they have had the opportunity to consult with legal counsel to the fullest extent it deems appropriate and necessary prior to signing applicable Order Forms and entering into this Agreement.
- 17.17. Drafting.** This Agreement has been considered and negotiated between the parties in an arm’s length transaction, and will not be construed against either party by reason of the drafting or preparation hereof.
- 17.18. Governing Language.** The governing language for this Agreement and its related transactions, for any notices or other documents transmitted or delivered under this Agreement, and for the negotiation and resolution of any dispute or other matter between the parties, will be the English language. If there is any conflict between the provision of any notice or document and an English version of the notice or document (including this Agreement), the provisions of the English version will prevail. Customer waives any right it may have under any applicable law to have the Agreement written in any language other than English.
- 17.19. Amendments.** Customer agrees that BSM may change the terms of this Agreement from time to time by notifying Customer via BSM’s website, the BSM Platform, email or other means. Customer agrees to accept, and Customer hereby accepts, any changes in the Additional Terms of Service and other terms of this Agreement, unless the changes impose commercially unreasonable disadvantages on Customer. If a change imposes commercially unreasonable disadvantages on Customer and BSM receives a written objection from Customer within 30 calendar days of the date when Customer received notice or Customer should have noticed the change, BSM may, in BSM’s sole option and discretion, (a) reverse such change with the effect that the immediately prior version of this Agreement will continue to apply to Customer, or (b) terminate this Agreement and any Order Form and Customer’s use of Products and refund to Customer, upon, if applicable, receipt of all Hardware Devices, in good working condition, subject to ordinary wear and tear, in Customer’s possession (i) the purchase price for any Hardware Devices, depreciated on a 36 months straight line basis, accounting for Customer’s use, and (ii) any prepaid services fees for time periods after the effective date of the change to which Customer objected in accordance with this Agreement. No modification, amendment, addition to or waiver of any rights, obligations or defaults will be effective unless in writing and signed by the party against whom the same is sought to be enforced.

**17.20. Counterparts.** Order Forms may be executed in any number of counterparts (including counterparts by facsimile or other electronic means) and all such counterparts taken together will be deemed to constitute one and the same instrument. The execution and delivery of a facsimile or other electronic transmission of any Order Forms will constitute delivery of an executed original and will be binding upon the person whose signature appears on the transmitted copy.

**BY SIGNING AND/OR SUBMITTING APPLICABLE ORDER FORMS, CUSTOMER ACKNOWLEDGES THAT IT HAVE READ OR HAD THE OPPORTUNITY TO READ THIS AGREEMENT, UNDERSTAND THIS AGREEMENT, AND AGREES TO BE BOUND BY THIS AGREEMENT.**