# Last Updated: 04/17/2023

# SERVICE AGREEMENT AND EULA

This Service Agreement and EULA (this “**Agreement**”) contains the terms and conditions that govern your access to and use of the Services and Software (as defined below) and is an agreement by and between Estate Retail Solutions, LLC (DBA: PROSALE), a Georgia limited liability company with an address of 1281 Knob Creek Drive, Athens, GA 30606 ("**Provider**", "**We**", "**Us**", or "**Our**") and the individual or entity entering into this Agreement (“**You**” or “**Your**”). This Agreement takes effect when You click an “I Accept” button or check box presented with these terms or, if earlier, when You use any of the Services or Software (the “**Effective Date**”). You represent to Us that You are lawfully able to enter into contracts, and, if an individual executes this Agreement on behalf of an entity, such individual represents to Us that such individual has legal authority to bind that entity.

1. Definitions.
   1. “**Aggregated Statistics**” means data and information related to Your use of the Services that is used by Us in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
   2. "**Authorized User**" means Your employees, consultants, contractors and agents: (i) who are authorized by You to access and use the Services or the Software under the rights granted to You pursuant to this Agreement, and (ii) for whom access to the Services or the Software has been acquired hereunder.
   3. "**Customer Data**" means, other than Aggregated Statistics, information, data and other content, in any form or medium, that is submitted, posted or otherwise transmitted by or on behalf of You or an Authorized User through the Services or the Software, or maintained in connection with the Services or Software or any databases maintained in connection with the Services or the Software, or otherwise collected by Us from You or Your clients, including without limitation information about Your clients and their customers.
   4. "**Documentation**" means Our user manuals, handbooks and guides relating to the Services or Software provided for Your use.
   5. "**Provider IP**" means the Services, Software, Documentation and any and all intellectual property provided to You or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Our monitoring of Your access to or use of the Services or Software, but does not include Customer Data.
   6. "**Services**" means the software-as-a-service or any other service offered to or procured by You from Us.
   7. “**Software**” means the software licensed to You hereunder or where software is copied, located at or otherwise transferred to You as part of the Services (unless other specific terms apply to such procurement).
2. Software as a Service.
   1. Provision of Access. Subject to and conditioned on Your payment of Fees and compliance with all other terms and conditions of this Agreement, We hereby grant to You a non-exclusive, non-transferable (except in compliance with Section 12.7 (Assignment)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Your internal use. We shall provide You the necessary passwords and network links or connections to allow You to access the Services.
   2. Suspension. Notwithstanding anything to the contrary in this Agreement, We may temporarily suspend access by You or any Authorized User to any portion or all of the Services if We reasonably determine that: (A) there is a threat or attack on any of the Provider IP; (B) the use of the Provider IP by You or an Authorized User disrupts or poses a security risk to the Provider IP or to any of Our customers or vendors; (C) You, or any Authorized User, are using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, You have ceased to continue Your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (E) Our provision of the Services to You or any Authorized User is prohibited by applicable law; (F) any of Our vendors has suspended or terminated Our access to or use of any third-party services or products required to enable You or any Authorized User to access the Services; or (G) You have failed to pay any amount owed to Us after any cure period provided herein (each a “**Service Suspension**”). With respect to any Service Suspension taking place pursuant to clause (E) (F), or (G) of the preceding sentence, We shall use commercially reasonable efforts to: (X) provide written notice of any Service Suspension to You; (Y) to provide updates regarding resumption of access to the Services following any Service Suspension; and (Z) to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. We will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that You or any Authorized User may incur as a result of a Service Suspension.
   3. Service Levels. Subject to the terms and conditions of this Agreement, We shall use commercially reasonable efforts to make the Services available. Service availability is determined excluding: (i) scheduled network, hardware or service maintenance; (ii) downtime caused by the acts or omissions of You or Your employees, agents, contractors or vendors, or anyone gaining access to the Services by means of Your or Authorized Users’ passwords or equipment; (iii) failures, incompatibility or malfunctions of any equipment or services provided directly or indirectly by You; (iv) failures of the Internet, power outages, natural disasters and data communication failures; and (v) the occurrence of any event that is beyond Our reasonable control.
3. License.
   1. License Grant. We hereby grant to You a non-exclusive, personal, non-sublicensable and non-transferable (except as stated in Section 12.7 (Assignment)), limited license to use the Software, and the Documentation in connection with Your use of the Software or Services, during the Term solely for Your internal business purposes, at Your business location that has been provided to Us, and You accept such license. This license may not be sublicensed or assigned without Our prior written consent. Should You change Your business location or sell Your business to another owner, this license can be transferred to the new location or owner after written notification to Us by You, by providing Us with documentation and proof of the sale and after the new business owner has agreed to the terms of and signed a Service Agreement and EULA.
4. Your Responsibilities/Restrictions.
   1. General. You are responsible and liable for all uses of the Services, Software and Documentation resulting from access by You and Your employees, consultants, contractors and agents, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, You are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by You will be deemed a breach of this Agreement by You. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, Software and Documentation, and shall cause Authorized Users to comply with such provisions. You are responsible for supplying all equipment, Internet access and bandwidth needed to access and use the Services and Software. The Services and Software may include certain communications from Us or Our partners such as service announcements, administrative messages and newsletters. You hereby agree to receipt of such communications and acknowledge that You may not be able to opt out of receiving such communications.
   2. Use Restrictions. Except to the limited extent expressly authorized by this Agreement (if applicable), You shall not: (i) license, sublicense, sell, resell, transfer, rent, lend, assign, distribute or otherwise commercially exploit or make available to any third party any Service, Software or Documentation, or any technology, software or data used by Us to provide the Services or to license the Software or Documentation (collectively, “**Provider Technology**”) in any way; (ii) provide any data contained within any Provider Technology or otherwise obtained by You using the Provider Technology to any third party; (iii) modify, adapt, translate or create derivative works based upon any Provider Technology; (iv) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from any Provider Technology or otherwise reduce any Provider Technology software to human-readable form; (v) reproduce any portion of any Provider Technology; (vi) access any Service or Software (including, without limitation, any databases or data thereof) by any means other than through an interface that is provided by Us for such access (if any); (vii) use any Provider Technology for any purpose or in any manner that is unlawful or prohibited by this Agreement; (viii) use any Service or Software in a manner that could reasonably be expected to interfere with or disrupt the integrity, security or performance of any Provider Technology, including, without limitation, the integrity or security of any data contained therein; (ix) access or use any Provider Technology to build a competitive product, software or service; (x) attempt to gain unauthorized access to any Service or its related systems or networks; (xi) mine, scrape or otherwise extract data from any Provider Technology (including, without limitation, databases); (xii) use any Provider Technology to send or store infringing or otherwise unlawful or tortious material, including, without limitation, material violative of third party intellectual property or privacy rights, or any materials that are misleading, obscene or hateful; or (xiii) authorize, instruct or cause any third party to do any of the foregoing. For the avoidance of doubt, as used in this Agreement, the term “third party” shall include, without limitation, Your service providers and vendors, in addition to other third parties. We shall have the right to suspend provision of the Services, to suspend license of the Software, and/or terminate this Agreement immediately if You violate any provision of this paragraph.
5. Fees and Payment.
   1. Fees. You shall pay to Us the fees ("**Fees**") as set forth on the website PROSALE.com without offset or deduction. We may increase the Fees with at least thirty (30) days prior notice to You. You shall make all payments hereunder in US dollars within thirty (30) days from invoice date. If You fail to make any payment when due, without limiting Our other rights and remedies: (i) We may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) You shall reimburse Us for all reasonable costs incurred by Us in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and (iii) if such failure continues for ten (10) days or more, We may suspend access to any portion or all of the Services to You and any Authorized User until such amounts are paid in full.
   2. Taxes. All Fees and other amounts payable by You under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by You hereunder, other than any taxes imposed on Our income.
   3. Auditing Rights and Required Records. You agree to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two years after the termination of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. We may, at Our own expense, on reasonable prior notice, periodically inspect and audit Your records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that You have underpaid Us with respect to any amounts due and payable during the Term, You shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5.1. You shall pay for the costs of the audit if the audit determines that Your underpayment equals or exceeds 3% for any quarter. Such inspection and auditing rights will extend throughout the Term and for a period of two years after the termination of this Agreement.
6. Confidential Information.
   1. Confidentiality Obligations. From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed, except that Customer Data stored as part of the Services can be delivered to You, upon Your written request, within one (1) year after such termination, in .csv or .pdf format. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.
   2. Privacy and Security Obligations. We will comply with all laws and regulations applicable to Our provision of the Services, license of the Software or Documentation or otherwise to exercise Our rights or obligations hereunder, and You will comply with all laws and regulations applicable to Your use of the Services, the Software and Documentation and otherwise to exercise Your rights or obligations hereunder. We have adopted, implemented, will maintain and shall comply with a privacy policy (“**Privacy Policy**”) and an information security program designed to protect Customer Data from loss, misuse and unauthorized access or disclosure, which shall include, without limitation, appropriate administrative, technical and physical safeguards to prevent the unauthorized access, modification or disclosure of the Customer Data (“**Security Policy**”). Each of the Privacy Policy and the Security Policy may be revised, modified, updated, supplemented and re-posted from time to time without prior notice at Our discretion. Such policies shall govern over any conflicts between such policy and this Agreement. You are advised to review the posted Privacy Policy and Security Policy regularly and to direct any questions about it to the address set forth therein.
7. Intellectual Property Ownership; Feedback.
   1. Provider IP. You acknowledge that, as between You and Us, except as specifically provided herein, We own all right, title and interest, including all intellectual property rights, in and to the Provider IP. We reserve all rights not expressly granted to You in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to You or any third party any intellectual property rights or other right, title or interest in or to the Provider IP.
   2. Customer Data. We acknowledge that, as between Us and You, except as specifically provided herein, You own all right, title and interest, including all intellectual property rights, in and to the Customer Data.
      1. You hereby grants to Us a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license: (a) to remotely access, obtain, reproduce, distribute and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data (including without limitation to reproduce, modify, analyze, aggregate and otherwise use), and to exchange such data among Us and our subsidiaries, affiliates and service providers as may be necessary for Us to provide the Services or license the Software to You, to support the Services and/or Software, to comply with applicable laws, for the purposes set forth herein and for Our business purposes, including, without limitation, account administration, transaction processing, consumer reporting, processing and delivering of account statements, research and analysis, product enhancement and development, analytics, marketing and delivery of products and services to third parties; (b) to reproduce, modify, analyze, aggregate and otherwise use, aggregated de-identified Customer Data and to disclose, display and distribute such aggregated de-identified Customer Data to third parties; and (c) to reproduce, distribute, otherwise use and display, modify, disclose, analyze and aggregate Customer Data incorporated within the Aggregated Statistics (or otherwise de-identified and aggregated), for its business purposes, including, without limitation, as described in subsection (a) above.
      2. You represent and warrant that You have the right, under all applicable laws, to grant the rights, permissions and approvals set forth in this Agreement with respect to identifiable and non-identifiable data, including Your clients’ individually identifiable information, and that any limits or cap on Your liability under this Agreement shall not apply to third party claims arising from Your misrepresentation under, or breach of, this sentence. You are solely responsible for obtaining and maintaining or verifying that You have obtained and are maintaining all client consents and other legally necessary consents and permissions required or advisable for Us to send any communications to Your clients on Your behalf, to perform the Services, to license the Software hereunder and to exercise other rights hereunder.
   3. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, We may monitor Your use of the Services, Software and Documentation, and collect and compile Aggregated Statistics. As between Us and You, all right, title and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Us. You acknowledge that We may compile Aggregated Statistics based on Customer Data input into the Services and the Software. You agree that We may: (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify You or Your Confidential Information.
   4. Feedback. If You or any of Your employees or contractors sends or transmits any communications or materials to Us by mail, email, telephone or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions or the like ("**Feedback**"), We are free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. You hereby assign to Us on Your behalf and on behalf of Your employees, contractors and/or agents, all right, title, and interest in, and We are free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although We is not required to use any Feedback.
8. Warranty Disclaimer. THE PROVIDER IP IS PROVIDED "AS IS", AND WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WE MAKE NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.
9. Indemnification.
   1. Indemnification by Us.
      1. We shall indemnify, defend and hold harmless You from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by You resulting from any third-party claim, suit, action or proceeding ("**Third-Party Claim**") that the Services, Software or Documentation, or any use of the Services, Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights or trade secrets, provided that You promptly notify Us in writing of the claim, cooperate with Us, and allow Us sole authority to control the defense and settlement of such claim.
      2. If a Third-Party Claim is made or appears possible, You agree to permit Us, at Our sole discretion, to: (A) modify or replace the Services, Software or Documentation, or component or part thereof, to make it non-infringing, or (B) obtain the right for You to continue to use the Services, Software or Documentation, or component or part thereof. If We determine that neither alternative is reasonably available, We may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to You.
      3. This Section 9.1 will not apply to the extent that the alleged infringement arises from: (A) use of the Services, Software or Documentation in combination with data, software, hardware, equipment or technology not provided by Us or authorized by Us in writing; (B) modifications to the Services, Software or Documentation not made by Us; or (C) Customer Data.
   2. Indemnification by You. You shall indemnify, hold harmless and, at Our option, defend Us from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights or trade secrets and any Third-Party Claims based on Your or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services, Software or Documentation in a manner not authorized by this Agreement; (iii) use of the Services, Software or Documentation in combination with data, software, hardware, equipment or technology not provided by Us or authorized by Us in writing; or (iv) modifications to the Services, Software or Documentation not made by Us, provided that You may not settle any Third-Party Claim against Us unless We consent to such settlement, and further provided that We will have the right, at Our option, to defend Ourself against any such Third-Party Claim or to participate in the defense thereof by counsel of Our own choice.
   3. Sole Remedy. THIS SECTION [9](#_bookmark1) SETS FORTH YOUR SOLE REMEDIES AND OUR SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE SERVICES, SOFTWARE OR DOCUMENTATION INFRINGE, MISAPPROPRIATE OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
10. Limitations of Liability. IN NO EVENT WILL WE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER WE WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO US UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
11. Term and Termination.
    1. Term. The term of this Agreement will begin on the Effective Date and this Agreement will continue in effect until terminated as provided in Section 11.2 or any other provision of this Agreement.
    2. Termination. In addition to any other express termination right set forth in this Agreement:
       1. We may terminate this Agreement, effective immediately on written notice to You, if You: (A) fail to pay any amount when due hereunder, and such failure continues more than ten (10) days after Our delivery of written notice thereof to You; or (B) breach any of Your obligations under Section 4.3 (Use Restrictions) or Section [6](#_bookmark0) (Confidential Information);
       2. either party may terminate this Agreement, effective immediately on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or
       3. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
       4. either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
    3. Effect of Termination. Upon termination of this Agreement, You shall immediately discontinue use of the Provider IP and, without limiting Your obligations under Section 6 (Confidential Information), You shall delete, destroy or return all copies of the Provider IP and certify in writing to Us that the Provider IP has been deleted or destroyed. No termination will affect Your obligation to pay all Fees that may have become due before such termination, or entitle You to any refund.
    4. Survival. This Section 11.4 (Survival) and Sections 1 (Definitions), 5 (Fees and Payment), 6 (Confidential Information), 7 (Intellectual Property Ownership, Feedback), 8 (Warranty Disclaimer), 9 (Indemnification), 10 (Limitations of Liability) and 12 (Miscellaneous) survive any termination of this Agreement. No other provisions of this Agreement survive the termination of this Agreement.
12. Miscellaneous.
    1. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and any other documents incorporated herein by reference, the terms of this Agreement shall control over the terms of any documents incorporated herein by reference.
    2. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") must be in writing and addressed to Us at the address set forth above or You at any address that you have provided to Us. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section.
    3. Force Majeure. In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
    4. Amendment and Modification; Waiver. Except as set forth in this Section 12.4, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement: (i) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; and (ii) no single or partial exercise of any right, remedy, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WE SHALL HAVE THE RIGHT, IN OUR SOLE DISCRETION, TO MODIFY THIS AGREEMENT FROM TIME TO TIME. WHEN WE DO SO, WE WILL GIVE YOU REASONABLE NOTICE OF THE MODIFICATION (WHICH MAY BE VIA EMAIL, AN ALERT DISPLAYED WITHIN OR VIA THE SERVICES OR SOFTWARE, OR OTHERWISE, BUT IS NOT REQUIRED TO COMPLY WITH SECTION 12.2). YOUR CONTINUED USE OF THE SOFTWARE FOLLOWING YOUR RECEIPT OR VIEWING OF SUCH NOTICE WILL CONSTITUTE YOUR AGREEMENT TO SUCH MODIFICATION, AND THIS AGREEMENT SHALL THEN BE AUTOMATICALLY DEEMED TO BE AMENDED BY SUCH MODIFICATION.
    5. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
    6. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Georgia in each case located in the County of Oconee, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
    7. Assignment. Except as provided herein, You may not assign any of Your rights or delegate any of Your obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Us. Any purported assignment or delegation in violation of this section will be null and void. No assignment or delegation by You will relieve You (or other assigning or delegating party) of any of Your obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
    8. Export Regulation. The Services, Software and Documentation utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the Services, Software, Documentation or the underlying software or technology to, or make the Services, Software, Documentation or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Services, Software, Documentation or the underlying software or technology available outside the US.
    9. Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section [6](#_bookmark0) (Confidential Information) or, in the case of You, Section 4.3 (Use Restrictions), would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
    10. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
    11. Construction. The language of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties hereto.