

Effective May 12, 2023

## **End User License Agreement and Terms of Service**

This End User License Agreement and Terms of Service (the “*Agreement*”), is a legal agreement between you individually if you are agreeing to it in your own capacity, or if you are authorized to acquire the Software and Services on behalf of your organization, between the entity for whose benefit you act (“*you*”, “*your*” or “*Customer*”), and TruQC, LLC, d/b/a TRU Solutions and d/b/a SPOT Tracker (“*TruQC*”) and its Affiliates (collectively with TruQC, “*TRU*”)(together the “*Parties*” and individually a “*Party*”).

**BY INDICATING YOUR ACCEPTANCE OF AN ASSOCIATED SOW OR OTHER ORDER, OR BY DOWNLOADING, INSTALLING, ACTIVATING OR USING THE BUNDLED SERVICES, CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT AND, IF YOU ARE ACTING ON BEHALF OF AN ORGANIZATION, THAT YOU ARE AUTHORIZED TO DO SO.**

### **1. DEFINITIONS.**

“*Access Credentials*” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Bundled Services.

“*Action*” has the meaning set forth in Section 5.9.1.

“*Affiliates*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Authorized User*” means each of the individuals authorized to use the Bundled Services with his or her unique Access Credentials.

“*Average Monthly Subscription Fee*” means the average of all of the monthly Subscription Fees for the then-current Term of this Agreement.

“*Bundled Services*” means the Licensed Application and Software Services, and any other services contained in the SOW.

“*Confidential Information*” has the meaning set forth in Section 5.5.1.

**“Configuration”** means customization of the Bundled Services, including modification or creation of reports, forms, features, permissions or summaries, within the Bundled Services, per an SOW agreed to by the Customer.

**“Customer Data”** means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer by or through the use of the Bundled Services or that incorporates or is derived from the Processing of such information, data or content by or through the Bundled Services.

**“Customer Failure”** has the meaning set forth in Section 4.9.

**“Customer Indemnitee”** has the meaning set forth in Section 5.9.1.

**“Customer Systems”** means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

**“Development”** means the creation of new features, functionality, or other items (which may include the addition of new software or software code) within the Bundled Services, per an SOW agreed to by the Customer.

**“Device”** means an iPad or other computer, tablet or similar device on which the Licensed Application may be downloaded or accessed.

**“Disclosing Party”** has the meaning set forth in Section 5.5.1.

**“Documentation”** means any manuals, instructions or other documents or materials that TRU provides or makes available to Customer in any form or medium and which describes the functionality, components, features or requirements of the Bundled Services or TRU Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

**“Elcometer”** means Elcometer, Inc.

**“Elcometer Information”** has the meaning set forth in Section 4.13.5.

**“Force Majeure Event”** has the meaning set forth in Section 5.10.

**“Harmful Code”** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from

accessing or using the Bundled Services as intended by this Agreement. Harmful Code does not include any TRU Disabling Device.

**“Hosted Services”** means electronic access to the Software through the internet.

**“Initial Term”** has the meaning set forth in Section 5.2.

**“Ideas”** has the meaning set forth in Section 4.13.2.

**“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Licensed Application”** means any TRU application, either downloaded or web-based, and all new versions, updates, revisions, improvements and modifications thereof, which enables Customer and its Authorized Users to access the Software on any Device.

**“Losses”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“NDA”** has the meaning set forth in Section 5.5.

**“Notices”** has the meaning set forth in Section 5.11.

**“Permitted Use”** means use of the Bundled Services by Authorized Users, each using his or her respective Access Credentials, solely in or for Customer’s business operations.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**“Personal Information”** means any information that, individually or in combination, does or can identify a specific Person or by or from which a specific Person may be identified, contacted or located.

**“Privacy Policy”** has the meaning set forth in Section 4.12.

**“Process”** means to take any action or perform any operation or set of operations that the Bundled Services are capable of taking or performing on any data, information or other content,

including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Receiving Party**” has the meaning set forth in Section 5.5.1.

“**Renewal Term**” has the meaning set forth in Section 5.2.

“**Representatives**” means, with respect to a Party, that Party’s employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

“**Resultant Data**” means data and other information relating to the provision, use of the Software and performance of the Bundled Services, including Customer Data, that is de-identified and recorded by TRU.

“**Software**” means the jobsite management, quality control and process documentation software, and all new versions, updates, revisions, improvements and modifications thereof, provided to Customer by TRU through the Hosted Services and the Licensed Application.

“**Software Services**” means the Hosted Services and Software.

“**Statement of Work**” has the meaning set forth in Section 2.

“**Subcontractor**” has the meaning set forth in Section 4.4.

“**Subscription Fee**” has meaning set forth in Section 5.1.1.

“**Term**” has the meaning set forth in Section 5.2.

“**Third Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Bundled Services that are not proprietary to TRU.

“**TRU Disabling Device**” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by TRU or its designee to disable Customer’s or any Authorized User’s access to or use of the Bundled Services automatically with the passage of time or under the positive control of TRU or its designee.

“**TRU Indemnitee**” has the meaning set forth in Section 5.9.2.

“**TRU Materials**” means the Bundled Services, Documentation and TRU Systems and any and all other information, data, documents, materials, works and other content, devices, methods,

processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by TRU or any Subcontractor in connection with the Bundled Services or otherwise comprise or relate to the Bundled Services or TRU Systems.

“*TRU Systems*” means the information technology infrastructure used by or on behalf of TRU in performing the Bundled Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by TRU or through the use of third-party services.

**2. STATEMENT OF WORK.** During the Term, TRU shall perform and provide the Bundled Services as more specifically set forth in one or more Statement of Work (“*SOW*”) agreements previously, concurrently or subsequently herewith agreed to by the Parties and incorporated herein by this reference. The SOW shall identify the number of Authorized Users and/or the amount of Subscription Fees (if any), the fees for any Development or Configuration, and any other compensation to be paid; but shall not modify any other term or condition of this Agreement, and without the need for reference shall incorporate all terms and conditions of this Agreement. In the event there is a conflict between any SOW and the Agreement, the terms and conditions of the SOW prevail.

**3. LICENSE.** TRU hereby grants Customer a limited, revocable, non-exclusive, non-transferable license to use the Licensed Application for the Permitted Use. The number of copies of the Licensed Application that Customer shall be permitted to use is set forth in the applicable SOW. Pursuant to Section 4.10, Customer shall not copy, modify or reproduce any part of the Licensed Application or the Software, nor may Customer reverse engineer or attempt to extract the source code of the Licensed Application or the Software. Customer may not distribute, sell, rent, lease, or transfer, or attempt to sell, rent, lease, or transfer, the Licensed Application or the Software or Customer’s license to use the Licensed Application. Pursuant to Section 4.13, but for clarity, Customer’s use of the Licensed Application does not give Customer any Intellectual Property Rights in the Licensed Application.

#### **4. TERMS OF SERVICE.**

**4.1. Permitted Use of Bundled Services.** During the Term, TRU hereby authorizes Customer to access and use the Software through the Licensed Application and Hosted Services solely for the Permitted Use by Authorized Users, and contingent upon the conditions and limitations set forth in this Agreement. This authorization is non-exclusive, revocable and non-transferable.

**4.2. Availability.** TRU will use commercially reasonable efforts to make the Bundled Services available at all times. However, TRU makes no guarantee of uninterrupted use or operation of the Bundled Services. TRU may temporarily or permanently suspend the Bundled Services, in whole or in part, where required by law, in the case of security violations or threats, for service improvements, maintenance or repair, for nonpayment of Subscription Fees, or for any other reason deemed necessary or desirable by TRU or beyond TRU’s control. Further details can be found in the Service Level Agreement on TRU’s website, [www.trusolutions.com](http://www.trusolutions.com).

**4.3. TRU Control.** TRU has and will retain sole control over the operation, provision, maintenance and management of the Bundled Services and TRU Materials, including the: (i) TRU Systems; (ii) location(s) where any of the Bundled Services are performed, including in and outside of the United States; (iii) selection, deployment, modification and replacement of the Bundled Services; and (iv) performance of maintenance, upgrades, corrections and repairs to the Bundled Services.

**4.4. Subcontractors.** TRU may, from time to time in its sole discretion, engage third parties to market, sell and/or perform certain services (each, a “*Subcontractor*”) in connection with performance of this Agreement.

**4.5. Improvements and Updates.** TRU reserves the right, in its sole discretion, to make any changes to the Bundled Services, without the consent of Customer, that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of the Bundled Services to its customers, (ii) the competitive strength of or market for the Bundled Services; or (iii) the Bundled Services’ cost efficiency or performance; or (b) to comply with applicable Law.

**4.6. Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Bundled Services; (b) ensure that each Authorized User has his or her own Access Credentials and that Access Credentials are, in no event, shared by more than one Person; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Software.

**4.7. Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Bundled Services; (c) Customer’s Systems (d) the security and use of Customer’s and its Authorized Users’ Access Credentials; and (e) all access to and use of the Bundled Services and TRU Materials directly or indirectly by or through the Customer’s Systems or its or its Authorized Users’ Access Credentials, with or without Customer’s knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

**4.8. Customer Obligations.** Customer shall at all times during the Term (i) maintain and operate in good repair all Customer Systems on or through which the Bundled Services are accessed or used; (ii) provide TRU with such access to Customer’s premises and Customer Systems as is necessary for TRU to perform the Bundled Services; and (iii) provide cooperation and assistance as TRU may reasonably request to enable TRU to exercise its rights and perform its obligations under and in connection with this Agreement.

**4.9. Effect of Customer Failure or Delay.** TRU is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer’s delay in performing, or

failure to perform, any of its obligations under this Agreement, including failure of Customer's Systems (each, a "*Customer Failure*").

**4.10. Prohibited Uses.** Customer shall not, and shall not permit any other Person to, access or use the Bundled Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not:

4.10.1. Copy, modify or create derivative works or improvements of the Bundled Services or TRU Materials;

4.10.2. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Bundled Services or any TRU Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

4.10.3. Reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Bundled Services or any TRU Materials, in whole or in part;

4.10.4. Bypass or breach any security device or protection used by the Bundled Services or any TRU Materials or access or use the Bundled Services or TRU Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

4.10.5. Input, upload, transmit or otherwise provide to or through the Bundled Services or any TRU Materials, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

4.10.6. Damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Bundled Services or any TRU Materials, TRU Systems, or TRU's provision of the Bundled Services;

4.10.7. Remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Bundled Services or any TRU Materials, including any copy thereof;

4.10.8. Access or use the Bundled Services or any TRU Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;

4.10.9. Access or use the Bundled Services or any TRU Materials for purposes of competitive analysis of the Bundled Services, the development, provision or use of a competing software service or product or any other purpose that is to the TRU's detriment or commercial disadvantage; or

4.10.10. Otherwise access or use the Bundled Services or any TRU Materials beyond the scope of the authorization granted under Section 4.1.

4.10.11 Input, upload, transmit or otherwise provide to or through the Bundled Services or any TRU Materials, any CUI without prior written agreement between the Parties.

**4.11. Corrective Action and Notice.** In the event Customer becomes aware of any actual or threatened activity prohibited by Section 4.10, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Bundled Services and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify TRU of any such actual or threatened activity.

**4.12. Privacy Policy.** TRU will employ security measures in accordance with TRU's data privacy and security policy, as amended from time to time, a copy of which is available by written request.

**4.13. Intellectual Property Rights.**

4.13.1. TRU is and will remain the sole and exclusive owner of all elements of the Bundled Services and all TRU Materials, including all Intellectual Property Rights therein. Customer has no right, license or authorization with respect to any of the Bundled Services or TRU Materials (including Third Party Materials) whatsoever, except as expressly set forth in Section 3.1 and Section 4.1 (or the applicable third-party license). All other rights in and to the Bundled Services and TRU Materials (including Third Party Materials) are expressly reserved by TRU and the respective third-party licensors.

4.13.2. **Ideas and Suggestions.** TRU wishes to continually expand and improve the Bundled Services. TRU welcomes any ideas, suggestions, complaints, or feedback, related to the Bundled Services or for upgrades, updates, improvements, new features or functions thereto ("*Ideas*"). If Customer provides TRU with any Ideas, whether orally, in writing, or in any other way, Customer grants TRU a non-exclusive, worldwide, royalty-free, sub-licensable and non-revocable license to develop, make, reproduce, import, modify, make derivative works of, sell, and offer to sell Ideas as part of TRU's technology, products or services. Customer shall not knowingly provide TRU with any Ideas that are subject to third party intellectual property rights or that include or reveal any confidential information of any person.

4.13.3. Customer is and will remain the sole and exclusive owner of all right, title and interest in and to (a) all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 4.13; (b) all information, instructions and materials provided to TRU by or on behalf of Customer in connection with the Bundled Services; and (c) Customer's Systems.



4.13.4. **License to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data to TRU and its Subcontractors, as applicable, as is necessary or useful to perform the Bundled Services, to enforce this Agreement and to exercise TRU's rights hereunder, including but not limited to use of Customer Data in TRU's testing environments for debugging purposes. In addition, Customer hereby unconditionally and irrevocably grants to TRU, a license to use the Resultant Data in TRU's sole discretion.

4.13.5. **Consent to Disclose Information to Elcometer, Inc.:** TRU has integrated the Bundled Services with gauges provided by Elcometer. In order for Elcometer to better perform its services, it is necessary for TRU to disclose to Elcometer, Customer's name, each Authorized User's username, and the device identification number and/or serial number of each gauge ("**Elcometer Information**"). Customer hereby consents to TRU disclosure of the Elcometer Information to Elcometer.

4.14. **Suspension or Termination of Bundled Services.** TRU may, directly or indirectly, and by use of a TRU Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Bundled Services without incurring any resulting obligation or liability, if: (a) TRU receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires TRU to do so; or (b) TRU believes, in its discretion, that: (i) Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the Bundled Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with this Agreement; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Bundled Services; or (iii) this Agreement expires or is terminated.

## 5. UNIVERSAL TERMS.

### 5.1. Fees and Payment Terms.

5.1.1. **User Fee.** In consideration for the license to use the Licensed Application granted herein and the provision of the Bundled Services, Customer shall pay TRU the subscription fees per the terms set forth in the SOW ("**Subscription Fee**" or "**License Fee**"). All Subscription Fees paid under this Agreement shall be non-refundable. Unless otherwise set forth in the SOW, the Subscription Fee may be automatically increased by up to five percent (5%) at the commencement of each Renewal Term.

5.1.2. **Payment Terms.** Unless otherwise set forth in the SOW, each month TRU will provide Customer with a monthly invoice for the Subscription Fees from the previous calendar month, which shall either be debited from Customer's credit card on or around the first day of each month or be paid by Customer within thirty (30) days of the end of the previous calendar month. TRU may charge interest on any past due amount at the rate of one and one half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law. In addition, Customer shall

reimburse TRU for all costs incurred by TRU in collecting any past due amounts, including attorneys' fees, court costs and collection agency fees; and in the event any past due amount is not paid within thirty (30) days of notice thereof, TRU may suspend performance of the Bundled Services until all past due amounts have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

5.1.3. **Other Fees.** Unless specified in the SOW, Subscription Fees or License Fees do not include Configuration or Development. Fees for these services will be agreed to with the Customer explicitly under a corresponding SOW.

**5.2. Term.** Unless otherwise set forth in the SOW, the initial term of this Agreement commences as of the Effective Date and, unless terminated earlier in accordance with this Section 5.2 will continue in effect for a period of twelve (12) months (the "**Initial Term**"). This Agreement will automatically renew for additional successive twelve (12) month terms unless earlier terminated pursuant to Section 5.3 or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term ("**Renewal Term**") and together with the Initial Term, the "**Term**"). Each Renewal Term shall commence on the first day of the calendar month on which the Renewal Term commences. In the event a SOW extends beyond the Term of this Agreement, this Agreement shall automatically be extended for the duration of the SOW.

**5.3. Early Termination.** During the Term, the Parties may terminate this Agreement as follows:

5.3.1. In the event Customer or any of its Authorized Users breaches any provision of this Agreement, TRU may choose to immediately terminate this Agreement, with or without notice to Customer.

5.3.2. Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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.

**5.4. Effect of Expiration or Termination.**

5.4.1. **Revocation of License and Termination of Service.** Upon any expiration or termination of this Agreement, the license granted to Customer pursuant to Section 3.1, shall immediately terminate. In addition, upon termination, Customer's right to access the Software Services shall immediately cease and all rights granted herein shall immediately cease. TRU shall not be liable to Customer for any damage arising from or related to the termination of this Agreement in accordance with Section 5.3. Upon termination of this

Agreement TRU shall inactivate Customer's and its Authorized User's Access Credentials, terminating Customer's and its Authorized User's access to the Bundled Services.

5.4.2. **Payment of Subscription Fees.** Customer shall pay to TRU any Subscription Fees due to TRU up to the effective date of termination, including all previously-accrued but not yet paid Subscription Fees.

## 5.5. Confidentiality.

5.5.1. **Confidential Information.** In connection with this Agreement each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). Subject to Section 5.5.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, all TRU Materials are the Confidential Information of Provider.

5.5.2. **Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

5.5.3. **Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

5.5.3.1. Not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

5.5.3.2. Not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 5.5.3; and (iii) are bound by

confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 5.5.3;

5.5.3.3. Safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and

5.5.3.4. Ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

5.5.4. **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this Section 5.5; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

**5.6. Non-Solicitation.** During the Term and for one (1) year thereafter, the Parties shall not, and shall not assist any other Person to, directly or indirectly recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior twelve (12) months employed or engaged by the other Party or any Subcontractor and involved in any respect with the performance of this Agreement; provided, however, that this Section 5.6 shall not apply to general advertising not targeted specifically at the employees of the Parties or any Subcontractor.

## **5.7. Representations and Warranties.**

5.7.1. **TRU Representations, Warranties and Covenants.** TRU represents, warrants and covenants to Customer that TRU will perform the Bundled Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

5.7.2. **Customer Representations, Warranties and Covenants.** Customer represents, warrants and covenants to TRU that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by TRU and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights or any privacy or other rights of any third party or violate any applicable Law.

5.7.3. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.7.1, ALL BUNDLED SERVICES AND TRU MATERIALS ARE PROVIDED "AS IS" AND TRU HEREBY DISCLAIMS ALL

WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND TRU SPECIFICALLY DISCLAIMS 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. WITHOUT LIMITING THE FOREGOING, TRU MAKES NO WARRANTY OF ANY KIND THAT THE BUNDLED SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S 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. ALL THIRD PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

## **5.8. Limitations of Liability.**

5.8.1. **EXCLUSION OF DAMAGES.** IN NO EVENT WILL TRU BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE BUNDLED SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

5.8.2. **CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF TRU UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AVERAGE MONTHLY SUBSCRIPTION FEE. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **5.9. Indemnification.**

5.9.1. **TRU Indemnification.** TRU shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors and

permitted assigns (each, a “*Customer Indemnatee*”) from and against any and all Losses incurred by such Customer Indemnatee arising out of or relating to any claim, suit, action or proceeding (each, an “*Action*”) by a third party to the extent that such Losses arise from any allegation in such Action that Customer’s or an Authorized User’s use of the Bundled Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right.

**5.9.2. Customer Indemnification.** Customer shall indemnify, defend and hold harmless TRU and its Subcontractors, officers, directors, employees, agents, successors and assigns (each, a “*TRU Indemnatee*”) from and against any and all Losses incurred by such TRU Indemnatee in connection with any Action by a third party that/to the extent that such Losses arise out of or relate to any:

5.9.2.1. Customer Data, including any Processing of Customer Data by or on behalf of TRU in accordance with this Agreement;

5.9.2.2. Any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including TRU’s compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by TRU;

5.9.2.3. Allegations of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants or obligations under this Agreement; or

5.9.2.4. Gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

**5.9.3. THIS SECTION 5.9 SETS FORTH CUSTOMER’S SOLE REMEDIES AND TRU’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE BUNDLED SERVICES AND TRU MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.**

**5.10. Force Majeure.** In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such Party’s reasonable control (a “*Force Majeure Event*”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law, any action taken by a governmental

or public authority, or national or regional shortage of adequate power, telecommunications or transportations. Either Party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

**5.11. Electronic Notices.** Customer agrees to this Agreement electronically. Customer hereby authorizes TRU to provide Customer any information and notices regarding the Bundled Services (“*Notices*”) in electronic form. TRU may provide Notices to Customer (a) via email if Customer has provided TRU with a valid email address; or (b) by posting the Notice on a web or mobile page designated by TRU for this purpose. The delivery of any Notice is effective when sent or posted by TRU, regardless of whether Customer reads the Notice or actually receives the email.

**5.12. Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the Bundled Services and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

**5.13. Waiver.** No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not alternative.

**5.14. Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by their nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.2, Section 4.10, and all of Section 5.

**5.15. No Assignment; Binding Effect.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Party without the prior written consent of the other Party and any attempt to do so will be void; provided, however, that TRU may, upon notice to the Customer, but without being obligated to obtain the Customer’s consent, assign this Agreement or any of its rights, interests or obligations hereunder to an affiliate or successor of TRU, including a purchaser of all or substantially all of the assets of TRU. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties hereto and their respective successors and assigns.

**5.16. Severability.** Any term or provision of this Agreement that is invalid, illegal or unenforceable in any situation in any jurisdiction shall not affect the validity, legality or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If such invalidity, illegality or unenforceability is caused by length of time or size of area, or both, the otherwise invalid provision shall be, without further action by the Parties, automatically amended to such reduced period or area as would cure such invalidity, illegality or unenforceability; provided, however, that such amendment shall apply only with respect to the operation of such provision in the particular jurisdiction in which such determinations is made.

**5.17. Attorneys' Fees and Costs.** In the event that TRU prevails in any legal proceeding brought for breach of this Agreement by either Party, TRU shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

**5.18. Choice of Forum and Governing Law.** In light of the TRU's substantial contacts with the State of Missouri, the Parties' interests in ensuring that disputes regarding the interpretation, validity and enforceability of this Agreement are resolved on a uniform basis, and TRU's execution of, and the making of, this Agreement in Missouri, the Parties agree that: (i) any litigation involving any noncompliance with or breach of the Agreement, or regarding the interpretation, validity and/or enforceability of the Agreement, shall be filed and conducted exclusively in a court of competent jurisdiction in or for St. Louis County, Missouri; and (ii) the Agreement shall be interpreted in accordance with and governed by the laws of the State of Missouri, without regard for any conflict of law principles.

**5.19. Interpretation.** The Parties hereto agree that this Agreement is the product of negotiation between sophisticated Parties and individuals, all of whom were represented by, or had an opportunity to be represented by legal counsel, and each of whom had an opportunity to participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any Party hereto but rather shall be given a fair and reasonable construction.

**5.20 Changes to Agreement.** Except to the extent that TRU is expressly precluded by law, TRU reserves the right to make changes to this Agreement either to reflect changes in business practices, or to reflect changes in or required by law, by providing Customer with reasonable Notice of the change. If Customer continues to use the Bundled Services for more than thirty (30) days after Notice of the change has been given, Customer shall be deemed to have accepted such change.