

## Tech Electronics, Inc.

### Hosted Cloud Services General Terms and Conditions

The following terms and conditions have been incorporated into and are an integral part of any Quote provided by Tech Electronics, Inc. or one of its affiliates (“Tech Electronics”) for hosted cloud services to a Customer (collectively with the Quote, the “Agreement”).

#### 1. SERVICES, TERM AND USE

a. Services and Term. The services described in the Quote (“Services”) are provided and billed to Customer by Tech Electronics on a monthly (30-day) basis for three years (“Initial Term”) and minimum monthly recurring fee (“Monthly Recurring Fee”), each as detailed on the Quote. Unless Tech Electronics receives written notice of termination of Services from Customer sixty (60) days prior to the end of the Initial Term or a Renewal Term, the Services shall automatically renew at the same Monthly Recurring Fee for one year for the Services detailed on the original Service Order (each a “Renewal Term”, together with the Initial Term, the “Term”).

b. Acceptance. Customer’s acceptance of the Services, and Hardware (if applicable), is deemed to occur on the earlier of (i) first use of the Services and/or Hardware, as applicable, by Customer or (ii) seven (7) days following delivery of the Services and/or Hardware, as applicable, to Customer.

c. Use. Customer and those Customer employees, consultants, contractors, or agents who are authorized by Customer to use the Service in support of Customer’s operations and who have been given user logins and passwords by Customer (“Users”) may use the Service and associated materials provided to Customer in conjunction with the Services, including any and all training, marketing, and demonstration materials, diagrams, test plans, and work flows (“Materials”) solely for Customer’s own internal business operations and not for any form of redistribution or resale. Customer will comply, and will ensure that its Users comply, with all applicable local, state, national international and foreign laws, treaties, regulations and conventions in connection with use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer’s Content, Customer’s Applications and Third Party Content, for any purpose that may (i) menace or harass any person or cause damage or injury to any person or property, (ii) involve the publication of any material that is false, defamatory, harassing or obscene, (iii) violate privacy rights or promote bigotry, racism, hatred or harm, (iv) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters, (v) constitute an infringement of intellectual property or other proprietary rights, or (vi) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Tech Electronics under this Agreement, Tech Electronics reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the “Acceptable Use Policy”), including the removal or disablement of access to such material. Tech Electronics shall have no liability to Customer in the event that Tech Electronics takes such action. Customer shall have sole responsibility for the accuracy, quality, integrity,

legality, reliability, appropriateness and ownership of all of Customer's Content and Customer's Applications. Customer agrees to defend and indemnify Tech Electronics against any claim arising out of a violation of Customer's obligations under this section. Customer shall, where required by law, inform third parties of the collection, storage or processing of any communications, personal information or other information, to ensure that any required third parties have opted in to such collection, storage or processing, and to otherwise comply with all applicable data protection and privacy law concerning the collection, storage and processing of personal information concerning such third parties. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By using the Services, Customer accepts responsibility for the confidentiality and timely and proper termination of user records in Customer's local (intranet) identity infrastructure or on its local computers. Tech Electronics is not responsible for any harm caused by Customer's Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer's local identity management infrastructure or its local computers. Customer is responsible for all activities that occur under its and its Users' usernames, passwords or accounts or as a result of Customer's or its Users' access to the Services, and agree to notify Tech Electronics immediately of any unauthorized use. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

d. Ownership. Subject to the limited rights expressly granted hereunder, Tech Electronics or its suppliers reserves all right, title and interest in and to (i) the Services; (ii) any and all Materials and Confidential Information provided or disclosed to Customer during the term of this Agreement; (iii) any and all derivatives, enhancements or improvements thereof; and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall not (i) copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means or create derivative works based on the Services or, except as expressly authorized herein, the Materials; (ii) alter, remove, obscure, frame or mirror Tech Electronics' or its suppliers' branding, proprietary notices or any content forming part of the Service or the Materials; (iii) disassemble, reverse compile, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Service or the Materials (as applicable to such Materials); (iv) modify, incorporate into or with other software or material, or create a derivative work of any part of the Service or the Materials; (v) attempt to circumvent or circumvent any license, timing or use restrictions that are built into the Services or the Materials; or (vi) access the Services or the Materials in order to (A) benchmark against or build a competitive product or service, or (B) copy any ideas, features, functions, or graphics of the Services or the Materials.

e. Maintenance. Customer is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, as such Patches are generally released by Tech Electronics. Tech Electronics is not responsible for performance or security issues encountered with the Services that result from

Customer's failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Tech Electronics will coordinate with Customer the scheduling of application of Patches, where possible, based on Tech Electronics' next available standard maintenance window.

f. Changes. Tech Electronics may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Availability and other specifications are subject to change at Tech Electronics' discretion; however, Tech Electronics changes to the Service Availability will not result in a material reduction in the level of performance, security or availability of the applicable Services provided to Customer for the duration of the Term.

## 2. PAYMENT AND BILLING

a. Fees. Customer agrees to pay to Tech Electronics the Monthly Recurring Fee and all associated charges for Services detailed on a Quote, as well as applicable variable usage and non-recurring charges incurred by the Customer in the billing month.

b. Credit Worthiness. Subject to credit review, Customer may be required, upon request from Tech Electronics, to make an advance payment or deposit to Tech Electronics for the Services.

c. Taxes. Customer shall pay any applicable taxes and governmentally imposed fees arising from its purchase under this Agreement (excluding taxes on Tech Electronics' income), or provide a tax exemption certificate prior to invoicing. Customer acknowledges and agrees that in the event that any governmental agency revises or imposes taxes, of any kind, on any service provided hereunder, that Tech Electronics reserves the right to pass on all such taxes without notice to Customer.

## 3. SERVICE AVAILABILITY

a. Tech Electronics' Service Availability commitment for a given calendar month is 99.0%.

"Service Availability" is calculated per month as follows:

$$\left( \frac{\text{Total} - \text{Unplanned Outage} - \text{Planned Maintenance}}{\text{Total} - \text{Planned Maintenance}} \right) \times 100 \geq 99.0\%$$

Definitions:

- "**Total**" is the total minutes in the applicable calendar month
- "**Unplanned Outage**" is total minutes not Available in the applicable calendar month outside of the Planned Maintenance window
- "**Planned Maintenance**" is total minutes of planned maintenance in the applicable calendar month.

- “**Available**” means the Services are available and operable for access and use by Customer and Authorized Parties over the Internet in material accordance with the Agreement.

b. Currently, Planned Maintenance is four (4) hours for weekly maintenance, plus four (4) hours for monthly maintenance, plus four (4) hours for quarterly maintenance. Tech Electronics’ current weekly maintenance begins at 2:00 am (Central) on Saturday; monthly maintenance begins at 6:00 am (Central) on a Saturday; and quarterly maintenance begins at 10:00 am (Central) on a Saturday. All times are subject to change upon reasonable notice, to be delivered to Customer in writing not less than seventy-two (72) hours prior to such change.

c. If actual maintenance exceeds the time allotted for Planned Maintenance it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month.

d. The measurement point for Service Availability is the availability of the Service at the Tech Electronics production data center’s Internet connection points. Customer may request an availability report describing the Availability and other performance of the Services during such calendar month and the calendar year-to-date as compared to the Service Availability Requirement and the Agreement not more than once per month via Tech Electronics’ customer center. The report shall be in electronic or such other form as Customer may approve in writing and shall include, at a minimum: (a) the actual performance of the Services relative to the Availability Requirement and the Agreement; and (b) if Service performance has failed in any respect to meet or exceed the Service Availability Requirement or Agreement during the reporting period, a description in sufficient detail to inform Customer of the cause of such failure and the corrective actions Tech Electronics has taken and will take to ensure that the Service Availability Requirement and Agreement requirements are fully met.

e. In the event of a failure by Tech Electronics to meet the foregoing Service Availability commitment in any calendar month, as Customer’s sole and exclusive remedy, Tech Electronics shall provide a service credit of 5% of the monthly fee for the month of disruption to be deducted from future invoices to Customer.

#### **4. TERMINATION**

a. By Tech Electronics. Tech Electronics may terminate, discontinue or suspend Services to a Customer or a User, or cancel an application for Services without incurring any liability in the event of: (i) non-payment of amounts due by Customer for more than thirty-five (35) days following the monthly service period to which they relate if such amounts remain unpaid after ten (10) days’ notice of such from Tech Electronics; (ii) breach of this Agreement; (iii) a violation by Customer of any law, rule or regulation of any governmental authority having jurisdiction over the Services; (iv) a violation by Customer of any Tech Electronics policy; (v) hacking, cracking, phishing, denial-of-service attacks, infection by computer viruses, worms or Trojan horses, or other activities that threaten computer or data security by Customer or a User; (vi) activities that Tech Electronics or its suppliers reasonably determine are defamatory, illegal, or offensive or are otherwise injurious or detrimental to the Service, to the supplier of the Service or to another customer; (vii) prohibition against Tech Electronics from furnishing

Services by order of a court or other governmental authority having jurisdiction; and (viii) the provision of false or misleading credit information by Customer. In the event Tech Electronics elects to terminate this Agreement during the Initial Term, subject to this section, Customer shall immediately return to Tech Electronics all rental Hardware.

b. By Customer. In the event Customer terminates this Agreement prior to the end of the current Term, Customer will pay Tech Electronics, immediately upon presentation of all outstanding invoices, an amount equal to the Monthly Recurring Fee, multiplied by the number of months remaining in the current Term. Customer shall also promptly return to Tech Electronics all rental Hardware in its possession, in accordance with the directions provided by Tech Electronics.

## **5. CONFIDENTIALITY**

By virtue of this Agreement, the parties may have access to information that is confidential to one another. The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. The parties each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Tech Electronics will hold Customer's Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. The parties disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Tech Electronics will protect the confidentiality of Customer's Content or Customer's Applications residing in the Services Environment in accordance with the Tech Electronics security practices as they may be in effect from time to time. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## **6. WARRANTIES.**

a. Tech Electronics warrants that it will perform the Services in all material respects as described in the Quote and the Agreement. If the Services provided to Customer are not performed as warranted, Customer must promptly provide written notice to Tech Electronics that describes the deficiency in the Services.

b. TECH ELECTRONICS DOES NOT GUARANTEE THAT (i) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TECH ELECTRONICS WILL CORRECT ALL SERVICES ERRORS, (ii) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR CUSTOMER'S APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY TECH ELECTRONICS, AND (iii) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT TECH ELECTRONICS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND

THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER CONTENT, CUSTOMER'S APPLICATIONS OR THIRD PARTY CONTENT.

c. EXCEPT FOR CUSTOMER'S REMEDY WITH RESPECT TO SERVICE AVAILABILITY, FOR ANY OTHER BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND TECH ELECTRONICS' ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TECH ELECTRONICS CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND TECH ELECTRONICS WILL REFUND TO CUSTOMER ANY FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO TECH ELECTRONICS FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

d. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF TECH ELECTRONICS HEREUNDER OR ARISING IN CONNECTION WITH THE PROVISION OF ANY SERVICES (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), WHETHER BASED UPON OR ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, STRICT LIABILITY, CONTRACT, TORT, WARRANTY, MISREPRESENTATION, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO TECH ELECTRONICS FOR SUCH SERVICES, NOT TO EXCEED ONE YEAR'S MONTHLY RECURRING FEE, OR \$10,000, WHICHEVER IS GREATER. THE PROVISIONS OF THIS SECTION SHALL APPLY IN THE EVENT OF LOSS OR DAMAGE, IRRESPECTIVE OF THE ORIGIN, RESULTING DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS SET FORTH BY THE TERMS OF THIS AGREEMENT OR FROM THE ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OF TECH ELECTRONICS' AGENTS OR EMPLOYEES. IN NO EVENT SHALL TECH ELECTRONICS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR ANY PLANT OR FACILITIES, LOSS OF PROFIT, OR LOSS OF PRODUCTION, REGARDLESS OF WHETHER THE CLAIM FOR SUCH CONSEQUENTIAL DAMAGES BE BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OR OTHERWISE. TECH ELECTRONICS SHALL NOT BE

LIABLE TO INDEMNIFY CUSTOMER AGAINST ANY CLAIMS MADE AGAINST CUSTOMER FOR SUCH CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD TECH ELECTRONICS HARMLESS FOR ALL CLAIMS (INCLUDING CLAIMS FOR INDEMNITY) FOR ANY SUCH CONSEQUENTIAL DAMAGES BROUGHT AGAINST TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**8. CUSTOMER INDEMNITY.** CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD TECH ELECTRONICS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND LAWSUITS (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY FEES, WHETHER THESE CLAIMS AND LAWSUITS ARE BASED UPON ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, INDEMNIFICATION, CONTRIBUTION OR STRICT OR PRODUCT LIABILITY, OR ANY OTHER TYPE OF CLAIM OR CONDUCT ON THE PART OF TECH ELECTRONICS, ITS AGENTS OR EMPLOYEES, EXCEPT TO THE EXTENT SUCH CLAIMS, DEMANDS OR LAWSUITS OCCUR WHILE AN EMPLOYEE OR AGENT OF TECH ELECTRONICS IS ON CUSTOMER'S PREMISES OR REMOTELY ACCESSING CUSTOMER'S SYSTEM AND WHICH DAMAGES, EXPENSES AND OTHER LIABILITY ARE SOLELY AND DIRECTLY CAUSED BY THE ACTS OF SAID EMPLOYEE OR AGENT. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**9. WAIVER OF SUBROGATION.** CUSTOMER DOES HEREBY FOR ITSELF AND ANY PARTIES CLAIMING UNDER IT, RELEASE AND DISCHARGE TECH ELECTRONICS FROM AND AGAINST ALL HAZARDS COVERED BY CUSTOMER'S INSURANCE, AND ALL CLAIMS AGAINST TECH ELECTRONICS ARISING OUT OF SUCH HAZARDS, INCLUDING ANY RIGHT OF SUBROGATION BY CUSTOMER'S INSURANCE CARRIER, ARE HEREBY WAIVED BY CUSTOMER, AND CUSTOMER SHALL PROMPTLY SO NOTIFY ITS INSURANCE CARRIER. THIS WAIVER OF SUBROGATION EXTENDS TO ANY ALLEGED NEGLIGENCE GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT OR RECKLESS CONDUCT BY TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

#### **10. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES**

a. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other Web sites, platforms, content, products, services, and information of third parties. Tech Electronics does not control and is not responsible for such Web sites or platforms or any such content, products, services and information accessible from or provided through the Services, and Customer bears all risks associated with access to and use of such Web sites and third party content, products, services and information.

b. Any Third Party Content made accessible by Tech Electronics is provided on an “as-is” and “as available” basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that Tech Electronics is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Tech Electronics reserves the right to take remedial action if any such content violates applicable restrictions under Section 1(c) of this Agreement, including the removal of, or disablement of access to, such content. Tech Electronics disclaims all liabilities arising from or related to Third Party Content.

c. Customer acknowledges that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Term, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. Tech Electronics may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Tech Electronics in its sole discretion, Tech Electronics may cease providing access to the affected Third Party Content or Third Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Term does not affect Customer’s obligations under this Agreement or the applicable Quote, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

d. Any Third Party Content that Customer stores in its Services Environment will count towards any storage or other allotments applicable to the Services that Customer ordered.

## **11. SERVICES TOOLS AND ANCILLARY SOFTWARE**

a. Tech Electronics may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer’s service requests. The Tools will not collect or store any of Customer’s Content or Customer’s Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer’s Content and Customer’s Applications) may also be used to assist in managing Tech Electronics’ product and service portfolio, to help Tech Electronics address deficiencies in its product and service offerings, and for license and Services management.

b. Tech Electronics may provide Customer with on-line access to download certain Ancillary Software for use with the Services. If Tech Electronics licenses Ancillary Software to Customer and does not specify separate terms for such Ancillary Software, then, subject to Customer’s payment obligations, (i) Customer has the non-exclusive, non-assignable, worldwide limited right to use such Ancillary Software solely to facilitate Customer’s access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Customer’s order, including the Services, (ii) Tech Electronics will maintain such Ancillary Software as part of the Services, and (iii) Customer’s right to use such Ancillary Software will terminate upon the earlier of Tech Electronics’ notice or the end of the Services associated with

the Ancillary Programs. If Ancillary Software is licensed to Customer under separate third party license terms, then Customer's use of such software is subject solely to such separate terms.

**12. FORCE MAJEURE.** Except with respect to Customer's payment obligations for Services rendered prior to the commencement of a force majeure event, notwithstanding any other provision of the Agreement, neither party shall be liable to the other party for any delay or failure in performance of the Agreement to the extent such delay or failure is caused by fire; flood; explosion; accident; war; strike; embargo; governmental requirement; civil unrest; civil or military authority; Act of God; inability to secure materials or labor; electrical, internet, or telecommunication outage that is not caused by the obligated party; or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the force majeure ceases.

**13. PUBLICITY.** Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except Customer agrees that Tech Electronics may profile or disclose Customer as a Tech Electronics customer in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as Tech Electronics may deem appropriate.

**14. GENERAL.**

a. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written. If there is any conflict between this Agreement and Customer's purchase order, or any other document or any oral agreements, this Agreement will govern. No conditions in the acceptance by Customer and no subsequent agreements or communications in any way modifying the provisions of this Agreement shall be binding unless signed by an authorized representative of Tech Electronics.

b. Waiver. No waiver of any of the terms and conditions contained herein shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such condition.

c. Severability. In the event any of the terms and conditions of this Agreement are declared invalid or inoperative, all of the remaining terms and conditions shall remain in full force and effect.

d. Governing Law. This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

e. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM IN RESPECT OF THIS AGREEMENT OR TRANSACTIONS RELATED HERETO, IN EACH

CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

f. Notices. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand-delivery or by delivery service, upon receipt thereof; (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid; or (iii) if by electronic mail, upon receipt thereof. All notices shall be addressed to the parties at the addresses specified in the Quote or at such other addresses as either party may in the future specify in writing to the other.

**15. DEFINITIONS.** For purposes of this Agreement, the following capitalized terms have the following meanings:

a. “Ancillary Software” means any software agent or tool that Tech Electronics makes available to Customer for download for purposes of facilitating Customer’s access to, operation of, and/or use with, the Services Environment.

b. “Confidential Information” means (i) the terms and pricing under this Agreement, (ii) Customer’s Content (including any personal data) and Customer’s Applications residing in the Services Environment, (iii) information related to Tech Electronics’ suppliers, customers and financial information and data; (iv) the Services and associated end user documentation, which shall include any and all associated intellectual property rights of Tech Electronics and its suppliers; and (v) any other information which is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the receiving party, using reasonable business judgment, to be confidential. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

c. “Customer’s Applications” means all software programs, including any source code for such programs, that Customer or Customer’s Users provide and load onto, or create using, any Tech Electronics Services. Services under this Agreement, including Tech Electronics Programs and Services Environments, Tech Electronics intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Customer’s Applications.”

d. “Customer’s Content” means all text, files, images, graphics, illustrations, information, data (including any personal data), audio, video, photographs and other content and material (other than Customer’s Applications), in any format, provided by Customer or on behalf of Customer’s Users that reside in, or run on or through, the Services Environment.

e. “Hardware” means the computer hardware purchased or leased by Customer as detailed on a quote from Tech Electronics.

f. “Services Environment” refers to the combination of hardware and software components owned, licensed or managed by Tech Electronics to which Tech Electronics grants Customer and Customer’s Users access as part of the Services which Customer has ordered. As applicable and subject to the terms of this Agreement and Customer’s Quote, Tech Electronics Programs, Third Party Content, Customer’s Content and Customer’s Applications may be hosted in the Services Environment.

g. “Tech Electronics Programs” refers to the software products owned or licensed by Tech Electronics to which Tech Electronics grants Customer access as part of the Services, including Program Documentation, and any program updates provided as part of the Cloud Services.

h. “Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Tech Electronics and made available to Customer through, within, or in conjunction with Customer’s use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, data libraries and dictionaries, and marketing data.