

## MASTER SOFTWARE SERVICES AGREEMENT

This Master Software Services Agreement (the “Agreement”) is between CapExpert Company, with offices at 3513 Brighton Blvd Suite 429, Denver, CO 80216 (“CapExpert”) and Customer.

BY ACCEPTING THIS AGREEMENT BY CLICKING A BOX OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THE AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement is effective as of the date of Customer’s acceptance of this Agreement (the “Effective Date”).

### 1. DEFINITIONS

1.1. “Authorized Users” means the users that Customer authorizes and designates to use the Software and Services.

1.2. “CapExpert Content” means any content that CapExpert makes available through the Software and CapExpert Platform, including but not limited to, all policies, statistics, data, information, graphics, text, images, icons, and other content as well as the arrangements thereof.

1.3. “CapExpert Insights” means the content CapExpert creates for Customer (only if Customer is a facility) and that analyzes and provides insights regarding Customer’s medical equipment.

1.4. “CapExpert Platform” means a hosting site CapExpert or a contractor controls and through which the Customer accesses and uses through the use of the internet and at a URL CapExpert provides.

1.5. “Confidential Information” means certain information that the disclosing party considers to be confidential, proprietary, or trade secret information, including all information the disclosing party marks as confidential or which, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential.

1.6. “Customer Data” means all information and data Customer uploads or provides through the Software and Services or otherwise provides to CapExpert.

1.7. “Equipment” means any devices or goods Customer sells or purchases through the CapExpert Platform.

1.8. “Equipment Services” means any services Customer sell or purchases with any Equipment through the CapExpert Platform.

1.9. “Order Form” means a written statement executed by both parties defining the Software and Services provided to Customer and additional terms and conditions for the Software and Services.

1.10. “Scheduled Downtime” means scheduled system backup or other ongoing maintenance as required and scheduled in advance.

1.11. “Services” means the services CapExpert provides Customer with the Software.

1.12. “Software” means proprietary software for healthcare facilities to manage equipment and allow facilities and equipment providers (vendors) to sell and buy hospital equipment.

## **2. SOFTWARE SERVICES**

2.1. Software as a Service. Subject to the terms and conditions of this Agreement, CapExpert grants Customer a nontransferable, nonexclusive, non-sublicensable, and limited right and license to access and use the Software and Services. All access to the Software and Services shall be limited to Authorized Users designated by Customer. Customer agrees to access and use the Software and Services only as authorized in this Agreement and only for internal business purposes.

2.2. Hosting of Software. CapExpert will make the Software and Services available to Customer through the CapExpert Platform, and Customer agrees to use the Software and Services only through the CapExpert Platform as permitted by this Agreement. The Software and Services shall not be available in any tangible form of media and shall not be installed on any Customer equipment or otherwise controlled by Customer. Customer shall have no right to modify, alter, or otherwise control any component of the Software, Services, or CapExpert Platform. Customer acknowledges and agrees that it is responsible for certain system requirements as provided by CapExpert.

2.3. Accounts. All access to the Software and Services shall be limited to the Authorized Users having an assigned username and password. Authorized Users are responsible for maintaining the confidentiality of their password and account and for any activity under their account. Authorized Users agree to immediately notify CapExpert of any suspected unauthorized use of their account or any other suspected breach of account security. Authorized Users may not transfer or assign their account to a third party without prior written consent from CapExpert. CapExpert may require additional information from the Authorized User regarding the requested transfer or assignment.

2.4. Use of Software. Customer and its Authorized Users agree to access and use the Software and Services: (a) only as authorized in this Agreement and the applicable written Order Form; (b) only for internal business purposes; and (c) only through the CapExpert Platform as

permitted by this Agreement. Customer and its Authorized Users agree to not (i) use the Software for the benefit of any third parties, (ii) use the Software in any application or situation where the Software's failure could lead to death, serious bodily injury, or severe physical or environmental damage, (iii) directly or indirectly sublicense, assign, transfer, sell, rent, lend, lease, or otherwise provide the Software or any portion thereof to any third party, (iv) translate, modify, reverse engineer, disassemble, decompile, or make any attempt to ascertain, derive, or obtain the source code for the Software, (v) remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Software, or (vi) test the vulnerability of the CapExpert Platform. Customer shall inform each Authorized User of its obligations under this Agreement and shall ensure that each Authorized User complies with the terms of this Agreement at all times. Customer shall immediately notify CapExpert if Customer becomes aware of any violation of the terms of this Agreement. Customer is solely responsible for any use of the CapExpert Platform by Authorized Users and shall be liable for any breach of this Agreement by any Authorized User.

2.5. Modification of Software. CapExpert reserves the right to make changes to the Software that (a) are necessary or appropriate to the continued orderly function of the Software, including, without limitation, implementing bug-fixes, patches, or Software updates, (b) are reasonably required in order to comply with applicable law or regulation, (c) extend or enhance the functionalities or architecture of the Software, or (d) are necessary to correct any actual infringement upon a patent or copyright of the United States. In the event CapExpert reasonably believes in its sole discretion that any such modification could adversely affect Customer, CapExpert agrees to notify Customer of such planned modification in advance.

2.6. Software Upgrades. CapExpert may provide upgrades to and new releases of the Software which are generally made available to its other clients, including patches and/or fixes, as they are made available, at no charge during the Term (as defined herein). Customer shall be solely responsible for upgrading Customer's hardware and related software, as a result of Software maintenance, Software upgrades, or new releases in order to allow continued access to and use of the Software.

2.7. Software Support. CapExpert shall provide Software support to Customer during the Term. Software support shall be available as defined in the applicable Order Form. Support shall include assistance with Customer's inability to access the Software due to the failure of CapExpert or its contractor's equipment. The scope of the Software support does not include (a) editing or modification of the Software, (b) diagnosis or correction of problems with Customer's operating software, equipment, or connection to the internet, or (c) correction of errors or issues not caused by the Software or Services as CapExpert determines.

2.8. Security. CapExpert shall use commercially reasonable security technologies in providing the Software and Customer shall comply with any applicable CapExpert security guidelines and procedures made known to Customer through the Software or otherwise.

### **3. LISTINGS AND PURCHASES**

3.1. Equipment RFPs. The CapExpert Platform allows Customer to purchase and/or sell Equipment and Equipment Services. Customer may submit a request for proposal (“RFP”) to buy or sell Equipment or Equipment Services on the CapExpert Platform. Customer is responsible for ensuring that all RFPs they submit to buy or sell Equipment are accurate and correct.

3.2. Right to Sell. Customer agrees to only sell and provide Equipment and Equipment Services that it has all rights necessary to sell or provide. Customer acknowledges and agrees that it owns and has the right to list, any and all Equipment listed for sale on the CapExpert Platform.

3.3. Equipment Information. Customer agrees to describe all Equipment truthfully, accurately, and completely. Customer acknowledges that any listings of Equipment or any related Equipment data, including purchase price, date, and service contracts previously inventoried by CapExpert will contain information collected by CapExpert during the onboarding process, whether such inventory is conducted in person or collected via a CapExpert application.

3.4. Third-Party Agreements. Customer will connect directly with any clients or vendors on the CapExpert Platform. Once Customer agrees with a client or vendor for the purchase or sale of Equipment or Equipment Services, Customer may enter into a legally binding agreement with the client or vendor (“Third-Party Agreement”). Any Third-Party Agreement shall be between Customer and the client or vendor. CapExpert may provide guidance and benchmarking services to Customer, but is not responsible for the terms of any Third-Party Agreement. Customer agrees that it is responsible for the negotiation and execution of all Third-Party Agreements. CapExpert is not a party to any Third-Party Agreement and CapExpert shall have no responsibility or liability for any actions or inactions of either party under any Third-Party Agreement, including any liability for payment obligations or any indemnification or warranty obligations created by or through any Third-Party Agreement.

3.5. Listing Conditions. Customer assumes full responsibility for the accuracy and content of any Equipment or Equipment Service listings it creates. Customer agrees that the appearance or placement of listings in search and browser results will depend on a variety of factors, including but not limited to: (a) affiliation with the seller, location, search query, and history; (b) Equipment location, listing price, and shipping cost, terms of service, and relevance to the user query and/or preferences; and (c) number of listings matching the user query. CapExpert has sole discretion regarding the placement of any listings on the CapExpert Platform. Customer agrees not to sell and shall promptly remove all listings for any Equipment recalled by a manufacturer or governmental agency if the sale of the Equipment is prohibited by law or regulation. CapExpert has no responsibility or liability for the condition, safety, or performance of any Equipment or Equipment Services that Customer buys, lists, or sells on the CapExpert Platform, including any Equipment subject to a recall. Customer is solely responsible for any non-conformity in or defect in, or compliance with any public or private recall of, or any Equipment Customer lists on the CapExpert Platform. CapExpert may request to publish or promote Customer’s listings, including related content, in any format and through any channel, including to vendor partners.

3.6. Prohibited Equipment. CapExpert prohibits the listing or sale of any Equipment or Equipment Services that are illegal to sell or violates the rights of third parties. If CapExpert determines that the sale of any Equipment or Equipment Services is prohibited, CapExpert may,

in its sole discretion, remove the listing. If any such Equipment is returned to Customer, Customer agrees not to attempt to relist or resell the Equipment through the CapExpert Platform.

3.7. Shipping. Customer and the client or vendor that Customer enters into a Third-Party Agreement with, are solely responsible for shipping fees. CapExpert will not be responsible for any shipping fees.

3.8. Purchase Obligations. If Customer is a purchaser of any Equipment or Equipment Services on the CapExpert Platform, Customer is solely responsible for reading and reviewing all listings before making an offer for, or purchasing such Equipment or Equipment Services. If Customer purchases any Equipment or Equipment Services on the CapExpert Platform, certain information regarding the Equipment or Equipment Services may be automatically populated to the CapExpert Platform following completion of the transaction.

3.9. Legal Compliance. CapExpert does not independently verify any Equipment or Equipment Services purchased or sold on the CapExpert Platform and does not verify Customer or any client or vendor's compliance with applicable laws. Customer is solely responsible for determining whether the sale or purchase of Equipment or Equipment Services on the CapExpert Platform complies with applicable law. CapExpert is not a participant in, and provide no warranty for, any transaction between Customer and any client or vendor. CapExpert does not take title of any Equipment. All Equipment or Equipment Services purchased on the CapExpert Platform is purchased on an "as is" basis, unless otherwise set forth in a Third-Party Agreement. CapExpert is not an auctioneer, consignee, or a shipping carrier. CapExpert does not make any representations or warranties regarding the timing of delivery or condition of any Equipment or Equipment Services purchased through the CapExpert Platform.

## **4. PAYMENT**

4.1. Subscription Fee. Customer agrees to pay CapExpert the subscription fee for the Software and Services as provided in the applicable Order Form ("Subscription Fees"). If Customer fails to make any payment when due, then, in addition to all other remedies that may be available, and such failure continues for ten (10) days following written notice, then CapExpert may: (a) charge interest on the past due amount at the rate of one percent (1%) per month calculated daily and compounded monthly, or if lower, the highest rate permitted under applicable law; and (b) suspend or disable Customer's access to the Software and Services until all past due amounts and interest have been paid. Customer shall reimburse CapExpert for all reasonable costs incurred by CapExpert in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.

4.2. Taxes. The prices of the Software and Services provided under this Agreement are quoted exclusive of all state, local, and other sales, use, value-added, withholding, excise, or other taxes or charges. In the event such taxes and/or similar charges becomes applicable to the Software and Services, Customer shall be responsible for paying all applicable taxes and charges.

## **5. TERM**

5.1. Term. This Agreement shall commence on the Effective Date and shall continue until Customer no longer has a currently active Order Form.

5.2. Termination. Either party may terminate this Agreement for cause upon a material breach of this Agreement by the other party if such material breach remains uncured for thirty (30) days after the non-breaching party provides written notice to the breaching party. Upon termination of the Agreement, Customer shall pay to CapExpert all undisputed Subscription Fees.

5.3. Effect of Termination. Upon termination of this Agreement or a Order Form for any reason, Customer's access to and use of the Software shall cease.

## **6. AVAILABILITY OF SOFTWARE**

6.1. Availability. During the Term, CapExpert will use commercially reasonable efforts to make the Software continuously available for Customer's use on the CapExpert Platform via the internet excluding: (a) Scheduled Downtime; (b) any unavailability caused by circumstances beyond CapExpert's reasonable control, including without limitation the failure of any network component associated with the CapExpert Platform; and (c) any force majeure event as described in Section 14.1.

6.2. Downtime. CapExpert will provide Customer with not less than three (3) days advance notice of any Scheduled Downtime. Notifications of Scheduled Downtime shall be delivered to Customer's contact information provided in the Notice section below. In addition to Scheduled Downtime, Customer understands and agrees that there may be instances where CapExpert needs to interrupt access to the Software without notice in order to protect the integrity of the Software or Customer Data due to security issues, virus attacks, spam issues, or other unforeseen circumstances.

6.3. Software Not Accessible. CapExpert shall not be responsible for the Software not being available due to any cause beyond its reasonable control, including without limitation (a) configuration of Customer's firewall, antivirus software or hardware, (b) Customer's connection to the internet or CapExpert Platform, (c) internet congestion, (d) software or hardware not provided or controlled by CapExpert, including software or hardware provided by third party providers, or (e) any cause specified in Section 14.1 hereof.

## **7. OWNERSHIP AND INTELLECTUAL PROPERTY**

7.1. Ownership of Software and Services. Except as expressly provided herein, CapExpert shall own all right, title and interest in and to all intellectual property, including any patent, copyright, trademark, trade secret and similar rights, in the Software and Services, any upgrades, modifications and improvements thereof or any other deliverable or work product arising out of or in connection with performance of the Services by CapExpert pursuant to this Agreement. The parties acknowledge that performance hereunder may result in the development by CapExpert of new concepts, software, methods, techniques, processes, adaptations and ideas, in addition to CapExpert's prior technology, which may be embodied in CapExpert's products and

services, including without limitation, in the Software and Services, all of which shall be owned by CapExpert pursuant to this Section.

7.2. CapExpert Content. CapExpert provides CapExpert Content through the CapExpert Platform and Software. CapExpert grants Customer a revocable, limited, non-exclusive, and non-transferable license to access, view, and download the CapExpert Content in accordance with this Agreement. Except for the foregoing license and as otherwise required or limited by applicable law, Customer shall have no other rights to the CapExpert Content and may not modify, edit, copy, reproduce, print, create derivative works of, alter, enhance, or in any way exploit in any manner or for any purpose the CapExpert Content.

7.3. CapExpert Insights. CapExpert provides CapExpert Insights through the CapExpert Platform and Software. CapExpert uses Customer Data to create CapExpert Insights for Customer. Customer grants CapExpert a non-exclusive and non-transferable license to access, view, download, and incorporate Customer Data into CapExpert Insights. CapExpert shall not be responsible for any inaccuracies or insufficiencies in Customer Data that CapExpert uses to create CapExpert Insights.

## **8. CUSTOMER DATA**

7.1 Use of Customer Data. Customer hereby acknowledges and agrees that CapExpert may access and use Customer Data to provide the Software and Services to Customer and fulfill its obligations under this Agreement, including without limitation, accessing, storing, recording, transmitting, reproducing, maintaining, displaying and otherwise using, manipulating and/or modifying the Customer Data as necessary to provide the Software and Services. CapExpert may also use aggregated and/or anonymized Customer Data, including any comments, suggestions, ideas, feedback, or other information about the Software and Services, to improve the Software and Services and for any other purpose, commercial or otherwise, without acknowledgement or compensation to Customer.

7.2 Restrictions. Customer Data shall not include any protected health information. Customer shall not provide any protected health information to CapExpert and shall not upload, store, or transmit any protected health information through the Software or Services. CapExpert shall not be responsible for any inaccuracies or insufficiencies in Customer Data that Customer provides and shall not be responsible for any protected health information that Customer provides. Customer is solely responsible for the accuracy, content, currency, completeness, form, and delivery of all Customer Data and CapExpert shall have no responsibility or liability related thereto.

## **9. CONFIDENTIALITY**

It is expected that pursuant to this Agreement one party may disclose to the other Confidential Information. Confidential Information shall remain solely the property of the disclosing party, and its confidentiality shall be maintained and protected by the receiving party with no less than a reasonable degree of care. Except to the extent required to perform Services under this Agreement, the receiving party agrees not to duplicate Confidential Information in any manner or to disclose

it to any third party not having a need to know for the purposes of this Agreement. The receiving party further agrees not to use any Confidential Information for any purpose other than the implementation of this Agreement. The receiving party acknowledges and agrees that the disclosing party would be irreparably harmed if any of its Confidential Information were to be disclosed to third parties and further agrees that the disclosing party shall have the right to seek and obtain injunctive relief, without the necessity of posting a bond, cash, or otherwise, upon any violation of this section, in addition to any and all rights or remedies which may be available at law or in equity. Confidential Information does not include information which the receiving party can establish: (a) was known to the receiving party prior to disclosure; (b) is or becomes generally known or available to the public other than as a result of disclosure by receiving party; (c) is disclosed to receiving party on a non-confidential basis by a third party with no obligation of confidentiality to disclosing party; (d) is independently developed by receiving party without reference to Confidential Information; or (e) is subpoenaed by court order or other legal process.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1. Software and Services Warranty. CapExpert represents and warrants that: (a) it is duly organized, validly existing, and in good standing and it has the full right, power, and authority to enter into this Agreement; (b) the Software and Services will be performed in accordance with the prevailing standards in the industry; and (c) it has sufficient right, title, and interest in the Software and Services to grant the license contemplated by this Agreement. The foregoing represents CapExpert's sole and exclusive remedy regarding warranties of the Software and Services. CapExpert shall not be responsible for any failure of the Software and Services due to a cause beyond its control.

10.2. Limitations. With respect to the Software and Services, CapExpert shall not be responsible for (a) any delays, delivery failures, or other damages resulting from limitations, delays, and other problems inherent from the use of the internet and electronic communications or problems or errors resulting from Customer's servers, computers or hardware, (b) any inaccuracies or insufficiencies contained in the Software and Services resulting from incomplete or inaccurate information supplied by Customer, (c) the reliability or continued availability of the CapExpert Platform connected to Customer's network or Customer's network connectivity or security configurations used to access the Software and Services, or (d) any unauthorized access or use of the Software and Services unless the unauthorized access or use results from CapExpert's failure to meet its security obligations stated in this Agreement.

10.3. Customer Warranty. Customer represents and warrants that (a) it is duly organized, validly existing, and in good standing and it has the full right, power, and authority to enter into this Agreement, (b) it will not allow any third parties or unauthorized users to use or access the Software and Services, (c) it will not disclose any CapExpert Confidential Information to any third parties, (d) it will not provide protected health information through the Software or Services, and (e) it shall comply with all applicable federal, state, and local laws and regulations.

10.4. DISCLAIMER. THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, OR FITNESS FOR



A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SOFTWARE AND SERVICES ARE PROVIDED “AS IS” AND CAPEXPERT DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SOFTWARE OR SERVICES, INCLUDING, WITHOUT LIMITATION, THAT THE USE OF THE SOFTWARE AND SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE; OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, EQUIPMENT, SOFTWARE, SYSTEM, OR DATA; OR THE SOFTWARE, SERVICES, CAPEXPERT CONTENT, ANY EQUIPMENT, OR CAPEXPERT INSIGHTS WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CAPEXPERT MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SECURE OPERATION OF THE SOFTWARE AND SERVICES, ANY EQUIPMENT, CAPEXPERT CONTENT, CAPEXPERT INSIGHTS, OR THAT CAPEXPERT’S SECURITY TECHNOLOGIES WILL BE ABLE TO PREVENT THIRD PARTY DISRUPTIONS OF THE SOFTWARE AND SERVICES. THE ABOVE SOFTWARE AND SERVICES WARRANTIES APPLY ONLY WITH RESPECT TO THE SOFTWARE AND SERVICES PROVIDED BY CAPEXPERT PURSUANT TO THIS AGREEMENT.

10.5. MEDICAL DISCLAIMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT CAPEXPERT IS NOT INTENDING TO, OR ENGAGING IN THE PERFORMANCE OR DELIVERY OF PROVIDING MEDICAL OR HEALTH CARE SERVICES OR ADVICE. ALL DECISIONS REGARDING ANY HEALTHCARE EQUIPMENT, DIAGNOSIS, OR TREATMENT SHALL AT ALL TIMES BE AND REMAIN THE SOLE RESPONSIBILITY OF CUSTOMER. THE SOFTWARE, SERVICES, AND CAPEXPERT INSIGHTS SHOULD IN NO CASE BE DEEMED OR TREATED AS A RECOMMENDATION, ENDORSEMENT, GUARANTEE, OR WARRANTY OF ANY HEALTHCARE EQUIPMENT OR HEALTHCARE EQUIPMENT PROVIDER. THE SOFTWARE IS NOT INTENDED AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT. CAPEXPERT DOES NOT WARRANT OR GUARANTEE THAT ANY MEDICAL SUBJECT MATTER OR OTHER INFORMATION THAT MAY BE INCLUDED IN ANY DOCUMENTATION, REPORT, INFORMATION, CAPEXPERT INSIGHTS, OR OTHER OUTPUT GENERATED BY THE SOFTWARE OR OTHERWISE MADE AVAILABLE BY CAPEXPERT IS ACCURATE, COMPLETE, CURRENT, OR FIT FOR ANY PURPOSE WHATSOEVER. BY PROVIDING THE SOFTWARE, CAPEXPERT INSIGHTS, AND/OR MAKING ANY SUCH INFORMATION AVAILABLE CAPEXPERT IS NOT PROVIDING ADVICE OR RECOMMENDATIONS AND CUSTOMER AND AUTHORIZED USERS SHALL NOT RELY ON THE SOFTWARE OR ANY SUCH INFORMATION AS A MEANS OF DIAGNOSIS OR TREATMENT OF PATIENTS OR AS A SUBSTITUTE FOR MEDICAL ADVICE.

## **11. LIMITATION OF LIABILITY**

11.1 INDIRECT DAMAGES. IN NO EVENT SHALL CAPEXPERT AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, PARTNERS, AND EMPLOYEES, BE LIABLE TO CUSTOMER FOR ANY

INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, COST OF SUBSTITUTE SERVICES) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH: ANY EQUIPMENT OR EQUIPMENT SERVICES, AND THE SOFTWARE AND SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE EQUIPMENT, SOFTWARE, AND SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, CUSTOMER DATA NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION, UNAUTHORIZED ACCESS TO CUSTOMER DATA, OR BREACH OF ANY SECURITY MECHANISMS UTILIZED IN THE SOFTWARE AND SERVICES.

11.2 DIRECT DAMAGES. CAPEXPERT AND ITS SUBSIDIARIES AND AFFILIATIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, PARTNERS, AND EMPLOYEES' LIABILITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT DAMAGES NOT TO EXCEED THE GREATER OF THE SUBSCRIPTION FEES PAID TO CAPEXPERT FOR SOFTWARE AND SERVICES DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS OR ONE HUNDRED DOLLARS (\$100.00). THE LIMITATIONS OF THIS SECTION SHALL NOT APPLY TO CAPEXPERT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 12. INDEMNIFICATION

12.1. Intellectual Property Indemnification. CapExpert shall indemnify Customer against any third-party claims that the Software and Services CapExpert provides to Customer infringes any United States patent or copyright. In the defense or settlement of any claim relating to infringing Software and Services, CapExpert shall, in its reasonable judgment and at its option and expense (a) obtain for Customer the right to continue using the Software and Services, (b) replace or modify the Software and Services so that the Software and Services become non-infringing while giving substantially equivalent functionality, or (c) if CapExpert determines the remedies in (a) or (b) are not commercially reasonable, at its sole obligation, terminate this Agreement and refund to Customer the Subscription Fees Customer paid during the preceding twelve (12) months. CapExpert shall have no liability to indemnify Customer to the extent (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Customer other than by CapExpert, (ii) the alleged infringement is the result of a modification to the Software and Services made by anyone other than CapExpert, or (iii) Customer uses the Software and Services other than in accordance with this Agreement or any documentation CapExpert provides. This Section states CapExpert's entire liability and Customer's sole and exclusive remedy for claims relating to infringement.

12.2. Customer Indemnification. Customer shall indemnify and defend CapExpert against any third-party claims arising from or related to (a) its violation of any applicable law or regulation or violation of the legal rights of others, (b) Customer's use of the Software or Services that exceeds the scope of the license granted in this Agreement, (c) any purchase, use, or maintenance of any Equipment or Equipment Services, (d) Customer's breach of its obligations hereunder, or (e) Customer's gross negligence or willful misconduct. The foregoing

indemnification obligations are conditioned upon CapExpert (i) notifying Customer promptly in writing of any claim or action pursuant to which CapExpert is requesting indemnification, (ii) giving Customer sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at Customer's request and expense, assisting in such defense or settlement.

### **13. NOTICES**

All notices and formal communications between the parties to this Agreement shall be in writing and addressed to the appropriate party as provided in the Order Form.

### **14. MISCELLANEOUS**

14.1. Force Majeure. Any loss, damage, or delay in, or failure of, performance by CapExpert shall not constitute a default hereunder, be a ground for termination of this Agreement, or give rise to any claims for damage against CapExpert if such loss, damage, delay, or failure is attributable in whole or in part to any cause beyond the reasonable control of CapExpert. These causes include, but are not limited to, acts or omissions of Customer causing delay, acts of God or the public enemy, compliance with any order, decree, or request of any governmental authority, fires, floods, explosions, accidents, riots, strikes, labor difficulties, or other concerted acts of workmen, power failure or any other cause not within the reasonable control of CapExpert. In the event of the occurrence of any such delay, the time for the performance by CapExpert of the Software and/or Services shall be extended for a period of time equivalent to the time reasonably attributable to such delay.

14.2. Governing Law. This Agreement will be governed by the laws of the State of Colorado, United States without regarding to the conflicts of law principles of such State.

14.3. Relationship of the Parties. CapExpert and Customer are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between CapExpert and Customer.

14.4. Publicity. CapExpert may include Customer's name and logo on its customer lists, website, and promotional and marketing materials. CapExpert may issue a high-level press release announcing the relationship with Customer and the manner in which Customer will use the CapExpert Platform.

14.5. Non-Solicitation. From the Effective Date until eighteen (18) months after the date of termination or expiration of the Agreement, Customer agrees not to directly or indirectly hire or employ, or solicit the employment of, or make or extend any offer of employment to, any employee of CapExpert or its affiliates.

14.6. Waiver. Any failure by either party hereto to enforce at any time any term or condition of this Agreement shall not be considered a waiver of that party's right to later enforce each and every term and condition thereof.

14.7. Assignment and Binding Effect. This Agreement may not be assigned by Customer hereto without the prior written consent of CapExpert, which shall not be unreasonably withheld or delayed, and any such attempted assignment shall be void. CapExpert may assign this Agreement in connection with a merger, acquisition or sale of substantially all assets without prior approval of Customer. This Agreement shall be binding upon and inure to the benefit of each of the parties and its respective successors and permitted assigns.

14.8. Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall be declared invalid, illegal, or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the parties shall use their best commercially reasonable efforts to replace the invalid or unenforceable provision with a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.

14.9. Survival of Terms. The terms and conditions of this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favor they operate.

14.10. Limitation on Actions. No action, regardless of form, arising under or relating to this Agreement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment of any invoice may be brought by a party no later than one year following the date of the last payment of any invoice hereunder.

14.11. Entire Agreement. This Agreement and any applicable Order Form(s) constitute the entire agreement between the parties and shall supersede all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement shall not be modified other than by an instrument in writing of subsequent date hereto, executed by the duly authorized representatives of both parties.