

epaCUBE

TERMS OF SERVICES

These Terms of Service (“**Terms**”) constitute a legal agreement between the person, entity or organization agreeing to these Terms on the Order (“**Customer**”) and epaCUBE, a business unit of Cordance Operations LLC, a Delaware limited liability company (the “**Company**”). By signing an Order, accepting these Terms, or using the Services, Customer represents that it has the authority to bind the Customer to the Order, these Terms, and any applicable schedules, exhibits, or appendices incorporated or referenced herein (collectively, the “**Agreement**”). Pre-printed terms of either party’s purchase orders, acknowledgements, or click-through terms do not apply or modify this Agreement, and such other or additional terms or conditions are void and of no effect.

1. **DEFINITIONS**

- 1.1. “**Annual Fee**” means the amount payable under Order(s) for the Services.
- 1.2. “**Administrator**” means the Customer’s primary contact person who coordinates and works with Company to implement, support, and train the Customer’s Users on their use of the Service.
- 1.3. “**Affiliate**” of a party means an entity which, directly or indirectly is controlled by, controls or is under common control with that party where “control” of the party or other entity is the possession of the power to direct or cause the direction of the management and policies of the party or other entity, whether by voting, contract or otherwise.
- 1.4. “**Customer Content**” means content, data, and information, including text, or other material submitted, uploaded, imported, or otherwise provided to or through the Services by Customer or by a third party on behalf of or for the benefit of Customer, including Customer’s customers, prospective customers, and Users of the Services.
- 1.5. “**Documentation**” means Company’s then-current generally available documentation, specifications, and user manuals for the Services which are available upon login to the Services, as well as any documentation included in or attached to this Agreement, or such other Services-related documents provided by Company to Customer.
- 1.6. “**Order**” means a written description of Services and Professional Services, and the applicable pricing as mutually agreed to by the parties in an order form, quote, schedule, statement of work or similar document.
- 1.7. “**Professional Services**” means installation services, additional training, consulting services, custom modification programming, support services relating to custom modifications, assistance with data transfers, system restarts and reinstallations and other specialized support services subject to execution by the parties of a statement of work provided by Company’s staff or contractors pursuant to a mutually agreed Order.
- 1.8. “**User(s)**” means an individual employee of Customer or its Affiliates, or their respective contractor(s) who has been authorized by Customer to use the Services on behalf of Customer and/or its Affiliates (including Administrators).

2. **ACCESS AND USE OF THE SERVICES.**

- 2.1. **Provision of the Services.** Company will make its proprietary, hosted, profit optimization solution for the distribution industry (the "Services") available to Customer and its Users pursuant to the terms of the Agreement and the Documentation. Any Affiliates of Customer which Customer has identified as authorized to use the Services, as of the effective date of the Order, are listed on the Order. Company will use commercially reasonable efforts to make the Services available 24x7. Customer acknowledges that its use of the Services requires third-party hardware, software, internet and/or telecommunications access, and that its ability to access and use the Services may be affected by Customer's choices and the performance of these products and services. Customer is responsible for all fees and charges which may be imposed by such third parties related to Customer's access and use of the Services.
- 2.2. **Implementation.** Promptly following the full execution of the Order, Company will provide Customer with access to the Services and will commence the installation, implementation and the training services described on Exhibit A.
- 2.3. **Changes to Services.** Company reserves the right to enhance, upgrade, improve, modify or discontinue features of the Services as it deems appropriate and in Company's sole discretion. Company will not materially reduce the core functionality or discontinue any Services unless Company provides Customer with prior written notice. If Company discontinues Services or materially reduce the core functionality, Customer may terminate the affected Services or this Agreement with 60 days prior written notice to Company. Company may offer additional functionality to its standard Services or premium feature improvements for an additional cost.
- 2.4. **Customer's Registration for the Services.** Customer's Users may be required to provide information about themselves to register for and/or use certain Services. Customer agrees that any such information will be accurate. Customer's Users may also be asked to choose a username and password. Customer is entirely responsible for maintaining the security of those usernames and passwords and agrees not to disclose such to any third party.
- 2.5. **Customer's Use of the Services.** Company grants Customer a limited, non-exclusive right to use the Services and Documentation only for Customer's internal business purposes, subject to the terms of this Agreement. Customer's third-party contractors may use the Services or Documentation as Users under Customer's account, provided that Customer takes full responsibility for such third parties' compliance with this Agreement.
- 2.6. **Limitations on Customer's Use.** By using the Services, Customer agrees on behalf of itself, Customer's Affiliates and Users, not to (i) modify, prepare derivative works of, or reverse engineer Company's Services; (ii) access or use the Services or Documentation for any purpose competitive with Company; (iii) use Company's Services in a way that abuses or disrupts Company's networks, user accounts, or the Services; (iv) transmit through the Services any harassing, indecent, obscene, or unlawful material; (v) market or resell the Services to any third party; (vi) use the Services in violation of applicable laws or regulations; (vii) use the Services to send unauthorized advertising, or spam; (viii) harvest, collect, or gather user data without their consent; (ix) transmit through the Services any material that may infringe the intellectual property, privacy, or other rights of third parties; or (x) use the Services to commit fraud or impersonate any person or entity. Customer understands and acknowledges that Company does not monitor the content passing through its servers, and that it is Customer's sole responsibility to ensure that the information it and its Users transmit and receive complies with all applicable laws and regulations and does not infringe upon the rights of any third party. Customer will be solely responsible for the Customer Content. In no event will Company be responsible for Customer Content or its accuracy or completeness, or for any loss of Customer Content.

- 2.7. **Responsibility for Users.** Customer is responsible for the activities of all Users who access or use the Services through Customer's account and agrees to ensure that all such Users will comply with the terms of this Agreement. Customer will provide Company prompt notice if Customer becomes aware of any violation of this Agreement in connection with use of the Services by any person.
- 2.8. **Support Services.** Beginning on the Effective Date, and provided that Customer is not in default in making any payment to Company hereunder, Company will provide Customer with the following ongoing support services, during Company's normal working hours:
- 2.8.1. telephone assistance regarding Customer's proper and authorized use of the Services.
 - 2.8.2. commercially reasonable efforts in solving errors reported by Customer, provided that Customer provides Company a reasonably detailed explanation of any error and reasonably assists Company in its efforts to diagnose, reproduce and correct the error.
 - 2.8.3. For an additional fee, these support services may be provided by Company at Customer's location(s) if on-site services are necessary to diagnose or resolve the problem.
- 2.9. **Professional Services.** From time to time, Company may provide the Professional Services as described on a mutually agreed Order and for the fees stated in such order.

3. **ORDERS, FEES AND PAYMENT.**

- 3.1. **Order(s).** Customer's order for Services and or Professional Services is detailed in an executed Order. All Orders are effective on the date on the signature block of the Order ("Effective Date"). Company's acceptance of Customer's Order may be subject to Company's verification and credit approval process. Each Order will be treated as a separate and independent Order. Without limiting the generality of the foregoing, Customer may, from time to time, place Orders to add any additional Affiliates of Customer to access and use the Services under Customer's account.
- 3.2. **Fees and Payment.** Customer agrees to pay all applicable, undisputed fees for the Services or Professional Services on the terms set forth in the Order, this Agreement, a statement of work ("SOW"), or Company's invoice. Unless otherwise specified in the Order or invoice, Customer agrees to pay all undisputed fees set forth in an invoice within 30 days of the date thereof. Except as otherwise expressly stated in the Agreement, any payments Customer makes for the Services are final and non-refundable. Customer is responsible for providing accurate and current billing, contact and payment information to Company. Customer agrees that Company may charge Customer's payment card or bill Customer for all amounts due for use of the Services, and Company may take steps to update Customer's payment card information (where permitted) to ensure payment can be processed. Company may suspend or terminate the Services if at any time Company determines that Customer's payment information is inaccurate or not current, and Customer is responsible for fees and overdraft charges that Company may incur when charging Customer's card for payment. Company reserves the right to update the Annual Fees annually in an amount not to exceed 5%. In addition, if, after the Effective Date, Customer identifies to Company in writing any additional Affiliate of Customer it wishes to use the Services for the operations of such Affiliate, the Annual Fee will be increased to reflect annual revenue of such additional Affiliate using the Services. All references to currency will be in US dollars (\$USD).
- 3.3. **Taxes and Withholdings.** Customer is responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs, or any other similar taxes or fees (collectively, "Taxes and Fees") imposed by any government entity or collecting agency based on the Services, except those based on Company's net income, or for which Customer has provided an exemption certificate. In all cases, Customer will pay the amounts due under this Agreement in full without any right of set-off or deduction.

- 3.4. **Disputes; Delinquent Accounts.** Customer must notify Company of any fee dispute within 15 days of the invoice date, and once resolved, Customer agrees to pay those fees within 15 days of such dispute notice. Company may, upon 10 days' notice to Customer, suspend the Services if Customer does not pay undisputed fees by their due date, and Customer agrees to reimburse Company for all reasonable costs and expenses, including overdraft charges, collection costs and attorneys' fees, incurred in collecting delinquent amounts. Customer further agrees that Company may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.

4. **TERM AND TERMINATION.**

- 4.1. **Term.** The initial term commitment for Customer's purchase of Services will be 36 months unless otherwise specified on the Order ("**Initial Term**"). After the Initial Term, the Term will automatically renew for additional periods of 12 months each ("**Renewal Terms**"), unless either party provides notice of non-renewal at least 90 days before the then-current term expires. Future Orders will commence on the date specified in the applicable Order. Terminating use of a specific Service does not affect the term of any other Service still in effect and these terms and conditions will continue to apply to those Services.
- 4.2. **Termination for Cause.** Either party may terminate the Agreement (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice of such breach by the other party, or (ii) where permitted by applicable law, if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business.
- 4.3. **Effect of Termination.** If the Agreement or any Services are terminated, Customer will immediately discontinue all use of the terminated Services. Unless otherwise agreed in writing, Company has no obligation to maintain Customer Content after the termination or expiration of the Agreement and will securely destroy Customer Content. Termination will not affect any claim arising prior to the termination date. If Company discontinues Services or materially reduce the core functionality in accordance with Section 2.3 above, and Customer elects to terminate the affected Services or this Agreement, Company will provide Customer with a pro rata refund of any prepaid, unused fees. Termination of the Agreement will not affect any claim arising prior to the termination date.
- 4.4. **Survival.** The terms of this Agreement will survive the termination or expiration of this Agreement to the extent reasonably necessary to carry out the intent of the parties as indicated therein.

5. **PROPRIETARY RIGHTS.**

- 5.1. **Company's Proprietary Rights and Marks.** Customer acknowledges that Company or its licensors retain all proprietary right, title and interest in the Services, all Documentation, Company's name, logo, or other marks (together, the "**Marks**"), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. Except for the express limited rights set forth in this Agreement, no right, title or interest in the Services, Documentation, or Marks is granted to Customer. Customer agrees that it will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part Company's Marks or is similar to any of these.

- 5.2. **Customer Content.** Customer retains all rights to Customer Content and is solely responsible for the Customer Content sent or transmitted by Customer or its Users or displayed or uploaded by its Users in using the Services and for compliance with all laws pertaining to the Customer Content, including, but not limited to, laws requiring Customer to obtain the consent of a third party to use the Customer Content and to provide appropriate notices of third-party rights. Customer hereby grants Company a worldwide, royalty-free, non-exclusive license to use, modify, reproduce, and distribute Customer Content in order to provide and operate the Services. Company will not view, access, or process any of the Customer Content, except: (x) as authorized or instructed by Customer or Users in this Agreement or in any other agreement between the parties, or (y) as required to comply with Company's policies, applicable law, or governmental request, or (z) as may be necessary for the performance of the Services.
- 5.3. **Feedback.** Customer hereby grants Company a fully paid-up, royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback Company receives from Customer, its Affiliates and Users ("**Feedback**"). Company also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or initiated by Customer's Feedback.
- 5.4. **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Customer acknowledges and agrees that Company may collect and compile data and information related to Customer's use of the Services to be used by Company in an aggregated and anonymized manner, including, but not limited to compile statistical and performance information related to the provision and operation of the Services ("**Aggregated Statistics**"). All right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Company. Customer agrees that Company may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law, provided that such Aggregated Statistics do not identify Customer or its Customer Content.
- 5.5. **Publicity.** Customer agrees that Company may use Customer's name, logo and refer to Customer in its promotional or marketing materials and its website, lists and business presentations.

6. **DATA PRIVACY AND SECURITY.**

- 6.1. **Security Safeguards.** Each party will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content and any associated personal data that is collected and/or processed through the Services. On Company's part, those safeguards will include commercially reasonable measures designed to prevent unauthorized access, use, modification, deletion, and disclosure of Customer Content. Customer (not Company) has sole responsibility for adequate security, protection, and backup of Customer Content when in Customer's or its representatives' or agents' possession or control.
- 6.2. **Sub-processors.** Customer acknowledges and agrees that Company may use sub-processors to help provide the Service, who may access Customer Content and any associated personal data, to provide, secure and improve the Services. Before sharing Customer Content with any of Company's sub-processors, Company will require that the sub-processor maintains, at a minimum, commercially reasonable data practices for maintaining the confidentiality and security

of Customer Content and preventing unauthorized access. Company will be responsible for the acts and omissions of Company's sub-processors to the same extent that Company would be responsible if it were performing the Services.

- 6.3. **Data Protection Laws.** To the extent that Company's provision of the Services involves the processing of Personal Data under applicable data protection law, the parties agree that Customer will be deemed to be the Data Controller, and Company will be deemed to be the Data Processor, as those terms are understood under the applicable data protection law. For the purposes of this Agreement, the term "**Personal Data**" means any information relating to an identified or identifiable natural person where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity of that natural person.
- 6.4. **State Privacy Laws.** To the extent that Customer Content contains "personal information" that is subject to the California Consumer Privacy Act of 2018, its implementing regulations, and any amendments thereto (collectively, the "CCPA"), or any other substantially similar state privacy laws, Company agrees that it will comply with all such laws and process such personal information as a service provider (as defined under the CCPA) and will not (a) retain, use or disclose personal information for any purpose other than the purposes set out in this Agreement and/or as permitted by the CCPA; or (b) "sell" (as defined and understood within the requirements of the CCPA) personal information.

7. CONFIDENTIALITY.

- 7.1. "**Confidential Information**" will mean all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Customer Content will be deemed Confidential Information of Customer without any marking or further designation. Company's Services and Documentation and any related intellectual property rights, and the terms and conditions of this Agreement will be deemed Confidential Information of Company without any marking or further designation. Confidential Information will not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.
- 7.2. Each party (as "**Receiving Party**") will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party (the "**Disclosing Party**") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party will, to the extent legally permitted, provide Disclosing Party with advance written notification, and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information

would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8. **WARRANTIES.**

- 8.1. Company provides its Services and Professional Services using a commercially reasonable level of care and warrants that the Services will materially conform to the Documentation under normal use. Company's entire liability and Customer's exclusive remedy under this warranty will be, at Company's sole option and subject to applicable law, to provide conforming Services, or to terminate the non-conforming Services and provide a pro-rated refund of any prepaid fees from the date Customer notifies Company of the non-conformance through the end of the remaining term. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT REPRESENT OR WARRANT THAT (i) THE USE OF THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (ii) THE SERVICES WILL MEET CUSTOMER'S SPECIFIC REQUIREMENTS.
- 8.2. Use of the Services may be available through a compatible mobile device, internet access, and may require third party software. Customer agrees that it is solely responsible for these requirements, including any applicable changes, updates and fees, as well as the terms of Customer's agreement with its mobile device and telecommunications provider. COMPANY MAKES NO WARRANTIES OR REPRESENTATION OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO (I) THE AVAILABILITY OF INTERNET OR TELECOMMUNICATION SERVICES FROM CUSTOMER'S PROVIDER AND ACCESS TO THE SERVICES AT ANY TIME OR FROM ANY LOCATION, (II) ANY LOSS, DAMAGE OR OTHER SECURITY INTRUSION OF THE INTERNET OR TELECOMMUNICATION SERVICES, AND (III) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTING CONNECTED WITH THE SERVICES. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.
- 8.3. CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY IS NOT LIABLE, AND CUSTOMER AGREES NOT TO SEEK TO HOLD IT LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING PROVIDERS OF THE THIRD-PARTY SERVICES, AND THAT THE RISK OF INJURY FROM SUCH THIRD-PARTY SERVICES RESTS ENTIRELY WITH CUSTOMER.
- 8.4. **No Liability in Connection With Data Accessed Through the Services.** Company will not have any liability for damages or issues resulting from the data or other information accessed by Customer or Users through the Services, including any damage to User's computer systems or loss or corruption of data caused by computer viruses contained in such accessed data or information.

9. **INDEMNIFICATION.**

9.1. **Company Indemnity.** Company will indemnify and defend Customer against any third-party claim alleging that any of the Services infringes upon any patent or copyright, or violates a trade secret of any such third-party (“**IP Claim**”), and Company agrees to pay reasonable attorney’s fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. Customer will promptly notify Company of any claim and cooperate with Company in defending the claim. Company will reimburse Customer for reasonable expenses incurred in providing any cooperation or assistance. Company will have full control and authority over the defense and settlement of any claim, except that any settlement requiring Customer to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) Customer may join in the defense with its own counsel at its own expense.

9.1.1. If (i) Company becomes aware of an actual or potential IP Claim, or (ii) Customer provides Company with notice of an actual or potential IP Claim, Company may (or in the case of an injunction against Customer, will), at Company’s sole option and determination: (a) procure for Customer the right to continue to use the Services; or (b) replace or modify the Services with equivalent or better functionality so that Client’s use is no longer infringing; or (c) if (a) or (b) are not commercially reasonable, terminate provision of the Services and refund to Customer any pre-paid Service fees for any periods after the termination of the Service, less any outstanding moneys owed by Customer to Company.

9.1.2. The obligations in Section 9.1 do not extend to (i) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Services with other products, software or services not provided by Company; (ii) any IP Claim related to any Customer Content, or (iii) any IP Claim related to any use or exercise of any other right in respect to the Service outside the scope of the rights granted in this Agreement.

9.2. **Customer's Indemnity.** Unless prohibited by applicable law, Customer will indemnify and defend Company against any third-party claim resulting from a breach of Sections 2.6 or 5.2 or alleging that any of its Customer Content infringes upon any patent or copyright, or violates a trade secret of any party, and Customer agrees to pay reasonable attorney’s fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. Company will promptly notify Customer of any claim and cooperate with Customer in defending the claim. Customer will reimburse Company for reasonable expenses incurred in providing any cooperation or assistance. Customer will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring Company to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) Company may join in the defense with its own counsel at its own expense.

10. **LIMITATION ON LIABILITY.**

10.1. **LIMITATION ON LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY DAMAGES, OR DAMAGES ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, OR (iv) CUSTOMER’S LOST PROFITS, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR

INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

10.2. **LIMITATION ON AMOUNT OF LIABILITY.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATION UNDER SECTION 9, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF COMPANY ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE FEES ACTUALLY PAID BY CUSTOMER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY.

11. **COMPLIANCE WITH LAWS.** In connection with the performance, access and use of the Services under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, data protection and anti-bribery laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Further, Customer will not permit its Users to access or use any Service or Content Product in a U.S. embargoed country or in violation of any U.S. export law or regulation. If necessary and in accordance with applicable law, Company will cooperate with local, state, federal and international government authorities with respect to the Services. If access to the Services or the Documentation are acquired by or on behalf of a unit or agency of the United States government, the government agrees that such Services or Documentation is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the government's rights with respect to such Services or Documentation are limited by the terms of this Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable. Notwithstanding any other provision in these Terms, Company may immediately terminate the Agreement for noncompliance with applicable laws.

12. **SUSPENSION OF SERVICES.** Company reserves the right to suspend the Services or restrict access or functionalities if (a) Company reasonably believes that Customer, its Affiliates or Users have materially violated this Agreement, or (b) Company reasonably determines that the security of the Services or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities. Unless legally prohibited, Company will use commercially reasonable efforts to notify Customer when taking any of the foregoing actions. Company will not be liable to Customer, its Affiliates or Users or any other third party for any such suspension of Services or reduced functionality. Any suspected fraudulent, abusive, or illegal activity by Customer, its Affiliates or Users, may be referred to law enforcement authorities at Company's sole discretion.

13. **ADDITIONAL TERMS.**

13.1. **Dispute Resolution.** Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it will provide written notice to the other party of the specific issue(s) in dispute (and reference the relevant provisions of the contract between the parties which are allegedly being breached). Within 30 days after such notice, knowledgeable executives of the parties will hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation, or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section will not apply to claims subject to indemnification under Section 9 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

- 13.2. **Limitation on Bringing Claims; No Jury.** By entering into this Agreement, each party is waiving the right to a jury. Any claim arising out of this Agreement must be brought, if at all, within two years of the claim arising. Customer may only resolve disputes with Company on an individual basis and Customer agrees not to bring or participate in any class, consolidated, or representative action against Company or any of its employees or affiliates.
- 13.3. **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of the State of Delaware. Each party agrees to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Delaware.
- 13.4. **No Class Actions.** Customer may only resolve disputes with Company on an individual basis and Customer agrees not to bring or participate in any class, consolidated, or representative action against Company or any of its employees or affiliates.
- 13.5. **Assignment.** Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which will not be unreasonably withheld, except that either party may assign the Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, acquisition, or sale of all or substantially all of its business or assets to which this Agreement relates without prior written consent. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.
- 13.6. **Notices.** Notices must be sent by personal delivery, overnight courier, or registered or certified mail. Company may also provide notice to the email last designated on Customer's account, electronically via postings on Company's website, in-product notices, or via its self-service portal or administrative center. Unless specified elsewhere in this Agreement, notices should be sent to Company at 16 W. Martin Street, Raleigh, NC 27601, Attn: Contract Admin, with a copy to the attention of the Revenue Department at the same address; e-mail: revenue@cordance.co, and for notice related to legal matters, to Legal@Cordance.co. Company will send notices to the address last designated on Customer's account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.
- 13.7. **Entire Agreement; Order of Precedence.** This Agreement, including the Order(s) and any applicable schedules, exhibits, and appendices, and any mutually signed SOW set forth the entire agreement between Customer and Company relating to the Services and/or Professional Services and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted. If there is a conflict between an executed Order, this Agreement, and the Documentation, in each case, as applicable, the conflict will be resolved in that order, but only for the specific Services described in the applicable Order. No modification of or amendment to this Agreement will be effective unless mutually agreed in writing.
- 13.8. **General Terms.** If any term of this Agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties. No person or entity not a party to the Agreement will be a third-party beneficiary or have the right to modify the Agreement or to make commitments binding on Company. Failure to enforce any right under the Agreement will not waive that right. The Agreement may be agreed to online or executed by electronic signature and in one or more counterparts. No party will be responsible

for any delay or failure to perform under the Agreement due to force majeure events (e.g., natural disasters; epidemics, pandemics, terrorist activities, activities of third-party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.

- 13.9. **Beta Services.** Company may offer Customer access to beta services that are being provided prior to general release ("**Beta Services**"). Customer understands and agrees that the Beta Services may contain bugs, errors and other defects, and use of the Beta Services is at Customer's sole risk. Customer acknowledges that its use of Beta Services is on a voluntary and optional basis, and Company has no obligation to provide technical support and may discontinue provision of Beta Services at any time in Company's sole discretion and without prior notice to Customer. Beta Services are offered "AS-IS", and to the extent permitted by applicable law, Company disclaims any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If Customer is using Beta Services, Customer agrees to receive related correspondence and updates from Company and acknowledges that opting out may result in cancellation of Customer's access to the Beta Services. If Customer provides Feedback about the Beta Service, Customer agrees that Company owns any Feedback that Customer shares. For the Beta Services only, this Section supersedes any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict. When, if at all, Company releases a Beta Service for general availability, it is no longer a "Beta Service" and is treated as a part of Services for all purposes under this Agreement (including the payment of applicable additional Fees).

Exhibit A: epaCUBE Professional Services Statement of Work (SOW)

#	Project	Project Notes/Detail	Month 1				Month 2				Month 3				Month 4				epaCUBE	Customer Team
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16		
1	Agreements	Finalize Project Plans and Agreements																	George Dunham	Customer Team
2	Kick Off Meeting	Project Kick off Meeting Review SOW Process Establish Initial Goals & Objectives																	epaCUBE Team	Customer Team
3	On-Boarding, Configuration and Initial Data Load	1) AWS instance is setup (epaCUBE). If available, initial sales data loaded. Customer has full access to software and Deliver of Software completed. 2) Connector to ERP is installed (epaCUBE). 3) Mapping to the ePO software (epaCUBE). 4) Data Validation & Custom Mapping (epaCUBE & Customer).																	epaCUBE Technical Support	IT & Pricing SME(s)
4	Strategic and Tactical Plan	Develop Rollout and Adoption Plan. Typically the new Optimized and Rationalized Pricing Model can be implemented all at once (i.e. a new matrix) or rolled out in phases based on Customer's strategy and knowledge of the business. For example, new pricing might be rolled out by vendor during supplier increase and/or initially less sensitive items to drive a high rate of adoption by customers and sales.																	epaCUBE Pricing Consultant	Pricing SME(s)
5	Initial epaCUBE Optimization Analysis and Initial Transaction Exclusion Project	Understand Current State of Data, current pricing performance and identify Initial Gross Profit Optimization Opportunities. epaCUBE to apply best practices learned with other like distributors and present initial results for customer for feedback and direction for next step.																	epaCUBE Pricing Consultant	Pricing SME(s)
6	Basic Training - Three 60-90 Min Web Sessions	Basic Training Sessions (Three 60 to 90 Min Sessions) to familiarize customer with user interface, navigation and how to review optimization results.																	epaCUBE Pricing Consultant	Pricing SME(s)
7	Initial Customer Segmentation and Ranking	epaCUBE Pricing Consultant then assists to build customer and product segmentation ranking model. epaCUBE will review multiple potential ranking models with customer.																	epaCUBE Pricing Consultant	Pricing SME(s)

8	Optimized and Rationalized Pricing Matrix Model Build and Review	Optimized and Rationalized Pricing Matrix Model. Develop initial Mass Price Change Model based on typical best practices. epaCUBE to suggest best practices typical for an initial model. epaCUBE to create full model and review results with customer. Results will drive adjustment for follow on models and tuning of factors related to how aggressive customer may desire for price changes based on their knowledge of business, customers, products, vendors, markets (the ART of the equation).																epaCUBE Pricing Consultant	Pricing SME(s)
9	Review Results/Status	Receive feedback from customer, adjust and re-work to initial Optimized and Rationalized Matrix Model for customer.																epaCUBE Pricing Consultant	Pricing SME(s) & Pricing Committee
10	Advanced Training - Four to Five 90 Minute Web Sessions	Advanced Training Topics - 4 (60 to 90 Min) Training sessions to take customer to the next level of more advanced usage of epaCUBE Profit Optimizer.																epaCUBE Pricing Consultant	Pricing SME(s)
11	Pricing Record Creation for Execution in ERP	epaCUBE to work with Customer to define how pricing records will be created from epaCUBE to ERP. Can create csv file for import / more sophistication can be determined if necessary.																epaCUBE Pricing Consultant epaCUBE Technical Support	Pricing SME(s) & IT
12	Pricing Performance Tracking	New Pricing Performance Tracking. epaCUBE to provide Customer with pricing performance tracking plan and process.																epaCUBE Pricing Consultant	Pricing SME(s)
13	Contract Manager	Analysis and pricing improvements for customer specific pricing and contract pricing.																epaCUBE Pricing Consultant	Pricing SME(s)
14	Repeat Process for Continuous Improvement	epaCUBE to hold Monthly status meetings to repeat project and models based on the strategic plan. Focus is on analyzing and learning from results of previous quarters to guide future gross profit improvement activities as identified above "Strategic Gross Profit Improvement Plan" (i.e. price changes, customer and product segmentation tuning, vendor negotiations, standard cost adjustments, etc.).	Monthly															epaCUBE Pricing Consultant	Pricing SME(s)

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