APPSANYWHERE

STANDARD TERMS

These Standard Terms (these "Terms") constitute a legal agreement between the organization signing an Order incorporating these terms ("Customer") and AppsAnywhere, a business unit of Cordance Software, Inc., a Delaware corporation (the "Company").

1. DEFINITIONS

1.1. "Acceptable Use Terms" means the Acceptable Use Terms for End Users required as a condition by Users before downloading and using the Client Application, as set out at HERE, as updated from time to time.

1.2. "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.

1.3. "Agreement" means these Terms including all referenced schedules, exhibits or appendices hereto, and any mutually executed agreements incorporated herein by reference. 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.

1.4. "Client Application" means any client application software required to be installed on any Device which will connect to the On-Premises or SaaS Software.

1.5. "Customer Content" means content, data, and information, including text, graphics, videos, or other material, submitted, uploaded, imported, or otherwise provided to or through the SaaS Software by Customer and Users of the SaaS Software.

1.6. "Data Processing Agreement" means the terms and conditions which apply to Company's processing of personal data on behalf of Customer as set out at HERE as update from time to time.

1.7. "Device(s)" means the physical data processing devices owned by the Customer or its Users and used to access the Software.

1.8. "Documentation" means Company's then-current generally available documentation, specifications, and user manuals for the Software located in Company's Help Portal, as well as any documentation included in or attached to any Order or Software related documents provided by Company to Customer.

1.9. "License Scope" means the limited scope of use rights granted by Company to Customer for the Software, such as the number of devices for a Per-Device License or the number of Student FTEs for a Site License, as listed on an Order.

1.10. "On-Premises Software" means software listed on an Order(s) as "On Premises" and provided to Customer by Company in object code for installation in Customer's infrastructure or that of a cloud services provider with whom Customer contracts.

1.11. "Order" means a written description of Software and or 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.

1.12. "Per-Device License" means the Company's form of license which is based on a limited number of Customer owned Devices that may connect to the Software, as stated on the Order(s) and which may be identified on an Order (or Invoice) as "device license."

1.13. "Professional Services" means services provided by Company's staff or contractors pursuant to a mutually agreed Order, including Packaging Services, as described in the Packaging Subscription Services as set out in HERE.

1.14. “SaaS Software” means the hosted software-as-a-service products listed on an Order as “hosted” or “cloud” or similar terms.

1.15. “Site” means one or more locations from which Customer provides its education services, such as one or more campuses or a department, as specified in the Order or as notified by Customer in writing from time to time.

1.16. “Software” means the On-Premises Software and or the SaaS Software identified in an Order.

1.17. “Student FTE” means a student determined to be Full-Time Equivalent (FTE) applying the standard, date-driven metric of measuring student workload.

1.18. “User” means a person who is authorized by Customer to use the Software, or to install the Client Application and use the same to access the Software, in accordance with this Agreement.

2. ACCESS AND USE OF THE SOFTWARE.

2.1. License Rights and Restrictions.

2.1.1. Client Application. Customer and its Users may use the Client Application solely to connect to the Software and may install it (a) on the number of Devices listed in the Order(s) if Customer purchased Per-Device Licenses, or (b) on any number of Devices if Customer has purchased a Site License to the Software. Company will provide Customer with a license key, which Customer may use to download the Client Application onto the authorized number of Devices. Customer agrees on behalf of itself, its Affiliates and Users, that the Client Application may only be installed and used by Users who accept the Acceptable Use Terms.

2.1.2. On-Premises Software. For On-Premises Software, Company grants Customer a limited term (as stated on the Order), non-exclusive, non-sublicensable and non-transferable (except as otherwise provided herein) license to use the On-Premise Software only for Customer's internal business use (and not as a service bureau or to provide a managed service) up to the License Scope stated on the Order. Customer may install the On-Premises Software on Customer’s up to two (unless otherwise stated in the Order) servers or on infrastructure provided to Customer by a third party (e.g., cloud services providers such as AWS). Customer agrees to use commercially reasonable efforts to upgrade the On-Premises Software to Company’s most current version/release promptly after the latest release is made available.

2.1.3. SaaS Software. For SaaS Software, Company grants Customer a limited term (as stated on the Order), nonexclusive, non-sublicensable and non-transferable (except as otherwise provided herein) license to access and use the SaaS Software only for Customer's internal business use (and not as a service bureau or to provide a managed service) up to the License Scope stated on the Order.

2.1.4. Terms Applicable to Software and the Client Application. The following terms apply to both the Software and the Client Application unless expressly stated otherwise.

2.1.4.1. Customer agrees on behalf of itself and its Affiliates and Users, not to (i) use the Software in a way that abuses or disrupts Company’s networks, user accounts, or the Software; (ii) transmit through the Software any harassing, indecent, obscene, or unlawful material; (iii) use the Software in violation of applicable laws, or regulations; (iv) use the Software to send unauthorized advertising, or spam; (v) translate, update, decompile, modify, adapt, merge, prepare derivative works of, or reverse engineer or assemble the Software, separate, disassemble, determine the source code of or otherwise reduce to binary code or any other human-perceivable form; (vi)) copy (with respect to the On-Premises Software, other than one copy for backup or archival purposes), or (vii) encumber, market, sublicense, lease or resell the use of the Software to any third party; (vii) harvest, collect, or gather User data without their consent; (viii) externally share or publish the results of any benchmarking of the Software; (IX) transmit through the Software any material that may infringe the intellectual property, privacy, or other rights of third parties; (x) use the Software to build a product that competes with the Software or any part of it; or (xi) use the Software to commit fraud or impersonate any person or entity.

2.1.4.2. Customer will ensure that each User has sight of, accepts, and complies with the terms of the Acceptable Use Terms and any applicable third-party EULA (as described in section 2.2 below). Customer will be responsible for any breach by any User of the

Acceptable Use Terms or applicable EULA and shall indemnify and hold Company harmless against any loss or damage it may suffer or incur as a result of a User's breach of the Acceptable Use Terms or EULA.

2.2. Independent Products - Not Purchased from Company. Customer acknowledges that Customer's use of the Software requires third-party hardware, software, internet and/or telecommunications access (which may involve extra charges from those third parties), and that Customer's ability to access and use the Software may be affected by Customer's choices and the performance of these products and services. Requirements for third party products and services are described in the Documentation. In addition, the Software may provide the capability for Customer to link to or integrate with third party sites or applications separately accessed by Customer and not purchased from Company. Company is not responsible for and does not endorse such services or products. Customer is solely responsible for any required third-party account setup or other fees levied by any such Third-Party Products for using their services. Customer has sole discretion whether to purchase or connect to any third-party services, and Customer's use is governed solely by the terms for those services. Unless otherwise specified, Company and Company's contractors, suppliers, and licensors disclaim all warranties, express or implied, and all liability for any third-party services Company sold to Customer.

2.3. Third-Party Software. The Software may link, interface, incorporate or integrate with third-party software that is included in products Customer purchases from Company (each, a "Third-Party Software"). All such Third-Party Software will remain the property of the third-party providers. To the extent any Third-Party Software requires accepting the third-party's terms and conditions or agreement Customer will be responsible for entering into any such terms and conditions or agreements. It shall be Customer's responsibility to, and Customer will ensure that its use of the Software complies with any applicable terms in the Third-Party Software agreement. A material breach of any such Third-Party Software terms will be considered a material breach of this Agreement. Without limiting the foregoing, when an Order lists products as "Numecent" such software is provided by Numecent, Inc. As a condition of Customer's or any Users' use of the Software Customer acknowledges and agrees that Customer and such Users shall be bound by the terms and conditions of Numecent's End User License Agreement linked here: https://www.appsanywhere.com/company/legal/numecent-cloudpaging-eula.

2.4. Changes to Software. Company reserves the right to enhance, upgrade, improve, modify or discontinue features of Company's Software as Company deems appropriate and in Company's discretion. Company will not materially reduce the core functionality or discontinue any Software.

2.5. Company may offer additional optional functionality, or premium feature improvements, for both Company's standard On-Premise and SaaS Software for an additional cost.

2.6. Login Information. Customer is entirely responsible for maintaining the security of Customer's Users' login information.

2.7. Responsibility for Users. Customer is responsible for the activities of all Users who access or use the Software through Customer's account, and Customer agrees to ensure that any such Users will comply with the terms of this Agreement and the Acceptable Use Terms, and any applicable EULA. If Customer becomes aware of any violation of this Agreement, or the Acceptable Use Terms or applicable EULA, in connection with use of the Software by any person, Customer will promptly notify Company.

2.8. Support and Maintenance. Company will, at no additional charge, provide customer support and maintenance for the Software as detailed in accordance with the Support Services Specification found at https://www.appsanywhere.com/company/legal/terms-and-conditions#hosting-support-services

3. ORDERS, FEES AND PAYMENT.

3.1. Orders. Customer may order licenses for Software (or for increased License Scope) or Professional

Services by executing an Order. All Orders: (i) are effective on the start date stated on the Order ("Order Effective Date"); (ii) will be treated as separate and independent Orders; (iii) form part of the Agreement; and (iv) may be subject to Company's verification and credit approval process.

3.2. Fees by License Scope..

3.2.1. Per-Device Licenses. For Per-Device Licenses, the fees will be calculated by the number of Devices licensed to connect to the Software, as listed on one or more Orders. If the number of Devices onto which Customer has enabled the Client Application to be downloaded exceeds the number previously agreed on one or more Orders, Company may charge Customer for the additional Devices applying Company's then current Per-Device License fee.

3.2.2. Site Licenses. If the Order lists a Site License, the License Fee for Software is calculated by numbers of Student FTEs that Customer has for the Site as specified in the Order. Customer represents that at the time it executes an Order, its total number of Student FTEs at (or assigned to) the Site is the same or less than the number of Student FTEs listed on the Order(s). Company may increase the Site License Fee at any time (in accordance with the standard license fee bands adopted by Company and available on request from time to time) if Customer merges with, or is taken over by, another entity/institution, or if it otherwise increases Student FTE numbers, such that the Student FTE number for Customer (or the entity it is taken over by or merges with) increases by 20% or more. Customer will notify Company as soon as reasonably practicable upon becoming aware of an increase in student numbers.

3.3. Fees and Payments. Customer will pay all fees for the Software and/or Professional Services on the terms set forth in the Order. Unless otherwise specified in the Order, all fees set forth in an invoice are due and payable net 30 days of the date thereof except fees subject to a reasonable and good faith dispute pursuant to Section 3.6 below. Except as expressly stated in these Terms, any payments Customer makes to Company are final and non-refundable. Customer is responsible for providing accurate and current billing, contact and payment information to Company. Customer agrees that

3.4. Company may charge its payment card or bill Customer for all amounts due for Customer's use of the Software, and Company may take steps to update Customer payment information (where permitted) to ensure payment can be processed. Customer agrees that its payment information and related personal data may be provided to third parties for payment processing and fraud prevention purposes. Company may suspend or terminate the use and or access to the Software if at any time Company determines that Customer's payment information is inaccurate or not current. Customer is responsible for fees and overdraft charges that Company may incur when Company charges Customer's card for payment. Unless otherwise stated in the Order, Company reserves the right to increase the fees for

3.5. Software annually after the end of the Initial Term. All references to currency will be in US dollars ($USD), unless otherwise stated on the Order.

3.6. 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 arising out of Customer's purchase of access to or use of Software and/or Professional Services, except those taxes and fees based on

3.7. Company's net income, or Taxes and Fees for which Customer has provided an exemption certificate. The fees stated on an Order exclude any Taxes and Fees. The total amount payable by Customer will be increased so that after any deduction for any applicable Taxes and Fees withholding is made Company is paid an amount equal to the sum it would have received had no such Taxes and Fees withholding been made. In all cases, Customer will pay the amounts due under this Agreement to Company in full without any right of set-off or deduction.

3.8. 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. Company may, on 10 days' notice to Customer, suspend Customer's right to use the Software if Customer does not pay undisputed fees by their due date, and Customer agrees to reimburse Company for all reasonable costs and expenses, including 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.

3.9. Sales, Promotional Offers, and Pricing Discounts. Sales, promotions, and other special discounted pricing offers are temporary, and upon the renewal of Customer's Order, any such discounted pricing offers may expire. Company reserves the right to discontinue or modify credits, sales, and special promotional offers in Company's sole discretion.

4. TERM AND TERMINATION.

4.1. Term. The initial term commitment for Customer's purchase of licenses for the Software will begin on the date Customer signs the initial Order (the “Initial Term”). If the Order is silent, the Initial Term will be 36 months. After the Initial Term, an Order will automatically renew for the same length as the Initial Term (each a “Renewal Term” and collectively with the Initial Term, the “Term”), unless either party provides notice of non-renewal at least 60 days before the current term expires. Company may agree to align the invoicing under multiple Orders, but this will not reduce the term of any Order. Terminating specific Orders does not affect the term of any Order still in effect, and these Terms will continue to apply to any Order that is still in effect. The parties agree to align the Term for any Software that is provided under multiple Orders for Software with the latest expiration date of any of the Orders for the Software.

4.2. Termination for Cause. Either party may terminate the Agreement or an Order (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice, 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. In addition, Company may terminate an Order if Customer fails to pay any amount due under the Order within 15 days of the due date for payment.

4.3. Effect of Termination. If the Agreement or any Order is terminated, Customer will immediately discontinue all use of the terminated Software, and delete, destroy or return all copies of the On-Premise Software and Documentation in Customer's procession and certify in writing to Company that such On-Premise Software and Documentation has been deleted or destroyed. Upon expiration or termination of this Agreement, Customer will immediately pay to Company any sums due to it under this Agreement. Termination 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 Proprietary Rights and Marks. Customer acknowledges that Company or Company’s licensors retain all proprietary right, title and interest in the Client Application and Software, 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 Company’s Client Application, the Software, 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. As between Customer and Company, Customer retains all rights to its Customer Content and is solely responsible for the Customer Content sent or transmitted by Customer or displayed or uploaded by Customer in using the Software 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 its Customer Content in order to provide and operate the SaaS Software. Company will not view, access or process any of Customer Content, except: (x) as authorized or instructed by Customer or Customer's Users in this Agreement (including as necessary to provide ongoing support for the Software) or in any other agreement between the parties, or (y) as required to comply with Company policies, applicable law, or governmental request.

5.3. Feedback. Customer agrees that Company will have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to implement, use, modify, commercially exploit, incorporate into the Software or otherwise use any suggestions, enhancement requests, recommendations or other feedback Company receives from Customer, Company’s 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 that were 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 SaaS Software to be used by Company in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SaaS Software ("Aggregated Statistics"). As between Company and Customer, 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 Customer's Content.

5.5. Publicity. Customer agrees that Company may use Customer's name and logo, and refer to Customer, in its promotional and marketing materials including on its website, lists and business presentation, subject to Customer's prior written consent.

6. PRIVACY AND SECURITY.

6.1. Security Safeguards. Each party will maintain reasonable 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 Software. 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 Software, who may access Customer Content and any associated personal data, to provide, secure and improve the Software. Before sharing Customer Content with any 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 its sub-processors to the same extent that Company would be responsible if Company were providing the Software.

6.3. Data Protection Laws. To the extent that Company's provision of the Software involves the processing of Personal Data under applicable data protection law, the parties agree that the terms of the Data Processing Agreement apply to the processing of personal data by AppsAnywhere on behalf of the Licensee. 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. The terms of the DPA apply to Company's processing of Personal Data on behalf of Customer. 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. Privacy Laws. Company acknowledges that Customer Content, which includes Personal Data, may be protected from disclosure by provincial, state and or federal law. Company agrees to only retain, use and disclose such data for the purposes of fulfilling its duties under this Agreement and to keep all such data to which it has access in the performance of this Agreement in a secure manner and disclose it only on direction by Customer.

7. CONFIDENTIALITY.

7.1. "Confidential Information" means 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. All Customer Content will be deemed Confidential Information of Customer without any marking or further designation. All Company technology and the terms and conditions of this Agreement will be deemed Confidential Information of Company without any marking or further designation. Confidential Information does 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 employees and contractors 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. Product Warranties. Company provides the Professional Services using a commercially reasonable level of care and warrants that the Software will materially conform to its Documentation under normal use and subject to Customer complying with the obligations required of it in the Documentation. Customer may provide written notice of any alleged non-conformity within 30 days of becoming aware of the alleged non-conformity. For the On-Premises Software, the warranty period is 30 days after the On-Premises Software is installed. Customer must provide notice of any alleged non-conformity within such 30 day period. Customer will provide sufficient detail in its notice for Company to assess the nature of the alleged and provide all information reasonably requested by Company to resolve the alleged non-conformity.

8.2. Sole Remedies. Company's entire liability and Customer's exclusive remedy under this warranty will be, at Company's sole option and subject to applicable law, (i) to provide conforming Software or Professional Services, (ii) replace the non-conforming Software or Professional Services, or (iii) to terminate the non-conforming Software or Professional 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 of the applicable Order. 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 SOFTWARE AND/OR THIRD-PARTY SOFTWARE WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (ii) THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE WILL MEET CUSTOMER'S SPECIFIC REQUIREMENTS. COMPANY DOES NOT PROVIDE ANY WARRANTIES FOR THIRD PARTY HARDWARE.

9. INDEMNIFICATION.

9.1. Company's Indemnity. Company will indemnify and defend Customer against any third-party claim alleging that any of the Software 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. This Section 9.1 describes Company's sole obligations in the event of an IP Claim, and Customer's exclusive remedies. 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: (i) 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 Customer's own counsel at Customer's 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 Software; or (b) replace or modify the Software with equivalent or better functionality so that Customer's use is no longer infringing; or (c) if (a) or (b) are not commercially reasonable, terminate provision of the Software and refund to Customer any pre-paid Service fees for any periods after the termination of the Software, less any outstanding moneys owed by Customer to Company.

9.1.2. The obligations in Sections 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 Software 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 Software outside the scope of the rights granted in this Agreement.

9.2. Customer's Indemnity. Customer will indemnify and defend Company against any third-party claim resulting from a breach of Sections 2.4 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 Company's own counsel at Company's 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 PUNITIVE, 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 EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SOFTWARE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DOES NOT LIMIT YOUR OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER ANY ORDER.

11. COMPLIANCE WITH LAWS. In connection with the performance, access, and use of the Software 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 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 Software. Notwithstanding any other provision in these Terms, Company may immediately terminate the Agreement for noncompliance with applicable laws.

12. SUSPENSION OF ACCESS TO SOFTWARE. Company reserves the right to suspend Customer's access to the Software or restrict functionalities if (a) Company reasonably believes that Customer, Customer's Affiliates or Users have materially violated this Agreement, or (b) Company reasonably determines that the security of Company's SaaS Software 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, Customer's Affiliates or Users or any other third party for any such suspension of access to the Software or reduced functionality. Any suspected fraudulent, abusive, or illegal activity by Customer, Customer's 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 trial by 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. These Terms 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. 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 relates. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.

13.5. 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 Company's 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, attention Contract Admin; e-mail support@appsanywhere.com; and for notice related to legal matters, e-mail 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.

13.6. 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 Software and 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 Software described in the applicable Order. No modification of or amendment to this Agreement will be effective unless mutually agreed in writing.

13.7. 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; 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.

13.8. Beta Software. Company may offer Customer access to beta versions of the Software that are being provided prior to general release ("Beta Software"). Customer understands and agrees that the Beta Software may contain bugs, errors and other defects, and use of the Beta Software is at Customer's sole risk. Customer acknowledges that its use of Beta Software is on a voluntary and optional basis, and Company has no obligation to provide technical support and may discontinue provision of Beta Software at any time in Company's sole discretion and without prior notice to Customer. Beta Software is 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 Software, 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 Software. If Customer provides Feedback about the Beta Software, the provisions of clause 5.3 apply to such Feedback. For Beta Software only, these Terms supersede any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict.