

## MASTER SUBSCRIPTION AGREEMENT

### ENACT™ Hosted Solution

Updated April 17, 2017

#### IMPORTANT - READ CAREFULLY:

This Master Subscription Agreement (“Agreement”) is a legal agreement between you (either an individual or a single entity) and InfinityQS International, Inc. (“InfinityQS”) for the ENACT™ service listed above (the “Hosted Solution”). This Agreement also includes any updates and supplements to the original Hosted Solution we may make available to you and any changes we make to this Agreement from time to time.

BY ACCEPTING THIS AGREEMENT YOU AGREE TO THE TERMS OF THIS AGREEMENT. THESE TERMS ARE INCORPORATED BY REFERENCE INTO EACH ORDER FORM YOU OR ANOTHER AUTHORIZED REPRESENTATIVE OF YOUR ENTITY SIGNS. THIS AGREEMENT AND EACH ORDER FORM TOGETHER CREATE A BINDING WRITTEN AGREEMENT BETWEEN YOU AND INFINITYQS, EFFECTIVE AS OF THE DATE YOU ACCEPT THIS AGREEMENT THE FIRST DATE YOU SIGN AN ORDER FORM.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. **IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OUR HOSTED SOLUTION.**

**NO USE BY COMPETITORS.** You may not access the Hosted Solution if you are a direct competitor of ours, except with our prior written consent. If you are not a competitor of ours, you may not, without our prior written consent: (a) allow a third party who is direct competitor of ours to access or use the Hosted Solution for any purpose; or (b) access or use the Hosted Solution or any of our services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

#### 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings indicated.

- 1.1. **“Activation Date”** means the date we make the Hosted Solution ready for your use and access.
- 1.2. **“Active Session”** means a license for one User to use or access the Hosted Solution.
- 1.3. **“Affiliate”** means any legal entity that directly or indirectly controls, is controlled by, or under common direct or indirect control with another entity, where “control” means the possession, directly or indirectly, of the power to direct or exercise a controlling influence over the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise. Such entity shall be deemed to be an “Affiliate” only so long as such relationship with the applicable party exists.
- 1.4. **“Beta Services”** means services or functionality we make available to you to try at your option at no additional charge. We will clearly designate such services or functionality as beta, pilot, trial, limited release, developer preview, non-production, evaluation, or by a similar description.
- 1.5. **“Confidential Information”** means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects that a party has designated as “Confidential,” “Proprietary” or some similar designation, or information the confidential or proprietary nature of which is reasonably apparent under the circumstances.
- 1.6. **“Deliverable”** means any tangible or intangible materials or other items we provide to you in the course of providing Professional Services.
- 1.7. **“Documentation”** means the online user guide, online help system, and other documentation InfinityQS provides along with the Hosted Solution and InfinityQS updates from time to time.
- 1.8. **“Order Form”** means an ordering document or online order specifying the Activation Date, number of Active Sessions, applicable Subscription Term, your information (including your billing address and project manager), and other options available to you in connection with your use of the Hosted Solution. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- 1.9. **“Personal Information”** means (a) any information personal or unique to a specific individual, including all sensitive personal or financial information relating to a specific individual; and (b) any information that relates to or can be used to identify or contact a specific individual, such as first and last name, email address, telephone number, social security number, or financial account information.
- 1.10. **“Professional Services”** means installation, system configuration, consulting, training or other similar services we provide in connection with your use of the Hosted Solution, in accordance with the terms of the Professional Services Addendum found [here](#).
- 1.11. **“Quotation”** means a cost proposal we submit to you for Active Sessions or Professional Services.
- 1.12. **“Renewal Term”** means any renewal of a Subscription Term to which the parties agree in writing.

- 1.13. **“Statement of Work” or “SOW”** means a document that describes the tasks and responsibilities of each party in relation to a particular Professional Services engagement.
- 1.14. **“Subscription Fees”** means fees for the Active Sessions purchased under this Agreement.
- 1.15. **“Subscription Term”** means the period during which you have the right to use and access the Hosted Solution.
- 1.16. **“User”** means an individual or a device you authorize to use or access the Hosted Solution and to which you have supplied a User ID and password.
- 1.17. **“User ID”** means a login identification for each Active Session you purchase.
- 1.18. **“We,” “us” or “our”** means InfinityQS or one of its Affiliates, as applicable.
- 1.19. **“You” or “your”** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.
- 1.20. **“Your Data”** means any electronic data or information you submit, use, process, or store on the Hosted Solution, as well any reports or other materials you create using the Hosted Solution.

## 2. Our Obligations Regarding the Hosted Solution

- 2.1. **Provision of the Hosted Solution.** In accordance with the terms of this Agreement and the applicable Order Forms, we will host the Hosted Solution and make it available to you via the website we specify. We will use commercially reasonable efforts to make the Hosted Solution available in accordance with the Service Level Agreement located [here](#). We will also update the functionality, user interface, usability, and other Documentation for the Hosted Solution from time to time in our sole discretion and in accordance with this Agreement as part of our ongoing mission to improve the Hosted Solution and our clients’ use of the Hosted Solution. The terms of this Agreement will also apply to such updates.
- 2.2. **Technical Support.** We include Standard Technical Support with purchases of licenses to the Hosted Solution at no additional charge and only in an online format. Response time for Standard Technical Support is within 2 U.S. business days. We also offer an option for Premium Technical Support for an additional fee. Premium Technical Support includes telephone and online support, with a response time within 1 U.S. business day, and is available Monday through Friday, 8:00 AM to 7:00 PM Eastern Time (ET, GMT-5), excluding company-assigned holidays. We provide both Standard and Premium Technical Support in English only.
- 2.3. **Security.** We will also use commercially reasonable efforts to maintain the security of the Hosted Solution and the Your Data in accordance with standards prevailing in the industry. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards include measures for preventing access, use, modification or disclosure of Your Data by our personnel except (a) as necessary to provide the Hosted Solution and prevent or address service or technical problems, (b) as compelled by law, or (c) as you expressly permit in writing.
- 2.4. **Our Personnel.** We will be responsible for the performance of our personnel and their compliance with our obligations under this Agreement, except as otherwise specified in this Agreement.
- 2.5. **Beta Services.** From time to time, we may make Beta Services available to you at no charge. You may choose to try such Beta Services or not in your sole discretion. We intend to offer Beta Services for evaluation purposes only and not for production use. If you choose to use a Beta Service, you agree to provide to us, in writing any relevant feedback on the functionality and performance of the Beta Service and the results of all tests you run on the Beta Service and to report to us the existence and type of any failures, errors or other malfunctions you discover or experience during your testing and evaluation. We do not offer support for Beta Services, and they may be subject to additional terms. Beta Services are not considered part of the Hosted Solution under this Agreement, except that, all restrictions, our reservation of rights and your obligations concerning the Hosted Solution shall apply equally to your use of Beta Services. Unless otherwise stated, any Beta Service trial period expires upon the earlier of one year from the trial start date or the date a version of the Beta Service becomes generally available without designation as a “Beta Service.” We may discontinue Beta Services at any time in our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.
- 2.6. **Professional Services.** From time to time, you may ask us to provide Professional Services related to your use of the Hosted Solution. The terms of the Professional Services Addendum, located [here](#) will apply to such Professional Services.

## 3. Your Rights and Obligations Regarding the Hosted Solution

- 3.1. **Access to the Hosted Solution.** Subject to the terms of this Agreement, we give you the right to access and use the Hosted Solution during the applicable Subscription Term on a nonexclusive, nontransferable basis, and solely for your internal business purposes. Your use is capped at the number of Active Sessions you purchase during a Subscription Term. Except as otherwise specified in the initial Order Form or in a Quotation, the initial Subscription Term for each Active Session shall be twelve (12) months from the Activation Date for such Active Session.
- 3.2. **No Use of Personal Information.** Notwithstanding any provision to the contrary in this Agreement, you acknowledge and agree that use of the Hosted Solution to transmit, process or store Personal Information is unnecessary for your use of the Hosted Solution. As such, you further acknowledge and agree that, with respect to our provision of the Hosted Solution under this Agreement, we have no obligation to comply with any laws or regulations applicable or related to the privacy or security of Personal Information. You will be solely responsible for any use of Personal Information in connection with your use of the Hosted Solution and we have no risk or liability for such use by you or your Users. Also, you specifically acknowledge and agree that: (a) we are not acting on your behalf as a Business Associate or subcontractor (as such terms are used, defined, or described in the Health Insurance Portability and

Accountability Act of 1996, as amended and supplemented ("HIPAA"); (b) the Hosted Solution is not HIPAA-compliant; and (c) you may not use the Hosted Solution in any manner that would require us or the Hosted Solution to be HIPAA-compliant.

- 3.3. **Your Responsibilities.** You will (a) be responsible for all activities that occur under your User IDs, as well as your Users' compliance with this Agreement, Documentation and Order Forms; (b) be responsible for the accuracy, quality and legality of Your Data and the means by which you acquired Your Data; (c) provide accurate, current, and complete information on your legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Solution, and notify us promptly of any such unauthorized access or use; (e) use the Hosted Solution only in accordance with this Agreement, the Documentation, and Order Forms, as well as applicable laws and government regulations; (f) provide us with reasonable access to your facilities and Users, as necessary to duplicate and resolve errors; (g) document and promptly report to us all errors or malfunctions you experience in the Hosted Solution; and (h) take all steps necessary to carry out procedures for the correction of errors or malfunctions within a reasonable time after you have received such procedures from us.
- 3.4. **User IDs and Passwords.** On or before the Activation Date, we will provide you one or more User IDs and passwords that enable you to access and use the Hosted Solution. You are solely responsible for protecting all User IDs against theft, loss, or unauthorized use. We reserve the right to reject a request to provide User IDs for Users that violate any of the restrictions set forth in or are otherwise inconsistent with, the terms and conditions of this Agreement. We will notify you in writing of the reason for which we are rejecting the request regarding a particular User.
- 3.5. **Limits on Active Sessions.** You may allow a number of Users equal to the total number of Active Sessions you purchased to access and use the Hosted Solution. You acknowledge, however, that we include in the Hosted Solution functionality to track the number of active User IDs at any particular time and to prevent your Users from exceeding the total number of Active Sessions you have purchased.
- 3.6. **Additional Purchases.** You will have the option to add Active Sessions to your Subscription Term at any time by requesting them from us. We will submit a Quotation related to such additional Active Sessions. The fees payable for additional Active Sessions under any new Quotation during a particular Subscription Term will be pro-rated so that the expiration of such Active Sessions will coincide with the expiration of the then-current Subscription Term. You can also expand the scope of your use of the Hosted Solution by purchasing subscriptions to other modules, such as the InfinityQS Data Management Service, Enact Gauge Server, or other add-on components we may offer from time to time. Again, we will submit a Quotation related to such expanded scope, and the fees payable for such expanded scope will be pro-rated so that the expiration of your use of such modules coincides with the expiration of the then-current Subscription Term.
- 3.7. **Restrictions.** You cannot and will not, except with our prior written consent: (a) make the Hosted Solution available to, or use the Hosted Solution for the benefit of, anyone other than you or your Users, unless expressly stated otherwise in an Order Form or the Documentation; (b) copy, modify, translate, create a derivative work of, disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code of any portion of the Hosted Solution or the underlying software; (c) gain or attempt to gain unauthorized access to any portion of the Hosted Solution or its related systems; (d) use unauthorized modified versions of the Hosted Solution, including for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Hosted Solution; (e) install or use any portion of the Hosted Solution on any of your computer systems, servers or networks (other than the client portion of the Hosted Solution installed on your server); (f) transfer, license, sublicense, lease, loan, sell, resell for profit, distribute or otherwise grant any rights in any portion of the Hosted Solution in any form to any other party; (g) use the Hosted Solution in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights, including using the Hosted Solution to send spam or otherwise duplicative or unsolicited messages in violation of applicable law; (h) send or store obscene, pornographic, threatening, libelous, or other unlawful or indecent material; (i) publish, post, upload or otherwise transmit Your Data that contains any viruses, worms, Trojan horses, time bombs, corrupted files or other malicious or harmful computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (j) interfere with or disrupt the integrity or the operation of the Hosted Solution or the data contained therein; (k) create Internet links to or from any portion of the Hosted Solution, "frame," "mirror" or "scrape" any content of the Hosted Solution, or copy any features, functions, screens, interfaces or graphics of any portion of the Hosted Solution, to give the impression that you are offering the Hosted Solution as a service located on its own systems; or (l) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Hosted Solution. Any use of the Hosted Solution in breach of this Agreement, the Documentation or Order Forms, by you or your Users that, in our judgment, threatens the security, integrity or availability of the Hosted Solution, may result in our immediate suspension of your access to and use of the Hosted Solution; we will, however, use commercially reasonable efforts under the circumstances to give notice and an opportunity to remedy such violation or threat before suspending your access and use.
- 3.8. **Internet Access.** You must have a high speed Internet connection for proper transmission and use of the Hosted Solution. You are responsible for procuring and maintaining the network connections that connect your network to the Hosted Solution, including "browser" software that supports protocol used by us, including Secure Socket Layer (SSL) protocol or other protocols accepted by us, and to follow logon procedures for services that support such protocols. We are not responsible for notifying you of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including the Internet) we do not own or operate. We assume no responsibility for the reliability or performance of any connections described in this Section.

#### 4. Proprietary Rights

- 4.1. **Our Ownership Rights.** Subject to the limited rights expressly granted to you under this Agreement, we and our licensors reserve all rights, title, and interest in and to the Hosted Solution, including all related intellectual property rights. You acknowledge and agree that we or our licensors exclusively own (a) all right, title and interest, including all related intellectual property rights, in and to the Hosted Solution and the underlying software, as well as any software we use to provide the Hosted Solution; (b) all Deliverables and other materials we provide in the course of providing Professional Services; and (c) any updates, upgrades, modifications, extensions, customizations, scripts or other derivative works of the items listed in clauses (a) and (b). The rights granted to you do not convey any ownership or other rights any of the items listed in the preceding sentence, whether express or implied.
- 4.2. **Your Data.** As between the parties, you own exclusively all right, title and interest in and to all Your Data. You, however, grant us a non-exclusive, perpetual, royalty-free license (a) to use Your Data to provide the Hosted Solution to you; and (b) to provide application technical support or otherwise at your request. We shall not reveal the source of any of Your Data, unless required to do so by law. For the avoidance of doubt, we will not access or modify any of Your Data without your request in writing. You acknowledge and agree that in connection with the Hosted Solution, we, as part of our standard offering make backup copies of Your Data in your account, and store and maintain such data for a period of time consistent with our standard business practices.
- 4.3. **License to Use Feedback.** You grant to us and our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Hosted Solution and any of our other services, free of any confidentiality restrictions, any suggestion, enhancement request, recommendation, correction or other feedback or other information (collectively, “**Feedback**”) you or your Users may provide with respect to the Hosted Solution or the operation of the Hosted Solution. In addition, we will own all rights, title, and interest in and to any version of the Hosted Solution that incorporates your Feedback.
- 4.4. **Third Party Applications or Services.** You may use or procure online web-based applications or services or offline software products that third parties provide in connection with your use of the Hosted Solution. We do not warrant any such third party applications or services, regardless of whether or not we identify such third party providers as “certified,” “approved” or “recommended.” Any procurement by you of any third-party applications or services is solely between you and the applicable third party provider. We are not responsible for any aspect of any third-party applications or services you may procure or connect to through the Hosted Solution, or any descriptions, promises or other information related to such applications or services, and any exchange of data or other interaction between you and a third-party provider is solely between you and such third party provider. Also, we are not responsible for any disclosure, modification or deletion of Your Data resulting from any such access to third party applications or use by third party providers.
- 4.5. **Federal Government End Use Provisions.** If you are an entity of the US Federal Government, we provide the Hosted Solution, including related software and technology, solely in accordance with the following: Government technical data and software rights related to the Hosted Solution include only those rights customarily provided to the public as defined in this Agreement. This customary license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and we must agree upon a mutually acceptable written addendum specifically granting such rights.

#### 5. Fees and Billing

- 5.1. **Fees.** You will pay all Subscription Fees, as well as other fees due under any Order Form and any invoices issued under this Agreement. Except as otherwise specified in this Agreement or in an Order Form, a Quotation or an invoice: (a) fees are based on Active Sessions purchased and not actual usage, (b) payment obligations are non-cancelable and fees paid are non-refundable, and (c) you cannot reduce the number of Active Sessions during the relevant Subscription Term. Following the initial Subscription Term, we reserve the right to change our pricing from time to time; except that such changes will not apply until the renewal of the Subscription Term then in effect at the time we adopt such changes.
- 5.2. **Billing and Payment Terms.** Upon the Activation Date, we will invoice you for the Subscription Fees for the initial Subscription Term for the number of Active Sessions you purchased under the initial Order Form, as well as any other fees included in the initial Order Form. All fees are payable up front, as specified in the applicable Quotation or Order Form. For each Renewal Term, we will invoice you for the applicable Subscription Fees for the Active Sessions in effect on the date of renewal, as well as other fees specified in the applicable Quotation. Payment of the fees specified in each invoice are due within thirty (30) days after the date of the invoice. All payments must be made in the currency specified in the applicable invoice.
- 5.3. **Overdue Charges.** If we do not receive any invoiced amount by the due date, then without limiting our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; and (b) we may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Billing and Payment Terms).
- 5.4. **Suspension of Service.** If any payment you owe is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of our other rights or remedies, we reserve the right, upon written notice to you, to suspend your access to and use of the Hosted Solution unless you pay such amounts in full within ten (10) business days of receipt of our notice.
- 5.5. **Taxes.** Our fees do not include any taxes, duties, or other fees or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with your purchases under this Agreement. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section, we will invoice you and you will pay that amount unless you provide us with

a valid tax exemption certificate authorized by the appropriate taxing authority. This Section shall not apply to taxes based on our net income or payroll taxes.

- 5.6. **Future Functionality.** You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments we may make regarding future functionality or features.

## 6. Confidential Information

- 6.1. **Components of Confidential Information.** Each party acknowledges it will have access to certain Confidential Information of the other party in the course of performing its obligations under this Agreement. Your Confidential Information includes Your Data. Our Confidential Information includes the Hosted Solution and any content included on it. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms and SOWs (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes such party discloses.
- 6.2. **Non-Use and Non-Disclosure.** Each party will use at least the same degree of care it uses to prevent the disclosure of its own Confidential Information of like importance, which care shall be no less than reasonable care, to prevent the disclosure of Confidential Information of the other party. Each party will not use the Confidential Information of the other party except to exercise its rights and perform its obligations under this Agreement, and will not disclose such Confidential Information to any third party without the prior written consent of the other party or otherwise in accordance with this Section. Each party may disclose the other party's Confidential Information only to its directors, officers, employees, and advisors (each, a "**Representative**") who have a need to know and are bound by written agreements include confidentiality obligations consistent with those set forth in this Agreement. Each party shall (a) be responsible for the compliance by each Representative with the terms and conditions of this Agreement; and (b) promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.
- 6.3. **Exceptions.** Each party's obligations with respect to the Confidential Information of the other party does not apply to information that: (a) is or becomes generally available to the public through no wrongful act of the receiving party; (b) was rightfully in the receiving party's possession without an obligation of confidentiality before it was acquired from the disclosing party; (c) is rightfully made available to the receiving party by a third party that is not, to the receiving party's knowledge, subject to an obligation of confidentiality to the disclosing party with respect to such information; or (iv) the receiving party independently develops without reference to or use of the disclosing party's Confidential Information.
- 6.4. **Compelled Disclosure.** If the receiving party receives a subpoena or other administrative or judicial process requiring the disclosure of the disclosing party's Confidential Information, the receiving party shall notify Disclosing Party of such subpoena or process (to the extent legally permitted) to allow the disclosing party a reasonable opportunity to obtain a protective order. If the disclosing party wishes to contest the disclosure, the receiving party will provide reasonable assistance, at the disclosing party's expense. If the disclosing party does not wish to contest the disclosure, the receiving party may then comply with such subpoena or process to the extent required by law.
- 6.5. **Return of Materials.** Upon the earlier of a written request at any time by the other party or the termination of this Agreement, each party shall return or destroy all Confidential Information of the other party and certify in writing within thirty (30) days as to its return or destruction.
- 6.6. **Previous Confidentiality Agreement.** The parties agree that this Section 6 is the entire agreement and understanding of the parties with respect to Confidential Information. If the parties have previously signed a non-disclosure agreement or other form of confidentiality agreement ("**NDA**"), the parties hereby agree that: (a) the NDA shall remain in effect, but shall apply to and govern only any exchanges of Confidential Information that occurred before the Effective Date of this Agreement; and (b) this Section 6 shall govern all exchanges of Confidential Information between the parties beginning as of the Effective Date of this Agreement.

## 7. Representations and Warranties

- 7.1. **Reciprocal Representation.** Each party represents it has validly entered into this Agreement and has the legal power to do so.
- 7.2. **Your Warranties; Breach of Your Warranties.** You represent, warrant, and covenant that your services, products, materials, Your Data, and information you use in connection with this Agreement, as well as your use of the Hosted Solution, do not and will not during the term of this Agreement operate in any manner that would violate any applicable law or regulation. You further represent, warrant, and covenant that any data, content, or materials you use, store, process or create in the course of using the Hosted Solution will comply with all applicable laws, and will not infringe the patent, copyright, trademark, trade secret, privacy, publicity, or other rights of any third party. If you are in breach of any of your representations or warranties in this Agreement, we will have the right, in addition to any other remedies available at law or in equity, to suspend your access to or use of the Hosted Solution or any Professional Services we provide to you if we deem such action reasonably necessary to prevent any liability to us or any potential risk or liability to our other clients.
- 7.3. **Our Warranty; Breach of Our Warranty.** We warrant to you that the Hosted Solution will perform in all material respects in accordance with the online Documentation. Your exclusive remedy and our entire liability for a breach of the warranties set forth in Section 7.1 and the first sentence of this Section 7.3, shall be as follows: (a) for a breach of the warranty in Section 7.1, we will provide the indemnification provided under Section 9; and (b) for a breach of the warranty set forth in the first sentence of this Section, we will provide technical support services and otherwise use commercially reasonable efforts to correct any repeatable errors detected in the Hosted Solution.
- 7.4. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR

A PARTICULAR PURPOSE OR NON-INFRINGEMENT, QUIET ENJOYMENT, AND TITLE, AS WELL AS ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WE PROVIDE BETA SERVICES "AS IS," WITHOUT ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. WE DO NOT WARRANT THAT YOUR USE OF THE HOSTED SOLUTION WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

- 7.5. **Internet Delays.** YOU ACKNOWLEDGE THAT THE HOSTED SOLUTION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS OR FOR ANY COMPROMISE OF DATA TRANSMITTED ACROSS COMPUTER NETWORKS OR TELECOMMUNICATIONS FACILITIES (INCLUDING THE INTERNET) THAT WE DO NOT OWN, OPERATE OR CONTROL. WE ASSUME NO RESPONSIBILITY FOR THE RELIABILITY OR PERFORMANCE OF ANY CONNECTIONS DESCRIBED IN THIS SECTION.

## 8. Limitations of Liability

EXCEPT FOR (A) AMOUNTS PAYABLE UNDER ARTICLE 9 (INDEMNIFICATION) OR (B) A VIOLATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR (1) ANY LOST REVENUE OR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE; OR (2) DAMAGES THAT EXCEED THE AMOUNT PAID BY YOU UNDER THE ORDER FORM THAT GAVE RISE TO SUCH LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER ARTICLE 5 (FEES AND BILLING) ABOVE.

## 9. Indemnification

- 9.1. **Our Indemnification of You.** We will defend you against any third party claim against alleging that the Hosted Solution infringes the third party's copyright or U.S. patent rights issued as of the Effective Date or misappropriates the third party's trade secrets rights. We will pay all damages, costs and expenses finally awarded against you by a court of competent jurisdiction or an arbitrator, or that we agree to in a written settlement agreement we sign. If we receive information about an infringement or misappropriation claim related to a Hosted Solution, (a) we may in our discretion and at no cost to you modify the Hosted Solution so that it is no longer infringing; (b) obtain a license for you to continue using the Hosted Solution in accordance with this Agreement, or (c) terminate your subscriptions for the Hosted Solution upon 30 days' written notice and refund to you any prepaid fees covering the remainder of the terminated Subscription Terms. We will have no obligation under this Section if the alleged infringement arises as a result of (i) use of the Hosted Solution other than in accordance with this Agreement; (ii) any modification to the Hosted Solution made by a party other than us; or (iii) use of the Hosted Solution in combination with other software or systems we do not provide.
- 9.2. **Your Indemnification of Us.** You will defend us against any claims made or brought against us by a third party (a) alleging that Your Data, or your use of the Hosted Solution in violation of this Agreement, infringes or otherwise violates such third party's property, privacy or other rights; or (b) arising from or related to your use of Personal Information with the Hosted Solution. You will pay all damages, costs, and expenses finally awarded against us by a court of competent jurisdiction or an arbitrator, or in a written settlement agreement you agree to and sign.
- 9.3. **Indemnification Procedures.** If a claim subject to indemnification arises under this Agreement, the party entitled to indemnification (the "**Indemnified Party**") will (a) promptly notify the other party (the "**Indemnifying Party**") in writing after becoming aware of the claim subject to indemnification; (b) allow the Indemnifying Party to assume sole control of the defense of the claim; and (c) provide reasonable cooperation to the Indemnifying Party in defending or settling the claim, at the Indemnifying Party's sole expense; except that, the Indemnified Party's failure to notify or assist the Indemnifying Party shall relieve the Indemnifying Party of any indemnification obligation only to the extent that such failure by the Indemnified Party materially prejudices the Indemnifying Party's ability to defend or settle the claim. Also, (i) neither party will enter into a settlement or other resolution of the claim that does not include a full release of the other party with respect to all claimants or imposes any liability on the other party; and (ii) the Indemnified Party shall be entitled, at its sole expense, to retain counsel and participate in the defense or settlement of a claim subject to indemnification.
- 9.4. **Exclusive Remedy.** This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

## 10. Term and Termination

- 10.1. **Term.** This Agreement begins on the date you first accept it and continues until all Subscription Terms have expired or the termination of all Active Sessions granted under this Agreement. Each Active Session remains in effect for the initial Subscription Term specified in the initial Order Form. At least 60 days before the expiration date of the initial Subscription Term or the then-current Renewal Term, we will (a) issue you an invoice for the Subscription Fees payable for the following Subscription Term; and (b) notify you of any changes to the pricing or other material terms of the Hosted Solution that will apply during the Renewal Term. Your payment of the invoice confirms your consent to the Renewal Term.
- 10.2. **Termination for Breach.** Either party will have the right to terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within 30 days after receiving written notice of the breach, except in the case of your failure to pay fees, which breach you must cure within ten business days after receiving written notice from us.
- 10.3. **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (a) we will immediately cease providing the Hosted Solution to you and you will cease all use of the Hosted Solution; (b) all your payment obligations under this

Agreement will become due immediately; (c) you will discontinue all use of the Hosted Solution; and (d) each party shall return or destroy (as directed by the other party), within 30 days after such expiration or termination, all Confidential Information of the other party in its possession at the time of expiration or termination. Neither party may make or retain any copies of the other party's Confidential Information, except as required to comply with any applicable legal or record-keeping requirement, or as part of each party's respective archival systems.

- 10.4. **Your Data Portability and Deletion.** Upon your request made within 30 days after the effective date of termination or the expiration of this Agreement, we will make Your Data available to you for export or download as provided in the Documentation. After such 30-day period, we have no obligation to maintain or provide any of Your Data, and we have the right after such period to delete or destroy all copies of Your Data in our systems or otherwise in our possession or control, unless legally prohibited.
- 10.5. **Survival.** The terms and conditions of this Agreement that would, by their terms or their nature, survive the expiration or earlier termination of this Agreement, will survive any expiration or termination of the Agreement, including: (a) your obligation to pay all amounts accrued or accruable under this Agreement before or after the date of such expiration or early termination; (b) any cause of action or claim you or we accrued because of any breach or default by the other party; and (c) any claims arising under Sections 3.7 (Restrictions), 4 (Proprietary Rights), 6 (Confidential Information), 7.4 (Disclaimers), 8 (Limitations of Liability), 9 (Indemnification), 11 (General Provisions) and this Section 10.5.

## 11. General Provisions

- 11.1. **Changes.** InfinityQS may amend this Agreement at any time in its sole discretion, effective upon posting the amended terms at the domain or subdomains of <http://www.infinityqs.com> where the previous version of this Agreement was posted, or by communicating the changes through any written contact method we have established with you.
- 11.2. **Order of Precedence.** If there is a conflict between the provisions in an Order Form and the terms of this Agreement, the provisions in the Order Form shall take precedence and control.
- 11.3. **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquakes, floods, fires, embargoes, riots, sabotage, labor shortages or disputes, governmental acts, failures of the Internet or telecommunications facilities, utility failures, or hosting facility failures or delays, network intrusions or interruptions, or denial of service attacks (each a "Force Majeure Event"), as long as the delayed party: (a) gives the other party prompt notice of the occurrence of a Force Majeure Event, and (b) uses its commercially reasonable efforts promptly to correct and otherwise reasonably mitigate such failure or delay in performance. A Force Majeure Event may delay your obligation to pay amounts due under this Agreement, but will not relieve you of such obligation. The delayed party will also promptly notify the other party when the Force Majeure Event has abated.
- 11.4. **Compliance with Laws.** Each party will comply with all applicable laws in performing its obligations or exercising its rights under this Agreement. The Hosted Solution and related services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You will not allow Users to access or use the Hosted Solution or any related service in a U.S. embargoed country or in violation of any U.S. export law or regulation.
- 11.5. **Anti-Corruption.** You agree that neither you nor your personnel has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from we or any of your personnel in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the restriction described in the preceding sentence. If you learn of any violation of the restriction set forth in this Section, you will use reasonable efforts to notify our Chief Financial Officer promptly.
- 11.6. **Governing Law.** If you maintain your headquarters in North America, Central America, South America, Asia (other than the People's Republic of China), or Australia, the laws of the Commonwealth of Virginia govern all matters arising under or related to this Agreement, without regard to conflicts of law principles and, subject to Section 11.7 (Dispute Resolution), the state and federal courts located in the County of Fairfax, Virginia shall have exclusive jurisdiction and venue to adjudicate all disputes, claims, questions or disagreements arising from or related to this Agreement, or a breach of this Agreement ("Dispute") arising out of or in connection with this Agreement. If you maintain your headquarters in a country located in Europe, the Middle East or Africa, the laws of England and Wales govern all matters arising under or related to this Agreement, without regard to conflicts of law principles, and, subject to Section 11.7 (Dispute Resolution), the courts located in London, England shall have exclusive jurisdiction and venue to adjudicate all Disputes arising out of or in connection with this Agreement. If you maintain your headquarters in the People's Republic of China, the laws of the People's Republic of China will govern all matters arising under or related to this Agreement, without regard to conflicts of law principles and, subject to Section 11.7 (Dispute Resolution), the courts located in Beijing, China shall have exclusive jurisdiction and venue to adjudicate all Disputes arising out of or in connection with this Agreement. The parties consent to the exclusive exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, or any similar or related doctrine. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement.
- 11.7. **Dispute Resolution.** If there is any Dispute, the parties agree to attempt to settle the Dispute through good faith consultation and negotiation. If the parties cannot resolve a Dispute through internal negotiation and escalation, either party may initiate arbitration for final resolution of the Dispute by notifying the other party in writing. If you have your headquarters in the United States, (a) the parties will use the then-current Commercial Arbitration Rules of the American Arbitration Association to conduct the arbitration; and (b) the arbitration will take place exclusively in the County of Fairfax, Virginia. If you are headquartered outside the United States, (i) the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its then-current International Arbitration Rules; and (ii) the arbitration will take place exclusively in London, England. In either case, the parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so, the parties may request the appointment of a neutral arbitrator that (A) has at least eight years' experience in technology law, or (B) is a retired judge. . No written or oral

statements of position or offers of settlement either party has made in the course of the Dispute resolution process will (1) be offered into evidence for any purpose, or (2) constitute an admission or waiver of rights by either party. The arbitrator will have no authority to award punitive damages or exceed the contractual limitations on awards set forth in this Agreement. The arbitrator may apportion some of a party's legal fees to the other party based the extent to which the Party prevailed. Otherwise, each party will bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of the arbitration. The arbitrator will (1) issue a judgment in writing, (2) sign it, and (3) include a reasoned opinion with findings of fact and a breakdown as to specific claims. The judgment of the arbitrator will be final and binding. Either party may enter it in any court with jurisdiction. This section shall not be construed to prevent a party from instituting formal judicial proceedings to: (A) avoid the expiration of any applicable limitations period, (B) preserve a superior creditor position, or (C) seek injunctive relief to prevent an irreparable harm, including harm caused by a breach of confidentiality or a violation of intellectual property rights.

- 11.8. **Severability; Waiver.** If a court of competent jurisdiction finds any provision in this Agreement invalid or unenforceable, the remaining provisions of this Agreement will remain valid and in full force and effect, and the court or the parties may modify the invalid or unenforceable provision to the extent required to allow its enforcement in a manner that most closely represents the intentions of the parties in entering into this Agreement. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.
- 11.9. **Assignment.** Neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party, which consent the other party will not unreasonably withhold or delay; except that, such consent is not required if (a) either party, upon written notice to the other party, assigns the Agreement to an Affiliate of, or a successor to, such party, including an assignment to an unrelated entity in connection with a merger or acquisition with, or a sale of all or substantially all of its assets to, such other separate entity; or (b) we assign our right to receive payment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 11.10. **Notices.** All notices, requests, demands, or other communications required under this Agreement will be in writing and sent to the address each party specifies to the other party. Notices shall be deemed effective (a) upon delivery if delivered personally or by overnight delivery by an established national delivery service, or (b) five (5) days after deposit in the mail, postage prepaid, certified or registered, return receipt requested to the address or to such other address as one party may specify to the other party in writing after the Effective Date. If any party does not acknowledge receipt of any certified mail, then notice by facsimile, email, or other electronic medium of transmission, followed by first class mailing, shall be deemed notice under this Agreement.
- 11.11. **Relationship of the Parties.** Each party is an independent contractor under this Agreement and this Agreement does not establish any partnership, joint venture, employment, franchise or agency relationship between the parties. Neither party will have the power to bind the other party or incur obligations on the other's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment-related taxes.
- 11.12. **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year after the termination for any reason, neither party will hire or attempt to hire or solicit any employee, representative, or independent contractor of the other party, assist in such hiring or solicitation by anyone else, or encourage any such person or entity to terminate such employment or relationship.
- 11.13. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.
- 11.14. **Entire Agreement.** This Agreement and all documents incorporated by reference constitute the entire agreement between the parties with respect to its subject matter, and supersede and replace all prior or contemporaneous discussions, negotiations, understandings, and agreements, whether written or oral, regarding the subject matter. No alteration, amendment, waiver, cancellation or any other change to any term or condition of this Agreement will be valid or binding on either party unless it is in writing and manually signed by both parties. The parties agree that any term or condition stated in a purchase order or in any other order documentation (excluding Order Forms) is void.
- 11.15. **Headings; Construction.** Headings used in this Agreement are for reference purposes only and will not modify the meaning of the terms and conditions of this Agreement. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" or the phrase "but not limited to". The word "will" shall be construed to have the same meaning and effect as the word "shall," and vice versa.
- 11.16. **Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent, which consent neither party will unreasonably withhold or delay. With your prior consent, as indicated on an Order Form, we may include your name or logo in our list of customers. We will comply with your trademark usage guidelines in doing so. Also, from time to time, we may ask you to approve a joint press release or other electronic or online materials. You will not unreasonably withhold or delay your consent to such materials.
- 11.17. **English Language Governs.** This Agreement is in the English language only, which version will control in all respects. No translation of this Agreement, if any, into any other language will be of any force or effect in the interpretation of this Agreement or in a determination of the intent of either party.