



Sawtooth Software

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SOFTWARE AS A SERVICE AGREEMENT *(Effective 19 March 2015)*

This software as a service subscription agreement ("Agreement") governs your use of the System (as defined below) and any related services provided by Sawtooth Software, Inc. ("Sawtooth"), a Utah corporation, having its principal place of business at 3210 N Canyon Rd Ste 202, Provo UT 84604. You are referred to as "User" in this Agreement. If you use the System, or if you click "I agree" or take any other affirmative action indicating your acceptance of this Agreement, then you have agreed to these terms. If you are an agent or employee of the intended subscriber or User, you individually represent and warrant to Sawtooth that you are authorized to bind that party to this Agreement. If you do not agree to this Agreement, then you are not authorized to use the System.

1. DEFINITIONS

a. System. "System" means the software services for which User has paid, or has access to, including any updates relating thereto that may be provided by Sawtooth, and any derivative works of the System. A System is made up of individual components.

b. Documentation. "Documentation" refers to the documentation provided by Sawtooth with the software.

c. Support. "Support" means the ongoing services by Sawtooth to support the System as outlined herein.

d. User. "User" is any named individual or entity that has been granted access to use the System, regardless of whether or not the User actually accesses the Software. Users may be employees, consultants, contractors, agents, or the entity itself.

e. Edition. "Edition" means the named configuration of the System that has been licensed to the User. An Edition defines what components, features, limits, and/or usage restrictions are placed on the System licensed to the User. From time to time, new components or features will be introduced to the System, and those components or features may be restricted to specific Editions. New named Editions may also be introduced from time to time.

f. Effective Date. "Effective Date" is the date on which the User's subscription to the licensed Edition of the System starts; the beginning of the contract term.

2. Applicability. This Agreement is valid upon an "I agree" click or some other affirmative attempt to use the System. It is applicable to all Users.

3. Rights Granted / Use Rights. Upon Sawtooth's acceptance of your order and for the duration of the services term, you have the nonexclusive, non-assignable, royalty free, worldwide limited right to use the services solely for your business operations and subject to the terms of this Agreement. The use right in the preceding sentence is limited to use by the number of Users for which the User has paid. You may allow your Users to use the services for this purpose and you are responsible for your Users' compliance with this Agreement. The services are provided as described in, and subject to, the services policies referenced in the ordering document. All rights in and to the System not expressly granted herein are reserved by Sawtooth. Without limiting the foregoing, a User's License Administrator (as defined herein) is permitted to transfer use rights amongst its employees and permitted Users when one User needs to replace another.

a. Ownership Restrictions. User shall not, directly, indirectly, alone, or with another party (i) copy, disassemble, reverse engineer, or decompile the System; (ii) modify, create derivative works based upon, or translate the System; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System (including, without limiting the foregoing, performing security audits, load testing or any other testing of the System) in any form to any other party, nor shall User attempt to do any of the foregoing or cause or permit any impermissible third party to do or attempt to do any of the foregoing, except as expressly permitted, in writing, hereunder. You acknowledge and agree that Sawtooth shall own all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations or other information provided by User relating to the System.

b. License Administrator; User Access. User shall designate one or more License Administrators. License Administrators shall be responsible for managing User access, including adding and subtracting Users. The License Administrator shall ensure that multiple Users do not share a password or username. User acknowledges and agrees that it is prohibited from sharing passwords and/or usernames with unauthorized users.

c. User Data. User owns all right, title and interest in the data provided to Sawtooth by the User, ("User Data"). User hereby grants to Sawtooth, a non-exclusive, non-transferable, non-sublicensable, right and license to use, copy, transmit, modify and display the User Data solely for purposes of User's use of the System. Sawtooth shall not use the User Data except to improve the System and as necessary to perform its obligations hereunder.

d. No Sensitive Data; Customer Responsibilities. User acknowledges that the System is not intended for use with protected health information under HIPAA, financial information protected under PCI compliance standards, or other similarly-sensitive personal information, and that User assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. User is responsible for ensuring that Users' use of the System is in compliance with all applicable laws and governmental regulations and User acknowledges that User assumes all risk

arising from any such use that is not compliant with applicable laws and regulations.

e. Security. User is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. Sawtooth will act as though any electronic communications it receives under User have been sent by User. User will immediately notify Sawtooth if it becomes aware of any loss or theft or unauthorized use of any of User's passwords or usernames. Sawtooth has the right at any time to terminate or suspend access to any User if Sawtooth believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Sawtooth's network.

4. Term and Termination. The term of this Agreement commences on Effective Date and will continue for the time period referenced in the User invoice. Services shall be paid for in advance of the Term.

a. Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party:

i. If a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 days of written notice by the other party specifying the amounts owed;

ii. In the case of Sawtooth, immediately upon any breach of User of Section 3 above;

iii. Immediately upon any breach of any confidentiality obligations owed to such party by the other party;

iv. If the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 30 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach);
or

v. Upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

b. Obligations Upon Termination. Upon termination of this Agreement:

i. Provided that User has paid all amounts owed to Sawtooth hereunder, Sawtooth shall, upon written request received within 30 days of termination, provide any User who has purchased access rights to an Edition requiring payment of a fee with access to the System for a period of 24 hours for the limited purpose of exporting User Data;

ii. Sawtooth may retain User Data past Termination of this Agreement, according to Sawtooth's applicable internal policies.

iii. Sawtooth shall immediately terminate access to the System by User; and

iv. User shall immediately pay Sawtooth any amounts payable or accrued but not yet payable to Sawtooth, including any deferred payments or payments originally to be made over time.

v. NOTWITHSTANDING ANY OTHER LANGUAGE HEREIN, USER ACKNOWLEDGES THAT IF USER IS USING AN EDITION OF THE SYSTEM THAT IS PROVIDED FREE OF CHARGE, UPON TERMINATION OF THIS AGREEMENT, SAWTOOTH IS UNDER NO OBLIGATION TO EITHER MAINTAIN USER DATA OR TO PROVIDE USER WITH ACCESS TO OR A COPY OF THE USER DATA.

5. Fees / Financial Terms.

a. Fees. In return for the products, services and use rights provided by Sawtooth to User hereunder, User shall pay to Sawtooth the fees in the amount set forth. All dollar amounts refer to U.S. dollars.

b. Payment Terms. Sawtooth shall invoice User in advance for the Services. User shall pay all Sawtooth invoices within 30 days of the invoice date. If User is delinquent in payment of any portion of an invoice, Sawtooth may, in addition to any other remedies it may have, including termination, suspend access to the System. User agrees to pay interest on delinquent amounts at the rate of 1.5% per month (or, if lower, the maximum amount permitted by law) that a payment is overdue.

c. Taxes. User shall pay or shall reimburse Sawtooth for all sales taxes and other taxes, however characterized by the taxing authority, based upon the license fees or other charges under this Agreement or otherwise incurred on account of User's use of the System, except for any taxes based upon Sawtooth's net income or gross receipts or for any franchise or excise taxes owed by Sawtooth. If User is a tax-exempt organization, then, upon Sawtooth's receipt of proof of such status, Sawtooth shall not charge User for any taxes from which User is exempt.

d. Pricing Changes. Users will receive notice of changes in pricing at least 30 days before each anniversary of the Effective Date.

6. Confidentiality.

a. Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure,

reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that User or Sawtooth is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder.

b. Exclusions. Notwithstanding the above, the term "Confidential Information" does not include any information that is: readily discernible from publicly available products or literature; was in receiving party's possession prior to disclosure of the same by the disclosing party; or approved for disclosure by prior written permission of an executive officer of the disclosing party.

c. Use of Confidential Information. Each party shall only use Confidential Information furnished to it hereunder in furtherance of activities contemplated by this Agreement, and, except as authorized in this Agreement, it shall not disclose the Confidential Information to any other persons without the disclosing party's express written authorization.

d. Required Disclosures. A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

e. Return of Information. Except as limited in provisions concerning User Data (particularly in provision 4(b)(ii)), if a disclosing party so requests at any time, the receiving party shall return promptly all copies or reproductions of the Confidential Information in its possession.

f. Survival. The parties of this Agreement covenant and agree that this Section 6 will survive the expiration, termination, or cancellation of this Agreement for a period of 3 years, except for Confidential Information constituting a trade secret, with respect to which this Section 6 will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

7. Indemnification / Disclaimers / Limitations.

a. Indemnification by Sawtooth. FOR USERS USING ONLY A FREE EDITION OF THE SYSTEM, THIS SECTION 7(a) DOES NOT APPLY AND YOU ACKNOWLEDGE THAT YOU ARE NOT ENTITLED TO ANY INDEMNIFICATION FROM SAWTOOTH. For Users using an Edition of the System on a fixed term licensing plan, Sawtooth shall defend, indemnify and hold harmless

User from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third-party claim, suit or proceeding that arises from Users' use of the System in accordance with this Agreement that, to Sawtooth's knowledge, infringes or misappropriates any U.S. trade secret, trademark, or copyright. Sawtooth will have no indemnity obligation to User if the alleged infringement or misappropriation is based on (i) any combination, operation, or use of the System with products, services, information, materials, technologies, business methods or processes not furnished by Sawtooth to the extent the infringement or misappropriation is based on such combination, operations or use; (ii) any modification (other than by Sawtooth) to the System to the extent the infringement or misappropriation is based on such modification; or (iii) the User's failure to promptly install any update that is provided by Sawtooth that would have eliminated the actual or alleged infringement or misappropriation.

b. Indemnification by User. User shall defend, indemnify and hold harmless Sawtooth from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third-party claim, suit or proceeding that arises from the Users' use of the System (other than to the extent indemnified by Sawtooth under Section 7(a) or, in the case of a User using only a free Edition of the System, other than to the extent the third-party claim would have been subject to indemnification by Sawtooth under Section 7(a) if Section 7(a) applied to User).

c. Indemnification Process. The indemnified party shall promptly notify the indemnifying party in writing of any third party claim, stating the nature and basis of the third party claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any third party claim, provided that, within fifteen (15) days after receipt of the above-described notice, the indemnifying party notifies the Indemnified Party of its election to so assume full control. The foregoing notwithstanding, the indemnified party shall be entitled to participate in the defense of such third party claim and to employ counsel at its own expense to assist in the handling of such claim, except that the indemnified party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) the indemnifying party fails or refuses to assume control over the defense of the third party claim within the time period set forth above; (y) the indemnified party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (z) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The indemnifying party shall not settle any such third party claim without the written consent of the indemnified party, except for a complete settlement requiring only the payment of money damages to be paid by the indemnifying party.

d. Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party in the nature of intellectual property infringement or misappropriation.

e. Disclaimer of Warranties. SAWTOOTH MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, THE SERVICES PROVIDED OR THE AVAILABILTY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SYSTEM. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SAWTOOTH DISCLAIMS ANY WARRANTY THAT THE SYSTEM, THE SERVICES PROVIDED BY SAWTOOTH, OR THE OPERATION OF THE SYSTEM ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. SAWTOOTH MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

f. Disclaimer of Consequential Damages. SAWTOOTH HAS NO LIABILITY WITH RESPECT TO THE SYSTEM, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS AND THE COST OF COVER) EVEN IF SAWTOOTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

g. Limitations of Remedies and Liabilities. SAWTOOTH'S TOTAL AGGREGATE LIABILITY TO USER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO SAWTOOTH BY THE USER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY; OR (3) IN THE CASE OF CUSTOMER USING ONLY A FREE EDITION OF THE SYSTEM, ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

8. Support.

a. Services Generally. Subject to the terms of this Agreement, Sawtooth shall use commercially reasonable efforts to make the System available to User.

b. Updates. Sawtooth may deliver updates to the System that apply to the User's currently licensed Edition at no additional charge. From time to time, new components or features may be released that are applied selectively to different Editions of the System. Only those updates that apply to the User's currently licensed Edition will be delivered automatically to the User at no additional charge.

c. Support Obligations and Procedures. Sawtooth shall provide general support to the User as set forth on the support section of the Sawtooth website for the User's currently licensed Edition. Different Editions of the System will be entitled to different levels of support. In addition, Sawtooth may offer premium support options to User at an additional charge.

d. Error Correction. Sawtooth shall use commercially reasonable efforts to correct errors in the software or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Sawtooth's normal business hours. User shall provide such access, information, and support as Sawtooth may reasonably require in the process of resolving any error. This paragraph is User's sole and exclusive remedy for errors.

9. General.

a. Notices. Notices regarding this Agreement to Sawtooth shall be in writing and sent by first class mail or overnight courier at the address provided at that time on Sawtooth's website. Sawtooth may give notice by means of posting notice on the System, by electronic mail to User's email address on record with Sawtooth, or by written communication sent by first class mail or overnight courier to User's address on record in Sawtooth's account information. All notices shall be deemed to have been given three days after mailing or posting (if sent by first class mail), upon delivery in the case of courier, or 12 hours after either sending by email or posting on the System.

b. Promotional Materials. With the written consent of the other party, either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that User is a user of the System.

c. Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, or insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

d. Assignment. Sawtooth may assign any of its rights or obligations under this Agreement at any time; provided, however, that Sawtooth shall not assign the rights granted to User Data in Section 2(c) except in connection with the sale (whether by merger, asset sale, equity sale or otherwise) of (i) Sawtooth, (ii) the System, or (iii) a portion of Sawtooth or the System that would reasonably require the acquirer of said portion to be assigned such rights to the User Data. User shall not assign any of its rights under this Agreement, except with the prior written approval of Sawtooth, which shall not be unreasonably withheld. The preceding sentence applies to all assignments of rights, except in the event of a voluntary transfer of substantially all assets by User to a transferee that executes Sawtooth's form of agreement agreeing to be bound by all of the terms and conditions of this Agreement. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

e. Third Parties and Contractors. Sawtooth engages several third parties and contractors as providers of hosting and backup services, email or video hosting, and other outside contractors in order to conduct business. You agree that Sawtooth may transmit User Data to and through these third party service providers in order to fulfill Sawtooth's obligations under this Agreement. Sawtooth agrees to use its best efforts to protect your confidential and proprietary information that is under its control.

f. Statistical Information. Sawtooth may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate your data and/or identify your confidential information or include your company's name. Sawtooth retains all intellectual property rights in such information.

g. Third Party Web Sites, Content, Products and Services. The services may enable you to add links to websites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. Sawtooth is not responsible for any third party websites or third party content provided on or through the services and you bear all risks associated with the access of use of such websites and third party content, products and services.

h. Governing Law; Venue. The laws of the state of Utah (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Salt Lake County, Utah, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Salt Lake County, Utah; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

i. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

j. Entire Agreement. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior or contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation,

warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those that are expressly stated in this Agreement.

k. Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

l. Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in sections relating to definitions, license and use restrictions, obligations upon termination, confidentiality, indemnification, disclaimers, and limitations in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement. In the event that any one of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provision contained in this Agreement will not in any way be affected or impaired by such a finding. Furthermore, if a court of competent jurisdiction finds any provision unenforceable or invalid, the court may modify that provision such that it becomes enforceable and is, to the greatest extent possible, aligned with the intentions of the parties.