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jda.

CLOUD SERVICES SUBSCRIPTION AGREEMENT

UPDATED: July 3, 2019

BY SIGNING AN ORDERING DOCUMENT, CUSTOMER AGREES TO BE BOUND BY THIS CLOUD SERVICES SUBSCRIPTION AGREEMENT (THE "CSSA"), AS UPDATED FROM TIME TO TIME. THE CSSA AND THE ORDERING DOCUMENT (COLLECTIVELY, THE "AGREEMENT") GOVERN CUSTOMER'S USE, AND JDA'S PROVISION, OF THE CLOUD SERVICES AND ANY RELATED SUBSCRIPTION CONTENT. "JDA" MEANS JDA SOFTWARE, INC., A DELAWARE CORPORATION.

1.   DEFINITIONS

(a)   "**Affiliates**" has the same meaning as set forth in the Data Processing Addendum.

(b)   "**Bundle**" means multiple Subscription Content subscribed to for one bundled Annual Subscription Fee.

(c)   "**Cloud Services**" mean the supply, hosting and Maintenance and Support of the Subscription Content (including any Third-Party Services) provided or made available by JDA to Customer as described in this Agreement and the Cloud Services Standards.

(d)   "**Cloud Services Standards**" means the online user guide, services description or manual for the Cloud Services, available at https://jda.com/legal/cloud-services-standards as updated from time to time, on condition that such updates do not materially decrease the features or functionality of the Cloud Services or the SLA.

(e)   "**Customer Data**" means the electronic data or information (including any personal data) submitted, provided, uploaded, transmitted, imported, displayed or otherwise made available by Customer through the Cloud Services.

(f)   "**Data Processing Addendum**" means the addendum available at https://jda.com/knowledge-center/gdpr/new-jda-customer-data-processing-addendum which sets out additional terms with regard to the processing of personal data in order to meet the requirements of European Data Protection Law (as such term is defined therein).

(g)   "**Data Protection Loss**" means any loss, expense, compensation, fine, penalty, liability, damage or cost arising out of or in connection with JDA's, JDA's Affiliates, or Suppliers' breach of their respective obligations in the Data Processing Addendum or breach of any other obligations relating to the processing of personal data under the Agreement.

(h)   "**Emergency Regulatory Issue**" means any current or future government regulation, requirement or obligation that: (i) subjects JDA or its Suppliers to any regulation, requirement or obligation not generally applicable to businesses operating there; (ii) presents a hardship for JDA or its Suppliers to continue operating the Cloud Services without modification; or (iii) causes JDA or its Suppliers to reasonably believe the Cloud Services and/or this Agreement may conflict with such government regulation, requirement or obligation.

(i)   "**Emergency Security Issue**" means either: (i) Customer's use of the Cloud Services in a way that could disrupt: (a) the Cloud Services; (b) other customers' use of the Cloud Services; or (c) the network or servers used to provide the Cloud Services; or (ii) unauthorized third-party access to the Cloud Services.

(j)   "**Incident Management**" means the incident management services for the Subscription Content and Cloud Services provided or made available by JDA to Customer at the Services Support Level, as further described in the Cloud Services Standards.

(k)   "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(l)   "**IP Claim**" means a claim by a third-party against Customer that the Cloud Services when used within the scope of the terms set forth under this Agreement, directly infringes a third-party copyright or trademark, directly infringes a patent issued in the United States or misappropriates a third-party trade secret.

(m)   "**Maintenance and Support**" means Services Updates and Incident Management.

(n)   "**Number of Subscriptions**" means the number of subscriptions for the Subscription Content measured by the applicable UOM, as set forth in the applicable Ordering Document.

(o) "**Ordering Document**" means the ordering document that references this Agreement and any additional ordering documents signed by both parties on or after the Ordering Document Effective Date that references this Agreement.

(p) "**Service Level Agreement**" or "**SLA**" means the service level commitments set forth in the Cloud Services Standards.

(q) "**Services Suite**" means a product architecture-based classification that differentiates features such as availability, upgrades, updates, as further described in the Cloud Services Standards.

(r) "**Services Support Level**" means the support plan set forth in the applicable Schedule, as further described as support services at https://jda.com/legal/cloud-services-support.

(s) "**Services Updates**" means the updates to the Subscription Content and Cloud Services provided or made available by JDA to Customer, as further described in the Cloud Services Standards.

(t) "**Sub-Processor**" has the same meaning as set forth in the Data Processing Addendum.

(u) "**Subscription Content**" means the subscription content identified in the applicable Ordering Document.

(v) "**Subscription Content Documentation**" means JDA's standard user instructions and/or functional specifications embedded within the Subscription Content, or as otherwise provided or made available by JDA, and any additions, updates, copies, translations, derivations, adaptions or modifications of or to the foregoing, in whole or in part.

(w) "**Subscription Metrics**" mean subscription metrics and values specified in the applicable Ordering Document.

(x) "**Subscription Term**" means the term of the Cloud Services specified in the applicable Ordering Document.

(y) "**Suppliers**" mean those third-parties who provide Third Party Services.

(z) "**Third Party Services**" means portions of the Cloud Services provided by Suppliers under agreements between JDA and such Suppliers.

(aa) "**Unit of Measure**" or "**UOM**" means the type of subscription (e.g. named users, users, freight under management (FUM), SKUs. DFUs. customers, order lines, stores, etc.) for the Subscription Content, as set forth in the applicable Ordering Document.

(bb) "**User**" means any individual who, pursuant to the terms of this Agreement, is authorized to use the Cloud Services, and who has been provided user identifications and passwords by Customer.

2.   CLOUD SERVICES

(a)   Provision of the Cloud Services. JDA will provide or make available the Cloud Services for the Subscription Content during the Subscription Term identified in the Ordering Document subject to the Number of Subscriptions and Subscription Metrics set forth in the applicable Ordering Document and the terms and conditions of this Agreement. JDA and its Suppliers may provide the Cloud Services (including the processing, transfer and storage of Customer Data) from the United States or any country where JDA or Suppliers operate or maintain facilities. Customer consents to such processing, transfer and storage of Customer Data. JDA and its Suppliers may make commercially reasonable changes to the Cloud Services, on condition that such changes do not materially decrease the features or functionality of the Cloud Services or the SLA. Changes to the Cloud Services will be set forth in an updated version of the Cloud Services Standards. JDA shall comply with all local, state, federal and foreign laws and regulations applicable to JDA's provision of the Cloud Services.

(b)   Affiliates. Portions of the Cloud Services may be provided by JDA's Affiliates, in which case JDA will be responsible for any breaches of this Agreement by those JDA Affiliates. Affiliates may also provide Cloud Services directly to Customer by entering into a separate Ordering Document with Customer. Any JDA Affiliate executing a separate Ordering Document under this Agreement will stand in the place of JDA under this Agreement for purposes of the applicable Ordering Document, each such Ordering Document will constitute a separate two-party agreement between the JDA Affiliate and Customer and, except for provisions in this Agreement that are specifically excluded or modified in the Ordering Document, the terms and conditions of this Agreement will be incorporated therein. Where an Affiliate enters into a separate Ordering Document with Customer, references in this Agreement to "JDA" (except any references to JDA in this Section) will refer to "Affiliate."

(c)   Third-Party Services. Portions of the Cloud Services may be provided by Suppliers. JDA will make Third-Party Services available to Customer on condition that Third-Party Services are made available to JDA. JDA will make Customer Data available to Suppliers as part of Suppliers providing Third-Party Services. JDA will bind Suppliers to confidentiality and (where that Supplier is also a Sub-Processor as defined in the Data Processing Addendum) data protection obligations that in both cases are substantially similar, and in any event no less stringent than, to JDA's confidentiality and data protection obligations under this Agreement. Subject to the terms and conditions of this Agreement and the Data Processing Addendum, JDA will be responsible for any breaches of this Agreement by Suppliers.

(d)   Details of Affiliates and Sub-Processors. Further information on JDA's current Affiliates and Sub-Processors is set out in the Data Processing Addendum.

(e)   Security; Reviews and Audits of Security Compliance. JDA has implemented and shall maintain several appropriate technical and organizational security measures which in certain areas of the organization are either based on the ISO/IEC 27001 framework or are ISO/IEC 27001 certified. In respect of personal data only, such measures are set forth in the Data Processing Addendum, including the JDA Security Measures referenced and incorporated therein. Upon Customer's reasonable written request, JDA will provide Customer with copies of the then available ISO/IEC 27001 certificate. Additional information regarding JDA's security compliance and Customer's right to audit such compliance is set forth in the Data Processing Addendum.

(f)   Security Event. To the extent permitted by applicable law, JDA shall notify Customer without delay of any actual unauthorized access, use or disclosure of Customer Data (a "**Security Event**"). If the Security Event was directly caused by JDA's failure to meet or exceed the technical and organizational security measures set forth in Section 2(e) above, JDA shall make commercially reasonable efforts to identify and remediate the cause of such Security Event. Additional information regarding JDA's specific obligations in the event of the unauthorized acquisition of personal data is set out in the Data Processing Addendum.

(g)   Disaster Recovery. JDA will provide the disaster recovery services at the level set forth in the relevant Ordering Document in accordance with the applicable Cloud Services Standards, and, if no level is set forth in the relevant Ordering Document, then JDA will use commercially reasonable efforts to promptly restore the production environment and the Customer Data from the last backup.

(h)   Transition Period. Upon termination of the applicable Ordering Document, except for JDA's termination in accordance with Sections 10(b) or 10(d), and upon Customer's advance written request, Customer will have the right, for a period of 30 days from termination of the applicable Ordering Document (the "**Transition Period**"), to continue to use the Cloud Services set forth in such Ordering Document to the extent required for Customer to transition to a new services provider. All terms and conditions of this Agreement shall remain in full force and effect during the Transition Period, and Customer shall, in advance of the Transition Period, pay JDA a prorated amount of the then-in-effect Total Annual Subscription Fees for the Transition Period. If the transition requires Professional Services, the parties will enter into a separate Statement of Work, and the Customer will be charged JDA's then-current time and materials rates. After expiration of the Transition Period, Customer shall cease accessing and using the Cloud Services in accordance with Section 10(e).

(i)   Access to Customer Premises. Customer shall, on reasonable prior notice and at all reasonable times, permit staff of JDA, its Affiliates or subcontractors to gain such access to Customer's premises as is necessary to enable the performance of the Cloud Services in accordance with this Agreement. Customer may refuse entry to, or require the removal of, any staff members of JDA, its Affiliates or subcontractors: (i) who do not comply with the reasonable security and other procedures and policies applicable at Customer's premises (including health and safety), provided those procedures and policies have been notified to JDA in advance; or (ii) who Customer reasonably believes (acting honestly and in good faith) is unsuitable to be on Customer's premises.

3.   CUSTOMER'S USE OF THE CLOUD SERVICES

(a)   Subscriptions. Customer will purchase the Cloud Services and access to the Subscription Content as subscriptions. Customer may add subscriptions during a Subscription Term in the increments and at the frequency and pricing set forth in the applicable Ordering Document. For the avoidance of doubt, the Customer may not, without the prior written consent of JDA, decrease subscriptions during the relevant Subscription Term.

(b)   Usage Limits. Unless otherwise provided in the applicable Ordering Document, Customer shall not use the Cloud Services in any manner that exceeds the Number of Subscriptions and Subscription Metrics set forth in the applicable Ordering Document. Customer shall not use the Cloud Services in a manner intended to avoid incurring fees. Where the Cloud Services are provided on a per User basis, User accounts cannot be shared or used by more than one User, except that subscriptions may be reassigned to new Users replacing former Users who no longer use the Cloud Services, and Customer shall not create multiple Users to simulate or act as a single User. Customer shall keep a secure password for use of the Cloud Services and each User shall keep the password confidential.

(c)   Customer's Obligations. Customer shall: (i) use the Cloud Services solely for its internal business purposes and not for the benefit of any third parties, except as permitted by the applicable Ordering Document; (ii) comply, and cause it's User's to comply, with the Agreement; (iii) obtain all required consents from third-parties with whom Customer has a business relationship (e.g. network providers or outsourced IT resource providers) necessary for JDA and its Suppliers to provide the Cloud Services; (iv) prior to providing personal data to JDA, provide to, and obtain and maintain from, third-parties (including Customer's contacts, resellers, distributors, administrators, and employees) all notices and consents required for JDA and Suppliers to process personal data under applicable law; (v) promptly notify JDA of any unauthorized access or use of the Cloud Services, passwords, authentication credentials, or a Security Event; and (vi) comply with all local, state, federal and foreign laws applicable to Customer's use of the Cloud Services.

(d)   Restrictions. To the extent permitted by law, Customer shall not: (i) modify, copy, duplicate, download, reverse engineer, disable, decompile, translate, disassemble create any derivative work of, or otherwise attempt to extract any or all of the source code, algorithms, proprietary technology, or analytics from, the Cloud Services; (ii) license, sublicense (if a license is ever granted), sell,

resell, rent, lease, lend, transfer, assign, distribute, time share, offer in a service bureau, or commercially exploit the Cloud Services, use the Cloud Services to provide hosting services to third-parties, or otherwise make the Cloud Services available to any third-party other than Users as permitted under this Agreement; (iii) disable, interfere with or circumvent any aspect of the Cloud Services; (iv) interfere with other authorized users use of the Cloud Services; (v) engage in, promote or encourage illegal activity or the violation of the legal rights of third-parties; (vi) generate, distribute, publish, facilitate or send unsolicited commercial messages ("spam") in violation of applicable law; (vii) copy any features, functions, integrations, interfaces or graphics of the Cloud Services; (viii) send or store known viruses, worms, time bombs, Trojan horses, and other harmful, destructive, deceptive or malicious code, files, scripts, agents or programs; (ix) send or store infringing, obscene, threatening, defamatory, obscene, racially or ethically offensive, libelous, fraudulent or otherwise unlawful or tortious material, including material that is harmful to children or violates third party rights, including privacy rights; (x) interfere with or disrupt the integrity or performance of the Cloud Services or the data contained therein; or (xi) gain or attempt to gain, or fail to use commercially reasonable efforts to protect against, the unauthorized access to the Cloud Services or its related systems or networks or to the data of another JDA customer. In addition, Customer shall not, without the prior written consent of JDA, perform any technical, application, or infrastructure security integrity review, penetration test, or vulnerability scan ("**Ethical Hack**"). Upon JDA's consent, the parties will mutually agree in writing as to the timing, scope and duration of the Ethical Hack, and JDA will reserve the right to monitor the Ethical Hack and immediately suspend the Ethical Hack at any time for any reason.

(e) **Customer Data**. Customer grants JDA the right to process, store, access, use, transmit, display, disclose or modify Customer Data, as reasonably necessary for: (i) JDA to provide the Cloud Services (including to prevent or address service or technical problems); and (ii) JDA to improve and enhance its services and solutions in accordance with this Agreement. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of Customer Data and for ensuring that Customer Data complies with Section 3(d). If Customer knows or learns that any Customer Data violates Section 3(d), Customer will immediately remove such Customer Data from the Cloud Services. Except as set out in Section 3(f), Customer acknowledges that JDA does not exercise any control whatsoever over the content of the Customer Data, and JDA will have no obligation, but reserves the right, to review Customer Data for, without limitation, accuracy, quality, integrity, legality, reliability or appropriateness solely for the purpose of providing the Cloud Services.

(f) **Data Protection**. Except as set out in Section 3(g) (Personal Information), Customer acknowledges that JDA is relying on the fact that Customer shall not provide or give access to JDA any personal data with regard to Customer or any of its customers, vendors, end users or otherwise. Without prejudice to the forgoing, if, in providing the Cloud Services JDA does have access to any personal data in respect of which the Customer is the data controller and JDA is the data processor, then the parties agree that the Data Processing Addendum shall govern JDA's processing of such personal data. Appendix 1 of the Ordering Document sets out the details of the personal data which JDA processes on the Customer's behalf which is required to meet European Data Protection Laws (as defined in the Data Processing Addendum).

(g) **Personal Information**. Customer acknowledges that JDA may process certain personal data about the Customer and/or its agents, representatives, employees or other related third parties for its own purposes including for the purposes of: (i) processing orders; (ii) managing Customer's account with JDA; and (iii) compiling aggregate statistics of the distribution and use of the Cloud Services. Customer may request access to and correction of the personal information or exercise any other rights it may have in respect of such personal data. More details on JDA's data processing activities are set out in its Privacy Notice a current version (as at the date of the Ordering Document Effective Date) is available https://jda.com/privacy-policy.

4. FEES & PAYMENT

(a) **Cloud Services Fees and Invoicing**. Customer shall pay all fees specified in the applicable Ordering Documents. All fees are quoted and payable in currency identified in the Ordering Document and are based on the Cloud Services purchased and not the Cloud Services actually used. Unless otherwise set out in the Ordering Document, the fees for the Cloud Services will be invoiced annually in advance and are non-cancellable and non-refundable.

(b) **Payment.** Except as otherwise provided in the applicable Ordering Document, Customer shall pay the fees within thirty (30) days of the invoice date.

(c) **Overdue Payments**. Any payment (except payment subject to a good faith dispute pursuant to Section 4(d)) not received from Customer by the due date may, at JDA's discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

(d) **Dispute Procedure**. Customer may dispute any part of an invoice by: (i) notifying JDA in writing of such dispute within ten (10) days of the invoice date; (ii) as part of the written notice, describing the nature of the dispute in reasonable detail to allow JDA to analyze the dispute; (iii) only making such dispute in good faith; and (iv) paying all undisputed amounts when due, and for the amounts in dispute, promptly after resolution of such dispute.

(e) **Suspension for Non-Payment**. If Customer's account is more than thirty (30) days past due (except with respect to fees subject to a good faith dispute pursuant to Section 4(d)), in addition to any other rights or remedies JDA may have under this Agreement or by law, JDA may, without liability to the Customer, suspend the Cloud Services upon ten (10) days written notice, until such amounts are paid in full.

(f)   Taxes. All amounts payable pursuant to an Ordering Document are exclusive of any sales or use taxes, value added tax (VAT), goods and services tax (GST), or any and all similar taxes or legally imposed fees, duties or contributions based on such amounts payable, all of which shall be the sole responsibility of Customer whether due now or subsequently imposed by any jurisdiction. Customer is not responsible for any taxes based upon the net income of JDA or its employees unless agreed to elsewhere in this Agreement or an Ordering Document.

(g)   Withholding Tax. If Customer is required to withhold income tax on any payments due under this Agreement, it shall promptly provide JDA with the official receipt of payment of these taxes to the appropriate taxing authority. Customer shall withhold only to the extent legally required under existing tax laws of Customer's legal country of domicile and after full consideration of applicable income tax treaty provisions, if any, by and between Customer's and JDA's respective legal countries of domicile. If tax is withheld and Customer does not submit a tax certificate to JDA within thirty (30) days after the payment due date, Customer shall immediately remit full payment for the outstanding amount to JDA.

5.   PROPRIETARY RIGHTS

(a)   Reservation of Rights. JDA is and will remain the exclusive owner of all right, title and interest in and to the Cloud Services, Subscription Content, and Aggregated Data (as defined in Section 5(c)) including any Intellectual Property Rights relating thereto. All Intellectual Property Rights in any work arising from or created, produced or developed by JDA (whether alone or jointly with others) under or in the course of this Agreement, including those arising from the Cloud Services, will immediately upon creation or performance vest absolutely in and will be and remain the property of JDA, and Customer will not acquire any right, title or interest in and to the same.

(b)   Ownership of Customer Data. Customer is and will remain the exclusive owner of all, right, title and interest in and to the Customer Data, including any Intellectual Property Rights relating thereto. JDA does not acquire any license or other rights to Customer Data, directly or indirectly, by implication, estoppel or otherwise, other than those expressly specified in this Agreement.

(c)   Aggregated Data. Customer grants JDA the right to compile, collect, copy, modify, publish and use anonymous data in aggregate form that is generated from, or based upon, Customer's use of the Cloud Services ("**Aggregate Data**"); on condition that: (i) Aggregate Data does not include Customer Data or Customer Confidential Information; (ii) Aggregate Data does not include any information that can be used directly, or in connection with other data, to identify, contact or locate an individual; (iii) Aggregate Data is combined with data from other customers and cannot be used to identify, directly or indirectly, Customer; and (iv) JDA uses Aggregate Data solely for data analytics, statistical reporting, or other lawful business purposes.

(d)   Customer Input. JDA will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, license to use or incorporate into the Cloud Services any suggestions, enhancements, requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Cloud Services (collectively, "**Customer Input**"). JDA will have no obligation to implement Customer Input, and Customer will have no obligation to provide Customer Input.

6.   CONFIDENTIALITY

(a)   Confidential Information. As used in this Agreement, "Confidential Information" means all confidential or proprietary information belonging to either party hereto and disclosed, made available to or learned by the other party during the term of this Agreement, including, without limitation, technical, business, financial, marketing or other information of every kind or nature (including, without limitation, trade secrets, know-how and information relating to the technology, Cloud Services, Subscription Content, designs, specifications and prototypes, customers, business plans, promotional and marketing activities, finances and other business affairs of such party), third party confidential information, and, with respect to JDA, the terms and conditions of this Agreement (including pricing), and any information arising from or relating to an Ethical Hack performed by Customer, and, with respect to Customer, Customer Data.

(b)   Exclusions. Confidential Information does not include any information that: (i) is or becomes generally available to the public through no improper action or inaction by the receiving party or any affiliate, agent, consultant or employee of the receiving party; (ii) was properly in the receiving party's possession or properly known by it, without restriction, prior to receipt from the disclosing party; (iii) was rightfully disclosed to the receiving party by a third party without restriction; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

(c)   Confidentiality Obligations. Subject to the terms of this Agreement, each party shall: (i) hold in strict confidence all Confidential Information of the other party, (ii) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any person or entity other than to its directors, officers, employees, consultants, subcontractors, auditors, and legal and financial advisors of such party, and, in the case of JDA, its Affiliates, Suppliers and subcontractors, (collectively, "Representatives") who need to know such Confidential Information and who are under confidentiality obligations at least as restrictive as the terms of this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. Except as otherwise expressly provided in this Agreement, neither party shall use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

(d)   Permitted Disclosures. The receiving party may disclose the Confidential Information of the other party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action, provided that: (i) to the extent permitted by applicable law or regulation, the disclosing party is notified in writing prior to disclosure of the information, (ii) the receiving party uses reasonable efforts to obtain a protective order or, in the absence of a protective order, to limit the disclosure of the disclosing party's Confidential Information and to obtain confidential treatment thereof, and (iii) the receiving party has allowed the disclosing party to participate in the proceeding that requires the disclosure.

(e)   Remedies upon Breach. Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this Section 6 and, accordingly, that either party is entitled (in addition to any legal or equitable remedies available to such party) to seek injunctive or other equitable relief without the necessity of proof of actual damages to prevent or remedy such breach.

(f)   Ownership. As between the parties, the parties agree that the Confidential Information of the other party is, and will remain, the property of such other party. The receiving party obtains no right, title, interest, or license in or to any of the Confidential Information of the disclosing party except for the rights expressly set forth in this Agreement.

7.   WARRANTIES & DISCLAIMERS

(a)   Cloud Services Warranty; Credit. JDA warrants that it will provide the Cloud Services in accordance with the applicable SLA. If JDA fails to provide the Cloud Services in accordance with the applicable SLA (an "**Incident**"), during any calendar month, Customer is entitled to a credit of 5% of the pro rata subscription fees for that month (the "**Credit**"). To receive the Credit, Customer shall provide a written report to JDA explaining the Incident. The written report must: (i) be received by JDA no later than 10 days following the end of the calendar month in which the Incident occurred; and (ii) be submitted to the Cloud Delivery Manager or to JDA's Group Vice President of Cloud Services. THIS SECTION 7(a) SETS FORTH JDA'S ENTIRE OBLIGATION AND LIABILITY FOR BREACH OF THE WARRANTY SET FORTH IN THIS SECTION 7(a).

(b)   Subscription Content Warranty; Remedy. JDA warrants that the Subscription Content will substantially conform in all material respects to the Subscription Content Documentation. If JDA breaches, or is alleged to have breached, the warranty set forth this Section, JDA may, in its discretion and its expense, take any of the following steps to remedy such breach: (i) repair the Subscription Content; (ii) replace the Subscription Content with functionally equivalent software (which software will, on its replacement of the Subscription Content, constitute Subscription Content hereunder); or (iii) if JDA is unable to repair or replace the Subscription Content as set forth in this Section within a commercially reasonable period of time, terminate the affected portion of the Cloud Services and provide a refund of any prepaid, unused fees for that portion of the Cloud Services. WITHOUT LIMITING ANY REMEDY MADE AVAILABLE UNDER SECTION 7(a) (CLOUD SERVICES WARRANTY; CREDIT), THIS SECTION SETS FORTH JDA'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE SUBSCRIPTION CONTENT WARRANTY SET FORTH IN THIS SECTION.

(c)   DISCLAIMER. EXCEPT AS SET FORTH IN THIS SECTION 7 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JDA AND ITS SUPPLIERS DO NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL OTHER, WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MEETING THE CUSTOMER REQUIREMENTS, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. JDA AND ITS SUPPLIERS DO NOT WARRANT THAT THE CLOUD SERVICES WILL BE PROVIDED UNINTERRUPTED OR ERROR-FREE. NEITHER JDA NOR ITS SUPPLIERS WARRANT THAT THE CLOUD SERVICES WILL NOT CAUSE ANY LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATION NETWORKS AND FACILITIES. JDA AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR PROBLEMS, CONDITIONS, DELAYS, FAILURES AND OTHER LOSS OR DAMAGE ARISING FROM OR RELATING TO THE CUSTOMER'S NETWORK CONNECTIONS OR TELECOMMUNICATIONS LINKS OR CAUSED BY THE INTERNET.

8.   INDEMNIFICATION

(a)   Indemnity by JDA. JDA shall defend Customer against or, subject to Section 8(e), settle any IP Claim and shall indemnify Customer for any damages, reasonable and verifiable costs and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction (or settlements agreed to in writing by JDA) which are directly attributable to such IP Claim.

(b)   Exclusive Remedies. In the event of an IP Claim or JDA believes that an IP Claim is likely, JDA, in its discretion, may: (i) obtain for Customer the right to continue using Cloud Services; (ii) replace or modify the Cloud Services so that they become non-infringing while giving substantially equivalent functionality; or (iii) if JDA believes such remedies are not commercially reasonable, then JDA may suspend or terminate Customer's use of the impacted element of the Cloud Services. CUSTOMER HEREBY AGREES THAT THIS SECTION 8(b) TOGETHER WITH THE INDEMNITY SET OUT IN SECTION 8(a) SETS FORTH JDA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY IP CLAIM.

(c)   Exceptions. JDA has no liability for an IP Claim to the extent the IP Claim is based on or arises from (i) the modification of the Cloud Services by anyone other than JDA unless such modification was done at the instruction of JDA or with JDA's consent; (ii) the combination of the Cloud Services with any third-party software, hardware, or service not specified for Customer's use in this

Agreement, to the extent such claim could not be asserted but for the combination; (iii) Customer's use of the Cloud Services not in accordance with this Agreement or in any manner not permitted by this Agreement; (iv) JDA's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Customer that have not been specified for Customer's use in this Agreement, and only to the extent the claim could not be asserted but for the incorporation of such software, materials or processes requested by Customer; or (v) Customer's use of other than the then most current version of the Cloud Services; on condition that the then-most current version was made available to Customer, to the extent such infringement would have been prevented by Customer's use of the then-most current version; (vi) Cloud Services that JDA makes available for testing or demonstration purposes or Cloud Services for which JDA does not receive a fee; or (vii) Third Party Services.

     (d)   **Indemnity by Customer**. Customer shall indemnify, defend and hold harmless JDA and its Suppliers against any third-party claims that are based on: (i) Customer's breach of Section 3(d); (ii) Customer's use of the Cloud Services in violation any local, state, federal or foreign law applicable to Customer's use of the Cloud Services or in a way that damages a third-party; or (iii) any Customer Data, including any Customer Data that infringes Intellectual Property Rights.

     (e)   **Procedure**. The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification: (i) prompt written notice of such claim (but in any event notice in sufficient time for the indemnifying party to file a defense to any proceedings before expiration of any applicable filing deadlines); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of the indemnified portion of the claim; and (iii) all reasonable cooperation of the indemnified party, on condition that the indemnifying party will reimburse the indemnified party for reasonable out-of-pocket expenses the indemnified party incurs providing such cooperation. The indemnified party may participate in the defense of such claim using its own non-controlling counsel at its own expense. The indemnifying party does not require the indemnified party's consent to settle any claim except where such settlement requires the indemnified party to admit liability, pay money, take or refrain from taking any action that would be materially detrimental to their overall business and reputation (except with respect to use or non-use of the Cloud Services).

9. LIMITATION OF LIABILITY

     (a)   **General Liability Cap**. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT FOR (i) NONPAYMENT OF FEES DUE AND PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (ii) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S VIOLATION OF JDA'S OR ITS SUPPLIERS INTELLECTUAL PROPERTY RIGHTS, (iii) DAMAGES ARISING OUT OF, OR RELATING TO, A PARTY'S BREACH OF SECTION 6 OF THIS AGREEMENT, (iv) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, OR (V) DATA PROTECTION LOSSES (WHICH ARE SUBJECT TO SECTION 9(b) BELOW), THE CUMULATIVE, AGGREGATE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES TO THE OTHER PARTY FOR ALL CLAIMS RELATED TO THE CLOUD SERVICES AND/OR THIS AGREEMENT (INCLUDING ALL ORDERING DOCUMENTS) WILL NOT IN ANY EVENT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO JDA FOR THE CLOUD SERVICE GIVING RISE TO THE CLAIM IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY CLAIM.

     (b)   **Data Protection Losses Liability Cap**. IN NO EVENT WILL JDA OR ITS AFFILIATES AGGREGATE LIABILITY IN RESPECT OF DATA PROTECTION LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDERING DOCUMENTS AND THE DATA PROCESSING ADDENDUM), EXCEED 150% OF THE FEES PAID OR PAYABLE BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (OR IF NO FEES HAVE BEEN PAID OR PAYABLE IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT, THEN 150% OF THE FEES PAID OR PAYABLE IN THE MOST RECENT 12-MONTH PERIOD WHERE ANY FEES WERE PAID OR PAYABLE). TO THE EXTENT THAT ANY BREACH OF SECTION 6 (CONFIDENTIALITY) OF THIS AGREEMENT RELATES TO THE PROCESSING OF ANY PERSONAL DATA, THEN THE CAP IN THIS SECTION 9(b) APPLIES.

     (c)   **Damages Waiver**. EXCEPT FOR: (i) NONPAYMENT OF FEES DUE AND PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (ii) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S VIOLATION OF JDA'S OR ITS SUPPLIERS INTELLECTUAL PROPERTY RIGHTS, (iii) DAMAGES ARISING OUT OF, OR RELATING TO, A PARTY'S BREACH OF SECTION 6 OF THIS AGREEMENT OR (iv) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR THE SUPPLIERS) IS LIABLE FOR ANY LOST PROFITS, LOST REVENUE, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION, LOSS OF USE, DELETION OR LOSS OF DATA OR FAILURE TO STORE DATA (WITHOUT LIMITING ANY OBLIGATION ON JDA TO PROVIDE AGREED DISASTER RECOVERY OR BACKUP SERVICES), COSTS OF RECREATING DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT SOFTWARE OR SERVICES (IN EACH CASE WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THE USE OF THE CLOUD SERVICES OR THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EVEN IF A PARTY IS INFORMED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES IN ADVANCE.

     (d)   BOTH CUSTOMER AND JDA HEREBY AGREE THAT THE FOREGOING LIMITATIONS AND WAIVERS SET FORTH IN THIS SECTION 9 APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Further, any right of action, proceeding or claim permitted under or in connection with this Agreement and not brought within 24 months after the occurrence of the act, omission or event first giving rise to the liability is irrevocably waived.

(e) IF CUSTOMER'S PLACE OF BUSINESS REGISTRATION OR INCORPORATION IS IN EUROPE, MIDDLE EAST OR AFRICA THEN THE PARTIES AGREE THAT NOTHING IN THE AGREEMENT SHALL EXCLUDE OR LIMIT JDA'S LIABILITY FOR (I) THE TORT OF DECEIT; (II) DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF JDA, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS; (III) FRAUD OR FRAUDULENT MISREPRESENTATION; (IV) ANY BREACH OF THE OBLIGATIONS IMPLIED BY S12 SALE OF GOODS ACT 1979 OR S2 SUPPLY OF GOODS AND SERVICES ACT 1982; OR (V) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

10. TERM & TERMINATION

(a) **Term of Agreement**. This Agreement will begin on the Ordering Document Effective Date and continue until all Ordering Documents under this Agreement have expired or been terminated.

(b) **Early Termination or Suspension of Cloud Services**. In addition to any other rights or remedies JDA may have under the Agreement or by law, JDA may, subject to Section 10(c) below, immediately suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part, at any time, with or without notice: (i) if JDA reasonably concludes there is an Emergency Regulatory Issue; (ii) if JDA reasonably concludes there is an Emergency Security Issue; or (iii) if Customer has breached any of its obligations to JDA under Section 3(c) or 3(d) and Customer has failed to cure such breach within ten (10) days after JDA has provided Customer notice of such breach. In addition, if Suppliers cease to make generally available to customers Third-Party Services or any portion or feature thereof, then JDA shall use commercially reasonable efforts to replace such Third-Party Services with functionally equivalent services. If after a commercially reasonable period of time JDA is unable to replace such Third-Party Services with functionally equivalent services, then, subject to Section 10(c) below, and upon JDA's advance written notice to Customer, JDA may suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part.

(c) **Procedure for Early Termination or Suspension of Cloud Services**. JDA's right to terminate, suspend, withhold, or disable access to the Cloud Services in accordance with Section 10(b) above is conditioned upon: (i) JDA exercising its foregoing right only to the minimum extent and minimum duration required to prevent or resolve the issue (provided that the issue is capable of resolution); and (ii) if JDA exercises its foregoing right without prior notice to Customer, JDA will provide Customer the reason for the termination, suspension, withholding, or disabling of access as soon as reasonably practicable.

(d) **Termination for Cause; Bankruptcy**. Except as otherwise set forth in Section 10(b)(iii) above, either party may terminate this Agreement and any Ordering Documents for cause if: (i) if the other party materially breaches this Agreement and does not cure such breach within 30 days after its receipt of written notice specifying such breach from the non-breaching party; or (ii) if the other party (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (D) makes or seeks to make a general assignment for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business. Upon termination by Customer under this Section, JDA will refund any prepaid but unused subscription fees to Customer on a pro-rata basis.

(e) **Effect of Termination**. Upon termination of this Agreement: (i) all Ordering Documents shall immediately terminate; (ii) Customer shall immediately cease accessing or using the Cloud Services; (iii) all subscriptions, licenses and rights granted under this Agreement with respect to the Cloud Services will immediately terminate; and (viii) Customer shall immediately pay JDA all amounts owing under any Ordering Document.

(f) **Return of Customer Data**. Upon written request made by Customer within thirty (30) days of termination of this Agreement, JDA will, within a commercially reasonable period of time, return Customer Data to Customer on JDA-standard media or in any other format mutually agreed to by the parties. After such 30-day period, JDA will have no obligation to maintain or provide the Customer Data and may thereafter, unless legally prohibited, delete the Customer Data in its systems or otherwise in its possession or under its control.

(g) **Survival**. Sections concerning the parties' rights and obligations that by the content of the section operate after termination or that are necessary to enforce any right will survive termination of this Agreement.

11. GENERAL PROVISIONS

(a) **Governing Law.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced, without reference to its choice of law rules, in accordance with the internal laws of: (a) the State of Arizona, if Customer's place of incorporation or principal place of business is in the United States , or in any region not otherwise specified herein; (b) the law s of England, if Customer's place of business registration or incorporation is in Europe, the Middle East, or Africa; (c) the laws of Singapore, if Customer's place of business registration or incorporation is in Asia Pacific; or (d) the laws of the Province of Ontario and the laws of Canada applicable therein, if Customer's place of business registration or incorporation is in Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement

(b) **Jurisdiction and Venue.** Subject to Section 11(c) below, any dispute, controversy, claim, question or disagreement (a "Claim") arising out of or related to this Agreement or the breach thereof: (a) will, if Customer's place of incorporation or principal place of

business is in the United States, be brought exclusively in the state and federal courts located in Maricopa County. Arizona, and Customer hereby submits to the personal jurisdiction of such state and federal courts; or (b) will, in all regions other than the United States, be finally resolved by binding arbitration before a single arbitrator under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such Claim is submitted to arbitration. The arbitrator must be a person having experience with and knowledge of the computer software business and such arbitrator will not have any authority to make any ruling, finding or award that does not conform to this Agreement. Judgment upon the award rendered by the arbitrator will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

(c) **Equitable Relief**. Notwithstanding anything to the contrary contained in Section 11(a), (i) any party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, against the other party in any court of competent jurisdiction with respect to any and all equitable remedies sought in connection with this Agreement; and (ii) JDA, at its option, may pursue any and all remedies available at law and in equity in any court of competent jurisdiction with respect to any claim against Customer for nonpayment under this Agreement.

(d) **Cumulative Remedies**. Except as otherwise set forth in this Agreement and subject to the terms of this Agreement, including Section 9, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of any other remedies.

(e) **Attorneys' Fees and Costs**. The prevailing party in any action or proceeding to enforce this Agreement, including any efforts to collect amounts due under this Agreement, is entitled to recover from the other party its costs and attorneys' fees in addition to its damages.

(f) **Notices**. All notices must be in writing and in English and may be sent by email, except for notices of breach or demands for indemnification, which must be sent by either, certified mail or internationally recognized courier to the address indicated in the relevant Ordering Document or such other address as either party may indicate by at least 10 days' prior written notice to the other party. Notices to JDA will be addressed to Chief Executive Officer, with a copy to General Counsel at JDA Software, Inc., 15059 N. Scottsdale Rd., Scottsdale, AZ 85254.

(g) **Entire Agreement**. This Agreement, including any appendices, the Data Processing Addendum, Ordering Documents and the Cloud Services Standards which are incorporated herein by this reference, sets forth the entire understanding and agreement between Customer and JDA and supersedes all prior and contemporaneous agreements, proposals or communications, whether oral or written, between the parties relating to the subject matter of this Agreement. In the event of any conflict or inconsistency between the documents that make up the Agreement, the documents will control and govern, to the extent necessary to resolve the conflict or inconsistency, in the following order: the appendix, the Ordering Document, the Agreement, and the Cloud Services Standards. In the event of any inconsistency between this Agreement and any Data Processing Addendum, the Data Processing Addendum controls and governs over this Agreement (except where this Agreement expressly states an intention to override a specific section of the Data Processing Addendum) to the extent necessary to resolve the conflict or inconsistency. Customer will not require JDA or its employees to sign, or otherwise enter into, any additional agreements, addendums or other documents not specifically referenced and incorporated in this Agreement nor require JDA or its employees to undergo any security or background screening not expressly set forth in this Agreement as a condition of JDA performing any Cloud Services under this Agreement or any related statement of work or change request.

(h) **Amendment**. This Agreement and each Ordering Document may not be amended, modified, or supplemented orally and may only be amended, modified, or supplemented by a written instrument signed by both parties.

(i) **Waiver**. No waiver of any right under this Agreement will be deemed effective unless contained in a writing signed by a duly authorized representative of the party to be bound, and no waiver of any past or present right arising from any breach or failure to perform will be deemed a waiver of any future right arising under this Agreement.

(j) **Severability**. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain in full force and effect.

(k) **Assignment; Successors and Assigns**. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), except that either party may assign this Agreement in its entirety (including all Ordering Documents), without the other party's consent to its affiliated entities or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

(l) **Force Majeure**. If by reason of labor disputes, strikes, lockouts, riots, war, terrorism, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the reasonable control of a party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement, excluding any obligations to make payments hereunder and excluding any obligations under Section 6 (Confidentiality) hereof, then such

party will be relieved of those obligations to the extent it is so unable to perform and such inability to perform will not make such party liable to the other party. Neither party will be liable for any losses, injury, delay or damages suffered or incurred by the other party due to the above causes.

        (m)   **Purchase Orders**. Nothing contained in any purchase order, clickwrap agreement, or other document or instrument issued by Customer will in any way modify or add any additional terms or conditions to this Agreement, and any such modified or additional terms or conditions are expressly rejected and excluded from the parties' agreement hereunder.

        (n)   **Independent Contractors**. The relationship between JDA and Customer has been and will continue to be that of independent contractors. Neither party is the legal representative, agent, joint venturer, partner, employee, or employer of the other party under this Agreement for any purpose whatsoever. Neither party has any right, power, or authority under this Agreement to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect. Each party agrees that it has not entered into this Agreement with a corrupt motive to obtain or retain business or to secure an unfair business advantage and it shall fully comply with all applicable anti-corruption laws, including, but not limited to, the Foreign Corrupt Practices Act of 1977 of the U.S., as amended. Each party represents that it has an anti-bribery policy in place and that it has not made and will not make or facilitate improper or illegal payments.

        (o)   **Publicity; Press Releases**. JDA may on one or more occasions reference Customer in advertisements, brochures, case studies, customer lists, presentations, professional articles, financial reports or other marketing, promotional or related materials. In addition, upon Customer's approval, which approval will not be unreasonably withheld, JDA may issue a press release (or similar public announcement or communication) publicizing the relationship between JDA and Customer created by this Agreement.

        (p)   **Export**. Customer will not divert Cloud Services (or any element or output of the Cloud Services including the Subscription Content), nor provide services using Cloud Services (or any element or output of the Cloud Services including the Subscription Content), to prohibited locations, end users or end uses. By accepting the terms of this Agreement, Customer acknowledges that the Cloud Services (or any element or output of the Cloud Services including the Subscription Content) are subject to U.S. sanctions and export controls, and undertakes all necessary action to prevent Customer, its employees, or contractors using the Cloud Services (or any element or output of the Cloud Services including the Subscription Content) from diverting the Cloud Services (or any element or output of the Cloud Services including the Subscription Content) contrary to U.S. and/or European Union law. Customer specifically represents and warrants that it will not export, re-export, sell, supply or transfer JDA products to any country or person to which the United States and/or the European Union has embargoed or restricted the provision of items, including, but not limited to, Cuba, Crimea, Iran, North Korea, or Syria, or to nationals of those countries and locations, or to any other embargoed or restricted destination or person, including those entities that are fifty percent (50%) or more owned or controlled by embargoed or restricted persons. Customer also warrants that it: (i) will not send any of the Cloud Services (or any element or output of the Cloud Services including the Subscription Content) to an individual or entity for a prohibited purpose including, without limitation, defense, nuclear, chemical, or biological weapons proliferation or development of missile technology; and (ii) upon learning that any of the Cloud Services (or any element or output of the Cloud Services including the Subscription Content) were diverted contrary to the obligations in this section, Customer will immediately notify JDA.

        (q)   **Interpretation**. In the event of a dispute between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the intent of the parties as evidenced by the terms of this Agreement. Unless otherwise specified, "days" means calendar days.

        (r)   **Counterparts**. This Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument. The parties agree that a facsimile or portable document format (pdf) of a signed counterpart is effective and has the same force and effect as the original thereof.