

## Software as a Service Subscription Agreement

This Software as a Service Subscription Agreement (this “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is by and between Sunnybrook Software Company, LLC, a Kansas limited liability Company with an address at 8735 Rosehill Rd. Suite 160, Lenexa, KS 66215, USA (“**Sunnybrook**”), and [CUSTOMER NAME], a [STATE OF ORGANIZATION] [ENTITY TYPE] with an address at [ADDRESS] (“**Customer**”). Sunnybrook and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

**WHEREAS**, Customer desires to access the Services, and Sunnybrook desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall mean:
  - a. “**Affiliate**” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.
  - b. “**Aggregated Statistics**” means data and information related to Customer’s use of the Services that is used by Sunnybrook in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
  - c. “**Applicable Law**” means, with respect to any Party, any federal, state, or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree, or other requirement of any international, federal, state, or local court, administrative agency, or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such Party or any of its properties, assets, or business operations.
  - d. “**Authorized User**” means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
  - e. “**Authorized Carrier**” means Customer’s customers that are (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
  - f. “**Customer Data**” means all information, data, and other content, in any form or medium, that is submitted by or on behalf of Customer or an Authorized User through the Services, including any such data contained within Output.

- g. **“Documentation”** means Sunnybrook’s user manuals, handbooks, and guides relating to the Services provided by Sunnybrook to Customer either electronically or in hard copy form/end user documentation and other documentation relating to the Services.
- h. **“Harmful Code”** means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Services, or any other associated software, firmware, hardware, computer system, or network (including, without limitation, “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious, or hidden procedures, routines or mechanisms that would cause the Services to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with the operations of the Services.
- i. **“Output”** means all reports, dashboards, overviews, analysis, and similar information generated by the Services from processing Customer Data and provided to Authorized Users through the Services.
- j. **“Professional Services”** means customization and deployment services and other related professional services in relation to Customer’s use of the Services or otherwise and which will be governed by a Professional Services Agreement and/or Statement of Work that will describe such Professional Services.
- k. **“Services”** means the software-as-a-service offering described in **Exhibit A**, including all related hosting services and support services related thereto in accordance with this Agreement and the Documentation. Services do not include Professional Services.
- l. **“Sunnybrook IP”** means the Services, the Documentation, the Output (excluding any Customer Data included therein) and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Sunnybrook IP includes Aggregated Statistics, and any information, data, or other content derived from Sunnybrook’s monitoring of Customer’s access to or use of the Services but does not include Customer Data.
- m. **“Third-Party Products”** means any third-party products described on **Exhibit A** provided with or incorporated into the Services.

2. Access and Use and Customer Representations.

- a. Provision of Access. Subject to and conditioned on Customer’s payment of Fees and compliance with this Agreement, Sunnybrook hereby grants Customer a limited, non-exclusive, revocable, non-sublicensable, non-transferable (except in compliance with Section 12(h)) right to access and use the Services (including the Output) during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer’s internal business use. Sunnybrook shall provide to Customer the necessary passwords and network

links or connections to allow Customer to access the Services. The Maximum Number of Authorized Users and Authorized Carriers is set forth on Exhibit A that are authorized to access and use the Services at any one time in connection with Customer's use of the Services. If Customer exceeds or intends to exceed such Maximum Numbers then they shall promptly notify Sunnybrook and the parties will engage in good faith negotiations regarding any modifications to increase such Maximum Numbers.

- b. Documentation License. Subject to the terms and conditions contained in this Agreement, Sunnybrook hereby grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(h)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- c. Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Law; (vi) introduce, post, or upload to the Services, any Harmful Code; or (vii) circumvent any processes, procedures, or technologies that we have put in place to safeguard the Services.
- d. Reservation of Rights. Sunnybrook reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Sunnybrook IP.
- e. Modifications. Sunnybrook reserves the right to modify the Services, from time to time by adding, deleting, or modifying features to improve the user experience or for other business purposes. Sunnybrook further reserves the right to discontinue any feature of the Services, at any time during the Term at its sole and reasonable discretion. Any such modification or discontinuance will not materially decrease the overall functionality of the Services.
- f. Suspension. Notwithstanding anything to the contrary in this Agreement, Sunnybrook may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Sunnybrook determines or anticipates that (A) there is a threat or attack on any of the Sunnybrook IP; (B) Customer's or any Authorized User's use of the Sunnybrook IP disrupts or poses a security risk to the Sunnybrook IP or to any other customer or vendor of Sunnybrook; (C) Customer, or any Authorized User, is using the Sunnybrook IP for fraudulent or illegal activities; (D) subject to Applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the

benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Sunnybrook's provision of the Services to Customer or any Authorized User is prohibited by Applicable Law; (ii) any vendor of Sunnybrook has suspended or terminated Sunnybrook's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Sunnybrook shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Sunnybrook shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Sunnybrook will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

- g. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Sunnybrook may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Sunnybrook and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Sunnybrook. Customer acknowledges that Sunnybrook may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Sunnybrook may (i) make Aggregated Statistics publicly available in compliance with Applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under Applicable Law, provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.
- h. Representations and Warranties of Customer. Customer represents and warrants that: (i) Customer has all rights and permissions necessary for Customer to provide Sunnybrook with or grant Sunnybrook access to and use of all Customer Data, (ii) Customer has obtained all necessary and appropriate consents, permissions, and authorizations in accordance with all Applicable Law with respect to the Customer Data provided hereunder.

- 3. Customer Responsibilities. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement as well as compliance with the Sunnybrook Terms and Conditions which are incorporated herein. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users including the use of any passcodes provided by the Sunnybrook, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

4. Service Levels and Support

- a. Service Levels. Subject to the terms and conditions of this Agreement, Sunnybrook shall use commercially reasonable efforts to make the Services available in accordance with the service levels set out in **Exhibit C**.
- b. Support Services. Sunnybrook shall use commercially reasonable efforts to provide the Customer and its Authorized Users problem resolution and technical support in connection with the Services during the Term (the “Support Services”), as more specifically set out in **Exhibit C**.

5. Fees and Payment.

- a. Fees. Customer shall pay Sunnybrook the fees (“**Fees**”) as set forth in **Exhibit A** without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in **Exhibit A**. If Customer fails to make any payment when due, without limiting Sunnybrook’s other rights and remedies: (i) Sunnybrook may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Sunnybrook for all reasonable costs incurred by Sunnybrook in collecting any late payments or interest, including attorneys’ fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, Sunnybrook may suspend Customer’s and its Authorized Users’ access to any portion or all of the Services until such amounts are paid in full.
  - b. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Sunnybrook’s income.
  - c. Auditing Rights. Sunnybrook may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer’s records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Sunnybrook with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a). Customer shall pay for the costs of the audit if the audit determines that Customer’s underpayment equals or exceeds thirty percent (30%) for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement.
6. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information (including Customer Data with respect to Customer and all Sunnybrook IP with respect to Sunnybrook), whether orally or in written, electronic, or other form or media/in written or electronic form or media, that is/and

whether or not marked, designated, or otherwise identified as “confidential” (collectively, “Confidential Information”). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under Applicable Law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under Applicable Law.

7. Intellectual Property Ownership; Feedback.

- a. Sunnybrook IP. Customer acknowledges that, as between Customer and Sunnybrook, Sunnybrook owns all right, title, and interest, including all intellectual property rights, in and to the Sunnybrook IP subject to the limited licenses set forth herein and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- b. Customer Data. Sunnybrook acknowledges that, as between Sunnybrook and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Sunnybrook a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Sunnybrook to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Output and any Aggregated Statistics.
- c. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Sunnybrook by mail, email, telephone, or otherwise, suggesting or recommending changes to the Sunnybrook IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“Feedback”), Sunnybrook is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such

Feedback. Customer hereby assigns to Sunnybrook on Customer's behalf, and on behalf of its employees, contractors, and/or agents, all right, title, and interest in, and Sunnybrook is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Sunnybrook is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

- a. Sunnybrook warrants that the Services will conform in all material respects to the service levels set forth in **Exhibit C** when accessed and used in accordance with the Documentation. Sunnybrook does not make any representations or guarantees regarding uptime or availability of the Services other than as identified in **Exhibit C**. The remedies set forth in **Exhibit C**, are Customer's sole remedies and Sunnybrook's sole liability under the limited warranty set forth in this Section 8(a). THE FOREGOING WARRANTY DOES NOT APPLY TO, AND SUNNYBROOK STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS. ALL THIRD-PARTY PRODUCTS ARE SOLELY WARRANTED BY THE THIRD-PARTY PRODUCTS LICENSOR OR PROVIDER.
- b. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SERVICES (INCLUDING AN SUNNYBROOK IP) ARE PROVIDED "AS IS" AND SUNNYBROOK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. SUNNYBROOK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), SUNNYBROOK MAKES NO WARRANTY OF ANY KIND THAT THE SUNNYBROOK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ADDITIONALLY, SUNNYBROOK WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH ANY USE OF THE SERVICES AND/OR THE OUTPUT. COMPANY IS NOT RESPONSIBLE FOR ANY DECISIONS TAKEN BY CUSTOMER OR ANY OF CUSTOMER'S AUTHORIZED USERS BASED ON THE OUTPUT PRODUCED AND/OR MADE AVAILABLE THROUGH THE SERVICES. CUSTOMER AND EACH AUTHORIZED USER AGREES THAT ITS USE OF THE SERVICES, DOCUMENTATION, THE OUTPUT, OR ANY COMPONENT THEREOF IS ENTIRELY AT ITS OWN RISK. THE FOREGOING LIMITATIONS SHALL BE APPLIED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. Indemnification.

a. Sunnybrook Indemnification.

- i. Sunnybrook shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that (1) use of the Services by Customer in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights and (2) an unauthorized third party accessed sensitive or confidential Customer Data maintained by Sunnybrook, provided that Customer promptly notifies Sunnybrook in writing of such Third-Party Claim, cooperates with Sunnybrook, and allows Sunnybrook sole authority to control the defense and settlement of such Third-Party Claim.
- ii. If a Third Party-Claim is made or appears possible, Customer agrees to permit Sunnybrook, at Sunnybrook's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Sunnybrook determines that neither alternative is reasonably available, Sunnybrook may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.
- iii. This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Sunnybrook or authorized by Sunnybrook in writing; (B) modifications to the Services not made by Sunnybrook; or (C) Customer Data; or (D) Third-Party Products.

- b. Customer Indemnification. Customer shall indemnify, hold harmless, and, at Sunnybrook's option, defend Sunnybrook from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Sunnybrook or authorized by Sunnybrook in writing; or (iv) modifications to the Services not made by Sunnybrook, provided that Customer may not settle any Third-Party Claim against Sunnybrook unless Sunnybrook consents to such settlement, and further provided that Sunnybrook will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

- c. Sole Remedy. THIS SECTION b SETS FORTH CUSTOMER'S SOLE REMEDIES AND SUNNYBROOK'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE



SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. IN NO EVENT WILL SUNNYBROOK BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SUNNYBROOK WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT IN THE EVENT OF A CLAIM OF INFRINGEMENT BY SUNNYBROOK OR SUNNYBROOK'S GROSS NEGLIGENCE, IN NO EVENT WILL SUNNYBROOK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED TWO (2) TIMES THE TOTAL AMOUNTS PAID TO SUNNYBROOK UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination.

- a. Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1) year from such date (the **Initial Term**). This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").
- b. Termination for Breach. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured for thirty (30) days (ten (10) days with respect to payment breaches) after the non-breaching Party provides the breaching Party with written notice of such breach; or, (C) if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

- c. Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Sunnybrook IP and, without limiting Customer's obligations under **Error! Bookmark not defined.****Error! Reference source not found.**, Customer shall delete, destroy, or return all copies of the Sunnybrook IP and certify in writing to the Sunnybrook that the Sunnybrook IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund. Customer may retrieve any Customer Data for up to thirty (30) days after termination and Sunnybrook may thereafter delete all such data. Upon Customer's request, Sunnybrook will delete or anonymize all Customer Data maintained in its principal operating systems and Sunnybrook will provide written confirmation of such deletion or anonymization, provided that (1) the foregoing shall not apply to data maintained in backup systems maintained by Sunnybrook or its service providers provided that if any such backup is ever restored Sunnybrook shall delete or anonymize any such Customer Data that might be restored and (2) Sunnybrook may retain any Customer Data maintained in an any previously provided Output and any Aggregated Statistics consistent with Section 7(b).
- d. Survival. This Section and all other Sections that by their nature would continue beyond expiration, termination, or cancellation of this Agreement (including, without limitation, the warranties, indemnification obligations, confidentiality requirements and ownership and property rights) shall survive any such expiration, termination, or cancellation.

## 12. Miscellaneous.

- a. Credit Assurance. Sunnybrook reserves the right to review the creditworthiness of Customer through available and reliable verification procedures or sources and Customer hereby consents to Sunnybrook obtaining such information. Sunnybrook reserves the right, in its sole discretion, to require a deposit, letter of credit or similar surety, as a condition to the initial provision of the Services. Furthermore, Sunnybrook may require a deposit, letter of credit or similar surety as a condition of continued provision of Services or decline to accept any requests to provide additional and/or new Services if: (a) Customer fails to comply with the payment terms of this Agreement (b) Customer presents an undue risk of non-payment; (c) Customer experiences a material adverse change in its creditworthiness or financial position; (d) Customer is acquired by an entity who is insolvent; or (e) Customer is subject to bankruptcy or has filed for bankruptcy or insolvency proceedings.
- b. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

- c. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- d. Force Majeure. In no event shall Sunnybrook be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond Sunnybrook’s reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- e. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- f. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- g. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Kansas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Kansas. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Kansas with original jurisdiction over Johnson County, Kansas, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- h. Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or

otherwise, without the prior written consent of Sunnybrook, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

SUNNYBROOK SOFTWARE  
COMPANY, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Print Name:  
Title:  
Date:

Print Name:  
Title:  
Date:

**Exhibit A**  
**Services and Third-Party Products**

1. Sunnybrook TMS Base Platform
2. [Dynamic Pricing API]
3. [Data Connection: \_\_\_\_\_]
4. [Other Platforms]

[For Client to Modify – This would be for anything you have a “set” module they would get month after month. If you are doing customized data connections or anything else that involves variable man hours on it, particularly if not going to be generally available to customers, then you probably will want it under the professional services agreement.]

## **Exhibit B**

### **Invoicing.**

- a. Invoice.** Sunnybrook Software may tender an invoice upon the initial contract start date.
- b. Payment of Invoices.** (Customer) will pay all invoices submitted in accordance with the terms of this Agreement within 30 days of the date of the invoice.

#### **a. Sunnybrook TMS Pricing Structure.**

Base platform fee of \$650 includes the first 200 shipments. When you go above the included 200 shipments, the following pricing would be enforced for the additional shipments:

201-1500 shipments, cost is \$2/each  
1501-2300 shipments, cost is \$1.95/each  
2301-5000+ shipments, cost is \$1.90/each

- b. Payment of Invoices.** (Customer) will pay all invoices submitted in accordance with the terms of this Agreement within 30 days of the date of the invoice.





**Exhibit C**  
**Service Level Commitments**

1. Sunnybrook shall provide the Services in accordance with the following Service Level Commitments.
2. Support Priorities and Response Times are set out below during Standard Support (except for Urgent issues):

Priority	Definition	Response Target
Urgent	Critical failure with no workaround. System or core functions are unusable.	Response within 2 hours
High	Major impact with workaround. Core workflows are disrupted.	Response within 4 hours
Normal	Minor disruption, non-critical features affected.	Response within 1-3 business day
Low	No impact on operations; cosmetic or improvement requests.	Response within 10 business days

3. Sunnybrook reserves the right to reclassify the priority level if it reasonably believes the classification is incorrect. If the priority level is not set by the Customer, the ticket will default to “Normal.” Timing begins upon submission of full and complete information related to the ticket with an appropriate classification.
4. Uptime Guarantee: Sunnybrook guarantees 99.5% Service uptime (Note: excludes scheduled maintenance announced at least 48 hours in advance or during Sunnybrook’s regularly scheduled maintenance window occurring Saturday 10:00 PM to Sunday 5:00 AM). Uptime is measured monthly.
5. Support Availability:
  - i. Standard Support: Available 8:00 AM to 5:00 PM CT, Monday through Friday, via email (support@sunnybrooksoftwaresupport.zendesk.com).
  - ii. Emergency Support: Available 24/7 for Urgent issues via phone (913-210-0514).
6. Customer Responsibilities:
  - i. Report issues promptly with examples and steps to reproduce.
  - ii. Provide necessary collaboration to resolve issues.
7. Remedies for SLA Failures:
  - i. If Sunnybrook fails to meet the response or availability targets set forth above, Customer is entitled to service credits against the monthly fees during such month as follows:
    - a. Availability Failures:

Uptime	Service Credit:
99.5% or above	0%
Between 99.0% and 99.4%	5%

Between 98.0% and 98.9%	10%
Between 95.0% and 97.9%	20%
Between 80.0% and 94.9%	30%
Below 80.0%	50%

b. Response Time Failure:

Priority	Service Credit:
Urgent	20%
High	10%

ii. Service credits must be requested in writing within 30 days of the incident and will be applied to the next invoice. In no event will service credits give rise to a refund. Service credits applicable under either prong may be combined up to a maximum of 50% of any one month's fees.

iii. The service credits provided herein are the sole and exclusive remedy for any failures of response time or uptime availability herein.

8. Escalation: If any Urgent or High priority issue remains unresolved 24 hours after initial response, Customer may escalate to Sunnybrook's support manager via [support@sunnybrooksoftwaresupport.zendesk.com](mailto:support@sunnybrooksoftwaresupport.zendesk.com).