

BY ACCEPTING, YOU ARE AGREEING ON BEHALF OF THE ENTITY OBTAINING THE INCENTIT PRODUCT (“COMPANY”) THAT COMPANY WILL BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT AND CERTIFYING THAT YOU HAVE THE AUTHORITY TO BIND COMPANY. IF COMPANY DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND COMPANY TO THIS AGREEMENT, DO NOT CLICK TRY TO ACCESS AND/OR USE THE INCENTIT PRODUCTS IN ANY MANNER.

UNLESS AND UNTIL COMPANY HAS AGREED TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT, COMPANY HAS NOT BECOME A LICENSEE OF, AND IS NOT AUTHORIZED TO ACCESS AND/OR USE, THE INCENTIT PRODUCT. THE “EFFECTIVE DATE” OF THIS AGREEMENT IS THE DATE YOU ARE ACTIVATED AS A USER.

1. Scope of License and Related Terms.

1.1. On-Demand Services. IncentIT will make the IncentIT Product available to Company for USE via IncentIT’s online, Web-based platform and applications that are hosted by IncentIT, or a third party hosting facility designated by IncentIT and provided as a service (known as the “saas” model).

1.2. License Grant. During the entire agreement Period, IncentIT grants to Company a non-exclusive, revocable and non-transferable right to use the IncentIT Product solely for the purpose of using IncentIT Product for Company’s internal business purposes. Company may, using the functionality within the IncentIT Product, configure and, modify certain available features and functionality of the IncentIT Product offered as part of its usage process.

1.3. Company Responsibilities. Company shall: (a) use commercially reasonable efforts to prevent unauthorized access to or use of the IncentIT Product, and (b) notify IncentIT in writing immediately of any unauthorized use of, or access to, the IncentIT Product or any user account or password thereof.

1.4. Use Restrictions. Company shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the IncentIT Product or any modified version or derivative work of the IncentIT Product created by or for Company, (b) provide the IncentIT Product, or any modified version or derivative work of the IncentIT Product created by or for Company, on a timesharing, service bureau or other similar basis, (c) remove or alter any copyright, trademark or proprietary notice in the IncentIT Product, (d) develop Forked Software, (e) copy any features, functions or graphics of the IncentIT Product for any purpose other than what is expressly authorized in this Agreement, (f) use or modify the IncentIT Product in any

way that would subject the IncentIT Product, in whole in or in part, to a Copyleft License, (g) send, store, or authorize a third party to send or store spam, unlawful, infringing, obscene or libelous material, or malicious code, (h) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the IncentIT Product, (i) use any intellectual property rights protected by applicable laws and contained in or accessible through the IncentIT Product for the purpose of building a competitive product or service or copying its features or user interface, (j) use the IncentIT Product, or permit it to be used, for purposes of product benchmarking or other comparative analysis intended for publication without IncentIT's prior written consent; or (k) use the IncentIT Product to develop or enhance any (i) open source version of IncentIT software, (ii) derivative works of any open source version of IncentIT software, or (iii) any software code made to work with any open source version of IncentIT software.

1.5. Suggestions. Company may, from time to time, provide suggestions, enhancement or feature requests or other feedback to IncentIT with respect to the IncentIT Property (as defined below) or other IncentIT products, services or related documentation (whether or not such is disclosed or delivered by IncentIT to Company under this Agreement) (collectively, "Feedback"). Company agrees that all Feedback is and shall be given by Company entirely voluntarily. IncentIT shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion, without restriction or obligation of any kind or nature. Feedback, even if designated as confidential by Company, shall not create any obligation of confidentiality for IncentIT, unless IncentIT expressly agrees so in writing.

2. Proprietary Rights and Data.

2.1. Ownership. IncentIT owns all right, title and interest, including all intellectual property rights, in and to the IncentIT Product, and all Modifications thereto (collectively, the "IncentIT Property"). Company hereby does and will assign to IncentIT all right, title and interest worldwide in the intellectual property rights embodied in any and all Modifications. To the extent any of the rights, title and interest are not assignable by Company to IncentIT, Company grants and agrees to grant to IncentIT an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) under Company's intellectual property rights to use, disclose, reproduce, license, sell, offer for sale, distribute, import and otherwise exploit the Modifications in its discretion, without restriction or obligation of any kind or nature. Except as expressly stated otherwise in this Agreement, IncentIT retains all of its right, title and ownership interest in and to the IncentIT Property, and no other intellectual property rights or license rights are granted by IncentIT to Company under this Agreement, either expressly or by implication, estoppel or otherwise, including, but not limited to, any rights under any of IncentIT's or its affiliates patents.

2.2. Business Information; Company Data. Company agrees to allow IncentIT and its Affiliates to store and use Company business contact information, including names, business phone numbers,

and business e-mail addresses, anywhere it does business that is provided by Company to IncentIT. Such information will be processed and used in connection with IncentIT's business relationship, and may be provided to contractors acting on IncentIT's behalf for uses consistent with IncentIT's business relationship. To the extent that (i) Company data is input into or resides in the IncentIT Product as part of this agreement (the "Company Data") and (ii) the Company Data contains personal data about any living individual ("Data"), IncentIT will process that Data only as a Data Processor acting on behalf of Company (as the Data Controller) and in accordance with the requirements of this Agreement.

2.3. Company's Compliance with Privacy Laws; Purpose Limitation. Company will at all times comply in full with the requirements of any applicable privacy and data protection laws (including where applicable, European Union Directives 95/46/EC and 2002/58/EC and any national implementation(s) of them) to which it is subject as a Data Controller ("Applicable Privacy Law(s)"). IncentIT will process the Data in accordance with Company's instructions under Applicable Privacy Law(s) and will not: (a) assume any responsibility for determining the purposes for which and the manner in which the Data is processed, or (b) process the Data for its own purposes.

2.4. Usage Data. In the course of providing Company with the services contemplated in the Agreement, IncentIT may collect, use, process and store diagnostic and usage related content from the computer, mobile phone or other devices the Company uses to access the IncentIT Product or service. This may include, but is not limited to, IP addresses and other information like internet service, location, the type of browser and modules that are used and/or accessed (the "Usage Data"). Usage Data does not, however, include Company Data. Company agrees that IncentIT may process Usage Data to create and compile anonymized, aggregated datasets and/or statistics about the IncentIT products or services in order to: (a) maintain and improve the performance and integrity of IncentIT products or services, (b) understand which IncentIT products or services are most commonly deployed and preferred by customers and how customers interact with IncentIT products or services, (c) identify the types of IncentIT services that may require additional maintenance or support, and (d) comply with all regulatory, legislative and/or contractual requirements, provided in each case that such aggregated datasets and statistics will not enable Company or any living individual to be identified.

3. Term and Termination.

3.1. Term. This Agreement commences on the Effective Date and continues for a period of 5 (5) years thereafter ("Agreement Term"), unless terminated sooner pursuant to Section 3.2.

3.2. Termination. Either party may terminate this Agreement at any time by providing a minimum of Thirty (30) days written notice to the other party. Additionally, either party may terminate this Agreement if the other party: (a) materially breaches its obligations hereunder and, where such

breach is curable, such breach remains uncured for two (2) days following written notice of the breach, or (b) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

3.3. Effect of Termination or Expiration. Upon any expiration termination of this Agreement, whichever occurs first, (a) the rights granted under this Agreement will be immediately revoked and IncentIT may immediately deactivate Company's account; (b) the Company Data will be deleted by IncentIT from the IncentIT Product; and (c) the return or destruction of Confidential Information will be handled as contemplated in the final sentence of Section 4. Sections 1.5, 1.6, 2, 3.3, 4, 5 and 6 survive termination or expiration of this Agreement.

4. Confidentiality. The parties acknowledge that in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that neither it nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to exercise its rights under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose third-party confidential or proprietary information disclosed to such party, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the Receiving Party's use of information: (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the Disclosing Party's Confidential Information, (iii) acquired by it from a third party that is not under an obligation of confidence with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement. The Receiving Party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. The terms of this Agreement, Original Code and the structure, sequence and organization of the IncentIT Product are Confidential Information of IncentIT or its licensors. Within five (5) days after a Disclosing Party's request, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information; provided, however, that the Receiving Party shall be entitled to retain archival copies of the Confidential Information of the Disclosing Party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

5. Disclaimer of Warranties; Limitation of Liability.

5.1. Disclaimer of Warranties. THE INCENTIT PRODUCT IS PROVIDED TO COMPANY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. INCENTIT'S PRODUCT OR SERVICE MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND INCENTIT IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES.

5.2. Limitation on Damages. EXCEPT FOR A BREACH BY COMPANY OF SECTIONS 1.2, 1.5 OR 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. & IN NO EVENT SHALL INCENTIT'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE AMOUNT OF \$100.

6. General.

6.1. United States Government Users. The IncentIT Product and related Modifications were fully developed at private expense and are commercial computer software as defined in FAR 2.101. Any related documentation, technical data, or services are also commercial. In accordance with FAR 12.212 and DFARS 227.7202, all rights conferred in the IncentIT Product, related documentation, technical data, services, or any deliverable to the United States Government are specified in this Agreement. All other uses are prohibited and no ownership rights are conferred.

6.2. Export Compliance. Company acknowledges and agrees that the IncentIT Product is subject to all applicable export control laws and regulations, including, without limitation, those of the United States Government. Company shall strictly comply with all applicable export control laws and regulations related to the IncentIT Product, including, without limitation, U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774, and all licenses and authorizations issued under such laws and regulations. Company agrees that it shall not, and shall cause its representatives, employees, agents, contractors and customers to agree not to, export, re-export, divert, release, transfer, or disclose any such IncentIT Product, or any direct product thereof, to any prohibited or restricted destination, end-use or end-user, except in accordance with all relevant export control laws and regulations.

6.3. Assignment. Company cannot assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of IncentIT. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in breach of this Section 6.3 shall be void.

6.4. Relationship of the Parties. IncentIT and Company are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.

6.5. Choice of Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its conflicts of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

6.6. Attorney's Fees. In any action related to this Agreement, if any party is successful in obtaining some or all of the relief it is seeking or in defending against the action, the other party shall pay, on demand, the prevailing party's reasonable attorneys' fees and reasonable costs.

6.7. Manner of Giving Notice. Notices regarding this Agreement shall be in writing and addressed to Company at the address Company provides, or, in the case of IncentIT, when addressed to IncentIT Inc via the provided email address(es) Notices regarding the IncentIT Product in general may be given by electronic mail to Company's e-mail address on record with IncentIT.

6.8. Entire Agreement; Other Terms. This Agreement and any URLs referenced herein represent the entire agreement of the parties and supersede all prior discussions, emails and/or agreements between the parties and is intended to be the final expression of their Agreement. To the extent there is a conflict between this Agreement and any additional or inconsistent terms, the terms of this Agreement shall prevail, unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in any other order document (other than an Order Form expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. The Agreement, including any related Order Form may not be modified or altered except by written instrument, and no amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed (either manually or electronically) by an authorized representative of Company and IncentIT. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the

remaining provisions shall remain in effect. Except as otherwise provided, remedies specified herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

7. Definitions.

7.1. "Affiliate" means a company that is controlled by, under common control with or controlling a party during the period of such control.

7.2. "Confidential Information" means information that one party (the "Disclosing Party") provides to the other party ("Receiving Party") during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

7.3. "Copyleft License" means a software license that requires that information necessary for reproducing and modifying such software must be made available publicly to recipients of executable versions of such software (see, e.g., GNU General Public License and <http://www.gnu.org/copyleft/>).

7.4. "Data Controller" means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or European Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or European Community law.

7.5. "Data Processor" means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the Data Controller.

7.6. "Forked Software" means modifications to any open source version of the Original Code to develop a separately maintained source code program (a) with features not present in the Original Code or (b) where modifications to the Original Code are not automatically integrated with the Original Code.

7.7. "Modifications" means any work based on or incorporating all or any portion of the IncentIT Product, including, without limitation, modifications, enhancements and customizations to the

IncentIT Product developed by IncentIT, Company, a third party on either such party's behalf or any combination of such parties.

7.8. "Original Code" means IncentIT Product source code.