

## GENERAL TERMS AND CONDITIONS

***This is a legally binding agreement. Please read these terms and conditions carefully. By clicking the button on the online registration page to accept this agreement, you represent that you have the full legal authority to enter this agreement on behalf of the party identified in the registration process, and in that capacity you acknowledge such party's agreement to be bound by the terms and conditions set forth or referenced below.***

This agreement (the “**Agreement**”) for use of the Software (as defined below) is between PreApp, LLC, **PreApp’s Customer (“You” or “Company”)**, (such process and the information provided during such process as amended from time to time through Customer’s login to its account in the Software in accordance with this Agreement, the “**Registration**”). This Agreement is effective upon Customer’s acceptance of it in the course of the Registration (the “**Effective Date**”). The Registration is incorporated herein and made a part of this Agreement.

### **1. Certain Definitions.**

(a) “**Affiliate**” means, as to a party, any other entity that directly or indirectly controls, is under common control with, or is controlled by, such party; as used in this definition, “control” and its derivatives mean possession, directly or indirectly, of power to direct the management or policies of an entity.

(b) “**Authorized User**” means the Customer, its clients, employees, borrowers, potential borrowers, or other representatives who have been granted access to use the Software by Customer, whether or not the Authorized User actually accesses the Software.

(c) “**Confidential Information**” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the course of, or by virtue of, this Agreement and (ii) either is designated as confidential or proprietary in writing at the time of such disclosure or within a reasonable time thereafter (or, if disclosure is made orally or by observation, is designated as confidential or proprietary orally by the person disclosing or allowing observation of the information) or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Agreement, and whether or not otherwise meeting the criteria described herein, the Licensed Materials, Customer Data, and the content of this Agreement (other than the fact of its existence and the identities of the parties hereto) shall be deemed conclusively to be Confidential Information. For purposes of this Agreement, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information to any person or body of which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, or (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction. A selection or combination of information will not meet any of the foregoing exceptions solely because some or all of its individual component parts are so excepted and will meet such exception(s) only if the selection or combination itself is so excepted. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information.

(d) “**Customer Data**” means all data, information, documents, electronic files or other information provided to Company by or on behalf of Customer as such data is maintained by Company from time to time.

(e) “**Documentation**” means all documentation (whether printed or in an electronic retrieval format) supplied or made available to Customer by Company for use with or in support of the Software or its implementation, including without limitation any and all revisions, modifications, and updates thereof as may be supplied or made available by Company to Customer during the Term of this Agreement and all copies thereof made by or on behalf of Customer.

(f) **“Hosting Services”** means the provision, administration, and maintenance of servers and related equipment, the provision of bandwidth at the hosting facility, and the operation of the Software for access and use by Authorized Users pursuant to this Agreement.

(g) **“Licensed Materials”** means the Software and the Documentation.

(h) **“Loss”** means all losses, liabilities, damages, awards, settlements, claims, suits, proceedings, costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, expert witness fees, settlement, judgment, interest, and penalties).

(i) **“Software”** means the online services, document workflow management system, and application offered by Company, together with any associated software applications, database structures and queries, interfaces, tools, and the like, together with any and all revisions, modifications, and updates thereof, as made available by Company to Customer pursuant to this Agreement.

(j) **“Services”** means the services performed or to be performed by Company under this Agreement other than the Licensed Materials and the provision thereof to Customer.

(k) **“System Administrator”** means the individual who initially completes the Registration on behalf of Customer (or otherwise is identified as such in the Registration) or such substitute designated by Customer from time to time in accordance with Company’s then-current procedures therefor.

(l) **“User Sublicenses”** means a sublicense granted by Customer to Authorized Users permitted pursuant to Section 3 hereof pursuant to the [Software Terms of Use](#) located at preapp1003.com.

(m) The word “including” means “including without limitation” unless otherwise expressly provided in a given instance.

**2. Registration.** Customer represents that the information indicated in the Registration is true and complete, and Customer agrees to update the Registration upon any changes to such information. The Registration is incorporated herein and made a part of this Agreement. If you create a Registration in the name of a legal entity, you represent that you have full corporate power and authority to enter into these Terms and Conditions. By using the Software and/or creating a Registration, you represent and warrant that you meet all of the eligibility requirements.

**3. License to Customer.** Subject to the terms and conditions of this Agreement, Company grants to Customer a non-exclusive, non-transferable, non-sublicensable (except with respect to User Sublicenses), revocable license during the Term for Customer to access and use the Licensed Materials solely for Customer’s internal business purposes to access and use the Licensed Materials during the Term pursuant to the [Software Terms of Use](#) located at preapp1003.com. All rights with respect to the Licensed Materials not explicitly granted herein are reserved to Company.

**4. Services.** Subject to the terms and conditions of this Agreement and provided Customer is not in material breach of its obligations hereunder, Company shall provide the following Services during the Term:

(a) **Hosting.** Company shall provide the Hosting Services; provided, however, that the Hosting Services may be interrupted and the Licensed Materials unavailable for use from time to time in Company’s discretion for Company (or a third-party) to perform scheduled or unscheduled system maintenance, to address security threats or security incidents, or due to the acts or omissions of third parties or Company.

(b) **Enhancements.** From time to time at its discretion, Company may implement releases of the Software that contain changes, updates, patches, fixes, enhancements to functionality, and/or additional functionality. Company in its sole discretion will determine whether to include in the Software, as part of the maintenance Services hereunder, features or functionality not originally specified for the Software, and Company shall have no obligation to disclose or offer to Customer any such features or functionality.

**5. Fees.** Company must purchase access for each Authorized User to the Software. Customer agrees to pay Company the applicable fees, amounts, and taxes for such access to the Software. Prices remain subject to change without notice.

**6. Customer Responsibilities and Restrictions.**

(a) Equipment and Ancillary Services. Customer shall be responsible for selecting, obtaining, and maintaining any equipment, items, and ancillary services needed to access the Licensed Materials, in each case meeting any criteria described in the Documentation, published on Company's website, or otherwise provided or made available to Customer by Company from time to time. Use of the Software requires Internet access and may be subject to additional fees or charges; high-speed internet access is recommended. Customer and each Authorized User shall be responsible for all fees and charges incurred with respect to accessing to the Licensed Materials and the Services.

(b) System Administrator. Customer acknowledges and agrees that the System Administrator, utilizing mechanisms provided therefor within the Software, will have the sole responsibility for authenticating and provisioning access to the Licensed Materials for other Authorized Users and for disabling access to the Licensed Materials for Authorized Users. Customer shall cause the System Administrator to perform such authentication in accordance with generally-accepted information privacy and security standards and shall cause the System Administrator to disable such access immediately upon the termination of employment or engagement of any Authorized User by Customer or its Affiliate or when an Authorized User otherwise is no longer eligible to use the Licensed Materials pursuant to this Agreement. Customer shall notify Company immediately, by telephone and in writing, to disable access to the Licensed Materials if System Administrator is terminated or otherwise is no longer eligible to use the Licensed Materials pursuant to this Agreement.

(c) Account Passwords and Data Security. Customer shall maintain and cause to be maintained the confidentiality of the user ID and password of the System Administrator, including implementing and enforcing policies and procedures as reasonable and appropriate thereto, and Customer at all times shall maintain (and shall cause any Affiliate having Authorized Users to maintain) adequate technical, physical, and administrative safeguards, including access controls and system security requirements and devices, to ensure that access to the Licensed Materials by or through Customer is limited to Authorized Users. Customer shall be solely responsible for all use or misuse of the user ID of the System Administrator, and except as otherwise required by applicable law Company shall have no obligation to monitor for or report any use or attempted use of the user IDs of the System Administrator. All such user IDs and passwords are deemed to be Confidential Information of both Customer and Company. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate. Customer shall be responsible for maintaining the user ID and resetting the password for the System Administrator if the person responsible for such account for Customer is terminated or otherwise is no longer eligible to use the Software.

(d) Storage. Company may establish general practices and limits concerning use of the Licensed Materials and data storage limits for Customer use of the Licensed Materials. Company may modify such practices and limits from time to time without notice. The Licensed Materials are not intended as a backup or storage system. Customer agrees to maintain backup copies of all Customer data submitted to the Licensed Materials. Company shall have no responsibility or liability for the deletion of, the failure to store, or the failure to transmit, any Personal Information, documents, or communications maintained by the Licensed Materials.

(e) Restrictions. Except as may be expressly authorized in this Agreement, Customer and Authorized Users shall not do, nor shall it authorize any person to do, any of the following: (i) use the Licensed Materials, Customer Data, or any other data associated with the foregoing for any purpose or in any manner not specifically authorized by this Agreement; (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic format, provided Customer may share copies of the Documentation with Authorized Users during the Term; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials; (iv) create or recreate the source code for, or re-engineer, reverse engineer, decompile, or disassemble any Licensed Materials; (v) modify, adapt, translate, or create derivative works from or based upon any part of the Licensed Materials, or combine or merge any part of the foregoing with or into any other software, document, or

work; (vi) refer to or otherwise use any part of the Licensed Materials as part of any effort to develop a product or service having any functional attributes, visual expressions, or other features or purposes similar to those provided by Company; (vii) remove, erase, or tamper with any copyright, logo, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Licensed Materials, or use a proxy, reverse proxy, or any other such mechanism that is intended to, or has the effect of, obscuring any of the foregoing or confusing an individual as to Company's rights in the foregoing; (viii) fail to preserve all copyright and other proprietary notices in any copy of any portion of the Licensed Materials made by or on behalf of Customer; (ix) sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party any right to possess or utilize any portion of the Licensed Materials without the express prior written consent of Company (which may be withheld by Company for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as Company in its sole discretion deems desirable); (x) use the Licensed Materials to gain or attempt to gain access to any software applications, computer systems, or data not expressly authorized under this Agreement; (xi) use the Licensed Materials to store, receive, or distribute any information in violation of any applicable law; (xii) diminish or infringe any intellectual property rights in and to the Licensed Materials or impair or interfere with any copyright protection mechanisms, copyright management information systems or digital identification devices employed in association with the foregoing; (xiii) cause the Licensed materials to defame or infringe the rights of any other person, including rights of publicity or privacy; (xiv) use the Licensed Materials to break or violate any applicable law, regulation, ordinance or guideline; (xv) impersonate any person or entity; (xvi) act in a manner that is fraudulent, libelous, abusive, obscene, discriminatory, harassing, or illegal; (xvii) transmit any computer viruses, worms, trojan horses or other malware; (xviii) use any device, software, methodology, or routine to interfere with or disrupt the Licensed Materials or the servers or networks connected to the Licensed Materials by trespass or burdening network capacity; (xix) harvest or collect information about other users or customers of Company; (xx) restrict or inhibit any other person from using the Licensed Materials, including without limitation by means of "hacking" or defacing any portion thereof; (xxi) "frame" or "mirror" any portion of the Licensed Materials; (xxii) use any robot, spider, other automatic device, or manual process, to "screen scrape," monitor, "mine," or copy any portion of the Licensed Materials; or (xxiii) attempt to do or assist any party in attempting to do any of the foregoing.

(f) Compliance with Laws. Customer represents, covenants, and warrants that Customer and Authorized Users will use the Licensed Materials and Services only in compliance with all applicable laws and regulations. Customer acknowledges that Customer's use of the Software is subject to all applicable local, state, national, and international laws and regulations.

(g) Anti-Spam. Customer agrees that Customer is aware and will follow any legislation from any level of government that pertains to the Services being used. This includes complying with legislation based on where Customer is located, where recipients of any messages sent from the Service are located and where Service Provider is located. For further clarity, this includes the United States CAN-SPAM Act. Service Provider will NOT be held responsible for any breach of CAN-SPAM or any other spam legislation whatsoever whether enforced by a governing agency or any other agent or party. Customer agrees that any penalty, fine or any other discipline for breach of CAN-SPAM or any other legislation will be Customer's sole responsibility. Customer further agrees to indemnify Service Provider from any penalty of any kind whatsoever that arise from Customer breach of CAN-SPAM or any other spam legislation. Violation of CAN-SPAM or any other spam legislation will result in account deactivation.

CAN-SPAM Act: <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>

(h) Cooperation. Customer agrees to comply with any instructions provided by and to respond to any requests made by Company with respect to or otherwise associated with access to the Licensed Materials or Services.

(i) Monitoring. Although Company has no obligation to monitor use of the Licensed Materials, Company may do so and may prohibit any use of the Licensed Materials the Company believes may be (or is alleged to be) in violation of applicable laws, regulations, or this Agreement.

(j) Permitted Use Locations. Customer agrees to access the Licensed materials only from within the United States. Customer shall notify Company without undue delay regarding purchase of Premium Services if Customer desires to use the Licensed Materials or Services in connection with activities outside of the United States.

(k) Disclaimer. Company shall not be liable to Customer for any Loss arising out of or relating to Customer's failure to comply with its obligations set forth in this Section 6.

## **7. Ownership; Proprietary Rights**

(a) Customer Data. As between Company and Customer, Customer has and retains exclusive ownership of all Customer Data and all intellectual property and proprietary rights therein except as otherwise provided herein.

(b) Licensed Materials. As between Company and Customer, Company has and retains exclusive ownership of the Licensed Materials, all improvements, enhancements or modifications thereto, and all intellectual property and proprietary rights therein. Company also owns and has the unrestricted right to use any data collected via the Licensed Materials that is not Customer Data. Customer acknowledges and agrees that Company has and retains exclusive and valid ownership of all anonymized statistical information regarding use of the Software. Customer acknowledges that the foregoing constitute valuable assets and may constitute trade secrets of Company or its licensors.

(c) Suggestions, Joint Efforts. Customer may suggest, and the parties may discover or create jointly, findings, inventions, improvements, discoveries, or ideas that Company, at its sole option, may incorporate in the Licensed Materials or in other products or services that may or may not be made available to Customer. Any such finding, invention, improvement, discovery, or idea, whether or not patentable, that is conceived or reduced to practice during the term of this Agreement, whether by a party alone or by the parties jointly, arising from or related to this Agreement or the Licensed Materials shall be and remain solely property of Company and may be used, sold, licensed, or otherwise provided by Company to third parties, or published or otherwise publicly disclosed, in Company's sole discretion without notice, attribution, payment of royalties, or liability to Customer. Customer hereby assigns to Company any and all right, title, and interest in and to any such findings, inventions, improvements, discoveries, ideas, and statistical information. Unless otherwise expressly agreed in writing, Customer shall not obtain any right, title, or interest (other than the license expressly set forth herein) in or to anything created or developed by Company in connection with or incident to this Agreement.

(d) License to Use Customer Data. Customer grants to Company a non-exclusive, transferrable, sublicensable, worldwide, royalty-free license to use, disclose, and process Customer Data to: (a) perform its obligations under this Agreement and to compile analyses and statistical information from Customer Data regarding usage or performance of the Licensed Materials and user engagement; (b) provide, monitor, correct, enhance, and improve the Licensed Materials and perform services related thereto; and (c) develop new products and accomplish other internal business purpose. Customer represents and warrants that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority, to grant to Company the license set forth herein. Customer further represents and warrants that it has provided all necessary notices to process the Customer Data and to transfer the Customer Data to Company. Customer shall indemnify, defend, and hold harmless Company, its Affiliates, and their respective directors, officers, employees, and agents from and against any Loss arising from or related to a claim of a third party with respect to a breach of the foregoing representations and warranties of Customer.

## **8. Confidentiality**

(a) Security of Confidential Information. In addition to any other restrictions or obligations imposed at law or provided under this Agreement, each party possessing Confidential Information of the other party will maintain all such Confidential Information under reasonably secure conditions, using the same security procedures used by such party for the protection of its own Confidential Information of a similar kind and in any event not less than reasonable security measures.

(b) Non-Disclosure Obligation. Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its employees, contractors, agents, and professional advisors having a substantial need to know the specific information in question in connection with such party's exercise of rights or

performance of obligations under this Agreement provided that all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.

(c) Compelled Disclosure. If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately shall notify the other party of the motion or order by the most expeditious possible means; (iii) such party shall not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iv) such party shall exercise reasonable efforts to obtain appropriate assurance that confidential treatment will be accorded the Confidential Information so disclosed.

(d) Post-Termination Procedures. Except with respect to Customer Data as provided in Section 10(b) or as otherwise expressly provided in this Agreement, promptly upon the expiration or any termination of this Agreement or other expiration or termination of a party's right to possess and/or use Confidential Information, each party shall turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any embodiments of any Confidential Information of the other party.

## **9. No Warranties**

(a) THE LICENSED MATERIALS AND ALL SERVICES PROVIDED OR TO BE PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," AND "AS AVAILABLE" WITH ALL FAULTS, AND CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED MATERIALS AND SERVICES. COMPANY DISCLAIMS, ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, OR STATUTORY, ORAL OR WRITTEN) WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF OR THE SERVICES, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT COMPANY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER. COMPANY DOES NOT WARRANT THAT THE SERVICES OR LICENSED MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE.

(b) DUE TO THE CONTINUAL DEVELOPMENT OF NEW TECHNIQUES FOR INTRUDING UPON AND ATTACKING NETWORKS, COMPANY DOES NOT WARRANT THAT THE LICENSED MATERIALS, SERVICES, OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THEY ARE USED OR ACCESSED, WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK THAT RESULTS IN CUSTOMER'S INABILITY TO USE THE SOFTWARE OR THE UNAUTHORIZED DISCLOSURE OR COMPROMISE OF CUSTOMER'S INFORMATION IN THE SOFTWARE.

(c) COMPANY CANNOT AND DOES NOT GUARANTEE OR WARRANT THAT FILES AVAILABLE FOR DOWNLOADING FROM THE INTERNET OR THE LICENSED MATERIALS WILL BE FREE OF VIRUSES OR OTHER DESTRUCTIVE CODE. CUSTOMER IS RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKPOINTS TO SATISFY ITS PARTICULAR REQUIREMENTS FOR ANTI-VIRUS PROTECTION AND ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO THE SOFTWARE FOR ANY RECONSTRUCTION OF ANY LOST DATA

(d) COMPANY IS NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE LICENSED MATERIALS.

(e) CUSTOMER WILL BE EXCLUSIVELY RESPONSIBLE AS BETWEEN THE PARTIES FOR, AND COMPANY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO, (A) DETERMINING WHETHER THE LICENSED MATERIALS OR SERVICES WILL ACHIEVE THE RESULTS DESIRED BY CUSTOMER, (B) ENSURING THE ACCURACY OF ANY CUSTOMER DATA, AND (C) SELECTING, PROCURING, INSTALLING, OPERATING, AND MAINTAINING THE TECHNICAL INFRASTRUCTURE FOR CUSTOMER'S ACCESS TO AND USE OF THE LICENSED MATERIALS OR SERVICES (OTHER THAN WITH RESPECT TO THE HOSTING SERVICES), AND (D) DECISIONS MADE, ACTIONS TAKEN, AND RESULTS EXPERIENCED WITH RESPECT TO USE OF THE LICENSED MATERIALS. COMPANY SHALL NOT BE LIABLE FOR, AND SHALL HAVE NO OBLIGATIONS WITH RESPECT TO, ANY ASPECT OF THE LICENSED MATERIALS THAT IS MODIFIED BY ANY PERSON OTHER THAN COMPANY OR ITS CONTRACTORS, USE OF THE LICENSED MATERIALS OTHER THAN IN ACCORDANCE WITH THE MOST CURRENT OPERATING INSTRUCTIONS PROVIDED BY COMPANY, ERRORS OR OTHER EFFECTS OF PROBLEMS, DEFECTS, OR FAILURES OF SOFTWARE OR HARDWARE NOT PROVIDED BY COMPANY OR OF ACTS OR OMISSIONS OF CUSTOMER OR ANY THIRD PARTY. CUSTOMER ACKNOWLEDGES THAT THE OPERATION OF THE LICENSED MATERIALS WILL NOT BE ERROR FREE IN ALL CIRCUMSTANCES AND THAT ALL DEFECTS IN THE LICENSED MATERIALS MAY NOT BE CORRECTED.

(f) E-MAIL/SMS DELIVERABILITY DISCLAIMER. COMPANY DOES NOT WARRANT THAT E-MAIL, SMS OR OTHER MESSAGES SENT THROUGH THE SOFTWARE WILL REACH THE INTENDED RECIPIENT(S) AND NOT BE DIVERTED OR BLOCKED BY ANTI-SPAM MECHANISMS.

(g) Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages, so some of the limitations and disclaimers above may not apply to Customer. To the extent applicable law does not permit such disclaimer of warranty, the scope and duration of such warranty and the extent of such liability shall be the minimum permitted under such applicable law.

## **10. Term and Termination.**

(a) Term. This Agreement is effective as of the Effective Date and it shall continue in effect until terminated in accordance with this section (the "**Term**"). Customer acknowledges that Company may terminate this Agreement and the license granted herein at any time with or without notice to Customer by disabling access to the Licensed Materials. Customer may terminate this agreement in accordance with the Company's "SOFTWARE AS A SERVICE AGREEMENT". Termination of Customer's account may include, at Company's sole discretion, any or all of the following: (a) removal of access to all or part of the Licensed Materials; (b) deletion of user accounts and password and all related information, files and content; and (c) barring of further use of the Licensed Materials.

(b) Disposition of Customer Data. Upon Customer's written request within 30 days following the expiration or any termination of this Agreement, Company shall destroy all Customer Data; provided, however, that to the extent Company is required by applicable law or legal process to retain any portion of the Customer Data, or to the extent that destruction of any Customer Data is infeasible or is inconsistent with Company's operations or needs, Company shall retain such Customer Data as though it were Confidential Information for such time as is required by such law or process or until destruction is no longer infeasible, after which Company promptly shall destroy the Customer Data. If Customer does not provide such notice within 30 days following the expiration or termination of this Agreement, Company may destroy such Customer Data in its sole discretion.

## **11. Risk Allocation.**

(a) Customer Indemnification. Customer agrees to indemnify, defend, and hold harmless Company, its Affiliates, their successors and assigns, and all of their respective officers, directors, agents, and employees from and against any Loss arising out of or relating to (i) any breach of this Agreement by Customer or an Authorized User; (ii) violation of the rights of any third-party or an Authorized User; (iii) a breach of a representation, warranty, or covenant made by Customer herein; (iv) any claim by an Authorized User or his/her representative; or (v) otherwise in connection with use of the Licensed Materials or the Services by Customer or an Authorized User.

(b) EXCLUSION OF CERTAIN DAMAGES. IN NO EVENT WILL COMPANY 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: (i) CONSEQUENTIAL, INCIDENTAL,

INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

(c) EXCLUSION OF SERVICE-RELATED DAMAGES. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (I) A FAILURE OF CUSTOMER OR AN AUTHORIZED USER TO COMPLY WITH THE TERMS OF THIS AGREEMENT, INCLUDING THE OBLIGATIONS SET FORTH IN SECTIONS 6 AND 12; (II) CUSTOMER OR AN AUTHORIZED USER'S USE OF THE LICENSED MATERIALS OR SERVICES; (III) CUSTOMER OR AN AUTHORIZED USER'S INABILITY TO ACCESS OR USE THE LICENSED MATERIALS; (IV) CUSTOMER OR AN AUTHORIZED USER'S RELIANCE ON THE LICENSED MATERIALS OR SERVICES; (V) ANY ASPECT OF THE LICENSED MATERIALS THAT IS MODIFIED BY ANY PERSON OTHER THAN COMPANY OR ITS CONTRACTORS; (VI) MALFUNCTIONS OR OTHER EFFECTS OF PROBLEMS, DEFECTS, OR FAILURES OF SOFTWARE OR HARDWARE NOT PROVIDED BY COMPANY; (VII) ANY TRANSACTION OR RELATIONSHIP BETWEEN CUSTOMER AND ANY OTHER INDIVIDUAL; OR (VIII) ACTS OR OMISSIONS OF SUBSCRIBER OR ANY THIRD PARTY. COMPANY SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND COMPANY'S REASONABLE CONTROL.

(d) MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL COMPANY'S OR ITS LICENSORS' AGGREGATE LIABILITY TO CUSTOMER (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY OR THROUGH CUSTOMER), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE LICENSED MATERIALS AND SERVICES), IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED \$50. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

(e) Intentional Risk Allocation. Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

## **12. Certain Data Processing.**

(a) Privacy Policy. Customer acknowledges and agrees that Customer has read and understood the [Privacy Policy](#), which is available at [preapp1003.com](http://preapp1003.com) and Customer consents to and authorizes the processing, use, and disclosure of personal information as set forth therein.

(b) Notices and Consents. Customer represents and warrants that it has provided all notices and obtained all consents required or necessary for the uses, disclosures, and processing of Customer Data contemplated under this Agreement.

(c) Minimum Age. Customer shall not permit anyone under the age of 18 to use the Software. If Customer Data includes information regarding an individual who is under the age of 13, Customer shall ensure that all such information is input by the parent, guardian, or authorized representative of the individual who is under the age of 13 and shall cooperate with Company in obtaining any required consents. Customer represents and warrants that it possesses all rights and authority necessary to submit and transfer to Company all Customer Data regarding an individual who is under the age of 13.

(d) Collection of Technical Data. Notwithstanding anything to the contrary herein, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of the Licensed Materials and related systems and technologies, and Company will be free (during and after the term hereof) to (i)



use such information and data to improve and enhance the Licensed Materials and for other development, diagnostic and corrective purposes in connection with the Licensed Materials and other service offerings, (ii) disclose such data solely in aggregated or de-identified form in connection with its business, and (iii) otherwise use and disclose such data as set forth in the Privacy Policy.

### **13. Other Provisions.**

(a) Notice. Except as otherwise expressly provided herein, notices shall be given under this Agreement in writing in the English language, signed by the party giving the same, and shall be given (i) personally (in which case such notices shall be deemed given when so delivered), (ii) by certified or registered U.S. Mail, properly addressed and postage pre-paid, from within the United States (in which case such notices shall be deemed given on the third business day after deposit), (iii) by generally recognized overnight courier, properly addressed and pre-paid, with next business day instruction (in which case such notices shall be deemed given on the next business day after deposit), or (iv) if to Customer, at Company's election, by e-mail (in which case such notice shall be deemed given upon transmission unless Company receives a non-delivery email message within a reasonable time thereafter). Such notices shall be sent to Company at 210 Odyssey Dr., Ste. A, Webster TX 77598 or support@preapp1003.com and to Customer at the address for notices or email address designated in the Registration or as provided in clause (iv) of this the preceding sentence. Either party may change its address for purposes of notice by written notice thereof to the other party.

(b) Nature of Relationship; Subcontractors. Company shall provide all Services hereunder as an independent contractor to Customer. Subject to the provisions of this Agreement regarding confidentiality, Company may perform its obligations hereunder through its employees and through subcontractors. Nothing contained herein shall be deemed to create any agency, partnership, joint venture, or other relationship between the parties or any of their affiliates, and neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

(c) Force Majeure. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party and not due to such party's own fault or negligence or that of its contractors or representatives or other persons acting on its behalf, and which cannot be overcome by the exercise of due diligence and which could not have been prevented through commercially reasonable measures, including acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, changes in any law or regulation, fires, floods, explosions, epidemics, pandemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.

(d) Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas, without application of any conflict of laws principles. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a state or federal court of competent jurisdiction sitting in Harris County, Texas and each party to this Agreement submits to the exclusive jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement.

(e) Marketing. Company may identify Customer as a Company customer and display Customer's logos in its marketing materials and advertisements, on its web site, and in presentations. Company shall not acquire any intellectual property rights in any such logos, trademarks, service marks, or other indicia of origin.

(f) Injunctive Relief. Each party acknowledges that any violation of its covenants in this Agreement relating to the other party's Confidential Information and intellectual property would result in damage to such party that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give such party the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants without bond and without prejudice to any other rights or remedies to which such party may be entitled as a result of a breach of this Agreement.

(g) Assignment. Customer may transfer or assign some or all of its rights and/or delegate some or all of its obligations under this Agreement only with the express prior written consent of Company, which may be granted or withheld in Company's sole discretion. Any purported transfer or assignment by Customer of any right under this

Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement. This Agreement shall be fully assignable by Company in its sole discretion.

(h) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

(i) No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, nothing in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

(k) Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, indemnification, and limitations of liability.

(l) Amendment and Waiver. Except as otherwise expressly provided herein, no modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by the party or parties to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

(m) Severability. If any provision in this Agreement is declared to be invalid or unenforceable in any respect by a court of law having jurisdiction to decide, then the invalid or unenforceable provision will be removed from the Agreement without affecting the rest of the terms, which will continue to be valid and enforceable, and a valid and enforceable provision that approximates the intent of the invalid or enforceable provision as closely as possible shall be substituted for the invalid or unenforceable provision.

(n) Headings. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.