

## SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (the "Agreement") is made between **PreApp, LLC**, ("PreApp") and **Customer**. The parties enter into this agreement once the customer creates an account with PreApp, LLC. Both parties agree as follows:

### 1. Definitions

(a) Affiliates. "Affiliates" 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. "Authorized User" means the Customer, its clients, employees, borrowers, potential borrowers, third-party or other representatives who have been granted access to use the Software by Customer, all of whom has agreed to the terms of PreApp's Required Terms, as specified in Section 3(b), regardless of whether or not the Authorized User actually accesses the Software.

(c) Business Day. "Business Day" means any day other than (i) a Saturday or Sunday or (ii) a federally recognized holiday on which the banking institutions located in New York, New York are permitted or required by law, executive order or governmental decree to remain closed.

(d) Customer Marks. "Customer Marks" means any trademark or service mark, whether or not registered, that is supplied to PreApp for use in providing services under this Agreement.

(e) Customer Data. "Customer Data" means any of Customer's or Authorized User's information, documents, electronic files or other information entered into the Software by or on behalf of Customer pursuant to a conversion of data from another system or through an interface to another system, in each case as such data is maintained on the Software.

(f) Deidentified Data. "Deidentified Data" means any data that has been de-identified, anonymized, or aggregated with other data on any anonymized or de-identified basis. Deidentified Data is owned by PreApp.

(g) Disclosing Party. "Disclosing Party" means the party that is disclosing the Confidential Information or Trade Secrets to the Receiving Party.

(h) Documentation. "Documentation" means any online or printed user manuals, functional specifications or Order Forms that are provided to Customer by PreApp, and any derivative works of the foregoing.

(i) Error. "Error" means any reproducible material failure of the Software to function in accordance with its Documentation.

(j) Person. "Person" means any natural person, firm, general or limited partnership, corporation, association, limited liability company or other entity, as the context may require.

(k) Receiving Party. "Receiving Party" means the party that is receiving the Confidential Information and Trade Secrets from the Disclosing Party.

(l) Order Form. "Order Form" means a document signed by authorized representatives of both parties and itemizing the Software licensed by Customer thereunder.

Software. "Software" means PreApp's software identified and licensed in the applicable Order Form, together with any and all revisions, modifications, and updates thereof, all as are supplied or made available by PreApp pursuant to this Agreement. Software includes Updates relating thereto that may be provided hereunder, and any derivative works of the foregoing developed by any party. The Software also means PreApp's software-as-a-service (cloud-based) application accessible via a web-based portal to facilitate the onboarding of general and financial information from individuals for mortgage loan originators for the loan origination process and any associated database structures, queries, user interfaces, system interfaces, tools, and the like, together with any and all revisions, modifications, and updates thereof, as are supplied or made available by PreApp pursuant to this Agreement.

(m) Subscription Services. "Subscription Services" means the Software-related application hosting services and Support (as defined in the Agreement) that PreApp provides or is obligated to provide Customer under this Agreement.

(n) Support. "Support" means the ongoing activities of PreApp to support the Software as defined in PreApp's "[SERVICE LEVEL AGREEMENT](#)".

(o) Update. "Update" means any patch, bug fix, release, version, modification, or successor to the Software. A Product Enhancement will not be considered an "Update."

## 2. License

(a) License. During the term and subject to the terms of this Agreement, PreApp hereby grants to Customer a non-exclusive, non-transferable, right and license to use the Software for its internal business purposes. Subject to the terms of this Agreement and the applicable Order Form, Customer is permitted to allow its Authorized Users to access and use the Software during the Term of this Agreement. The license granted hereunder is limited to the number of Authorized Users who Customer and PreApp shall have access to the Software which Customer shall have paid PreApp the fees due under this Agreement.

(b) License and Use Restrictions. Customer shall not, directly, indirectly, alone, or with another party, (i) copy, download, disassemble, reverse engineer, or decompile the Software; (ii) modify, create derivative works based upon, or translate the Software; (iii) transfer or otherwise grant any rights in the Software in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

(c) Customer Data. Customer owns all right, title and interest in the Customer Data. Customer hereby grants PreApp (i) a non-exclusive, royalty free license during the term of this Agreement to use, copy, distribute, display, perform, and transmit Customer Data and Customer Marks as necessary to perform its obligations under this Agreement and (ii) a non-exclusive, royalty free perpetual right and license to collect, store, use and disclose Customer Data for any lawful purpose provided that any such use or disclosure does not specifically identify Customer to any third party not under an obligation of confidentiality with regard to such information. With respect only to the license granted in clause (i) above, Customer represents and warrants that it owns or has the legal right and authority, and will continue to own or have the legal right and authority, to grant PreApp during the term of this Agreement the rights and licenses set forth herein and that PreApp's use of Customer Data and Customer Marks as provided therein will not infringe any copyright, patent, trademark, or other proprietary right, misappropriate any trade secret, violate any right of privacy or other right of a third party, or violate or contradict any law or any order of a court or administrative tribunal. The license granted in clause (ii) above is as is and without any warranties. PreApp shall use commercially reasonable efforts to safeguard the security, integrity and usability of the Customer Data.

(d) Authorized User Access. PreApp has the right at any time to terminate access to any Authorized User if PreApp reasonably believes that such termination is necessary to preserve the security, integrity, or accessibility of the Software or PreApp's network.

(e) Exports. Both parties understand that the Software is subject to U.S. export controls and trade sanctions and that such controls and sanctions are extraterritorial. Each party shall comply with all applicable federal, state, and local laws and regulations governing the manufacture or sale of the Software covered by this Agreement, including US export control laws and Department of Commerce and Treasury regulations governing sales to prohibited Authorized Users. As such, Customer or its Authorized Users shall not divert, use, export, reexport or transship the Software to any country for which export or use is prohibited or to any person prohibited by the Office of Foreign Assets Control. In order to comply with U.S. export laws, Customer shall seek written approval from PreApp prior to the use of the license by an Authorized User outside the United States. Customer agrees that it will not permit any Authorized User to access the Software from outside the United States without prior written approval from PreApp. Customer further agrees that it will not permit any Authorized User to access the Software from Iran, North Korea, Syria, Cuba or Crimea. In the event that PreApp grants such written approval to Customer, the Authorized User is permitted to use the Software license, as applicable. Customer shall cause its Authorized Users to comply with this Section 2(e) and shall be liable for failure of its Authorized User's to comply with this Section 2(e).

## 3. Customer Responsibilities

(a) Misrepresentations. Customer shall not make any statements concerning the Software or likely results that might obtain from the use of the Software except for such statements as are directly supported by marketing materials or Documentation provided by PreApp or any publicly available PreApp web site. Customer shall not make any false or misleading statements concerning PreApp or the Software.

(b) Required Terms. For each Authorized User to whom Customer wishes to provide access to the Software, Customer shall cause Authorized User to enter into a written agreement with PreApp containing terms and conditions for Authorized User's use of the Software that are approved by PreApp. An electronic Authorized User license agreement to which an Authorized User agrees by means of clicking or typing "I agree" or other affirmative electronic signature mechanism constitutes a written agreement for purposes of this paragraph. PreApp is not obligated to provide access to the Software to any Authorized User prior to such Authorized User's execution of such Authorized User terms of use. The Initial written agreement can be found [Software Terms of Use](#). PreApp has the right to change the terms of the Authorized User terms of use in its sole discretion.

## 4. Subscription Services and Support.

(a) Support. Subject to the terms hereof, PreApp will provide Customer with reasonable consultation and assistance with operational and technical support issues arising from use of the Software by Authorized Users during Business Hours, pursuant to requests for support services submitted by

telephone, email, or to a web portal as PreApp shall provide to Customer from time to time. PreApp shall provide such services as promptly as is reasonably practicable based upon priority determined in good faith by PreApp.

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

(c) **CUSTOMER WILL BE EXCLUSIVELY RESPONSIBLE AS BETWEEN THE PARTIES FOR, AND PREAPP MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO, (A) DETERMINING WHETHER THE SOFTWARE OR SERVICES WILL ACHIEVE THE RESULTS DESIRED BY CUSTOMER; (B) ENSURING THE ACCURACY OF ANY CUSTOMER DATA; (C) SELECTING, PROCURING, INSTALLING, OPERATING, AND MAINTAINING THE TECHNICAL INFRASTRUCTURE FOR ACCESS TO AND USE OF THE SOFTWARE OR SERVICES, AND (D) DECISIONS MADE, ACTIONS TAKEN, AND RESULTS EXPERIENCED WITH RESPECT TO THE USE OF THE SOFTWARE OR SERVICES.**

(d) The Software is delivered to the Authorized Users through a website over the internet via a Software as a Service. PreApp shall provide passwords to Authorized Users who will access the website to use the Software.

## 5. Service Level Agreement

(a) **Hosting.** PreApp shall provide hosting of the Software through a third-party vendor. Provided that Customer is current with respect to all amounts owing to PreApp hereunder, PreApp shall comply with the service level agreement contained in PreApp's "[SERVICE LEVEL AGREEMENT](#)".

(b) **Software Delivery and Passwords.** The Software is delivered to the Authorized Users through a website over the internet via a Software as a Service. PreApp shall provide passwords to Authorized Users who will access the website to use the Software.

**6. Mediation.** Except for breach of the covenants contained in Section 11 or 13(a) to which the remedies contained in those sections shall apply, all disputes and controversies of every kind and nature between the parties to this Agreement arising out of or in connection with the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination of the Agreement shall first be submitted to mediation pursuant to the procedure set forth in this Section 7. PreApp and Customer may demand such mediation in writing within fourteen (14) days after the controversy arises. The parties agree that the mediator

shall be appointed locally from Houston, Texas. The mediation shall be held in Houston, Texas and concluded within thirty (30) days of the selection of the mediator. The parties shall equally bear the cost of the mediator but otherwise bear their own costs in connection with the mediation.

## 7. Intellectual Property

(a) **Ownership of Intellectual Property.** PreApp owns all right, title and interest in and to the Software and Documentation as well as all PreApp trademarks and any other trademarks, copyrights, patents, service marks, common law rights or other intellectual property rights created or developed in connection with this Agreement by any party. To the extent that such rights do not automatically vest in PreApp as works made for hire, Customer hereby assigns any and all right, title and interest, including trademarks, copyrights, patents, service marks, common law rights or any other intellectual property rights, it may have or acquire with respect to the Software and Documentation or otherwise, and Customer agrees, at PreApp's expense, to take any and all actions reasonably requested by PreApp to secure such rights for PreApp. Customer shall not challenge PreApp's ownership of the Software or Documentation nor any part thereof.

(b) **Ownership of Customer Data.** As between Customer and PreApp, Customer has and retains exclusive ownership of all Customer Data, including all Confidential Information contained in Customer Data, disclosed to PreApp by or on behalf of Customer pursuant to this Agreement.

(c) **Domain Names.** Customer shall not register any domain names that are similar or identical to any trademarks, trade names, "doing business as" names, legal names, or product names of PreApp.

## 8. Financial Terms

(a) **Fees.** In return for the products, services and licenses provided by PreApp, Customer shall pay to PreApp the fees in the amount set forth on any PreApp invoices or amounts shown on the Software due from Customer to PreApp.

(b) **Expenses.** Customer shall reimburse PreApp for its reasonable and necessary expenses (including travel and travel-related expenses).

(c) **Suspension of Services.** PreApp may, in addition to other remedies it may have, including termination, suspend access to the Software to the Authorized Users or the provision of all services to Customer if Customer fails to make payment required under this Agreement. Customer agrees to pay interest on delinquent amounts at the rate of 1½% per month (or, if lower, the maximum amount permitted by law) that a payment is overdue.

(d) Taxes. Customer is solely responsible for paying all sales taxes and any other taxes, however characterized by the taxing authority.

## 9. Term and Termination

(a) Term. The initial/introductory term of this Agreement shall be as set forth in the Order Form or when you signed up for the Services (the "Initial Term"). The Initial Term shall begin upon commencement of the Services. After the Initial Term, this Agreement shall automatically renew. The Initial Term and all successive renewal periods shall be referred to, collectively, as the "Term."

(b) Suspension. Services will automatically suspend 5 days after renewal date if no payment is received.

(c) Reactivation. Reactivating requests must be sent to [billing@preapp1003.com](mailto:billing@preapp1003.com). Reactivation after account suspension will incur a 1.5% late fee applied to total outstanding invoice (s) due. Reactivation after the account has been cancelled will require the first month's service fee and a reactivation fee of \$25. Reactivation does not guarantee recovery of past data.

(d) Billing/Invoicing. Billing will occur on the same day as the day your services began. You may request to changed that billing date by sending your request to [billing@preapp1003.com](mailto:billing@preapp1003.com). A prorated charge may apply to change your renewal date. Invoices will automatically be emailed to the email provided at the start of service 5 days before your renewal date. Your payment method will be auto debited on your renewal date.

(e) Cancellation. By Canceling services, you will lose access to any benefits, features, or rights outlined in these Service Agreement. Any data collected and stored while your service was active may be deleted according to PreApp's [General Terms of Conditions](#). All cancellations must be sent to [billing@preapp1003.com](mailto:billing@preapp1003.com) as outlined below under each service type.

(f) Either party can terminate this Agreement under the following conditions:

(i) Monthly Accounts: Upon purchase you agree to the monthly subscription charge associated with your purchased product/service. This fee will be billed every month on the same day you signed up. This PreApp monthly subscription may be cancelled with a cancellation request sent to [billing@preapp1003.com](mailto:billing@preapp1003.com). To avoid the next scheduled charge, a cancellation request must be sent to [billing@preapp1003.com](mailto:billing@preapp1003.com) within 5 days of the scheduled upcoming charge.

(ii) Monthly Accounts with Annual Commitment: Upon purchase of a monthly subscription with an annual commitment, you agreed to pay for 12 consecutive months. If you are not satisfied with your service, you have 25 days

from the purchase date to request a cancelation and terminate your 12-month commitment. Cancellation requests must be sent to [billing@preapp1003.com](mailto:billing@preapp1003.com).

(iii) Annual Accounts: If you agreed to and paid for an annual subscription, but are not satisfied with your service, you have 30 days from the purchase date to request and receive a 10-month refund. Cancellation requests made after 30 days of purchase will not incur a refund. Cancellation requests must be sent to [billing@preapp1003.com](mailto:billing@preapp1003.com).

(iv) Corporate Accounts with Pre-determined Term: Upon the expiration of the initial Term (as reflected in SAAS SERVICES ORDER FORM), this Agreement will automatically renew for successive one (1) year periods. Either party may choose not to renew this Agreement for a subsequent term for any reason upon ninety (90) days prior written notice to the other party.

(i) if the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 45 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 45 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or

(ii) upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

(g) Obligations Upon Termination. Upon termination of this Agreement:

(i) PreApp shall immediately terminate access to the Software by all Authorized Users; and

(ii) Customer shall immediately pay PreApp any amounts payable or accrued but not yet payable to PreApp, including any deferred payments or payments originally to be made over time.

## 10. Confidentiality

(a) "Confidential Information" means data and information:

(i) relating to the business of the Disclosing Party regardless of whether the data or information constitutes a Trade Secret;

(ii) disclosed to the Receiving Party or of which the Receiving Party became aware of as a consequence of the Receiving Party's relationship with the Disclosing Party;

(iii) having value to the Disclosing Party;

(iv) not generally known to competitors of the Disclosing Party; and

(v) which includes, without limitation, Trade Secrets (as defined below) and information pertaining to: (1) data and compilations of data relating to the business of the Disclosing Party, including without limitation any data and compilations relating to the items (2)-(11) and shall also be deemed to include all notes, analyses, compilations, studies, forecasts, interpretations or other documents prepared by Receiving Party that contain, reflect or are based upon, in whole or in part, the information delivered, disclosed or furnished to Recipient pursuant hereto; (2) lists of Customers and potential Customers and other data or information about, communications and agreements with, and proposals to Customers and potential Customers of the Disclosing Party, including without limitation prices offered or charged to Customers and the Disclosing Party's costs for products or services provided to its Customers, specific Customers information pertaining to the Disclosing Party's projects, products, and services, and information pertaining to any Customer complaints or disputes; (3) the Disclosing Party's financial information and financial statements; (4) information concerning the Disclosing Party's past, current, and prospective business plans, marketing strategies, products and services, and Customers and Authorized Users, including but not limited to new project timelines, future market and product plans, inventory, sales, and cost and expense reports, and information concerning past, current, and projected sales, bids or other proposals to offer or acquire products or services; (5) employee and contractor lists and other information about the Disclosing Party's employees and independent contracting consultants, including without limitation information regarding the relative skills, experience, compensation, and incentives of the Disclosing Party's other employees and contractors; (6) data or information concerning, communications and agreements with, and proposals to, the Disclosing Party's wholesalers, distributors, vendors, and licensors and other sources of technology, products, services or components used in the business of the Disclosing Party and amounts charged to the Disclosing Party by its wholesalers, distributors, vendors, and service providers; (7) know-how, and other information of a technical or economic nature relating to the Disclosing Party and its Affiliates, and Customers, including without limitation computer software, hardware, network and internet technology utilized, modified or enhanced by the Disclosing Party and negative know-how, which is information about what the Disclosing Party tried that did not work, if that information is not generally known or easily ascertainable by the Disclosing Party's competitors and would give them an unfair advantage in knowing what not to do; (8) the Disclosing Party's research and development records and data; (9) data acquired or maintained by the Disclosing Party and methods for managing, accessing, searching, or utilizing the data and any reports or certificates associated therewith; (10) any summary, extract or analysis of such information; and (11) any information that has been received or disclosed to the Disclosing

Party by any third party as to which the Disclosing Party has an obligation to treat as confidential.

Confidential Information does not include data or information: (A) which has been voluntarily disclosed to the public by the Disclosing Party, except where such public disclosure has been made by the Receiving Party without authorization from the Disclosing Party; (B) which has been independently developed and disclosed by others; or (C) which has otherwise entered the public domain through lawful means.

(b) Definition Trade Secrets. means Disclosing Party's trade secrets (as defined under U.S. Federal, applicable state law or foreign law), as the same may be amended from time to time.

(c) Use of Confidential Information. Each party shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this Agreement, and it shall not disclose the Confidential Information to any other Persons without the Disclosing Party's express written authorization. Upon termination of the Agreement for any reason, Receiving Party shall return (or at Disclosing Party's written request, destroy) to Disclosing Party all things and documents containing Confidential Information or Trade Secrets (including physical or electronic copies of the foregoing) in Receiving Party's possession, whether made by Receiving Party or others, will be left with or returned to Disclosing Party. All "Confidential Information" subject to the provisions of this Section 11 must be either clearly marked as such or reasonably understood by the Receiving Party from the nature of its disclosure to be confidential.

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

(e) Remedies. Receiving Party understands and agrees that Disclosing Party shall suffer irreparable harm in the event Receiving Party breaches any of its obligations pursuant to Section 11 and that monetary damages will be inadequate to compensate Disclosing Party for such breach. Receiving Party agrees that, in the event of a breach or threatened breach of Section 11, Disclosing Party, in addition to any other rights, remedies or damages available to Disclosing Party at law, shall be entitled to a temporary restraining order, preliminary injunction or permanent injunction in order to prevent or to restrain any

such breach by Receiving Party, its officers, employees, agents, attorneys and representatives or by any of Receiving Party's Affiliates and such Affiliates officers, employees, agents, attorneys and representatives, or any other Person who receives Confidential Information and/or Trade Secrets from the Receiving Party (and to cover all costs (including reasonable attorneys' fees) in doing so).

(f) Survival. The parties hereto covenant and agree that this Section 10 shall continue to bind Receiving Party during the term of the Agreement and (i) with respect to all Trade Secrets, at all times hereafter so long as such Trade Secrets constitute trade secrets under applicable law, and (ii) with respect to all Confidential Information, for a period of 5 years afterward.

## 11. Indemnification

(a) Indemnification. Each party shall indemnify, defend and hold harmless the other, and its shareholders, members, board of directors, board of managers, officers, employees, agents and representatives (each, an "Indemnified Party") at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to any claim by an unaffiliated third party (i) alleging that the use in accordance with this Agreement of the Software (in the case of PreApp) or the Customer Marks or Customer Data (in the case of Customer) infringes or misappropriates any copyright, patent, trademark, trade secret, right of privacy of an unaffiliated third party, or violate or contradict any law or any order of a court or administrative tribunal of such unaffiliated third party, or (ii) that arises or is alleged to have arisen solely out of the gross negligence or intentional misconduct of the indemnifying party (each a "Third Party Claim"). Notwithstanding the foregoing, if the Software becomes the subject of such a claim of infringement then PreApp may, at its option: (x) procure for Customer the right to use the Software free of any liability for infringement; (y) replace or modify the Software to make it non-infringing but with reasonably comparable functionality; or (z) if PreApp determines that the previous two options are not available on a commercially reasonable basis, grant to Customer a credit for the unused portion of any prepaid access rights fees and refund any deposits paid by Customer for the affected Software. Furthermore, PreApp has no liability for, and no obligation to indemnify Customer against, any Third-Party Claim arising or alleging based in whole or in part on use of the Software other than as specified in this Agreement, or its Documentation, including use with third party hardware and software products not specifically authorized by PreApp.

(b) Customer shall indemnify, defend and hold harmless PreApp, its shareholders, board of directors, officers, employees, agents and representatives at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense,

interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to (i) any Authorized User failure to comply with Sections 2(b), 2(e) and 7(a) of this Agreement or violation of the PreApp terms of use by any Authorized User or (iii) any violation of this Agreement by Customer's independent contractor(s).

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

(d) Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third-party claim against the other party in the nature of gross negligence, intentional misconduct, intellectual property infringement, or invasion of privacy.

## 12. Disclaimers and Limitations

(a) Disclaimer of Warranties. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PREAPP MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, THE SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, PREAPP DISCLAIMS ANY WARRANTY THAT THE SOFTWARE, THE SERVICES PROVIDED BY PREAPP, OR THE OPERATION OF THE SOFTWARE ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. PREAPP MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE



OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(b) Disclaimer of Consequential Damages. PREAPP HAS NO LIABILITY WITH RESPECT TO THE SOFTWARE, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, OR ANY OTHER TORTS EVEN IF PREAPP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Limitations of Remedies and Liability. EXCEPT FOR ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREUNDER, CUSTOMER'S SOLE REMEDIES FOR ANY BREACH OF THIS AGREEMENT BY PREAPP ARE CORRECTION OF ERRORS AS SET FORTH HEREIN AND THE REPROCESSING OF ANY DATA THAT IS INCORRECT AS A RESULT OF THE BREACH. PREAPP'S TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO PREAPP BY THE CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

### 13. General

(a) Non-Solicitation. Customer shall not, during and for 2 years after the termination or expiration of this Agreement, regardless of reason, hire or attempt to hire, directly or indirectly, any person who, during the previous twelve months, was an employee of PreApp unless such employee has ceased to work at PreApp for at least 6 months. If Customer breaches this paragraph, Customer shall pay PreApp, at its option, a referral fee in the amount of thirty percent (30%) of the employee's gross compensation at PreApp for the immediately preceding year. The parties agree this is a reasonable pre estimate of damages to PreApp and is not intended as a penalty. The referral fee is in addition to, and not in lieu of, any other remedy that PreApp may have in law or in equity, including, without limitation the remedy contained in Section 11(e). Such referral fee is due and payable within 10 days after PreApp elects such remedy in writing to Customer.

(b) Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and

insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(c) Assignment. Customer shall not assign any of its rights under this Agreement, except with the prior written consent of PreApp. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

(d) Governing Law and Arbitration. The laws of the State of Texas (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

(i) Subject to Section 6, any controversy or claim arising out of or relating to this Agreement, or any breach thereof, must be settled by confidential binding arbitration in Houston, Texas, administered by the American Arbitration Association ("AAA") in accordance with its International Arbitration Rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration proceeding will be conducted in English. The parties further agree that the arbitration will be conducted by a single arbitrator agreed to by the parties or, if the parties are unable to proceed, by a single arbitrator selected by the AAA. The parties agree that the arbitrator has the power to award all costs of the arbitration, including reasonable attorneys' fees and expenses, to the prevailing party. The arbitration award shall be final and binding on the parties to this Agreement and the parties agree to be bound thereby and to act accordingly, and the parties hereby waive any right of appeal on the merits and/or any point of law.

(ii) Notwithstanding the agreement to arbitrate, either party may seek from any court that may exercise jurisdiction over the parties and the subject matter of the lawsuit any provisional or equitable remedy (including, but not limited to an injunction) available under the laws of that country for the preservation or protection of any of its rights or interests pending the establishment of the arbitral tribunal or the ultimate determination of the merits of the controversy.

(iii) The parties waive, to the fullest extent

permitted by law, any objection that it may now or later have to (a) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in a court or arbitration sitting within or outside the United States of America; and (b) any claim that any action or proceeding brought in any such court or arbitration has been brought in an inconvenient forum.

(iv) If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties are entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

(v) Any arbitration award shall be enforceable by any court having jurisdiction over the party or parties against which the award has been rendered, or wherever assets of the party or parties against which the award has been rendered can be located and shall be enforceable in accordance with the United Nations Convention on the Reciprocal Enforcement of Arbitral Awards (1958).

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

(f) Entire Agreement. The Agreement, its Exhibits and any Order Forms hereunder constitute the final, complete and exclusive expression of agreement between the parties on the matters contained in this Agreement. In the event of any conflicts between this Agreement and an Order Form, this Agreement shall control unless the Order Form expressly states that it shall override a specific provision of this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this

Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.

(g) No Third-Party Beneficiaries. 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.

(h) Notices. Unless notice specifically allows email as provided in such section, all communications or notices required

(i) or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of or personally to the other party, or (ii) the day following deposit when properly deposited for overnight delivery with a nationally-recognized commercial overnight delivery service, prepaid, and addressed as provided in the initial paragraph of this Agreement, unless and until either of such parties notifies the other in accordance with this Section of a change of address.

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

(k) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 1, 2(b), 2(c), 8(a), 10, 11, 12 and 13 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

(l) Insurance. PreApp follows the industry standard of not requiring its Customers to maintain cyber insurance.

(m) Authorized Representatives. The individual signing on behalf of each party below represents and warrants to the other party that such individual is authorized to enter into this contract on behalf of, and to bind, the party for which he or she is signing.

(n) Acknowledgement of Other Company Policies. Customer has access to, has reviewed and agrees to the Company's [General Terms and Conditions](#), [Privacy Policy](#), and [Software Terms of Use](#) all of which can be found on the Company's website [preapp1003.com](http://preapp1003.com).