

# Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS CUSTOMER'S FREE TRIAL OF THE SERVICES. IF CUSTOMER PURCHASES SPANNING'S SERVICES, THIS AGREEMENT WILL ALSO GOVERN CUSTOMER'S PURCHASE AND ONGOING USE OF THOSE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING CUSTOMER'S ACCEPTANCE, INSTALLING THE APPLICATION OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF CUSTOMER DOES NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, CUSTOMER MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Customer may not access the Services if Customer is Spanning's direct competitor, except with Spanning's prior written consent. In addition, Customer may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on January 15, 2018. It is effective between Customer and Spanning as of the date of Customer accepting this Agreement.

## 1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Order Form" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between Customer and Spanning from time to time. Order Forms shall be deemed incorporated herein by reference.

"Purchased Services" means Services that Customer or Customer's Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Services" means the online, Web-based applications and platform provided by Spanning via <https://spanningbackup.com> and/or other designated websites, that are ordered by Customer as part of a free trial or under an Order Form, including associated offline components.

"Users" means individuals who are authorized by Customer to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Customer (or by Spanning at Customer's request). Users may include but are not limited to Customer's employees, consultants, contractors and agents; or third parties with which Customer transacts business.

"Spanning" means Spanning Cloud Apps, LLC., described in Section 13 (Who Customer Is Contracting With, Notices, Governing Law and Jurisdiction).

"Customer" means the company or other legal entity for which Customer is accepting this Agreement, and Affiliates of that company or entity.

"Customer's Data" means all electronic data or information submitted by Customer to the Purchased Services.

## 2. FREE TRIAL

Spanning will make one or more Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period beginning upon Customer's acceptance of this Agreement or (b) the start date of any Purchased Services ordered by Customer.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY DATA BACKED UP BY THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, OR PURCHASES UPGRADED SERVICES BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

## 3. PURCHASED SERVICES

3.1. Provision of Purchased Services. Spanning shall make the Purchased Services available to Customer pursuant to this Agreement and the relevant Order Forms during a subscription term. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Spanning regarding future functionality or features.

3.2. User Subscriptions for Spanning Backup for G Suite and Spanning Backup for Office 365. Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3.3. Subscriptions for Spanning Backup for Salesforce. Unless otherwise specified in the applicable Order Form, Services are purchased as subscriptions and are usable only by Customer and Customer's Users for Customer's internal business purposes and solely for Customer's benefit. Pricing for subscriptions is based on the anticipated number of initial Users as of the date the applicable Order Form is accepted, as specified on the Order Form. If at any point during the subscription term the number of actual Users equals or exceeds 150% of the anticipated number of initial Users, then Spanning may adjust the fees ratably (relative to the anticipated number of initial Users) on a go-forward basis, to apply beginning on the first day of the calendar month after the month during which such threshold is reached, and invoice Customer for the incremental amount for the remainder of the then-current subscription term.

#### 4. USE OF THE SERVICES

4.1. Spanning's Responsibilities. Spanning shall: (i) provide to Customer email-based customer support for the Purchased Services at no additional charge, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime, or (b) any unavailability caused by circumstances beyond Spanning's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Spanning employees), or Internet service provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

4.2. Customer Responsibilities. Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer's Data and of the means by which Customer acquired Customer's Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Spanning promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with applicable laws and government regulations. Customer shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise

unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

- 4.3. Usage Limitations. While Spanning does not impose any pre-set limits on the amount of storage capacity Users are allowed to consume, Spanning reserves the right to decline to renew Customer's subscription and cancel Customer's account upon expiration of Customer's current Order Form if Customer's Users' storage consumption far exceeds Spanning's cost of providing those resources to Customer as calculated by Spanning.
- 4.4. Administration. Customer will specify one or more administrative users who will have rights to manage Customer's deployment and use of the Services through an administrative console ("Administrators"). Among other functions, Administrators will control the provisioning of Users for Spanning Backup for G Suite and for Spanning Backup for Office 365. For Spanning Backup for Salesforce, Administrators will control the security settings of the Services, including management of encryption keys. Customer shall be solely responsible for (a) designating and authorizing individuals to act as Administrators; (b) ensuring Administrators comply with the Agreement; and (c) maintaining confidentiality of encryption keys and passwords managed by Administrators applicable for Spanning Backup for Salesforce. Customer agrees that Spanning is not responsible for the internal management and administration of the Services for Customer and, accordingly, act only as a data processor.

## 5. THIRD-PARTY PROVIDERS

- 5.1. Google Services. The Services interoperate with Google services and depend on the continuing availability of the Google APIs and applications for use with the Services. If Google ceases to make the Google API or applications available on reasonable terms for the Services, Spanning may cease providing such Services features without entitling Customer to any refund, credit, or other compensation.
- 5.2. Microsoft Services. The Services interoperate with Microsoft services and depend on the continuing availability of the Microsoft APIs and applications for use with the Services. If Microsoft ceases to make the Microsoft APIs or applications available on reasonable terms for the Services, Spanning may cease providing such Services features without entitling Customer to any refund, credit, or other compensation.
- 5.3. Salesforce.com Services. The Services interoperate with Salesforce services and depend on the continuing availability of the Salesforce APIs and applications for use with the Services. If Salesforce ceases to make the Salesforce APIs or applications available on reasonable terms for the Services, Spanning may cease providing such

Services features without entitling Customer to any refund, credit, or other compensation.

## 6. FEES AND PAYMENT FOR PURCHASED SERVICES

- 6.1. **User Fees.** Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased or the subscription fee cannot be decreased during the relevant subscription term stated on the Order Form.
- 6.2. **Invoicing and Payment.** Customer shall pay all fees or charges to Customer's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges for Spanning Backup for G Suite and Spanning Backup for Office 365 will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments may be made annually, consistent with the Initial Term, or as otherwise mutually agreed upon. Customer is responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. Customer must provide Spanning with valid credit card or other payment information as a condition to signing up for the Service.
- 6.3. **Overdue Charges.** If any charges are not received from Customer by the due date, then at Spanning's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Spanning may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).
- 6.4. **Suspension of Service and Acceleration.** If any amount owed by Customer under this or any other agreement for Spanning's services is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer has authorized Spanning to charge to Customer's credit card), Spanning may, without limiting Spanning's other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Spanning's services to Customer until such amounts are paid in full.
- 6.5. **Payment Disputes.** Spanning shall not exercise Spanning's rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

6.6. Taxes. Unless otherwise stated, Spanning's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Spanning has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Spanning with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Spanning is solely responsible for taxes assessable against Spanning based on Spanning's income, property and employees.

## 7. PROPRIETARY RIGHTS

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Spanning reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

7.2. Restrictions. Customer shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

7.3. Ownership of Customer's Data. As between Spanning and Customer, Customer exclusively owns all rights, title and interest in and to all of Customer's Data.

7.4. Suggestions. Spanning shall have a royalty-free, worldwide, transferable, sub-licenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Services.

## 8. CONFIDENTIALITY

8.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include Customer's Data; Spanning's Confidential

Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer's Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

- 8.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 8.3. Protection of Customer's Data. Without limiting the above, Spanning shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer's Data. Spanning shall not (a) modify Customer's Data, (b) disclose Customer's Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure) or as expressly permitted in writing by Customer, or (c) access Customer's Data except to provide the Services or prevent or address service or technical problems, or at Customer's request in connection with customer support matters. Details about Privacy Policy are available at <https://spanning.com/privacy-statement/>.
- 8.4. FERPA (for Education Entities only). The parties acknowledge that (a) Customer's Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent that Customer Data includes FERPA Records, Spanning will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.
- 8.5. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party reasonable prior notice of such compelled disclosure (to the extent legally permitted) and upon request by the Disclosing party reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the

Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 9. WARRANTIES AND DISCLAIMERS

- 9.1. Spanning's Warranties. Spanning warrants that (i) the Services shall perform materially, and (ii) subject to Section 5, the functionality of the Services will not be materially decreased during a subscription term and (iii) the Service will be provided in accordance with the [Service Level Agreement](#). For any breach of either such warranty, Customer's exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.
- 9.2. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).
- 9.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 10. MUTUAL INDEMNIFICATION

- 10.1. Indemnification by Spanning. Spanning shall defend Customer against any claim, demand, suit, or proceeding (" Claim") made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives Spanning written notice of the Claim; (b) gives Spanning sole control of the defense and settlement of the Claim (provided that Spanning may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provide to Spanning all reasonable assistance, at Spanning's expense. Should the Services become, or in Spanning's opinion be likely to become, the subject of such a Claim, Spanning may, at Spanning's option and expense, (a) procure for Customer the right to make continued use of the affected Services; (b) modify the affected Services to make them non-infringing; (c) terminate the affected Services and refund any unearned fees actually paid by Customer that are attributable to the period following any such termination. Notwithstanding the foregoing, Spanning shall have no liability to the extent that the alleged infringement relates to (a) combination of the Services with third party products or services; (b) use of the Services for a purpose or in a manner not



contemplated by their design; (c) any modification to the Services made by any person other than Spanning or Spanning's authorized representatives; (d) any modifications to the Services made by Spanning pursuant to Customer's specific instructions; or (e) any technology owned or licensed by Customer from third parties.

10.2. Indemnification by Customer. Customer shall defend Spanning against any Claim made or brought against Spanning by a third party alleging that Customer's Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Spanning for any damages finally awarded against, and for reasonable attorney's fees incurred by, Spanning in connection with any such Claim; provided, that Spanning (a) promptly give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally releases Spanning of all liability); and (c) provide to Customer all reasonable assistance, at Spanning's expense.

10.3. Exclusive Remedy. This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$10,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. TERM AND TERMINATION

- 12.1. **Term of Agreement.** This Agreement commences on the date Customer accepts it and continues until all Subscriptions and User subscriptions granted in accordance with this Agreement have expired or been terminated. If Customer elects to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.
- 12.2. **Term of Purchased Subscriptions and User Subscriptions.** Subscriptions and User subscriptions purchased by Customer commences on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all Subscriptions and User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term (including for the reasons mentioned in Section 4.3). The per-unit pricing during any such renewal term shall be the same as that during the prior term unless Spanning has given Customer written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Order forms are non-cancelable by Customer after acceptance by Spanning, and the subscription fee specified in an accepted Order Form cannot be decreased, prior to the end of the term of the Order Form, regardless of any termination, nonpayment, nonuse or other conduct or inaction on the part of either Party.
- 12.3. **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 12.4. **Refund or Payment upon Termination.** Upon any termination for cause by Customer, Spanning shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Spanning, Customer shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Spanning for the period prior to the effective date of termination.
- 12.5. **Return of Customer's Data.** Upon the effective date of termination, Spanning shall have no obligation to maintain or provide any of Customer's Data and shall thereafter, unless legally prohibited, delete all of Customer's Data in Spanning's systems or otherwise in Spanning's possession or under Spanning's control.

12.6. Surviving Provisions. Section 5 (Third-Party Providers), Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Customer's Data), 13 (Who Customer Is Contracting With, Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

### 13. WHO CUSTOMER IS CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. Customer is contracting with Spanning Cloud Apps, LLC., 501 Congress Avenue, Suite 200, Austin, Texas, USA. This Agreement shall be governed by Texas law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Austin, Texas. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Spanning as a result of this agreement or use of the Service. The failure of the Spanning to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Spanning in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between Customer and Spanning and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to Customer shall be addressed to the system administrator designated by Customer for Customer's relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by Customer.

13.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.4. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

#### 14. GENERAL PROVISIONS

14.1. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

14.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

14.4. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

14.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the 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 of this Agreement shall remain in effect.

14.6. Attorney Fees. Customer shall pay on demand all of Spanning's reasonable attorney fees and other costs incurred by Spanning to collect any fees or charges due Spanning under this Agreement following Customer's breach of Section 6.2 (Invoicing and Payment)

14.7. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Spanning shall refund to Customer any prepaid fees covering the remainder of the term of all subscriptions

after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.8. **Publicity.** Customer agrees to allow Spanning, and hereby provides Spanning with the necessary rights and licenses, to use Customer's name and logo on Spanning's website, blog and/or in marketing materials, including case studies and as press references, to identify Customer as Spanning's customer.

14.9. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.