

## CORTEX BUSINESS SOLUTIONS MASTER TERMS

### ("Master Terms")

TERMS OF THESE MASTER TERMS: in consideration of all Service that Cortex Business Solutions Inc., ("Cortex") agrees to provide in these Master Terms and for which the Customer agrees to subscribe to and pay Fees, the parties enter into this contractual relationship subject to the following terms and conditions:

#### 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 "**Business Documents**" means documents used by users of the Cortex System, including (but not limited to) purchase orders, receipts, field tickets, invoices, requests for information, requests for proposal, contracts, exchanged on the Cortex System;
- 1.2 "**Confidential Information**" means all information, data and financial information relating to each party's business, commercial strategies, pricing (including the fees in these Master Terms), personnel, customers, products or services of the party, including Business Documents, but excludes any information that:
- (a) was lawfully in the party's possession before receiving it from the other party,
  - (b) is provided in good faith to the party by a third party without breaching any rights of the other party,
  - (c) is or becomes generally available to, or accessible by, the public through no fault of either party, or
  - (d) is independently developed by a party;
- 1.3 "**Cortex Proprietary Information**" means any information disclosed by Cortex with respect to these Master Terms or a proposed amendment to the Master Terms which consists of information (including any copies, extracts, summaries or adaptations of such information, regardless of the form of its disclosure, that, by its nature or by the circumstances in which it is disclosed, ought reasonably to be considered to be confidential. For greater certainty, the Cortex System and Documentation, as well as the service levels, specifications, performance restrictions and data configuration requirements of the Cortex Trading Partner Network and any pricing for Cortex's products and/or Service shall be deemed to be Proprietary information of Cortex;
- 1.4 "**Cortex System**" is the proprietary automated, internet-based procurement-to-payment communication infrastructure made commercially available which provides Customers with the ability to electronically exchange Business Documents between multiple Trading Partners;
- 1.5 "**Cortex Trading Partner Network**" or "**CTPN**" means the Cortex System within which Trading Partners can exchange Business Documents with each other over the Cortex System;
- 1.6 "**Cover Page**" means the page attached at the beginning of these Master Terms;
- 1.7 "**Deployment**" means Cortex's assessment of the work required by both Cortex and the Customer to facilitate electronic communication on the Cortex System, not limited to: infrastructure required to install, integrate and set-up of either the Draft Folder and/or Machine to Machine modules of the Cortex System allowing system to system functionality, provided at the commencement of the Subscription (described in Section 2.1) to allow the Customer access to the Cortex System, and does not include Professional Service;
- 1.8 "**Deployment Fees**" means the amount Cortex will charge the Customer for the Deployment Service as in Section 3.1;
- 1.9 "**Documentation**" means any end-user instructional or supplementary materials in human or machine readable form, but only to the extent that Cortex, in its sole discretion, makes such materials generally available for commercial distribution;
- 1.10 "**Effective Date**" means the date that the Master Terms becomes effective by and between Cortex and Customer, as identified on the Cover Page, in the absence of a specific effective date being set out, the date of signature of the Master Terms by Cortex;
- 1.11 "**Fees**" means amounts in American dollars to be paid by Customer to Cortex pursuant to the services provided by Cortex, including Subscription Fee, Transaction Fees, Deployment Fees, and Professional Fees as applicable under these Master Terms;
- 1.12 "**Force Majeure**" means fire, flood, natural disaster, any act of God, riot, act of war (whether or not declared), terrorism, change in law, Internet outages, communication or utility failures or any other cause beyond the reasonable control of either party;
- 1.13 "**Harmful Components**" means (but not limited to) viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- 1.14 "**Intellectual Property Rights**" means all patent rights (including patent disclosures and patent divisions, continuations, continuations-in-part, reissues, re-examinations, and extensions thereof), copyright rights, and other rights in works of authorship (including registered and unregistered copyrights and unpublished works of authorship), mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence in the Cortex System and Cortex System, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction;
- 1.15 "**Professional Services**" means those services other than Deployment Service, that Cortex has expressly agreed to provide to the Customer, and are billed separate and apart from the Deployment Service herein and described in Section 6, if applicable;
- 1.16 "**Service**" means either of Deployment Service or Professional Service, or the combination hereof between the parties;
- 1.17 "**Service Levels**" means the service quality guidelines provided by Cortex as described in detail in Appendix "C";
- 1.18 "**Subscription Fee**" means the entire amount specified in Appendix "B" payable by the Customer for access and Use of the Cortex System for the duration of the Term;
- 1.19 "**Support Services**" means support services included in the Subscription Fee with respect to technical support and use described in detail in Section 2.2;
- 1.20 "**Term**" shall mean the period of time commencing on the Effective Date for which the Master Terms is to be in force, as identified in Section 4.1 herein;
- 1.21 "**Trading Partners**" means entities with are customers of Cortex which have ongoing business relationships with other Cortex customers. Cortex providing services to any one Trading Partner with whom Customer conducts business does not constitute competition or solicitation with respect to any one customer, and each customer is a separate contractual party with Cortex;
- 1.22 "**Transaction Fees**" means the amount billed to Customer on a monthly basis by invoice with respect to number of Business Documents exchanged over the CPTN each month; such fees are in addition to the Subscription Fee;
- 1.23 "**Use**" means to allow access the Cortex System in order to transfer Business Documents between Trading Partners Use is deemed to occur where the system is accessed at any electronic device that initiates or is activated by any such process in the Cortex System, and does not include redistribution, remarketing, loaning, renting, sublicensing or otherwise making the Cortex System available or accessible to any third party outside of these Master Terms;
- 1.24 "**User Data**" means all electronic data or information, including Business Documents submitted and incorporated into the Cortex Trading Partner Network by the Customer and/or its Users;

- 1.25** “User” means the Customer and its employees, representatives, agents, service providers and other users of the Cortex System, including Cortex Trading Partners, as authorized by the Customer pursuant to these Master Terms; and
- 1.26** “Vendor Match” means the Customer’s list of suppliers who are already on the Cortex System and the Customer can access as a part of their Service.

## **2. GRANT OF LICENSE**

- 2.1** Cortex provides hereby a world-wide, non-exclusive, non-transferable license to the Customer to have deployed, to access and to Use the Cortex System (“Subscription”) as it exists at the Effective Date for the Term at the Service Levels described in Appendix “C” and with the Support Service described in Section 2.2, on the following terms:
- (a)** Cortex shall initiate the Deployment Service (as described in Appendix “A”) at the Effective Date and the Customer’s obligation to pay Subscription Fee shall commence Effective Date;
  - (b)** Customer may not copy, modify, or create derivative works from or merge the Cortex System with or into other material to make an updated or different functionality; and
  - (c)** Customer is solely responsible for compliance with any applicable laws and regulations and its own contractual obligations to third parties through use of the Cortex System.
  - (d)** No license is given to any of the underlying software, source code or object code in the Cortex System;
  - (e)** Customer is solely authorized to access the Cortex System via an Internet browser or through such other connections or methods that conform to the Cortex System as determined by Cortex;
  - (f)** Customer must adhere to all such specifications in configuring such connections to properly function with the Cortex System;
  - (g)** Customer may request that Cortex assist in such configuration efforts, which shall constitute Professional Services subject to Section 6;
  - (h)** Cortex is in no way responsible or liable for the provision or cost of such connections or any related hardware or Cortex System to facilitate the connections or for the ability or inability of such connections to properly function or perform on behalf of Customer; and
  - (i)** Cortex may, but shall be under no obligation to, modify the Cortex System, provided such modification does not have a material adverse effect on the scope and nature of the Service as of the Effective Date.
- 2.2** Cortex will provide to the Customer email and telephone support for the Cortex System by Cortex technicians from 6:00am to 6:00pm MST from Monday to Friday (“Support”). Emails and calls received outside of support hours will be collected and a message taken, however no action can be guaranteed until the next working day. Cortex reserves the right to determine in its sole discretion whether or not support requests require Professional Service.
- 2.3** Customer agrees that these Master Terms do not apply any restriction for Cortex work with other companies or businesses in the same industry and target markets as the Customer.
- 2.4** Cortex will initiate the Deployment on the estimate described in Appendix “A” upon receipt of the signed Master Terms and upon payment of the first month’s Subscription Fee. Customer shall be liable for full payment of the Deployment Fees prior to Customer access to the Cortex System.
- 2.5** In the event the deployment of the Cortex System is beyond the scope of a typical migration or requires customization of the Customer system in Cortex’s reasonable assessment, Cortex will advise Customer, and Customer may need to enter into a Professional Service Master Terms as per Section 6 for completion of the Deployment Service.
- 2.6** From time to time, Cortex may in its sole discretion add new features to the Cortex System or otherwise modify or change the Cortex System (including its functionality, its visual design and “look and feel”) as long as these modifications or additions do not impair the features of the Cortex System at the Effective Date. The Subscription includes any such addition of new features, and releases, modifications, improvements, enhancements, updates or other changes that Cortex makes to the Cortex System which do not materially affect the scope of Use, but Cortex shall be under no obligation to develop new releases, modifications, improvements, enhancements, updates or other changes to the Cortex System.
- 2.7** Customer is solely responsible for any User Data that is uploaded, published, displayed, linked to or otherwise made available to the Customer or Users through the Cortex System, and Customer agrees:
- (a)** that the Cortex System is only a passive conduit for Customer’s communication and interaction with Users and its handling of User Data;
  - (b)** Cortex takes no responsibility and assumes no liability for any User Data transmitted over the Cortex System. Customer understands and agrees that any loss or damage of any kind that occurs as a result of the transmission and/or use of any User Data made available or accessed through Customer’s use of the Cortex System is solely the Customer’s responsibility;
  - (c)** Customer agrees and acknowledges that Cortex is not responsible, or liable to any User or third party, for the content or accuracy of any User Data, including but not limited to inaccurate, offensive, indecent, or objectionable User Data; and
  - (d)** and Customer agrees that Cortex shall not be liable for any damages Customer and/or its end user alleges to have incurred as a result of such User Data.

## **3. FEES AND PAYMENT**

- 3.1** Upon the Effective Date, Customer shall pay the Deployment Fees as described in detail in Appendix “A” and the first month installment of the Subscription Fee as Described in Appendix “B”.
- 3.2** For the duration of the Term, the Customer will automatically be billed the Subscription Fee for the monthly installment if approved by Cortex for monthly payments, and the previous month’s Transaction Fees on the fifth (5<sup>th</sup>) day of each month and Customer shall pay the Fees plus all applicable taxes without any deduction, set-off or withholding. Customer shall pay all invoices within thirty (30) days of receipt of an invoice, and Customer disputes on invoices are subject to section 3.5.
- 3.3** Cortex reserves the right to change the Subscription Fee and Transaction Fees in its sole discretion and such changes to Subscription Fee and/or Transaction Fees shall require thirty (30) days advance notice to the Customer.
- 3.4** Simple interest will be calculated on all overdue amounts at a rate of 12% per year, calculated from the date payment was due until the date payment (including accrued interest thereon) is made in full.
- 3.5** Customer shall promptly and carefully review statements and invoices provided or made available by Cortex to Customer. If Customer believes any adjustments are needed with respect to any amounts due to Cortex, or if Customer has any other questions, disputes or concerns regarding any statement or report provided by Cortex, Customer must notify Cortex in writing within ninety (90) days after such invoice or report is received. If Customer fails to notify Cortex within ninety (90) days, Cortex will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by Cortex. If Customer notifies Cortex after such time period, Cortex may, at its sole discretion and at Customer’s cost, investigate the matter addressed in Customer’s notice, but Cortex will not have any liability to effect any related adjustment absent any willful misconduct by Cortex.

- 3.6 Failure to pay any Fees or installment thereof owing when due shall be deemed a material breach of the Master Terms, and Cortex, in its sole discretion may:
- (a) suspend provision of any Service after Fees being overdue for forty-five (45) days;
  - (b) declare the entire unpaid Subscription Fee as specified in Appendix "B" be immediately due and payable; or
  - (c) terminate these Master Terms by which the Customer is still liable for payment to Cortex of any unpaid balance of the Subscription Fee.
- 3.7 Customer agrees to reimburse Cortex for any and all collection related expenses incurred by Cortex in the collection of any amounts owed to Cortex pursuant to the Master Terms.

#### 4. TERM AND TERMINATION

- 4.1 The Term of the Master Terms commences on the Effective Date and shall continue for five (5) years and shall automatically renew unless Customer provides ninety (90) days written notice of termination prior to the end of the Term for a renewal term as in section 4.2, and Customer shall be liable for all applicable payments thereto.
- 4.2 The renewal term shall be for subsequent terms of one (1) year at Subscription Fee in accordance to market rates at that time. Each renewal term will automatically renew for one (1) year terms, unless the Customer provides sixty (60) days written notice of termination prior to the end of a term. Cortex, in its sole discretion will determine whether or not any further Deployment type services are required in renewal terms to ensure Customer's access to the Cortex System which services shall constitute Professional Service.
- 4.3 The Master Terms shall terminate immediately upon either party:
- (a) or its creditors filing for liquidation, bankruptcy, dissolution, or Customer entering into liquidation, bankruptcy, reorganization, or dissolution;
  - (b) filing a proposal or notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* or any similar law;
  - (c) seeking the benefit of protection under the *Companies Creditors Arrangement Act* or similar legislation; or
  - (d) ceasing to do business in the ordinary course.
- 4.4 In the event of a change in ownership in the corporate organization of either party, whereby directly or indirectly, more than 50% of the voting securities or rights of the corporation are acquired by a third party, with respect to the:
- (a) Customer, the purchaser of such voting securities or rights of the Customer shall be liable for the Customer's obligations in these Master Terms for the duration of the Term or any renewal term; or
  - (b) Cortex, the purchaser of such voting securities or rights of Cortex these Master Terms shall continue with the Master Terms for the Term or any renewal term during which the change of control occurs.
- 4.5 Upon termination of these Master Terms for any reason whatsoever the Subscription granted hereunder shall terminate forthwith, and Customer shall not be entitled to any refund of Fees.
- 4.6 Cortex may, at its sole option, terminate the Master Terms or suspend the Service pursuant to Section 3.6 above.
- 4.7 Should Customer choose to terminate these Master Terms for convenience:
- (a) Customer shall provide no less than ninety (90) days written notice to Cortex;
  - (b) Customer shall be liable for the balance of the unpaid Subscription Fee owing for the remainder of the Term or any renewal term within which the termination notice is provided;
  - (c) The balance of the Subscription Fee for the balance of the Term shall be paid prior to Cortex effecting transition; and
  - (d) Both parties shall, in good faith, effect transition and decommissioning of the Customer from Cortex System if applicable, with Cortex transition services to be billed as Professional Service separate from any Subscription Fees owing.

#### 5. THIRD-PARTY SOFTWARE & SERVICES

- 5.1 Except to the extent the third party software includes a written warranty in its packaging, Cortex does not make any warranties or representations, either express or implied, with respect to the third party software or any third party service to be provided to Customer. Without limiting the foregoing, in respect of any third party software or services, Cortex expressly disclaim any warranties of quality, performance, merchantability or fitness for a particular purpose or non-infringement, and those arising by statute or otherwise in law or from a course of dealing, usage or trade thereof.

#### 6. PROFESSIONAL SERVICES

- 6.1 In the event the Customer requires consulting and/or technical services, including but not limited to further development of the Cortex System, training services, implementation, development, customization, deployment or updates in renewal terms, and related services or services beyond the scope of a typical migration, Customer may request and negotiate with Cortex the provision of additional professional services, separate and apart from the grant of Subscription herein, which professional services agreement shall be appended to these Master Terms as Appendix "D".

#### 7. REPRESENTATIONS AND RESPONSIBILITIES

- 7.1 Cortex has the legal right to hereby grant the license in Section 2.1, and to provide access and use rights to the Cortex System in accordance with the terms and conditions of these Master Terms.
- 7.2 Cortex represents that it is a duly incorporated corporation pursuant to the laws of the jurisdiction of these Master Terms.
- 7.3 Cortex will:
- (a) perform in a good and workmanlike manner, in accordance with the standards of care and diligence normally practiced by similar firms performing services and providing technology of a similar nature;
  - (b) take commercially reasonable measures to keep the Cortex System secure;
  - (c) retain all such rights and interests in and to the Cortex System as are necessary and sufficient to provide the Subscription; and
  - (d) make reasonable efforts to achieve the Service Levels in Appendix "C".
- 7.4 Customer represents and warrants that it:
- (a) Is and will remain a duly incorporated corporation in the jurisdiction in which
  - (b) is solely liable for determining whether the Cortex System is suitable for Customer to use in light of any legislation and regulations like privacy legislation, data use, and/or other laws; and
  - (c) shall comply with all regulations, as well as data protection, electronic communication, and privacy laws that apply to the Customer in using the Cortex System, and Customer shall collect, store, use, and transfer all User Data relating to any end user in compliance with all data protection laws and regulations.

- 7.5 The Customer shall:
- (a) cooperate with Cortex and respond to all reasonable requests in a timely way, including but not limited to during Deployment;
  - (b) make reasonable efforts to report to Cortex all malfunctions and errors it discovers in the Cortex System;
  - (c) maintain the confidentiality and security of all usernames and passwords issued to the Customer and the Users;
  - (d) be responsible and liable for all activities conducted under its Users' usernames and passwords;
  - (e) immediately notify Cortex in writing if it becomes aware of any unauthorized use of any username or any other security breach regarding the Cortex System;
  - (f) not resell the Service or authorize any third party (other than a User) to use or access those services without Cortex's prior written consent;
  - (g) ensure that it and the Users:
    - (i) have the knowledge, skill, technology and communications connections necessary to access and use the Cortex System, including a computer workstation with the minimum features specified by Cortex from time-to-time;
    - (ii) use the Cortex System in a manner consistent with all applicable laws and regulations;
    - (iii) do not hack, reverse engineer, disable, disrupt or interfere with the functioning of the Cortex System;
    - (iv) do not upload to, or transmit from the Cortex System anything that, if reproduced, published, transmitted or used, may be defamatory, threatening, abusive, obscene, pornographic, harmful or invasive of anyone's privacy, may violate any law including but not limited to copyright, trade-mark, trade secret, patent, privacy or other laws, or may give rise to civil or other liability;
    - (v) do not upload or transmit, or permit anything to be uploaded or transmitted, to the Cortex System any data, file or software that contains any Harmful Components; and
    - (vi) do not use the Cortex System for spamming, other advertising, other bulk message transmission or other similar activity that is objectionable to Cortex in its sole discretion.
- 7.6 The Customer acknowledges that, as with all systems that permit messaging, document exchange, file upload or transmission, the Cortex System carry with them a risk that the Customer or a User may send or receive a message, or upload or transmit a file, that contains Harmful Components, and that Harmful Components may cause damage to the Customer's or the Users' computers, systems or electronic files, and may spread and may cause damage to other persons' computers, systems or electronic files. Cortex will take reasonable measures to guard against Harmful Components, but Cortex shall not be responsible or liable for any damages (financial or otherwise) caused to Customer or any User by any Harmful Components.

## **8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 8.1 As between Cortex and the Customer, Cortex owns all right, title and interest in and to all aspects of the Cortex System including the underlying software(s) that operates the Cortex System, the graphical design and "look and feel" of the Cortex System and its user interface, code libraries, data exchange systems, and all modifications, customizations and additions thereto, and all work product created by or for Cortex in association with the Cortex System, and all Intellectual Property Rights in the foregoing, excluding the User Data.
- 8.2 Customer acknowledges Cortex's ownership and Intellectual Property Rights and will not take any action to jeopardize, limit or interfere in any manner with Cortex's ownership and rights with respect to the Cortex System. Customer agrees that nothing contained in these Master Terms shall be construed to restrict any of Cortex's rights of use of the same technologies, algorithms, methods, programming languages, interfaces and software architectural solutions for further work.
- 8.3 Each party grants to the other a non-exclusive, royalty-free license for the sole, limited use of the other's name and trademarks for the purpose of these Master Terms.
- 8.4 The Customer and its Users may download the Documentation to the extent necessary to Use the Cortex System for the purposes of these Master Terms, but the Customer may not otherwise copy, reproduce, republish, post, transmit, display, perform, distribute, modify or create derivative works from the Documentation without Cortex's prior written approval.
- 8.5 Cortex does not own the User Data input or transmitted using the Cortex System. Cortex may manipulate, format, display, transmit to third parties and otherwise use the User Data as necessary to perform its obligations under the Master Terms and to give effect to the Subscription granted herein, to provide support and customer service to the Customer and the Users, to develop, maintain and improve the Cortex System. Cortex acknowledges that the User Data may contain Confidential Information, and Cortex agrees not to disclose the User Data, or permit the User Data to be disclosed, except as permitted by the Master Terms or as otherwise permitted or requested by the Customer. Cortex may keep copies of the User Data for a reasonable amount of time during the Term and any extension thereof to assist Customer in effecting the Subscription granted herein. Cortex will maintain the confidentiality of all User Data per Section 8.5 below, and agrees to delete or destroy same upon final termination of the Master Terms.
- 8.6 Cortex, including its directors, officers, employees and agents to, agrees to keep Customer's Confidential Information strictly confidential and not disclose it to anyone unless permitted by the Master Terms or Cortex is required by law or court order to do so.

## **9. NON-COMPETITION AND NON-SOLICITATION**

- 9.1 For the consideration as above, and the further consideration of an additional \$100.00 paid by the Customer, the Customer hereby agrees that during the Term and for twelve (12) following termination of these Master Terms for any reason or cause:
- (a) Customer is prohibited, either directly or indirectly, through its own directors, officers, personnel, agents, representatives or through third parties, either as an individual or as a partner or joint venturer or as a consultant, employee, principal, organization, syndicate, company or corporation, or in any manner, from reverse engineering, disassembling or decompiling the Cortex System or otherwise attempting to create or generate any source code version of any part of the Cortex System or directly or indirectly offer any products or services competitive to or related to the Cortex System in any manner whatsoever; and
  - (b) Customer shall not directly or indirectly, through its own directors, officers, personnel, agents, representatives or through third parties, either as an individual or as a partner or joint venturer or as a consultant, employee, principal, organization, syndicate, company or corporation, or in any manner do or attempt to induce or cause or attempt to solicit, induce or cause any of Cortex's employees, contractors, sub-contractors or any Cortex personnel with access to Cortex's Confidential Information to terminate their employment or relationship with the Cortex and shall not, directly or indirectly, hire or engage or attempt to hire or engage any individual who shall have been an employee of the Cortex, whether for or on behalf of the Customer or for any entity in which the Customer shall have a direct or indirect interest (or subsidiary or affiliate of any entity, whether as a proprietor, partner, co-venturer, financier, investor or stockholder, director, officer, employer, employee, servant, agent, representative or otherwise).

## **10. INDEMNIFICATION**

- 10.1** Neither Cortex nor its directors, officers, employees and agents shall be liable for any indirect, punitive, special, or consequential damages suffered by the Customer, under any circumstances, even if the Customer has been advised of the possibility of such damages.
- 10.2** Customer expressly releases Cortex from any and all liability arising from Customer use of any third-party website or services or third party owned content, and dealings with such third parties.
- 10.3** The above limitations and exclusions shall apply to the fullest extent that applicable law permits, in all actions of any kind, whether based on contract (including fundamental breach), tort (including negligence) or other legal or equitable theory. Any clause declared invalid shall be deemed severable and not affect the validity or enforceability of the remainder of these terms of use. The total liability of Cortex for any and all claims made at any given time with respect to the Cortex System shall be no more than the equivalent of three(3) months Subscription Fee paid by the Customer during the Term.
- 10.4** Both parties hereby agree to defend, indemnify, and hold the other party, its affiliates and their respective officers, directors, employees and agents, (each an "Indemnified Party") harmless from and against any third party's claims for loss, damage, or liability resulting from:
- (a) any breach of these Master Terms or any warranty or covenant provided in these Master Terms by such party;
  - (b) any violation of applicable law by such party;
  - (c) any infringement of any third party intellectual property rights; and
  - (d) any negligent act or omission or willful misconduct of such party; in all cases, except to the extent such third party's claim for loss, damage or liability is the result of:
    - (i) any breach of these Master Terms by the party seeking indemnification
    - (ii) any violation of applicable law by the party seeking indemnification, or
    - (iii) any negligent act or omission or willful misconduct of the party seeking indemnification.
- 10.5** If an indemnified party intends to claim indemnification under this section, such party shall promptly notify the other party of any loss, claim, damage, liability or action in respect of which the indemnified party intends to claim such indemnification, and the indemnifying party shall have a first opportunity to assume the sole defense thereof with counsel selected by the indemnifying party and approved by the indemnified party acting reasonably; provided, however, that an indemnified party shall have the right to retain its own counsel and participate fully in the defense, with the fees and expenses to be paid by the indemnified party. The failure or delay to deliver notice to the indemnifying party, within a reasonable time after the commencement of any such proceeding, if irreparably prejudicial to the indemnifying party's ability to defend such proceeding, shall relieve the indemnifying party of any and all liability to the indemnified party under this Section. The indemnified party shall cooperate fully with the indemnifying party and their legal representatives in the investigation of any loss, claim, damage, or liability covered by this indemnification, and shall mitigate such loss and damages. Any amount payable in order to satisfy an indemnity hereunder shall be paid as soon as reasonably possible after the indemnified party has incurred an indemnified expense and notified the indemnifying party thereof.

## **11. DISCLAIMER OF WARRANTIES**

- 11.1** Cortex shall not be liable or responsible for any User Data, nor be liable to the Customer or any User or any third party for any claims or damages whatsoever in connection with the User Data.
- 11.2** Subject to the warranties and representations made by Cortex herein, Customer's exercise of this Subscription is at Customer's sole risk and liability; Customer access and Use of the Cortex System is at the Customer's own risk, and the Cortex System is provided "AS IS" and "AS AVAILABLE" to the maximum extent permitted by law. That means Cortex do not provide warranties of any kind, either express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. In particular, Customer acknowledges that Cortex makes no warranties with respect to:
- (a) using third party vendors and hosting partners to provide the necessary hardware, application Cortex System, networking, storage, and related technology required to run the Cortex System;
  - (b) the technical processing and transmission of any User Content, may be transferred unencrypted and involve transmissions over various networks and be changed to conform and adapt to technical requirements of connecting networks or devices;
  - (c) Cortex System meeting the Customer's specific requirements or expectations;
  - (d) the results that may be obtained from the use of the Cortex System including but not limited to accuracy or reliability; or
  - (e) statements or conduct of any third party using the Cortex System.
- 11.3** CORTEX DISCLAIMS AND WILL NOT BE BOUND BY ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, OTHER THAN THE ONES EXPLICITLY SET FORTH HEREIN.
- 11.4** EXCEPT AS EXPRESSLY PROVIDED IN THE MASTER TERMS, CORTEX AND CORTEX SUBSIDIARIES MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY HARDWARE, SYSTEM OR SERVICES THAT MAY BE UTILIZED AS PART OF THE MASTER TERMS OR OTHERWISE, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CORTEX SPECIFICALLY DISCLAIMS ANY COLLATERAL WARRANTIES AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CORTEX DOES NOT REPRESENT OR WARRANT THAT THE HARDWARE, SYSTEM OR CORTEX SERVICES WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR ERRORS OR THAT THE HARDWARE, SYSTEM OR SERVICES ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS.

## **12. LIMITATION OF LIABILITY**

- 12.1** CUSTOMER AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LIABILITY ON THE PART OF CORTEX UNDER AN MASTER TERMS (INCLUDING FOR BREACH OF ANY PROVISION OF THE MASTER TERMS, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THE MASTER TERMS, HARDWARE, SYSTEM OR SERVICES IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL SUBSCRIPTION FEES PAID TO CORTEX BY CUSTOMER IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.
- 12.2** TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL CORTEX OR C O R T E X S U B S I D I A R I E S BE LIABLE TO CUSTOMER OR ITS CORTEXS OR ANY OTHER PERSON, FIRM, CORPORATION OR ENTITY FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS OR COMPUTER MALFUNCTION, OR ANY DAMAGES IN THE NATURE OF LOST OPPORTUNITY COSTS OR COSTS FOR PROCUREMENT OF AN ALTERNATIVE TO THE HARDWARE, SYSTEM OR SERVICES PROVIDED UNDER THE MASTER TERMS, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT OR OTHERWISE, EVEN IF CORTEX HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT IN NO EVENT WILL CORTEX'S DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES ARISING OUT OF THE MASTER TERMS. CORTEX SHALL NOT HAVE ANY LIABILITY REGARDING DELIVERY OR FAILURE OF DELIVERY OF ANY PACKAGE OR FREIGHT, EITHER BY OR TO CUSTOMER, OR IN RESPECT OF DELIVERIES FACILITATED BY CUSTOMER, REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGE.

- 12.3** IN NO EVENT SHALL EITHER PARTY HAVE LIABILITY TO THE OTHER PARTY, OR ANY OTHER THIRD PARTY, FOR LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY ARISING OUT OF, OR RELATING TO, THE MASTER TERMS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE THAT THIS SECTION REPRESENTS A REASONABLE ALLOCATION OF RISK. CORTEX WILL NOT BE LIABLE IN ANY WAY TO THE CUSTOMER OR THE USERS FOR ANY DAMAGE, LIABILITY, COST OR EXPENSE INCURRED BY ANY OF THEM AS A CONSEQUENCE OF RECEIVING ANY HARMFUL COMPONENT THROUGH USE OF THE CORTEX SYSTEM OR THE SERVICES OR AS A CONSEQUENCE OF AN INTENDED RECIPIENT NOT BEING ABLE TO SEND OR NOT RECEIVING A TRANSMISSION THROUGH THE USE OF THE CORTEX SYSTEM OR THE SERVICES.

### **13. GENERAL PROVISIONS**

- 13.1 Successors and Assigns.** The Master Terms shall be binding upon and inure to the benefit of the parties to the Master Terms, and their respective successors and permitted assigns.
- 13.2 Entire Master Terms.** The Master Terms constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior proposals, agreements or understanding between the parties, whether oral or written with respect to the subject matter. Unless made in writing and executed by duly authorized representatives of all parties to the Master Terms, no amendments or modifications to the Master Terms shall be binding. The terms of any document submitted by Customer to Cortex from time to time shall be of no force or effect to the extent that they are inconsistent with the terms of the Master Terms.
- 13.3 Reasonableness of Restrictions.** The Customer has carefully read and considered the provisions of these Master Terms and, having done so, agrees that any restrictions set forth herein are fair and reasonable and are reasonably required for Customer's access and Use of the Cortex System, and for the protection of the interests and business of Cortex.
- 13.4 Survival of Terms.** Sections 5, 8, 9, 10, 11, and 12 shall survive termination of these Master Terms.
- 13.5 Severability.** The invalidity or unenforceability of any term or provision of the Master Terms will not affect any other term or provision of the Master Terms; the remaining terms and provisions will continue in full force and effect. To the extent reasonably possible, the parties will negotiate in good faith to agree to a substitute term that will be as close as possible to the intention of any invalid or unenforceable term if rendered valid and enforceable. Regardless, the invalidity or unenforceability of any term in any particular jurisdiction will not affect its validity or enforceability in any other jurisdiction where it is valid or enforceable.
- 13.6 Attachments.** Any appendices, attachments and schedules referred to in these Master Terms and attached hereto or thereto are incorporated herein or into the Master Terms by reference to the same extent as if set forth in full in the Master Terms. In the event of any inconsistency between any appendix, attachment or schedule and the main body of the Master Terms, the terms and conditions of the main body of the Master Terms shall prevail unless otherwise expressly provided to the contrary in such appendix, attachment or schedule or in these Master Terms.
- 13.7 Construction.** Each provision of the Master Terms shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Master Terms shall be prohibited or invalid, such provision shall be ineffective only to the effect of such prohibition or invalidity and shall not invalidate the remainder of such provision or the remaining provisions of the Master Terms in that or other jurisdictions which shall continue in full force and effect.
- 13.8 Waiver.** Neither party hereto shall, by mere lapse of time without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any provision of the Master Terms. Failure by either party to enforce any term of the Master Terms shall not be deemed a waiver of future enforcement of that or any other term in the Master Terms.
- 13.9 Multiple Counterparts.** The Master Terms may be executed in several counterparts, all of which taken together shall constitute one single Master Terms between the parties.
- 13.10 Compliance with Law.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Master Terms.
- 13.11 Law and courts.** The Master Terms will be governed by and construed in accordance with the laws of the State of Texas. The parties hereby attorn irrevocably to the exclusive jurisdiction of the Texas courts in Houston, Texas.
- 13.12 Notice.** All notices ("Notice") under the Master Terms shall be in writing and shall be deemed given:
- (a) when delivered personally by hand (with written confirmation of receipt),
  - (b) when sent by facsimile (with written confirmation of transmission),
  - (c) one (1) business day following the day sent by overnight courier (with written confirmation of receipt) or
  - (d) if mailed by registered, certified or express mail, either five (5) days after the date on which the envelopes containing the Notice and copy are deposited in the mail, properly addressed, and with sufficient postage prepaid, or on the actual date of receipt, whichever is earlier, in each case at the addresses and facsimile numbers as provided on page 1 of the Master Terms (or to such other address or facsimile number as a party may have specified by Notice given to the other party pursuant to this provision).
- 13.13 Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any intellectual property right, any dispute or controversy between the parties arising out of or relating to the Master Terms (each, a "Dispute") shall be resolved by good faith negotiations between the parties which negotiations should not terminate until the Dispute has been considered by a senior officer of each party.
- 13.14 Assignment.** Either party may assign these Master Terms with the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed.
- 13.15 Announcements.** Upon signing of the Master Terms, Customer consents to being publicly identified by Cortex as a customer of the products and services provided by Cortex pursuant to the Master Terms.
- 13.16 Reference.** Customer authorizes and agrees that Cortex may refer to the Customer as a Customer in Cortex's promotional materials, including on Cortex's website, and may use the Customer's name and logo for that purpose, and such reference shall not constitute any trademark infringement.
- 13.17 Further Assurances.** The parties will execute and deliver to each other all other supplemental agreements and other instruments and take any other actions necessary to give full effect to these Master Terms and to make these Master Terms legally effective, binding, and enforceable as between them and as against third parties.

- 13.18 Force Majeure.** A party (the “Claiming Party”) will not be in breach of the Master Terms or other liable to the other party (the “Non-Claiming Party”) for any delay in performance or any non-performance of any obligations under these Master Terms (and the time for performance will be extended accordingly) if and to the extent of the delay or non-performance is owing to Force Majeure. This clause only applies if:
- (a) the Claiming Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
  - (b) the Claiming Party has used reasonable endeavors to mitigate the effect of the Force Majeure and to carry out its obligations under the Master Terms in any other way that is reasonably practicable. The Claiming Party shall promptly notify the Non-Claiming Party of the nature and extent of the circumstances giving rise to the Force Majeure. If the Force Majeure in question prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the Non-Claiming Party shall be entitled to give notice to the Claiming Party to terminate the Master Terms entirely and cease Use of the Cortex System. The notice to terminate must specify the termination date, which must not be less than thirty (30) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Master Terms will terminate on the termination date set out in the notice.
- 13.19 No Agency.** Nothing in the Master Terms shall constitute or be deemed to constitute one party as agent for the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.
- 13.20 Cortex is a Non-Party.** All transactions concluded through Use of the Cortex System or the Cortex Trading Partner Network by Customer shall be between the Customer and other parties to that transaction pursuant to the terms and conditions agreed upon by the Customer and those parties. Cortex shall not be a party to any transaction or contract concluded through Use of the Cortex System or the Cortex Trading Partner Network.
- 13.21 Right to Assurance.** Cortex reserves the right to review the creditworthiness of Customer through available and reliable verification procedures or sources and Customer hereby consents to Cortex obtaining such information. Cortex reserves the right, in its sole discretion, to require a deposit, letter or credit or similar surety, as a condition to the initial provision of the Service and/or the Cortex System. Furthermore, Cortex may require a deposit, letter of credit or similar surety as a condition of continued provision of Service and/or the Cortex System or decline to accept any requests to provide additional and/or new Service and/or the Cortex System if:
- (a) Customer fails to comply with the payment terms of these Master Terms and/or any Master Terms;
  - (b) Customer presents an undue risk of non-payment;
  - (c) Customer experiences a material adverse change in creditworthiness or financial position;
  - (d) Customer is acquired by an entity who is insolvent; or
  - (e) Customer is subject to bankruptcy or has filed for bankruptcy or insolvency proceedings.
- 13.22 Execution by Facsimile and Transmissions in PDF and Other Document Scanning Programs.** Execution and delivery of a facsimile transmission of the Master Terms or execution and delivery of the Master Terms in a PDF or similar document-scanning file format shall constitute, for purposes of the Master Terms, delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy. Any party so executing the Master Terms hereby undertakes to originally-execute and deliver to the other party hereto a copy of the Master Terms as soon as possible after execution by facsimile and execution and transmission in PDF and other document-scanning programs.

**Appendix A = Deployment Services and Fees.** As this subscription is for Workbench, NO set up fees apply.

**Appendix B = Subscription Fees.** Please refer to page 1 of this document, this will act as appendix B.

**Appendix C = Service Level Guidelines.** See below.

**Appendix D = Professional Services.** As this subscription is for Workbench, NO professional services are applicable.

**Appendix E = Payment Options.** Please refer to pages 2 and 3 of this document to provide payment details, this will act as appendix E.

#### APPENDIX “C” Service Level Guidelines

WHEREAS in consideration of the Cortex System being Internet-based, and the parties acknowledge that the Internet is neither owned nor controlled by any one entity, therefore Cortex cannot warranty or guarantee that Customer will be able to access the Cortex System at any given time with respect to causes beyond the control of Cortex described in detail in Section 4 below. Accordingly, the quality levels set out in this Appendix are voluntary which Cortex has taken on itself, and do not constitute a pledge or guarantee of services owed by Cortex:

1. Cortex will be responsible for the maintenance and performance of the Cortex System:
2. Perform ongoing monitoring to ensure that outages and errors are quickly identified and corrected;
3. Take all reasonable measures to address technical or user issues identified by Customer;
4. Update the Cortex System to ensure that it meets all required technical specifications including but not limited to making the updates necessary to ensure accessibility;
5. Cortex endeavours to provide 99.99% uptime with less than 7 hours of unanticipated outage time each month, with the following definitions:
6. “Downtime” means the inability of the Customer to access the Cortex System, excluding issues local to the Customer’s premises, *Force Majeure*, or upstream Internet connectivity; and
7. “Uptime”—the time that the Cortex System is working and available to the Customer.
8. Maintenance Window means the time Cortex regularly schedules its system maintenance and deployments to the applications. This window occurs every Sunday morning from 8:00am – 12:00pm MST and is not calculated in “Downtime” metrics.
9. Legacy System Sunset. Cortex has an application “Desktop” and backend systems to support this application. Over the next two years it will be sun setting this product. As buyers are available on the new platform, suppliers will be transitioned off this older platform. As we approach the end of this products life cycle, we will be reducing support, our SLA and any enhancements related to this platform.
10. Cortex may be required to complete both routine and scheduled, and non-scheduled maintenance of the Cortex System, and Customer hereby consents to Cortex performing such maintenance of the Cortex System as required, giving the Customer as much prior notification as is practicable.
11. Cortex shall not be liable for problems, disruptions, interruption or failure of telecommunication or digital transmission links, failure of data transmission, delays or other failures or causes outside of Cortex’s control, and which by exercise of commercially reasonable diligence Cortex is unable to overcome, including but not limited to:
12. Misuse by the Customer and/or Users;
13. due to Internet Service Provider, hostile network attacks, network congestion;
14. any fault or negligence on the part of the Customer or Users, including any failure or delay in recovery of service attributable to the failure of the Customer or User to advise Cortex promptly of the interruption or failure;
15. any services or equipment directly provided by the Customer, Users, or any of the Customer’s third party vendors/suppliers;

16. any failure of the Customer or User to provide a suitable environment for, or to properly maintain, any computer equipment and/or hardware used to access the Cortex System;
17. any loss of or interruption in the source of power, systems, or connections provided by suppliers by subcontractors; and
18. any *Force Majeure* occurrence.