

## Subscriber Agreement

Please review before use of any Big Squid software.

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF BIG SQUID'S SERVICES.

IF YOU REGISTER FOR BIG SQUID'S TRIAL SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL GOVERN THOSE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE; BY EXECUTING A SERVICE ORDER FORM THAT REFERENCES THIS AGREEMENT; OR, FOR TRIAL SERVICES, BY USING SUCH SERVICES, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE BIG SQUID'S SERVICES.

This Subscriber Agreement (this "Agreement") is entered into by and between Big Squid, Inc. ("Big Squid"), a Delaware corporation, and You (the "Subscriber"), and is effective on the same day the accompanying Service Order is executed by both Big Squid and Subscriber (the "Effective Date"). Big Squid and Subscriber shall each be referred to individually as a "Party" and collectively as the "Parties."

### Big Squid Services and Deliverables.

Services. Subject to the terms and conditions of this Agreement, Big Squid will make the online, web-based software applications that are described in an applicable service order ("Service Order") entered into pursuant to and in accordance with this Agreement, and any associated electronic or written documentation that may be provided in connection therewith, including upgrades and updates thereto generally made commercially available by Big Squid to its customers (the "Services"), available for use by Subscriber, its Affiliates (defined below) and Permitted Third Parties (defined below) for whom Subscriber has created unique user names and passwords ("Authorized Users"). The use of the Services provided by Big Squid hereunder is limited to Authorized Users only, up to the number of such Authorized Users set forth in the applicable Service Order. Big Squid may also provide to Subscriber professional services (e.g., implementation services, consulting services) and training services in connection with the Services, as set forth in the applicable Service Order.

Related Parties; Limited License. For purposes of this Agreement, "Affiliate" means any entity that, directly or indirectly, controls, is controlled by or is under common control with such entity (but only for so long as such control exists), where "control" means the ownership of more than 50% of the outstanding shares or securities representing the right to vote in the election of directors or other managing authority of such entity, and "Permitted Third Party(ies)" means any entity under contract with Subscriber or its Affiliates who needs to access the Services to perform its obligations to Subscriber or its Affiliates and who is not a competitor of Big Squid. In connection therewith, Big Squid grants to Subscriber a limited, worldwide, non-exclusive, non-transferable license to use the Services and any related deliverables and documentation provided by Big Squid solely in connection with Subscriber's internal business operations, for the time period described in the applicable Service Order, or until terminated as described herein.

Payment. In consideration for the right to access and use the Services, Subscriber shall pay the fees for the Services and any professional services and training services set forth in each applicable Service Order. All payments are due thirty (30) days from the date of invoice. All late payments shall bear interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, whichever is less. Fees charged for Services do not include any present or future sales, use, value added, excise or similar tax, customs duties or import or export fees. Subscriber shall be responsible for paying applicable taxes later assessed by any government agency. Big Squid will separately itemize any applicable taxes or duties on each invoice. All fees for Services are non-cancelable and non-refundable. Subscriber shall have no right to withhold or reduce fees owed or set off any amount against any fees owed or against alleged defects in the Services. If Subscriber fails to pay any fee due for Services, in whole or in part, Big Squid may pursue collection of such owed fees itself and, at its option, suspend Subscriber's access to and use of the Services until any such fees are paid in full, or terminate this Agreement immediately upon written notice to Subscriber. If any action is necessary to collect fees subject to this Agreement, Big Squid shall also be entitled to collect its reasonable attorneys' fees and costs.

Subscriber Data. Subscriber hereby grants Big Squid a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, aggregate and display the data Subscriber uploads into the Services or otherwise provides for processing by the Services (the "Subscriber Data") as required for Big Squid to provide or perform the Services, and to publish, display, and distribute anonymous information derived from Subscriber Data and from Subscriber's use of the Services for purposes of improving Big Squid's products and services, and developing and distributing benchmarks and similar reports, provided that such aggregated data is not identified or identifiable as originating with or associated with Subscriber or any individual person. Big Squid is not responsible for, and does not undertake to verify, the accuracy or completeness of Subscriber Data. Subscriber shall make the Subscriber Data available for Big Squid to provide the Services, or stated timelines may not be met.

Trial Services.

Proof of Concept; Trial Subscription. Big Squid may provide Subscriber with proof of concept services ("Trial Services") to Subscriber for a limited time at no charge and solely for evaluation purposes. Trial Services may include both Big Squid's online, web-based software applications and professional services. Big Squid may make Trial Services available to Subscriber during a subscription term that ends on the

earlier of: (i) the end of the free trial period for which Subscriber agreed as stated in the Service Order; (ii) the start date of any purchased Services ordered by Subscriber; or (iii) termination of the trial by Big Squid in its sole discretion ("Trial Subscription Term"). Trial Services are only made available based on a Trial Subscription Term that applies to a requesting Subscriber, Affiliate, or Permitted Third Party, and are not available through multiple Trial Subscription Terms for individuals who are members of the same Subscriber, Affiliate, or Permitted Third Party.

**Terms and Conditions.** The terms and conditions of this Agreement that refer to Services shall also apply to the greatest extent possible to Trial Services, except for the limitations identified in this Section 2. Additional terms and conditions may also apply to Trial Services and shall appear on the applicable Service Order.

**Limited Functionality.** Trial Services may be limited in various ways as compared to the scope of available purchased Services, such as no implementation or support assistance, limits on number of Authorized Users, disabled or limited customization, functionality, and features. Trial Services are provided for general information purposes only, and should not be relied on for any Subscriber operational purposes.

**DATA LOSS.** ALL SUBSCRIBER DATA THAT HAS BEEN ENTERED AND ANY CUSTOMIZATIONS MADE DURING THE TRIAL SUBSCRIPTION TERM WILL BE PERMANENTLY LOST UNLESS SUBSCRIBER PURCHASES SERVICES THROUGH AN APPLICABLE SERVICE ORDER BEFORE THE END OF THE TRIAL SUBSCRIPTION TERM.

**EXCLUSION OF TRIAL WARRANTIES.** ALL TRIAL SERVICES ARE PROVIDED "AS-IS", WITHOUT ANY WARRANTIES, AND SOLELY AT SUBSCRIBER'S OWN RISK.

**Intellectual Property.**

**Definition.** "Intellectual Property Rights" means all right, title, and interest in and to any copyright, software, design, logo, trademark, service mark, patent, invention, trade secret, domain name, Confidential Information (as defined below), know-how, technology, business name, trade name, trade dress, technical solutions, associated right to sue (past, present, and future), any other intellectual property rights whether existing at common law, applied for, registered or unregistered and all extensions, renewals, continuations, continuations-in-part, divisionals, reissues, re-examinations, and revivals therefor and existing anywhere in the world.

**Ownership.** Except as otherwise expressly provided in this Agreement, Big Squid and its licensors own all right, title, and interest in and to all Intellectual Property Rights in any deliverables, software, related documentation, or other materials developed, delivered and/or used by Big Squid in the performance of Services and any professional services, including, without limitation, any modifications, updates, customizations, cards, apps, or other add-ons. Big Squid reserves all Intellectual Property Rights not expressly granted to Subscriber under this Agreement.

**Unauthorized Use.** Subscriber shall ensure that its Affiliates, Permitted Third Parties, and Authorized Users comply with this Agreement and will be directly and fully responsible to Big Squid for their conduct and any breach of this Agreement by them. Subscriber will, and will ensure that its Affiliates,

Permitted Third Parties, and Authorized Users use reasonable efforts to prevent any unauthorized use of the Services and any deliverables or documentation provided by Big Squid, and Subscriber shall immediately notify Big Squid in writing of any unauthorized use that comes to Subscriber's attention. If there is unauthorized use by anyone who obtained access to the Services or such deliverables or documentation directly or indirectly through Subscriber, its Affiliates, a Permitted Third Party, or an Authorized User, Subscriber will take all steps reasonably necessary to terminate the unauthorized use. Subscriber will cooperate and assist with any actions taken by Big Squid to prevent or terminate unauthorized use of the Services or any deliverables or documentation.

**Protection Measures.** Subscriber shall take all reasonable steps to protect any deliverables provided to Subscriber under this Agreement from unauthorized copying or use. Subscriber will not, and will not permit or authorize its Affiliates, Authorized Users, or any Permitted Third Parties to: (a) sell, rent, lease, sublicense, distribute, or except as explicitly set forth in this Agreement, otherwise permit third parties to use the Services or any deliverables or documentation provided by Big Squid; (b) use the Services to provide services to third parties; (c) circumvent or disable any security or other technological features or measures of the Services, or attempt to probe, scan or test the vulnerability of a network and or system or to breach security or authentication measures; (d) upload or provide for processing any information or materials that are illegal, defamatory, offensive, abusive, obscene, or that violate privacy or intellectual property rights; (e) use the Services to harm, threaten or harass another person or organization; or (f) send, store or distribute any viruses, worms, Trojan horses, or other malware component harmful to a network or system.

**Derivative Works; Intellectual Property Rights Restrictions.** Subscriber shall not, directly, indirectly, alone, or with another party: (i) copy, disassemble, reverse engineer, or decompile the Services, or any deliverable; (ii) modify, create derivative works based upon, or translate the Services or any deliverable; (iii) use the Services or any deliverable in any way as part of, or to build, a competitive product or service; or (iv) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the Services or any deliverable in any form to any other party, nor shall Subscriber 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. Subscriber may not use the "Big Squid®" or "Kraken®" word or logo marks, or any other mark or brand of Big Squid, in publicity, advertising, or external broadcasts or distributions, without the prior written consent of Big Squid.

**Rights Notices.** Subscriber, its Authorized Users, its Affiliates, and any Permitted Third-Parties shall neither alter nor remove any trademark, copyright notice, or other proprietary rights notices that may appear on any part of any documentation or deliverables provided to Subscriber hereunder, and Subscriber shall include all such notices on any copies.

**Extraterritorial Access.** Neither Subscriber, its Affiliates nor any Permitted Third-Parties may transfer, provide access to or otherwise make available the Services, any deliverables, or Confidential Information to any individual or entity outside of the United States (even within its own organization) without Big Squid's prior written consent. Such consent must reference this Section 3.7 and expressly outline all access rights and related scope of such access.

**U.S. Government End User Provisions.** Big Squid provides the Services, including related software and technology for U.S. federal government end use solely as "Commercial Items" in accordance with the following regulations. Government technical data and software rights related to the Services include

only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with Federal Acquisition Regulation ("FAR") 12.211 (Technical Data) and FAR 12.212 (Computer Software) and for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items), and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under this Agreement, it must negotiate with Big Squid to determine if there are acceptable terms for transferring such additional rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable new or modified contract.

Confidential Information.

Definition. "Confidential Information" means all information disclosed by either Party (a "Disclosing Party") relating to clients, projects, sensitive personal information (as defined in various federal laws), and business affairs that are of a confidential, proprietary, trade secret, or non-public nature, whether communicated orally or in writing, and whether in tangible or intangible form, including, without limitation, entity data, or any other information that is of a confidential, proprietary, trade secret, or non-public nature. Confidential Information does not include information: (a) that was already known by the Party receiving Confidential Information (a "Receiving Party"); (b) in the public domain or later entered the public domain through no wrongful act or omission by the Receiving Party; or (c) is independently developed by the Receiving Party without reference to the Confidential Information.

Restrictions on Use; Disclosure. Unless otherwise required by law, the Receiving Party must: (a) keep the Disclosing Party's Confidential Information in strict confidence; (b) not, without the prior written consent of the Disclosing Party, use, discuss, or disclose or permit the use, discussion, or disclosure of Confidential Information other than use by, discussion with, or disclosure to the Receiving Party's employees or representatives as necessary in performing its obligations under this Agreement; (c) be responsible for the compliance with this Agreement by its employees and representatives; and (d) immediately notify the Disclosing Party in writing of any impermissible disclosure or use of Confidential Information. Notwithstanding the above, the Receiving Party may disclose the Disclosing Party's Confidential Information, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the Receiving Party gives the Disclosing Party reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued. This Section 3 will survive the expiration or termination of this Agreement.

Indemnification.

Subscriber Indemnification. Subscriber shall indemnify and hold harmless Big Squid, its Affiliates, and their respective shareholders, directors, officers, agents, employees and other agents and representatives from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits and proceedings (including legal expenses and reasonable attorneys' fees) of whatsoever

kind and nature imposed on, incurred by or arising out of or related to or resulting from: (a) action taken or permitted to be taken by Big Squid in good faith in reliance on instructions or orders received from Subscriber as to anything arising in connection with Big Squid's performance of its obligations under this Agreement; (b) actual or alleged use of the Services provided by Big Squid in violation of this Agreement or any applicable law, including, without limitation, infringement of third party Intellectual Property Rights, by any person regardless of whether such person has been authorized to use the Services by Subscriber, except for unauthorized use that is a direct result of Big Squid's negligence or failure to perform its obligations under this Agreement; (c) actual or alleged breach by Subscriber of any of its obligations to its customers or end users or of this Agreement; (d) any dispute between persons who claim to have authority to act for Subscriber in connection with the control of Subscriber's account with Big Squid; and (e) any claims resulting from Subscriber's unauthorized disclosure of Confidential Information.

**Big Squid Indemnification.** Big Squid hereby indemnifies and agrees to hold harmless Subscriber and Subscriber's subsidiaries, Affiliates, officers, agents, employees and other agents and representatives, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits and proceedings (including legal expenses and reasonable attorneys' fees) of whatsoever kind and nature imposed on, incurred by or asserted against Subscriber and Subscriber's subsidiaries, Affiliates, officers, agents, employees and other agents and representatives arising out of or in connection with the breach of any warranty or covenant contained herein, including any claims resulting from Big Squid's unauthorized disclosure of Confidential Information.

**Warranty and Disclaimers.**

**Performance of Services.** Big Squid warrants that it will perform Services in a professional and workmanlike manner. Subscriber's sole and exclusive remedy arising out of or in connection with a breach of any of the warranties in this Agreement is limited to re-performance of the non-conforming Services. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN HEREIN, BIG SQUID DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, MODEL PERFORMANCE OR ACCURACY, TITLE, OR NON-INFRINGEMENT. BIG SQUID DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES OR ANY DELIVERABLES, OR THAT ANY OF THE SERVICES OR ANY DELIVERABLES OR DOCUMENTATION ARE ERROR-FREE OR THAT THEY WILL BE SECURE OR UNINTERRUPTED. BIG SQUID EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF USE OF THE SERVICES OR ANY DELIVERABLES OR DOCUMENTATION.

**Forward-Looking Analytics.** AS PART OF THE SERVICES, DELIVERABLES, AND DOCUMENTS PROVIDED BY BIG SQUID, SUBSCRIBER MAY RECEIVE A FORWARD-LOOKING PROJECTION/PREDICTIVE ANALYTICAL SERVICE BASED ON A MODEL DEVELOPED BY BIG SQUID. SUBSCRIBER UNDERSTANDS AND ACKNOWLEDGES THAT ANY INFORMATION AND/OR PROJECTIONS PROVIDED TO SUBSCRIBER ARE FOR INFORMATIONAL PURPOSES ONLY. SUBSCRIBER UNDERSTANDS AND ACKNOWLEDGES THAT ANY SUCH PREDICTIVE ANALYTICAL SERVICE IS NOT DESIGNED OR LICENSED FOR USE AS A GUARANTEE OF POTENTIAL OUTCOMES BUT RATHER IS DESIGNED TO GUIDE THE SUBSCRIBER IN UNDERSTANDING AN ARRAY OF POSSIBILITIES. THERE IS NO GUARANTEE THAT ANY SUCH PROJECTIONS PROVIDED WILL OR

WILL NOT OCCUR. PROJECTIONS OF THE FUTURE ARE INHERENTLY UNCERTAIN AND BIG SQUID MAKES NO CLAIM, WARRANTY, OR GUARANTEE OF MODEL PERFORMANCE OR ACCURACY. BIG SQUID SPECIFICALLY DISCLAIMS THAT THERE IS ANY ASSERTION OF ACCURACY IN THE INFORMATION PROVIDED THROUGH THE PREDICTIVE ANALYTICAL SERVICE. BIG SQUID IS NOT AND CANNOT BE HELD LIABLE FOR ANY DECISIONS MADE BY SUBSCRIBER IN RELIANCE ON ANY INFORMATION AND/OR PREDICTIONS PROVIDED AS PART OF THE FORWARD-LOOKING PROJECTION/PREDICTIVE ANALYTICS SERVICE. BIG SQUID EXPRESSLY ADVISES THE SUBSCRIBER TO USE CAUTION, PRUDENCE, AND SOUND JUDGMENT IN THE CONSUMPTION, USE, AND APPLICATION OF MODEL OUTPUT.

Data Security. SUBSCRIBER ACKNOWLEDGES THAT USE OF SOME OF THE SERVICES PROVIDED BY BIG SQUID WILL INVOLVE TRANSMISSIONS OF SUBSCRIBER DATA AND OTHER COMMUNICATIONS OVER THE INTERNET IN ORDER TO CARRY OUT SOME OF THE SERVICES REQUIRED. BIG SQUID MAKES NO CLAIMS AND CANNOT GUARANTEE THE SAFETY AND SECURITY OF SUBSCRIBER DATA AT ANY POINT DURING OR IN CONNECTION WITH ANY SUCH TRANSMISSIONS. SUBSCRIBER UTILIZES THE SERVICES AT SUBSCRIBER'S OWN RISK. SUBSCRIBER ACKNOWLEDGES THAT ANY SUCH TRANSMISSIONS COULD POTENTIALLY BE ACCESSED BY UNAUTHORIZED PARTIES WHEN COMMUNICATED ACROSS THE INTERNET. BIG SQUID IS NOT LIABLE FOR ANY SUBSCRIBER DATA WHICH IS DELAYED, LOST, ALTERED, INTERCEPTED OR STORED DURING TRANSMISSION ACROSS NETWORKS NOT OWNED OR OPERATED BY BIG SQUID, INCLUDING, BUT NOT LIMITED TO, THE INTERNET AND SUBSCRIBER'S LOCAL NETWORK. SUBSCRIBER SHALL PROTECT ITS AUTHORIZED USERS' LOGIN NAMES AND PASSWORDS FROM ACCESS OR USE BY UNAUTHORIZED PARTIES, AND IS SOLELY RESPONSIBLE FOR ITS FAILURE TO DO SO. SUBSCRIBER UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE TO TAKE APPROPRIATE MEASURES TO ISOLATE AND BACK UP ITS COMPUTER SYSTEM, INCLUDING ITS COMPUTER PROGRAMS, DATA AND FILES, AND TO TAKE ALL OTHER ACTIONS NECESSARY TO PROTECT ITS SYSTEM AND DATA, INCLUDING, WITHOUT LIMITATION, THE SUBSCRIBER DATA. SUBSCRIBER ACKNOWLEDGES THAT SUBSCRIBER DATA MAY BE ALTERED OR DAMAGED IN THE COURSE OF PROVIDING TECHNICAL SERVICES, WHETHER ON-SITE OR VIA REMOTE CONNECTION OR OTHERWISE.

Limitations of Liability.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS, EVEN IF THE DISCLAIMING PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND (b) HAVE LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, THAT EXCEEDS THE TOTAL AMOUNTS PAID OR DUE BY SUBSCRIBER FOR THE SERVICES PROVIDED OR TO BE PROVIDED UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS CONTAINED IN THIS SECTION 7 WILL NOT LIMIT A PARTY'S (i) INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (ii) LIABILITY FOR ITS INFRINGEMENT OR MISAPPROPRIATION OF ANY PROPRIETARY RIGHTS OR CONFIDENTIAL INFORMATION OF THE OTHER PARTY; (iii) LIABILITY ARISING FROM THE

PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (iv) SUBSCRIBER'S PAYMENT OBLIGATIONS HEREUNDER.

General.

Term. The term of this Agreement shall begin on the Effective Date and shall continue until all Service Orders are terminated, subject to earlier termination in accordance with this Agreement.

Termination. Big Squid may terminate this Agreement and all outstanding Service Orders immediately upon written notice to Subscriber in the event Subscriber is in material breach of any of the terms and conditions of this Agreement or any Service Order; provided, however, Subscriber shall have thirty (30) days from the date of Big Squid's written notice of any such breach to cure any such breach that is capable of cure. If any such breach has not been cured within such thirty (30) day period, this Agreement shall terminate immediately.

No Assignment. Neither Party may assign its rights, duties, or obligations under this Agreement (including by way of merger, acquisition, sale of assets, change of control or operation of law) without the other Party's prior written consent, which consent will not be unreasonably withheld or delayed, except that a Party may assign this Agreement as a result of merger, acquisition, sale of assets, change of control, or operation of law without the other Party's consent if in the event of actual assignment, the assignee agrees in writing to assume and fulfill all of the assigning Party's obligations under this Agreement.

Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or overnight courier, return receipt requested, with the appropriate postage affixed, to, in the case of Subscriber, the address set forth below, and in the case of Big Squid, to 224 South 200 West, Suite 110, Salt Lake City, Utah 84101. Either party may change its address for receipt of notice by notice to the other Party in accordance with this section. Notices are deemed given two (2) business days following the date of mailing or one business day following delivery to a courier.

Entire Agreement; Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

Force Majeure. Neither Big Squid nor Subscriber shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This Section 8.6 does not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Subscriber's obligation to pay for the Services.

Headings. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.



Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Waiver; Enforcement. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the Party's right to take subsequent action. Exercise or enforcement by either Party of any right or remedy under this Agreement will not preclude the enforcement by the Party of any other right or remedy under this Agreement or that the Party is entitled by law to enforce.

Publicity. Big Squid may use and publish Subscriber's name in its customer lists, lists of referrals for other customers (or potential customers), and in other promotional information, including, but not limited to, press releases, brochures, reports, letters, white papers, and electronic media such as e-mail or Web pages. This Section 8.10 will survive expiration or termination of this Agreement.

Governing Law; Choice of Forum. This Agreement will be interpreted, construed, and governed by the laws of the State of Delaware, regardless of the law that might be applied under principles of conflict of laws. Any action to enforce this Agreement or any action otherwise regarding this Agreement must be brought in a court in the State of Utah, to which jurisdiction Big Squid and Subscriber consent.