

Cloud Software License and Subscription Agreement

This Cloud Software License and Subscription Agreement (the "Agreement") is between ManagerPlus Solutions, LLC ("ManagerPlus") and the Customer identified in the accompanying Order ("Customer"). The person accepting this Agreement on behalf of Customer represents that he or she has the authority to bind such entity to these terms and conditions. If you are a User using the Subscription Service under the Customer's license, the restrictions in this Agreement are also binding upon you individually.

THIS AGREEMENT GOVERNS CUSTOMER'S AND ITS USERS' USE OF THE SUBSCRIPTION SERVICE AND CLOUD SOFTWARE OFFERED BY MANAGERPLUS AND PROVIDED TO CUSTOMER UNDER AN ORDER EXECUTED BY CUSTOMER. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING IT. BY CLICKING "I ACCEPT" BELOW OR BY USING THE MANAGERPLUS CLOUD SOFTWARE ON THE APPLICABLE WEBSITE FOR CUSTOMER'S ACCOUNT (THE "WEBSITE"), CUSTOMER INDICATES ITS ACCEPTANCE OF THE ENTIRE AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, CLICK "I DO NOT ACCEPT" BELOW AND DO NOT USE THE SUBSCRIPTION SERVICE. This Agreement is effective between Customer and ManagerPlus as of the date Customer accepts this Agreement.

TERMS AND CONDITIONS

In consideration of the mutual promises set out in this Agreement, ManagerPlus and Customer agree as follows:

1. Definitions.

- (a) "ManagerPlus" means ManagerPlus Solutions, LLC.
- (b) "Confidential Information" means ManagerPlus's pricing, Customer Data, either party's non-public business and technology information, the Software, trade secrets, any written materials marked as confidential and any other information which reasonably should be understood to be confidential. Confidential Information excludes information that the receiving party can document: (a) is or becomes generally available to the public without fault of the receiving party; (b) was rightfully in the receiving party's possession prior to its disclosure by the other party; (c) is independently developed without the use of any Confidential Information of the disclosing party; or (d) is obtained without obligation of confidentiality from a third party who has the right to disclose it. The receiving party also may disclose Confidential Information to the extent required under a judicial or legislative order or proceeding or as necessary to comply with open records acts or other freedom of information laws or regulations; provided that it gives the disclosing party, if legally permissible, reasonable prior notice and an opportunity to respond or object to the disclosure.
- (c) "Customer Data" means all electronic data or information input by Customer and Users into the Subscription Service, including any personal data of individuals. Customer Data does not include any suggestions, enhancement requests, complaints or other feedback from Customer or its Users relating to the Software ("Feedback").
- (d) "Documentation" means ManagerPlus's online user manual for the Subscription Service, as updated by ManagerPlus from time to time.
- (e) "Effective Date" means the date the initial Order is agreed to by both parties.
- (f) "Malicious Code" means any virus, worm, trap door, back door, snoopware, spyware, malicious logic, Trojan horse, time bomb or other malicious software functionality that would intentionally erase or render the Subscription Service unusable or intentionally interfere with the use of the Subscription Service, any other software, or Customer's computer system.
- (g) "Order(s)" means the electronic or written documents for placing orders hereunder that are submitted by Customer to ManagerPlus and accepted by ManagerPlus from time to time, including any supplements thereto. Orders are incorporated into this Agreement by reference, except as provided in Section 13(a).
- (h) "Services" means technical support, Software maintenance, and other services offered by ManagerPlus to customers as part of or in connection with the Subscription Service, including consulting or other professional services for which ManagerPlus may charge a separate fee.
- (i) "Software" means the ManagerPlus Cloud software, as specified in the applicable Order, that ManagerPlus makes available to Customer as part of the Subscription Service, including updates, upgrades, patches and enhancements thereto ("Updates"). Software does not include Third Party Software.

- (j) "Subscription Service" means the subscription service providing online access to the hosted Software and any related products and Services offered by ManagerPlus that are made available online at the Website, including any associated offline components, as described in the Documentation. The Subscription Service will be hosted either on ManagerPlus servers or the servers of a third party that in the business of hosting web- or cloud-based software applications. "Subscription Service" excludes any third party applications and software products that are owned by entities or individuals other than ManagerPlus and that interoperate with the Software, including but not limited to those listed or provided on the Website or together with the Subscription Service.
 - (k) "Third Party Software" means software owned by third parties and licensed to ManagerPlus for customers to use in connection with the Subscription Service, including open source software.
 - (l) "Users" means individuals who are authorized by Customer to use the Subscription Service, and for whom Customer has obtained licenses under an Order. Users may include but are limited to Customer employees, consultants, contractors, agents, and third parties with whom Customer transacts business, but may not include ManagerPlus's competitors or their personnel.
 - (m) "Website" means the applicable ManagerPlus website for Customer, where the Subscription Service is accessed by Customer and its users via the customer login, and/or other web pages designated by ManagerPlus where resources and Services related to the Subscription Service are provided by ManagerPlus (excluding third party websites).
2. License. ManagerPlus grants to Customer a license to use the Subscription Service designated in the applicable Order submitted by Customer to ManagerPlus. The Subscription Service is subject to the following license terms and limitations:
- (a) ManagerPlus grants Customer a non-exclusive, non-transferable license, during the term of this license, to use the Subscription Service and Software for Customer's internal business purposes. Customer is limited to the number of concurrent Users specified in the applicable Orders. Customer is granted the right to access to the Website, the Software provided as part of the Subscription Service on such Website, and related materials made available as part of the Subscription Service by ManagerPlus. Customer acknowledges and agrees that the Website, Software and other materials that are made available as part of the Subscription Service may be updated and changed from time to time, in ManagerPlus's sole discretion. Customer is licensed to use the Software only as part of the Subscription Service.
 - (b) Except as otherwise indicated on the Website, Customer may view, print, and copy any working files and documents produced by the Software for Customer's business, software help files and similar documents made available by ManagerPlus on the Website, solely for Customer's own informational and internal business purposes. ManagerPlus reserves the right to revoke its consent at any time. The documents and information permitted to be copied as specified above do not include the layout or design of the Website or any ManagerPlus logos or graphics. Except as specifically permitted herein, no portion of the information on the Website may be copied without prior written permission from ManagerPlus. If Customer decides to access or use any third party websites linked to the Website, this is entirely at Customer's own risk.
 - (c) Customer shall not remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded by ManagerPlus or its licensors on or in the Subscription Service, Website, any Software, or related Documentation.
 - (d) Customer will not reverse engineer, disassemble, decompile or otherwise attempt to derive source code, trade secrets, algorithms, programming methods or Confidential Information (as defined in Section 9) from the Software or Website. Customer will not modify or create derivative works of the Subscription Service or Software or use them in order to build a competitive product or service, or copy any features, functions or graphics of the Subscription Service, Software or Website. Customer agrees not to sublicense, lease, rent or engage in any time-sharing of the Subscription Service or any Software, or use or offer the Subscription Service or Software on a "service bureau" basis, to provide the benefits of the Software to third parties.
 - (e) The parties acknowledge that the Software contains open source code and other Third Party Software components. Open source components are subject to the applicable third party license terms, which are available on the Website or upon request. Other Third Party Software that is embedded in the Software, or provided by ManagerPlus as an integrated part of the Subscription Service, is sublicensed by ManagerPlus to Customer pursuant to the applicable terms of this Agreement, unless ManagerPlus provides a separate third party license(s) for such Third Party Software to Customer. Third Party Software is licensed only for use in connection with the Software, unless otherwise permitted under an open source license.

(f) Customer is responsible for ensuring that its Users comply with the terms of this Agreement, and Customer will be liable for any breach of this Agreement by a User. ManagerPlus's representations, warranties and commitments are made only to Customer, not to its Users.

3. Fees.

- (a) The fees to be paid by Customer are set forth in the Order(s). The fees for the Subscription Service include support and maintenance Services as described in Section 4(a). All Orders are final and all payments are non-refundable, other than as expressly set forth in this Agreement. Customer is responsible for any applicable taxes associated with its use of the Subscription Service. If Customer pays fees using a credit card, Customer certifies to ManagerPlus that Customer is the cardholder or that Customer is expressly authorized by the cardholder to incur the applicable charges on its behalf.
- (b) If any amount owing by Customer for the Subscription Service is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer have authorized ManagerPlus to charge to Customer's credit card), ManagerPlus may, without limiting ManagerPlus's other rights and remedies, (i) charge interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less; (ii) terminate this Agreement and accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable, and/or (iii) suspend ManagerPlus's Subscription Service to Customer until such amounts are paid in full. ManagerPlus will give Customer at least 7 days' prior notice that Customer's account is overdue before suspending the Subscription Service to Customer. Customer shall also be liable for all costs of collection, including reasonable attorney's fees, whether or not a suit is instituted.

4. Services.

- (a) Technical Support and Maintenance. ManagerPlus will provide Customer with toll-free telephone-based and Website-based technical support and maintenance Services to assist Customer in utilizing the Subscription Service. Support Services are provided during the business hours specified on ManagerPlus's primary website. ManagerPlus will make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. ManagerPlus will also update the Subscription Service from time to time to provide bug fixes, modifications, enhancements and updates as ManagerPlus deems appropriate in its sole discretion. ManagerPlus may update its support and maintenance policies from time to time, upon notice to Customer.
- (b) Professional Services. Upon Customer's request and subject to a separate written professional services agreement, Order, and/or statement of work between the parties, Customer may purchase training, consulting services, or other professional services from ManagerPlus. All such services are subject to the terms and conditions set forth in such separate document as well as the terms and limitations of this Agreement, to the extent not conflicting with such separate document.
- (c) Copy of Customer Data. From time to time during the term and until thirty (30) days after termination of this Agreement, Customer may request ManagerPlus to provide a copy of its Customer Data in the Subscription Service database, subject to payment of ManagerPlus's then-current fee for such service. After thirty (30) days from the date of termination of this Agreement, ManagerPlus may delete Customer Data from its system.
5. Term and Termination. The initial term of this Agreement begins upon the Effective Date and continues for the period specified in the last-to-expire Order between the parties. If neither party gives notice of non-renewal at least sixty (60) days before the end of the initial term or any succeeding term then, subject to Customer's payment of the applicable subscription fees to ManagerPlus, this Agreement will automatically renew for successive annual terms, subject to termination as set forth below. Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after the receipt of written notice of such breach from the other party. Upon termination of this Agreement for any reason, ManagerPlus will discontinue providing the Subscription Service to Customer, and Customer shall pay to ManagerPlus all outstanding fees and amounts owed within thirty (30) days of the date of termination. Customer is not entitled to cancel its subscription prior to the end of a term, except for cause as set forth above. No refund of fees will be provided in the event of an early termination. In addition to where it is so stated, it is agreed that Sections 1, 2(c), 2(e), 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 shall survive termination of this Agreement.
6. Ownership. ManagerPlus and its licensors own and retain all right, title and interest in and to the Subscription Service, including the Software and Documentation, ManagerPlus's trademarks, the Website and its contents, Third Party Software, and all intellectual property rights in the foregoing. The Subscription Service, including the Software, its accompanying Documentation and materials, and any materials made available on or through the Website, may be used only for the purposes described in this Agreement. ManagerPlus and its licensors retain

all right, title and interest in and to any intellectual property developed or delivered to Customer in the performance of this Agreement, regardless of whether it is based on or incorporates any Feedback, and Customer hereby disclaims any ownership interest in any Update. Any rights not expressly granted herein are reserved by ManagerPlus. Neither this Agreement nor any other agreement between the parties changes ownership of any pre-existing software or other materials.

7. Confidential Information. The receiving party (i) shall not disclose Confidential Information or any information derived therefrom to any person, other than employees and independent contractors with a need to know such information and who are obligated to keep such information confidential; or (ii) use the Confidential Information for any purpose, except as expressly permitted by this Agreement. The receiving party shall give Confidential Information at least the same level of protection as it gives its own information of similar sensitivity, but not less than a reasonable level of protection. All confidentiality obligations shall survive for a period of three (3) years from the date of disclosure of the Confidential Information, regardless of any prior termination of this Agreement.

8. Privacy.

(a) Definitions. The terms “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing” and “Processor” (including any similar, derivative terms) used throughout this Privacy section shall have the same meaning as the EU General Data Protection Regulation (GDPR) (EU) 2016/679 (“GDPR”). The term “you” in this section means Customer, and “you” in regards to the provision of Personal Data refers to Personal Data provided by the representatives and employees of Customer.

(b) Our Privacy Policy. The information that ManagerPlus (or “we”) obtains through your use of the Subscription Service, Software, Services or any portion of the Website, whether through the registration process or otherwise, is governed by the ManagerPlus Privacy Policy posted on the Website (“Privacy Policy”), which is incorporated into the terms and conditions of this Agreement. You may access the Privacy Policy by clicking on this link: https://www.managerplus.com/privacy_policy/. The Privacy Policy describes the data we collect and why we collect it, how we use that data, and the choice we offer to control that data. If you do not agree with the Privacy Policy, you may not use the Subscription Service, Software, Services or Website.

(c) Our Data Processing. We use Personal Data for purposes related to the Subscription Service, including licensing and operation of the Subscription Service and Software, remote management, education and information services, training, webinars, communication, customer service, system monitoring and data security. In addition, we process Personal Data for our business purposes, including processing sales leads, invoicing, payments, tradeshow, quotes, submitted forms, trials, consultations, demonstrations, response to inquiries, seminars, web analytics, other marketing, security monitoring, business operations and administration, tax, and other regulatory requirements. We use Personal Data to enable use of Subscription Service features and related Software and Services, including through use of third-party service providers. We also use Personal Data to communicate with you for marketing purposes. We may use Personal Data to comply with applicable laws and exercise legal rights. We may also use Personal Data for internal purposes, including auditing, data analysis system troubleshooting, and research.

The types of Personal Data we Process includes contact information, employment information, work tasks and scheduling information, Subscription Service use and service information, market and use information, internet use information, payment information, and regulatory information (to satisfy regulatory obligations such as tax). We process the Personal Data of Data Subjects that include: Customers, Customer Representatives, Customer Employees, Customer Administrators, Potential Customers, and Contacts of Third-Party Service Providers to operate our Subscription Service, Software, Services and Website.

(d) Processing per Your Instructions. We Process the Personal Data you provide to us as instructed by you to fulfill your request for our Services. The servers that host ManagerPlus’ Subscription Service, Software, and Website are based in the United States of America and all content, information, and Personal Data you provide through the Website will be received, Processed and stored in the United States of America. When you submit any such content, information, or Personal Data through ManagerPlus’s Subscription Service, Software, or Website or through your interactions with our customer service team, you instruct ManagerPlus to transfer the information to the United States of America.

ManagerPlus does not process Personal Data of minors. For the purposes of Personal Data collected from the European Economic Area, the age of a minor is under age sixteen (16). You agree that you will not submit the Personal Data of minors to the Software.

(e) Confidentiality. ManagerPlus shall require its employees and contractors to be subject to confidentiality undertakings.

- (f) Security. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, ManagerPlus shall, in relation to Personal Data provided by you, implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk. Measures have been implemented to prevent accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed, including:
- (1) Web and database servers are protected using firewalls;
 - (2) Passwords used for account registration require minimum password strength attributes;
 - (3) User access is tracked;
 - (4) Role-based security is applied to system access;
 - (5) Use of data encryption;
 - (6) Use of RC4 256-bit Transport Layer Security (TLS) technology where Customer data traverses public networks;
 - (7) Vendor-supplied patches are reviewed and tested for compatibility before installation;
 - (8) Regular system backups are made;
 - (9) Regular maintenance is performed on systems;
 - (10) Systems are monitored for security;
 - (11) Data requiring a higher level of protection, such as payment card account numbers, are processed via a third-party vendor that specializes in the payment processing;
 - (12) Security assessments are performed on third-party vendors with access to Personal Data;
 - (13) All ManagerPlus employees are contractually obligated to maintain the confidentiality of Personal Data accessible through their employment; and
 - (14) All ManagerPlus employees are required to attend regular security and awareness training.
- (g) Subprocessors. ManagerPlus uses third-party service providers (“Subprocessors”) to Process Personal Data to facilitate our Subscription Service, Software, Services and Website. Examples include payments, security, data analysis, surveys, and so forth. You authorize ManagerPlus to use Subprocessors to facilitate ManagerPlus’s Subscription Service, Software, Services and Website. ManagerPlus carries out due diligence to ensure its Subprocessors are capable of providing the level of protection for you required under this Agreement and applicable law, including appropriate technical and organizational measures for Processing Personal Data. If you would like to know more about our Subprocessors including Personal Data that is shared with specific Subprocessors or would like to object to the use of any Subprocessor, please contact us. We will respond in a timely manner to such inquiry or objection.

Inquiries may be made to:

Organization: ManagerPlus Solutions, LLC.
Contact: Marketing at ManagerPlus
Address: 9350 South 150 East, Suite 650
Sandy, UT, 84070
E-mail: marketing@managerplus.com
Phone: 801-730-9965

Under certain data protection laws, including the GDPR, ManagerPlus is liable if a Subprocessor that we have engaged to Process Personal Data fails to fulfill its data protection obligations.

- (h) Rights of Data Subjects. We rely upon our Customers and their representatives, employees and administrators to maintain the accuracy of the Personal Data they provide through our Subscription Service, including the ability to administer user accounts and the ability to add, edit and delete contact information. ManagerPlus agrees to assist in meeting obligations under the GDPR or applicable law for responding to a Data Subject’s exercise of rights. Such rights include the right of access, right to rectification, right to be forgotten, right to restriction of processing, and right of data portability. In accordance with applicable law, ManagerPlus shall promptly notify you if it receives a request from a Data Subject for whom you submitted Personal Data in respect of the exercise of the rights of the Data Subject and shall ensure that it does not respond to that request except on your documented instructions provided to us within a reasonable timeframe, or as required by law, in which case ManagerPlus shall to the extent permitted by law inform you of that legal requirement before responding to the request. You agree that a reasonable timeframe to provide us with documented instructions is 2 weeks. When we do receive your timely instructions we will make reasonable efforts to comply with your instructions, consistent with applicable law. Where we do not receive your documented instructions within a 2 week timeframe from the time that we notify you of the Data Subject’s request, we will comply with the request made by the Data Subject in exercise of their rights.

- (i) Data Breach and Other Obligations. In the event of any breach or compromise of the security, confidentiality or integrity of Personal Data, ManagerPlus will inform you of the breach as required under applicable law, typically through contacting you via email and posting a notice on the Website. In addition, we will make available to you all information necessary for you to demonstrate or maintain your compliance with data protection, as required under applicable law.
- (j) Retention of Data. Personal Data shall be retained in accordance with your use of ManagerPlus Subscription Service, Software, Services and Website. ManagerPlus shall add, update or delete personal information as instructed by you through use of Subscription Service features that perform these functions. We shall delete Personal Data in response to your request to delete data, which is indicated by you deactivating or deleting a User's account. We shall remove deactivated data from our central database within a reasonable time, usually after 30 days, and permanently delete the data within a reasonable time, usually after 1 year. In addition, after termination of this Agreement ManagerPlus shall delete Personal Data provided by Customer. You authorize ManagerPlus to delete your data from our systems after 30 days from the date of termination of this Agreement. On your request, we shall return Personal Data to you if such request is made prior to performing our standard delete function. Personal Data will only be further retained as allowed under applicable law or required under regulatory provisions mandating record retention.

9. Customer's Representations and Warranties. Customer represents and warrants to ManagerPlus that:

- (a) Customer has full power and authority to enter into this Agreement and make the agreements specified herein.
- (b) Customer Data will not contain any libelous or unlawful material or any Malicious Code or other materials or instructions that may cause harm or injury, and will not violate any person's right of privacy or copyright, trademark, or other intellectual property rights, and Customer will not post any such materials on the Website or transmit it to ManagerPlus.

Customer agrees to indemnify ManagerPlus against any actions, proceedings, liabilities, damages, costs, and expenses (including attorneys' fees) that ManagerPlus may incur or suffer by reason of the breach of any of Customer's obligations, warranties or representations under this Agreement.

10. ManagerPlus Warranties and Disclaimers; Limitations of Liability.

(a) ManagerPlus warrants to Customer as follows:

- (1) ManagerPlus warrants, for a period of 60 days from the Effective Date, that the Subscription Service, when used properly and in accordance with its Documentation and this Agreement, will be free from a reproducible defect that materially adversely affects the operation of the Subscription Service, as described in the Documentation. This warranty is non-transferable. In order to obtain warranty service, Customer must call the ManagerPlus Warranty Department at 1-800-730-9965 within the above warranty period. In such event, the Subscription Service will, at ManagerPlus's option, be repaired or replaced by ManagerPlus. ManagerPlus's sole obligation and liability for breach of the foregoing warranty shall be to replace or correct the Subscription Service so that it conforms in all material respects to the Documentation.

(2) ManagerPlus will use commercially reasonable efforts to keep Malicious Code out of the Software.

- (3) ManagerPlus will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of such Customer Data. ManagerPlus will not disclose or use Customer Data except as set forth in the Privacy Policy, as compelled by law, or as expressly permitted or instructed by Customer, in order to provide the Subscription Service and support Services, or at Customer's request for any other reason.

- (b) ManagerPlus's warranties exclude non-performance issues that result from (i) Third Party Software (except that Section 10(a)(1) applies to Third Party Software embedded by ManagerPlus in the Subscription Service) or hardware malfunctions or defects; (ii) modification of the Subscription Service by any person other than ManagerPlus; (iii) defects or problems that are outside the reasonable control of ManagerPlus, including defects or damage resulting from use of the Subscription Service in other than its normal and authorized manner; or (iv) Customer's failure to comply with due standards of care. Customer will reimburse ManagerPlus for its reasonable time and expenses for any services provided at Customer's request to remedy excluded non-performance issues.

- (c) Except as expressly set forth herein or agreed in writing by an authorized official of ManagerPlus, the Subscription Service (including the Software, Documentation and Website) and all ManagerPlus services are provided "AS IS". Open source copyright holders have no liability to Customer for any reason. ManagerPlus's licensors make no warranties of any kind to Customer in connection with the Software or Documentation. **MANAGERPLUS AND ITS LICENSORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, whether arising by law, by reason of custom or usage of trade, or by course of dealing. ManagerPlus does not warrant that the Subscription Service, Software, Documentation, Website or its services are error-free. Except as set forth in Section 10(b), ManagerPlus is not liable for any damages or claims arising out of or related to Third Party Software.**
- (d) **IN NO EVENT SHALL MANAGERPLUS OR ITS LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA, INTERRUPTIONS OF BUSINESS, OR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SUBSCRIPTION SERVICE OR SOFTWARE, INCLUDING FOR DAMAGES ARISING OUT OF ACCIDENTAL OR UNLAWFUL DESTRUCTION, LOSS, ALTERATION, UNAUTHORIZED DISCLOSURE OF, OR ACCESS TO PERSONAL DATA TRANSMITTED, STORED OR OTHERWISE PROCESSED, REGARDLESS OF WHETHER MANAGERPLUS OR ITS LICENSOR HAS NOTICE OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE, AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE AND STRICT LIABILITY). MANAGERPLUS'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED (i) IN THE CASE OF CLAIMS ARISING OUT OF OR RELATED TO PROFESSIONAL SERVICES PERFORMED UNDER THIS AGREEMENT, THE TOTAL AMOUNTS PAID FOR THE SERVICES IN QUESTION; AND (ii) FOR ALL OTHER CLAIMS OR DAMAGES, THE SUBSCRIPTION FEES CUSTOMER HAS PAID DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy. The above limitations may be superseded by law in some jurisdictions.**
11. Feedback and User Information. Except as otherwise stated in Section 8 or the Privacy Policy or as required by law, any Feedback, information or other communications Customer transmits to ManagerPlus or posts to the Website or Subscription Service will be considered non-confidential and non-proprietary communications, other than Customer Data and credit card numbers. ManagerPlus shall have a royalty-free, worldwide, irrevocable, perpetual license to use Feedback and incorporate it into ManagerPlus's software, products and services. Any press releases or other public statement regarding this Agreement may be made only with the other party's consent, which shall not be unreasonably withheld. However, ManagerPlus is permitted to include Customer's name on customer lists that may be posted on ManagerPlus's website or provided to potential customers and other third parties.
12. General.
- (a) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or oral agreements or understandings with respect thereto. Any preprinted terms in a purchase order submitted by Customer are expressly agreed to be of no force or effect. This Agreement may not be amended except by a writing signed by authorized representatives of both parties.
- (b) Any waiver by either party of a default or obligation under this Agreement will be effective only if in writing. Such a waiver does not constitute a waiver of any subsequent breach or default. No failure to exercise any right or power under this Agreement or to insist on strict compliance by the other party will constitute a waiver of the right in the future to exercise such right or power or to insist on strict compliance.
- (c) This Agreement shall be construed in accordance with the laws of the State of Utah. Should any dispute arise concerning this Agreement and/or ManagerPlus's products or services, venue shall be laid in Salt Lake County, Utah. Utah state and federal courts shall have exclusive jurisdiction over any such dispute, and the parties hereby consent to the jurisdiction and venue of such courts.
- (d) If any provision of this Agreement is deemed invalid or unenforceable, that provision shall be severed and the remainder of this Agreement shall remain in full force and effect.
- (e) ManagerPlus makes no representation that Subscription Service, Software, documents, graphics and other materials and information in the Software or on the Website (collectively, "Materials") are appropriate or available for use outside of the U.S.A., and access to or use of them from countries or territories where their content is illegal is prohibited. Those who choose to access the Website from other locations are responsible

for compliance with local laws. Customer acknowledges that the laws and regulations of the United States restrict the export of the Materials. Customer may not use, export or re-export the Materials in any form in violation of U.S. export laws and regulations, or without first obtaining the appropriate United States and foreign government approvals.

- (f) All notices or other communications required under to this Agreement will be in writing and will be delivered personally, or mailed by registered or certified mail, return receipt requested, or sent by commercial overnight delivery service with provisions for a receipt, or sent by confirmed facsimile or e-mail, to the address of the receiving party set forth in the applicable Order or such other address a party may specify by written notice.
- (g) Customer may assign this Agreement and Customer's license to the Subscription Service only with ManagerPlus's prior written consent, which will not be unreasonably withheld.
- (h) During the term of this Agreement and for a period of two years after Customer ceases using the Subscription Service, Customer will not solicit or hire any ManagerPlus personnel, either as employees or independent contractors, except as ManagerPlus may consent in writing.
- (i) Each party acknowledges that the other party's intellectual property and Confidential Information is highly valuable to the other party, that any breach of such party's obligations with respect to confidentiality and/or use of the other party's intellectual property, including any breach by Customer of any restrictions on use of the Subscription Service or the scope of the licenses granted by ManagerPlus herein, may severely damage the other party, the extent of which damage would be difficult to ascertain and, therefore, that the other party is entitled to seek, among other remedies, temporary and permanent injunctive relief and other equitable relief for any such breach, without the necessity of posting bond or other security, to the extent permitted by law.
- (j) A party shall be excused from delays or failure to perform its duties (other than payment obligations) to the extent such delays or failures result from acts of nature, riots, war, acts of public enemies, fires, epidemics, labor disputes, or any other causes beyond its reasonable control. The parties will promptly inform and consult with each other as to any of the above causes that in their judgment may or could be the cause of a substantial delay in the performance of this Agreement.
- (k) U.S. GOVERNMENT RESTRICTED RIGHTS - This Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in sub-paragraph (c) (1) (ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or in the Commercial Computer-Restricted Rights clause at FAR 52.225-19, if applicable. Contractor/Manufacturer is ManagerPlus Solutions, LLC, 9350 S. 150 E. #650, Sandy, UT 84070.