# ADOPT TECHNOLOGIES CLOUD PLATFORM

# TERMS OF SERVICE

## ADOPT TECHNOLOGIES CLOUD PLATFORM SERVICE AGREEMENT

This Adopt Technologies Cloud Platform Service Agreement (the "Agreement") is made and entered into by Adopt Technologies, LLC, an Arizona limited liability company ("AT"), and the entity agreeing to these terms ("Customer"). From time to time herein, AT and Customer shall collectively be referred to as "parties," and individually, each as a "party."

This Agreement is effective on the earlier of (i) the date Customer clicks to accept the Agreement, or (ii) the date the two parties execute a written agreement (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement. If you do not have the legal authority to bind Customer, please do not click to accept. This Agreement governs Customer's access to and use of the Services.

In addition to the following terms of service, this Agreement consists of the following, each of which is incorporated into this Agreement by reference: AT's Service level Agreement, posted at www.adopttechnologies.com/legal/sla.pdf (the "SLA"); AT's Acceptable Use Policy, posted at www.adopttechnologies.com/legal/aup.pdf (the "AUP"); AT's Privacy Policy, posted at www.adopttechnologies.com/legal/privacy.pdf (the "Privacy Policy"); and if applicable the Customer Signup that Customer enters into with AT for provision of Services.

1.  Definitions.

"Account" means Customer's AT Cloud Platform account.

"Additional Products" means products, services and applications (whether made available by AT or a third party) that are not part of the Services, but that may be accessible via the Admin Console or otherwise, for use with the Services.

"Admin Console" means the online console(s) and/or tool(s) provided by AT to Customer for administering the Services.

"Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

"Allegation" means an unaffiliated third party's allegation.

"Application(s)" means any web or other application Customer creates using the Services, including any source code written by Customer to be used with the Services, or hosted in an Instance.

"AT Group" means those AT Affiliates involved in provision of the Services to Customer.

"AUP" means the acceptable use policy set forth here for the Services: http://adopttechnologies.com/legal/aup.pdf.

"Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

"Confidential Information" means information that one party or its Affiliate (the "Discloser") discloses to the other party (the "Recipient") under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that: (i) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of any of Discloser's Confidential Information; (ii) was already known by or in the possession of the Recipient without restriction on use or disclosure before the receipt of such information directly or indirectly from or on behalf of the Discloser; (iii) is rightfully given to the recipient by a third party without confidentiality obligations; or (iv) becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer's Confidential Information.

"Control" means control of greater than fifty percent of the voting rights or equity interests of a party.

"Customer Data" means content provided to AT by Customer (or at its direction) via the Services under the Account.

"Customer Personal Data" means the personal data that is contained within the Customer Data.

"Customer End Users" means the individuals Customer permits to use the Application.

"Customer Signup" means the Services and Optional Features that are agreed to by Customer as reflected by an AT Proposal accepted by AT and Customer and any other ordering records maintained by AT.

"Data Incident" means (a) any unlawful access to Customer Data stored in the Services or systems, equipment, or facilities of AT or its Subprocessors, or (b) unauthorized access to such Services, systems, equipment, or facilities that results in loss, disclosure, or alteration of Customer Data.

"Data Protection Legislation" means: any laws or regulations that are applicable to Customer and/or any Customer Affiliates as the controller(s) of the Customer Personal Data.

"Documentation" means the AT documentation (as may be updated from time to time) in the form generally made available by AT to its customers for use with the Services.

"Emergency Security Issue" means either: (a) Customer's or Customer End Users' use of the Services in violation of the AUP, which could disrupt: (i) the Services; (ii) other customers' or their customer end users' use of the Services; or (iii) the AT network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

"Fee Accrual Period" means a calendar month or another period specified by AT in the Admin Console.

"Feedback" means feedback or suggestions about the Services provided to AT by Customer.

"Fees" means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are set forth in the Customer's Signup.

"High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.

"Hosted Data" has the meaning set forth in Section 2.8 of this Agreement.

"Indemnified Liabilities" means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

"Instance" means a virtual machine instance, configured and managed by Customer, which runs on the Services. Instances are more fully described in the Documentation.

"Instructions" means Customer's written instructions to AT consisting of the Agreement, including instructions to AT to provide the Services as set out in the Agreement; instructions given by Customer via the Admin Console and otherwise in its use of the Services; and any subsequent written instructions given by Customer to AT and acknowledged by AT.

"Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

"Legal Process" means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

"Optional Features" means the additional optional Services that are added to the Services provided to Customer as reflected in any AT quote accepted by Customer and any other ordering records maintained by AT. Optional Features may include: (1) consulting or other professional services provided by AT's employees or independent contractors, and (2) software and other services Customer requires through AT's Services.

"Project" means a grouping of computing, storage, and API resources for Customer, and via which Customer may use the Services. Projects are more fully described in the Documentation.

"Proposal" means the AT Proposal for Hosted and Managed Cloud Computing which contains a quote for potential Services for Customer to accept in the Customer Signup.

"Security Measures" has the meaning given in Section 2.8 of this Agreement.

"Services" means the services as indicated and accepted in the Customer Signup and further defined here: https://adopttechnologies.com/services/ (including any associated APIs); and TSS.

"Services Page" means the URL: https://adopttechnologies.com/services/

"SLA" means each of the then-current service level agreements at: https://adopttechnologies.com/legal/sla.pdf.

"Software" means any downloadable tools, software development kits or other such proprietary computer software provided by AT in connection with the Services, which may be downloaded by Customer, and any updates AT may make to such Software from time to time.

"Subprocessors" means (a) all AT Group entities that have logical access to, and process, Customer Personal Data (each, a "AT Group Subprocessor"), and (b) all third parties (other than AT Group entities) that are engaged to provide services to Customer and that have logical access to, and process, Customer Personal Data (each, a "Third Party Subprocessor").

"Taxes" means any duties, customs fees, or taxes (other than AT's income tax) associated with the purchase of the Services, including any related penalties or interest.

"Term" has the meaning set forth in Section 10 of this Agreement.

"Terms URL" means the following URL set forth here: https://adopttechnologies.com/legal/terms/pdf

"Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

"TSS" means the technical support service provided by AT to the administrators pursuant to the Customer's Signup

2. Provision of the Services.

2.1. Services Use. Subject to this Agreement, during the Term, Customer may: (a) use the Services, (b) integrate the Services into any Application that has material value independent of the Services, (c) use any Software provided by AT as part of the Services, and (d) use any Optional Features that may be included in the Services. Customer may not sublicense or transfer these rights except as permitted under the Section 16.2 of the Agreement.

2.2. <u>Administration Console</u>. AT will provide the Services to Customer. As part of receiving the Services, Customer will have access to the Admin Console, through which Customer may administer the Services.

2.3. <u>Facilities</u>. All AT facilities used to store and process an Application and Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where AT processes and stores its own information of a similar type. AT has implemented at least industry standard systems and procedures to (i) ensure the security and confidentiality of an Application and Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of an Application and Customer Data, and (iii) protect against unauthorized access to or use of an Application and Customer Data.

2.4. <u>Data Location</u>. Customer may select where certain Customer Data will be stored ("<u>Data Location Selection</u>"), and AT will store the Customer Data at the Data Location Selection in accordance with the Customer Signup. If a Data Location Selection is not made by Customer with respect to any Customer Data, AT may process and store the Customer Data anywhere AT or its agents maintain facilities. By using the Services, Customer consents to this processing and storage of Customer Data. Under this Agreement, AT is merely a data processor.

2.5. <u>Accounts</u>. Customer must have an Account to use the Services, and is solely responsible for the information it provides to create the Account, the security of its passwords for the Account, and for any use of its Account. If Customer becomes aware of any unauthorized use of its password or its Account, Customer will notify AT as promptly as possible. AT has no obligation to provide Customer multiple Accounts.

2.6. <u>New Applications and Services</u>. AT may: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the Services definition from time to time (by adding them at the URL set forth under that definition), the use of which may be contingent upon Customer's agreement to additional terms.

2.7. <u>Modifications</u>.

(a) <u>To the Services</u>. AT may, but is not obligated, make commercially reasonable updates to the Services from time to time. If AT makes a material change to the Services, AT will inform Customer, provided that Customer has subscribed with AT to be informed about such change.

(b)     To the Agreement. At AT's sole discretion, AT may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by AT, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. AT will provide at least 90 days' advance notice for materially adverse changes to any SLAs by either: (i) sending an email to Customer's primary point of contact; (ii) posting a notice in the Admin Console; or (iii) posting a notice to the applicable SLA webpage. If Customer does not agree to the revised Agreement, please stop using the Services. AT will post any modification to this Agreement to the Terms URL.

2.8.     Data Processing and Security.  Our Services infrastructure stores and transmits information about customers' businesses, as well as information collected by those businesses. We refer to all such information that we do not actively collect as "Hosted Data." Hosted Data may include personally identifiable information and other information that belongs to our customers' own customers, website visitors, or other users. Company is a passive recipient of Hosted Data: we take no active part in collecting it, and generally we do not access its content. However, Company staff may occasionally access Hosted Data through delivery of services and support to customers. For instance, staff may come into contact with Hosted Data by verifying back-up and restore processes, by verifying that applications are running properly, or through debugging efforts.

(a)     Data Protection Legislation. The parties agree and acknowledge that the Data Protection Legislation will apply to the processing of Customer Personal Data.

(b)     Processing of Customer Personal Data.

(i)     Controller and Processor. If the Data Protection Legislation applies to the processing of Customer Personal Data, then as between the parties, the parties acknowledge and agree that: (a) Customer is the controller of Customer Personal Data under the Agreement; (b) AT is a processor of such data; (c) Customer will comply with its obligations as a controller under the Data Protection Legislation; and (d) AT will comply with its obligations as a processor under the Agreement. If under the Data Protection Legislation a Customer Affiliate is considered the controller (either alone or jointly with the Customer) with respect to certain Customer Personal Data, Customer represents and warrants to AT that Customer is authorized: (i) to give the Instructions to AT and otherwise act on behalf of such Customer Affiliate in relation to such Customer

Personal Data as described in these Terms, and (ii) to bind the Customer Affiliate to these Terms.

(ii)     Scope of Processing.    AT will only process Customer Personal Data in accordance with the Instructions, and will not process Customer Personal Data for any other purpose.

(iii)     Additional Products. Customer acknowledges that if it installs, uses, or enables Additional Products, then the Services may allow such Additional Products to access Customer Data as required for the interoperation of those Additional Products with the Services. The Agreement does not apply to the processing of data transmitted to or from such Additional Products. Such Additional Products are not required to use the Services.

(c)     Data Security; Security Compliance.

(i)     Security Measures. AT will take and implement appropriate technical and organizational measures to protect Customer Data against accidental or unlawful destruction or accidental loss or alteration, or unauthorized disclosure or access, or other unauthorized processing (the "Security Measures"). AT may interrupt service to update or modify the Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services. Customer agrees that it is solely responsible for its use of the Services, including securing its account authentication credentials, and that AT has no obligation to protect Customer Data that Customer elects to store or transfer outside of AT's and its Subprocessors' systems (e.g., offline or on-premise storage).

(ii)     Security Compliance by AT Staff. AT will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors and Subprocessors to the extent applicable to their scope of performance.

(iii)     Data Incidents. If AT becomes aware of a Data Incident, AT will promptly notify Customer of the Data Incident, and take reasonable steps to minimize harm and secure Customer Data. Notification(s) of any Data Incident(s) will be delivered to the email address provided by Customer in the Agreement (or in the Admin Console) or, at AT's discretion, by direct Customer communication (e.g., by phone call or an in-person meeting). Customer acknowledges that it is solely responsible for ensuring that the contact information set forth above is current and valid, and for fulfilling any third party notification obligations. Customer agrees that "Data Incidents" do not include:

(i) unsuccessful access attempts or similar events that do not compromise the security or privacy of Customer Data, including pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems; or (ii) accidental loss or disclosure of Customer Data caused by Customer's use of the Services or Customer's loss of account authentication credentials. AT's obligation to report or respond to a Data Incident under this Section will not be construed as an acknowledgement by AT of any fault or liability with respect to the Data Incident.

(d)     <u>Data Location and Transfers</u>. Customer may select where certain Customer Data will be stored (the "<u>Data Location Selection</u>"), and AT will store it there in accordance with the Service Specific Terms. If a Data Location Selection is not covered by the Service Specific Terms (or a Data Location Selection is not made by Customer in respect of any Customer Data), AT may store and process the relevant Customer Data anywhere AT or its Subprocessors maintain facilities.

(e)     <u>Subprocessors</u>.

(i)     <u>Subprocessors</u>. AT may engage Subprocessors to provide limited parts of the Services, subject to the restrictions in these Terms.

(ii)     <u>Subprocessing Restrictions</u>. AT will ensure that Subprocessors only access and use Customer Data in accordance with this <u>Section 2.8(e)</u> (Data Location and Transfers) and terms of the Agreement and that they are bound by written agreements that require them to provide at least the level of data protection required by the Data Processing Legislation.

(iii)     <u>Consent to Subprocessing</u>. Customer consents to AT subcontracting the processing of Customer Data to Subprocessors in accordance with the Agreement.

3.    Payment Terms.

3.1.    Standard Fees. In consideration of the provision of the Services by AT and the rights granted to Customer under this Agreement, Customer shall pay the Fees set out in a prepaid plan pursuant to the Customer Signup ("Prepaid Plan"). Payment to AT of such Fees and the reimbursement of expenses pursuant to this Section 3 shall constitute payment in full for the performance of the Services. Such fees may be revised from time to time. Payment is due before the start of each prepayment period (as defined in the Customer Signup), including renewed prepayment periods. Each Prepaid Plan will renew automatically at the end of its prepayment period.

3.2.    Cancellation Terms. Customer will provide notice of cancellation by email to: contract@adopttechnologies.com pursuant to the terms of this Section 3.2:

(a)    If the prepayment period is one month or less, Customer must cancel the Prepaid Plan before the beginning of each month with written notice.

(b)    If the prepayment period exceeds one month, Customer may cancel the Prepaid Plan at any time during the first 30 days of a renewed prepayment period, and if AT has already charged Customer for such period, it will refund the fees, prorated to deduct for the time between start of the prepayment period and cancellation.

3.3.    Fees for Optional Features. Fees for Optional Features are in addition to the Fees for the standard Prepaid Plan. Pursuant to AT's standard policies, AT may bill Customer separately for Optional Features on a monthly or other periodic basis.

3.4.    Alternative Fees. If Customer and AT agree to alternative fees in the Customer Signup or in a supplementary statement of work for Optional Features (a "Statement of Work"), such alternative fees will apply until the end-date specifically listed in the Customer's Signup or Statement of Work. If no end date is listed, the alternative fees will apply for 1 year. Thereafter, alternative fees will revert to AT's standard fees.

3.5.    Fees for Statement of Work Expenses. Customer shall reimburse AT for all reasonable expenses incurred in accordance with the Statement of Work, within thirty (30) days of receipt by the Customer of an invoice from AT accompanied by receipts and reasonable supporting documentation.

3.6.    Other Fee Terms. Pursuant to AT's standard policies, Customer will pay any administration or other fees required by the Services and Optional Features listed in

Customer Signup. Promotional credits and SLA credits issued by AT may not be used to pay for Optional Features, and no credit issued by AT may be used for Third Party Products and Services.  In the event that Customer under-utilizes its memory or data related Services and Optional Features as listed in its Customer's Signup, AT shall not provide any kind of memory or data roll-over to a future month, a credit, or any other refund related to the underutilization.

3.7.    <u>Invoice Disputes & Refunds</u>.  Any invoice disputes must be submitted at least fifteen (15) days prior to the payment due date. If the parties determine that certain billing inaccuracies are attributable to AT, AT will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, AT will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within sixty days after charged (this does not affect any Customer rights with its credit card issuer). Refunds (if any) are at the sole discretion of AT and will only be in the form of credit for the Services. Nothing in this Agreement obligates AT to extend credit to any party.

3.8.    <u>Delinquent Payments; Suspension</u>.  Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.  AT may charge a late fee of $3 per day for administrative expenses, starting on the first day after any payment is due.  Customer shall further reimburse AT for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.  In addition to all other remedies available under this Agreement or at law (which AT does not waive by the exercise of any rights hereunder), AT shall be entitled to suspend the provision of any Services and access to Customer's Account if the Customer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

3.9.    <u>Mandatory Credit Card on File</u>. Customer shall maintain a valid credit card on file at all times. AT may charge such card fees listed on Customer's Signup on the first business day of each month. Customer will update credit card information as necessary by contacting AT's support team by telephone at 480-422-6400. If a charge attempt is denied, AT shall first make reasonable efforts to provide advanced notice of discontinuation of Services.  If such denied charge attempt is not thereafter resolved, AT may discontinue Customer's Service.

3.10. <u>Taxes</u>. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, AT's income, revenues, gross receipts, personnel or real or personal property or other assets.

4. <u>Customer Obligations</u>.

4.1. <u>Compliance</u>. Customer is solely responsible for its Applications, Projects, and Customer Data and for making sure its Applications, Projects, and Customer Data comply with the AUP. AT reserves the right to review the Application, Project, and Customer Data for compliance with the AUP. Customer is responsible for ensuring all Customer End Users comply with Customer's obligations under the AUP and the restrictions in <u>Sections 4.3</u> and <u>4.5</u> below.

4.2. <u>Privacy</u>. Customer will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.

4.3. <u>Restrictions</u>. Customer will not, and will not allow third parties under its control to: (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (subject to <u>Section 4.4</u> below and except to the extent such restriction is expressly prohibited by applicable law); (b) use the Services for High Risk Activities; (c) sublicense, resell, or distribute any or all of the Services separate from any integrated Application; (d) create multiple Applications, Accounts, or Projects to simulate or act as a single Application, Account, or Project (respectively) or otherwise access the Services in a manner intended to avoid incurring Fees; (e) unless otherwise set forth in the Customer Signup, use the Services to operate or enable any telecommunications service or in connection with any Application that allows Customer End Users to place calls or to receive calls from any public switched telephone network; or (f) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State. Unless otherwise specified in writing by AT, AT does not intend uses of the Services to create obligations under HIPAA, and makes no representations that the Services satisfy HIPAA requirements. If Customer is (or becomes) a Covered Entity or Business Associate, as defined in HIPAA, Customer will not use the Services for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) unless Customer has received prior written consent to such use from AT.

4.4.    Personal Data. Without limiting the foregoing, if Customer Data includes personal information, personally identifiable information, personal data, any information about a person or individual, or any other data covered by applicable law or regulation, Customer represents that Customer has obtained all necessary rights to transfer such Customer Data to or from the AT region you select, and you will comply with all of your obligations with respect of such Customer Data as required by applicable law or regulation, which may include obtaining consent of the subjects of such Customer Data. We may reproduce Customer Data as necessary in providing our Services.

4.5.    The Service does not include any software, consulting service, or other product or service not provided by AT.   Third party products and services include, without limitation: (A) any third party consulting services that assist Customer in utilizing the Service or otherwise relate to the Service, including such services provided by third parties AT referred to Customer; and (B) any and all software and other products and services Customer acquires through AT online services, unless such product or service is specifically identified on Customer Signup as provided by AT.

4.6.    THIRD PARTY PRODUCTS AND SERVICES ARE NOT PART OF THE SERVICE, AND CUSTOMER ACQUIRES THEM DIRECTLY FROM THE THIRD PARTY PROVIDER PURSUANT TO SUCH CONTRACT AS CUSTOMER AND THE THIRD PARTY PROVIDER MAY EXECUTE.   AT IS NOT RESPONSIBLE OR LIABLE FOR THIRD PARTY PRODUCTS AND SERVICES, EVEN IF AT RECOMMENDS THE THIRD PARTY PROVIDER, EVEN IF THE THIRD PARTY PRODUCTS AND SERVICES ARE RLEATED TO THE SERVICE OR TO CUSTOMER'S ABILITY TO RECEIVE OR EXPLOIT THE SERVICE, AND EVEN IF AT ACTS AS THE THIRD PARTY PROVIDER'S AGENT IN DELIVERING THE THIRD PARTY PRODUCT OR SERVICE, IN COLLECTING PAYMENT, OR IN OTHER WAYS.  WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AT WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR MAINTENANCE, UPDATES, OR UPGRADES OF THIRD PARTY PRODUCTS AND SERVICES OR FOR INTELLECTUAL PROPERTY INFRINGEMENT BY THIRD PARTY PRODUCTS AND SERVICES.   In the event that AT is held liable for third party products or services, such liability will be subject to the disclaimers and limitations of liability in Sections 13 and 14 of this Agreement.

4.7.    Third Party Components.   Third party components (which may include open source software) of the Services may be subject to separate license agreements. To

the limited extent a third party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component.

4.8.    Documentation.    AT may provide Documentation for Customer's use of the Services. The Documentation may specify restrictions (e.g. attribution or HTML restrictions) on how the Applications may be built or the Services may be used and Customer will comply with any such restrictions specified.

5.    Suspension and Removals.

5.1.    Suspension/Removals.    If Customer becomes aware that any Application, Project, or Customer Data violates the AUP, Customer will immediately suspend the Application or Project and/or remove the relevant Customer Data (as applicable). If Customer fails to suspend or remove as noted in the prior sentence, AT may specifically request that Customer do so. If Customer fails to comply with AT's request to do so within twenty-four hours, then AT may disable the Project or Application, and/or disable the Account (as may be applicable) until such violation is corrected.

5.2.    Emergency Security Issues.    Despite the foregoing, if there is an Emergency Security Issue, then AT may automatically suspend the offending Application, Project, and/or Account. Suspension will be to the minimum extent required, and of the minimum duration, to prevent or resolve the Emergency Security Issue. If AT suspends an Application, Project, or the Account, for any reason, without prior notice to Customer, at Customer's request, AT will provide Customer the reason for the suspension as soon as is reasonably possible.

6.    Intellectual Property Rights; Use of Customer Data; Feedback.

6.1.    Intellectual Property Rights.    Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data and the Application or Project (if applicable), and AT owns all Intellectual Property Rights in the Services and Software.

6.2.    Use of Customer Data. AT will not access or use Customer Data, except as necessary to provide the Services to Customer.

6.3.    Customer Feedback. If Customer provides AT Feedback about the Services, then AT may use that information without obligation to Customer, and

Customer hereby irrevocably assigns to AT all right, title, and interest in, to, and under that Feedback.

7.    Technical Support Services.

7.1.    By Customer. Customer is responsible for technical support of its Applications and Projects.

7.2.    By AT. Subject to payment of applicable Fees as listed in the Customer Signup, AT will provide TSS to Customer during the Term in accordance with the Customer Signup.  If Customer downgrades its TSS level during any calendar month, AT may continue to provide TSS at the same level and TSS Fees before the downgrade for the remainder of that month.

8.    Deprecation of Services.

8.1.    Discontinuance of Services.  Subject to Section 8.2, AT may discontinue any Services or any portion or feature for any reason at any time without liability to Customer.

8.2.    Deprecation Policy.  AT will announce if it intends to discontinue or make backwards incompatible changes to the Services specified at Services Page. AT will use commercially reasonable efforts to continue to operate those Services versions and features identified at the Services Page without such changes for at least one year after that announcement, unless (as AT determines in its reasonable good faith judgment):

(i)    required by law or third party relationship (including if there is a change in applicable law or relationship), or

(ii)    doing so could create a security risk or substantial economic or material technical burden.

The above policy is the "Deprecation Policy."

9.    Confidential Information.

9.1.    Obligations. The recipient agrees to hold Confidential Information of the Discloser in strictest confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever, except as authorized by this Agreement or in connection with Recipients obligations under this Agreement.  The Recipient shall take reasonable precautions to protect the confidentiality of Discloser's Confidential

Information, at least as stringent as the Recipient takes to protect its own Confidential Information, but with no less than reasonable care and reasonable restrictions. The Recipient will not disclose the Confidential Information, except to Affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The Recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.

9.2.    Required Disclosure.    Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines that complying with (i) and (ii) could: (a) result in a violation of Legal Process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third party requests concerning its use and Customer End Users' use of the Services.

10.    Term and Termination.

10.1.    Agreement Term. The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in Section 10 of this Agreement.

10.2.    Termination for Breach. Either party may terminate this Agreement for breach if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches. In addition, AT may terminate any, all, or any portion of the Services or Projects, if Customer meets any of the conditions in Section 10.2(i), (ii), and/or (iii).

10.3.    Termination for Inactivity. AT reserves the right to terminate the Services for inactivity, if, for a period exceeding 180 days, Customer: (a) has failed to access the Admin Console; (b) a Project has no active virtual machine or storage resources or an

Application has not served any requests; and (c) no electronic bills are being generated. AT reserves the right to terminate the provision of the Service(s) to a Project upon 30 days advance notice if, for a period of 60 days (i) Customer has not accessed the Admin Console or the Project has had no network activity; and (ii) such Project has not incurred any Fees for such Service(s).

10.4. <u>Termination for Convenience</u>. Customer may stop using the Services at any time. Customer may terminate this Agreement for its convenience at any time on prior written notice and upon termination, must cease use of the applicable Services. AT may terminate this Agreement for its convenience at any time without liability to Customer.

10.5. <u>Effect of Termination</u>. If the Agreement is terminated, then: (i) the rights granted by one party to the other will immediately cease; (ii) all Fees owed by Customer to AT are immediately due upon receipt of the final electronic bill; (iii) Customer will delete the Software, any Application, Instance, Project, and any Customer Data; and (iv) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party. Limited Warranty and Limitation of Liability.

11. <u>Publicity</u>. Customer is permitted to state publicly that it is a customer of the Services. If Customer wants to display AT Brand Features in connection with its use of the Services, Customer must obtain written permission from AT. AT may include Customer's name or Brand Features in a list of AT customers, online or in promotional materials. AT may also verbally reference Customer as a customer of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

11.1. <u>Customer License</u>. Subject to and conditioned upon Customer's payment of the Fees and compliance with this <u>Section 11.1</u> and all other terms and conditions of this Agreement, AT hereby grants to Customer a limited, non-exclusive, fully paid-up and royalty free, non-transferable, non sub-licensable Trademark license to use the AT trademark during the Term for promotion and marketing purposes only.

11.2. <u>AT License</u>. Subject to the terms and conditions of this Agreement, Customer hereby grants to AT a limited, non-exclusive, fully paid-up and royalty free,

non-transferable, non sub-licensable Trademark license to use Customer's trademark during the Term for promotion and marketing purposes only.

12.      Representations and Warranties. Each party represents and warrants that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable. AT warrants that it will provide the Services in accordance with the applicable SLA (if any).

12.1.    Acceptable Use Policy. Customer represents that it has read the AUP, and Customer will adhere to its requirements and the AUP is incorporated herein by reference. Customer understands and agrees that AT may suspend Service in whole or in party in the event that AT reasonably suspects an AUP violation.  AT will make reasonable efforts to notify Customer before any such suspension, unless the AUP violation calls for immediate action to prevent injury or liability, in AT's opinion and at its sole discretion.  Suspension pursuant to this Section 12.1 may continue so long as AT reasonably suspects an AUP violation.   AT is not liable for any Service suspension authorized by this Paragraph, or for any related loss, even if the suspected AUP violation did not occur.

13.      Disclaimer. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AT DOES NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. AT IS NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE SERVICES. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.  CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP ITS APPLICATION, PROJECT, AND CUSTOMER DATA. NEITHER AT NOR ITS SUPPLIERS, WARRANTS THAT THE OPERATION OF THE SOFTWARE OR THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

14.      Limitation of Liability.

14.1.    Limitation on Indirect Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR AT'S SUPPLIERS,

WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

14.2. Limitation on Amount of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR AT'S SUPPLIERS, MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO AT UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

14.3. Exceptions to Limitations. These limitations of liability do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, indemnification obligations, or Customer's payment obligations.

15. Indemnification.

15.1. By Customer. Unless prohibited by applicable law, Customer will defend and indemnify AT and its Affiliates against Indemnified Liabilities in any third party claim or Third-Party Legal Proceeding to the extent arising from: (i) any Application, Project, Instance, Customer Data or Customer Brand Features; or (ii) Customer's, or Customer End Users', use of the Services in violation of the AUP.

15.2. By AT. AT will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an Allegation that use of (a) AT's technology used to provide the Services (excluding any open source software) or (b) any AT Brand Feature infringes or misappropriates the third party's patent, copyright, trade secret, or trademark.

15.3. Exclusions. This Section 15 will not apply to the extent the underlying Allegation arises from:

(a) the indemnified party's breach of this Agreement;

(b) modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party;

(c) combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party; or

(d)     use of non-current or unsupported versions of the Services or Brand Features.

15.4.   Conditions.  Sections 15.1 and 15.2 will apply only to the extent:

(a)     The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the third party claim or Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If breach of this Section 15.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 15.1 or 15.2 (as applicable) will be reduced in proportion to the prejudice.

(b)     The indemnified party tenders sole control of the indemnified portion of the third party claim or Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

15.5.   Remedies.

(a)     If AT reasonably believes the Services might infringe a third party's Intellectual Property Rights, then AT may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative.

(b)     If AT does not believe the remedies in Section 15.5(a) are commercially reasonable, then AT may suspend or terminate Customer's use of the impacted Services.

15.6.   Sole Rights and Obligations.  Without affecting either party's termination rights, this Section 15 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

16.     Miscellaneous.

16.1. Notices.

(a)　To Customer. Notices to Customer must be in writing and addressed to the other party's primary point of contact provided to AT listed in the Customer's Signup or as provided in writing.

(b)　To AT. Unless AT otherwise notifies Customer in writing of alternate contact information, notices to AT must be in writing and addressed to:

> Adopt Technologies, LLC
> 7500 N. Dreamy Draw Drive, Suite 105
> Phoenix, AZ 85032
> Attn: Ryan Treisman

16.2. Assignment. Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Any other attempt to assign is void.

16.3. Change of Control. If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) that party will give written notice to the other party within thirty days after the change of Control; and (b) the other party may immediately terminate this Agreement any time between the change of Control and thirty days after it receives that written notice.

16.4. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) Law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other

industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "Force Majeure Event").

16.5. No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.

16.6. Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

16.7. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

16.8. No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person, firm, or corporation other than the parties hereto any rights, remedies, obligations, or liabilities under or by reason of this Agreement, or result in their being deemed a third party beneficiary of this Agreement.

16.9. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.10. Governing Law. ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE EXCLUSIVELY GOVERNED BY ARIZONA LAW, AND WILL BE EXCLUSIVELY LITIGATED IN THE FEDERAL OR STATE COURTS OF MARICOPA COUNTY, ARIZONA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

16.11. Amendments. Except as set forth in Section 2.7(b) or (c), any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

16.12.  <u>Survival</u>.  The following Sections will survive expiration or termination of this Agreement: 6, 9, 10.5, 14, 15, and 16.

16.13.  <u>Entire Agreement</u>.  This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement and the Documentation are incorporated by reference into the Agreement. After the Effective Date, AT may provide an updated URL in place of any URL in this Agreement.

**16.14.**  <u>Conflicting Terms</u>.  If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms at any URL.