

# Terms of Service

IT IS IMPORTANT THAT YOU READ CAREFULLY AND UNDERSTAND THIS TERMS OF SERVICE AGREEMENT (THIS "AGREEMENT"). BY CLICKING THE "I ACCEPT" BUTTON OR ACCESSING OR OTHERWISE USING THE SERVICE AND ITS ASSOCIATED USER DOCUMENTATION, YOU ACKNOWLEDGE THAT (1) YOU HAVE READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) YOU AGREE TO BE BOUND BY THIS AGREEMENT, (3) THE INDIVIDUAL USING THE SERVICE HAS THE POWER, AUTHORITY AND LEGAL RIGHT TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOU (AS AN INDIVIDUAL IF ON YOUR OWN BEHALF OR FOR THE ENTITY THAT EMPLOYS YOU) ("YOU" OR "YOUR") AND, (4) BY SUCH USE, THIS AGREEMENT CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN YOU AND OPMANTEK SOFTWARE PTY LTD (ACN 160362907) ("LICENSOR"). IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THE SERVICES OR THE DOCUMENTATION. LICENSOR MAY MAKE CHANGES TO THE SERVICES AT ANY TIME. IN ADDITION, LICENSOR MAY MAKE CHANGES TO THE TERMS OF THIS AGREEMENT AT ANY TIME, AND LICENSOR WILL POST NOTICE OF THE CHANGES ON THE LOG-IN SCREEN FOR THE SERVICES AND REQUIRE YOU TO ACKNOWLEDGE AND AGREE TO THE CHANGED TERMS. YOUR CONTINUED USE OF THE SERVICES AFTER SUCH CHANGES HAVE BEEN POSTED WILL SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF THE UPDATED AGREEMENT.

## 1. Services

**1.1. Access and Use License.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to You on the Effective Date (defined below) a limited, non-exclusive, non-transferable right to access and use the services provided by Licensor to You pursuant to this Agreement, and a limited, non-exclusive, non-transferable license (without the right to sublicense) to install and use any downloadable software components ("Downloadable Software") made available therein (the services and Downloadable Software together, the "Services") in accordance with the printed paper, electronic or online user instructions and help files made available by Licensor for use with the Services as may be updated from time to time by Licensor (the "Documentation") in each case solely for Your internal business purposes and not any production or commercial use, including but not limited to any embedding, bundling, or other such resale of the Services (the "Authorized Purposes"). Your use of the Services may not exceed the number of user subscriptions You have purchased pursuant to the online ordering document on Licensor's website ("Order Form"), and may be subject to certain other limitations, which limitations will be provided to You as they become required. The Effective Date is the earlier of the date on which You first clicked on the "I Accept" button and the date on which You started using the Services.

**1.2. Third-Party Hosting.** Licensor may use the services of one or more entities who are not a party to this Agreement ("Third Parties") to deliver any part of the Services. Licensor will pass through any warranties to the extent that Licensor receives any from its then-current Third-Party service provider and, at Your request, Licensor shall provide the relevant terms unless they are confidential. You agree to comply with any acceptable use policies and other terms of any Third Party service provider.

**1.3. Restrictions.** You will not directly, and You shall not permit any Third Party to: (a) copy or use the Services except

# Terms of Service

as expressly permitted by this Agreement; (b) relicense, sublicense, distribute, sell, resell, assign rent or lease the Services or otherwise transfer Your rights to use the Services; (c) use the Services for third-party training, time-sharing or service bureau use; (d) adapt, alter, modify, translate, reverse engineer, disassemble or decompile the object code, source code or underlying ideas or algorithms of the Services, except to the extent expressly permitted by applicable law, and then only after You have notified Licensor in writing of Your intended activities; (e) publish or disclose to Third Parties any evaluation of the Services without Licensor's prior written consent; (f) use the Services for any purpose other than its intended purpose; (g) interfere with or disrupt the integrity or performance of the Services; or (h) attempt to gain unauthorized access to the Services or their related systems or networks. For any prospective user that is not Your employee, You shall, prior to allowing the prospective user access to the Services, have the prospective user sign an agreement with You containing an equivalent level of protection for Licensor and its intellectual property (the "Services Access Terms") as this Agreement. Without limitation, the Services Access Terms must contain provisions that (w) disclaim all express and implied warranties on behalf of Licensor, (x) disclaim and exclude all liability on the part of Licensor for direct, indirect, consequential, incidental and special damages, (y) prohibit the copying, modification, reverse engineering, decompiling and disassembly of the Services, and (z) terminate the prospective user's access to the Services upon any termination, expiration or cancellation of this Agreement. You are responsible for compliance by each user with the terms of this Agreement and the Services Access Terms.

**1.4. Ownership.** As between Licensor and You, all right, title and interest in and to all copies and derivatives thereof of Downloadable Software, Documentation and Feedback (defined below), are and will remain the sole and exclusive property of Licensor. As between Licensor and You, all right, title and interest in the intellectual property rights in the Services are and will remain the sole and exclusive property of Licensor. You do not acquire any other rights, express or implied, in the Services other than those rights expressly granted under this Agreement. You hereby do and will irrevocably assign to Licensor all evaluations, ideas, feedback and suggestions made by You to Licensor regarding the Services (collectively, "Feedback") and all intellectual property rights therein. All rights not expressly granted by Licensor to You are hereby reserved by Licensor. You shall not delete or in any manner alter or change any copyright, trademark and other proprietary rights notices appearing on the Services and the Documentation and shall reproduce them on all copies made by or for You.

**1.5. Registration and Product Licensing Information.** The registration information provided by You when registering the Services or renewing Your subscription to the Services and product licensing information generated by the Services may be submitted to Licensor. This information will only be used for the purpose of maintaining the registration of Your subscription and will be treated as Your Confidential Information. No other information provided by You or collected or stored by the Services will be submitted to the Licensor by the Services.

**1.6. Aggregated Statistics.** Notwithstanding anything else in this Agreement or otherwise, Licensor may monitor Your use of the Services and use data and information related to such use, Your Data, and other information in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Services ("Aggregated Statistics"). As between Licensor and You, all right, title and interest in all

# Terms of Service

intellectual property rights therein, belong to and are retained solely by Licensor. You acknowledge that Licensor will be compiling Aggregated Statistics based on Your Data and other information input by other customers into the Services and You agree that Licensor may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify You or Your Confidential Information.

## 2. PASSWORDS; SECURITY.

**2.1. Passwords.** Licensor will issue to You, user logins and passwords for each subscription authorized to access and use the Services. You shall be, and shall ensure that each of Your users are, responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by You and Your authorized users. You are solely responsible for any and all access and use of the Services that occurs using logins and passwords Licensor issues to You. You shall restrict Your users from sharing passwords. You agree to immediately notify Licensor of any unauthorized use of any account or login and password issued to You, or any other breach of security known to You. Licensor shall have no liability for any loss or damage arising from Your failure to comply with the terms set forth in this Section.

**2.2. No Circumvention of Security.** Neither You nor any of Your users may circumvent or otherwise interfere with any user authentication or security of the Services. You will immediately notify Licensor of any breach, or attempted breach, of security known to or reasonably suspected by You.

**2.3. Security.** Licensor will use commercially reasonable efforts to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of You and received and analyzed by the Services ("Your Data"). Notwithstanding the foregoing, You acknowledge that, notwithstanding any security precautions deployed by Licensor, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Services and Your Data. The licensor cannot and does not guarantee the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet or otherwise or that any such security precautions will be adequate or sufficient. Licensor shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

## 3. YOUR OBLIGATIONS.

**3.1. Your System.** You are responsible for (a) obtaining, deploying and maintaining Your internal website(s), services, and other equipment and software used in the conduct of Your business, and all computer hardware, software, modems,

# Terms of Service

routers and other communications equipment necessary for You to access and use the Services via the Internet; (b) contracting with third-party ISP, telecommunications and other service providers to access and use the Services via the Internet; and (c) paying all third-party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in this Agreement, Licensor shall not be responsible for supplying any hardware, software or other equipment to You under this Agreement.

**3.2. Acceptable Use Policy.** You shall be solely responsible for Your actions and the actions of Your users while using the Services. You acknowledge and agree: (a) to abide by all local, state, national, and international laws and regulations applicable to Your use of the Services, including without limitation the provision and storage of Your Data; (b) not to send or store data on or to the Services which violates the rights of any individual or entity established in any jurisdiction; (c) not to upload in any way any information or content that contain viruses, worms, time bombs, Trojan horses and other harmful or malicious codes, scripts agents, or programs, or data that may damage the operation of the Services or another's computer or mobile device; (d) not to upload in any way any data regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity, or an individual's first name and last name, or first initial and last name, in combination with any one or more of the following data elements that relate to such individual: Social Security number, driver's license number or state-issued identification card number, financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account; (e) not to use the Services for illegal, fraudulent, unethical or inappropriate purposes; (f) not to interfere or disrupt networks connected to the Services or interfere with other ability to access or use the Services; (g) not to distribute, promote or transmit through the Services any unlawful, harmful, obscene, pornographic or otherwise objectionable material of any kind or nature; (h) not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (i) not to interfere with another customer's use and enjoyment of the Services or another person or entity's use and enjoyment of similar services; (j) not to use the Services in any manner that impairs the Services, including without limitation the servers and networks on which the Services is provided; (k) to comply with all regulations, policies and procedures of networks connected to the Services and Licensor's service providers; and (l) to use the Services only in accordance with the Documentation. You acknowledge and agree that Licensor neither endorses the contents of any of Your communications or Your Data, nor assumes any responsibility for any offensive material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby. Licensor may remove any violating content posted or stored using the Services or transmitted through the Services, without notice to You. Notwithstanding the foregoing, Licensor does not guarantee, and does not and is not obligated to verify, authenticate, monitor or edit Your Data, Other Information, or any other information or data input into or stored in the Services for completeness, integrity, quality, accuracy or otherwise. You shall be responsible and liable for the completeness, integrity, quality and accuracy of Your Data and Other Information input into the Services. Licensor reserves the right to amend, alter, or modify Your conduct requirements as set forth in this Agreement at any time. Licensor may deliver notice of such updated requirements to You via e-mail or through the

# Terms of Service

Services. Your continued access to and use of the Services following the issuance of such updated requirements shall constitute Your acceptance thereof. Licensor may upon written notice to You amend this Section 3.2.

**3.3. Accuracy of Your Contact Information; Email Notices.** You agree to provide accurate, current and complete information as necessary for Licensor to communicate with You from time to time regarding the Services, issue invoices or accept payment, or contact You for other account-related purposes. You agree to keep any online account information current and inform Licensor of any changes in Your legal business name, address, email address and phone number. You agree to accept emails from Licensor at the e-mail addresses specified for login purposes. In addition, You agree that Licensor may rely and act on all information and instructions provided to Licensor by You from the above-specified e-mail address.

**3.4. Temporary Suspension.** Licensor may temporarily suspend Your access to the Services in the event that either You or Your users are engaged in, or Licensor in good faith suspects You or any of Your users is engaged in, any unauthorized conduct (including, but not limited to any violation of this Agreement). Licensor will attempt to contact You prior to or contemporaneously with such suspension; provided, however, that Licensor's exercise of the suspension rights herein shall not be conditioned upon Your receipt of any notification. A suspension may take effect for Your entire account. You agree that Licensor shall not be liable to You, any of Your users, or any other third party if Licensor exercises its suspension rights as permitted by this Section. Upon determining that You have ceased the unauthorized conduct leading to the temporary suspension to Licensor's reasonable satisfaction, Licensor shall reinstate Your access and use of the Services. Notwithstanding anything in this Section to the contrary, Licensor's suspension of Services is in addition to any other remedies that Licensor may have under this Agreement or otherwise, including but not limited to termination of this Agreement for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Licensor may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

**3.5. Data Privacy.** You understand and expressly agree that Your Data may be transferred to and processed by Licensor (including by Licensor's affiliates and service providers) in the United States, in accordance with Licensor's Privacy Policy which may be found here <https://opmantek.com/privacy-policy/>. You further acknowledge that Your Data may include MAC address, IP address, location information and other information that is considered personal information by or otherwise regulated under applicable data privacy, protection, security or similar laws, rules and regulations ("Privacy Laws"). You acknowledge and agree that You are responsible for ensuring that any collection, use, storage, access, transfer and other processing (collectively, "Processing") of Your Data pursuant to this Agreement and the Services (including any personal information or other regulated categories of information), as well as the transfer of Your Data pursuant to this Agreement, complies with all applicable laws, rules and regulations. Without limiting the foregoing, You represent, warrant and covenant that, where required by applicable law, You shall provide notice to and obtain consent from end-users (individuals or otherwise) regarding the Processing of Your Data by You and Licensor pursuant to this Agreement and the Services.

# Terms of Service

## 4. Fees

The fees for the Services are set forth in the Order Form. Except for any applicable trial period, the payment of the fees for all subscriptions of the Services shall be due prior to the use of the Services for the Term. The fees shall not include any taxes.

## 5. Enhancements

Certain enhancements to the Services made generally available at no cost to all subscribing customers during the applicable Subscription Term will be made available to You at no additional charge. However, the availability of some new enhancements to the Services may require the payment of additional fees, and Licensor will determine at its sole discretion whether access to any other such new enhancements will require an additional fee. This Agreement will apply to, and the Services include, any bug fixes, error corrections, new builds, enhancements, updates, upgrades and new modules to the Services subsequently provided by Licensor to You hereunder.

## 6. No Warranties

LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTY. YOU AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. LICENSOR DOES NOT WARRANT THAT (A) THE SERVICES WILL OPERATE IN COMBINATION WITH HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY LICENSOR, EXCEPT AS EXPRESSLY SPECIFIED IN THE DOCUMENTATION; (B) THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (E) THE SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (F) THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. LICENSOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

## 7. Confidentiality

The party receiving any information ("Receiving Party") from the other party ("Disclosing Party") that a Disclosing Party should know is confidential or proprietary based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information ("Confidential Information") shall maintain the

# Terms of Service

Confidential Information of the Disclosing Party in confidence for a period of seven (7) years after the termination of this Agreement. The Receiving Party agrees not to use said Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The Receiving Party shall protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party to the same degree that it takes to protect its own confidential information of similar importance and in no event less than reasonable care. This section shall not apply to any Confidential Information which is (a) in the public domain or which enters into the public domain without the action or inaction of the Receiving Party, (b) is known to the Receiving Party prior to the disclosure of the Confidential Information, or (c) is developed by the Receiving Party without access to the Confidential Information of the Disclosing Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

## 8. Termination

**8.1. Term.** Until it is terminated as provided below, this Agreement is effective for one (1) year after the Effective Date ("Initial Term") and shall be automatically extended for subsequent one (1) year periods (each a "Renewal Term" and together with the Initial Term, the "Subscription Term") unless You give Licensor notice of non-renewal at least thirty (30) days prior to the initial date of the next Renewal Term. Either party may terminate this Agreement prior to the end of a term if the other party materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach.

**8.2. Termination by Licensor.** Licensor may terminate this Agreement at any time if You materially breach Your obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach. For breaches of Section 7 (Confidentiality), Licensor may terminate the Agreement immediately upon notice.

**8.3. Termination by You.** You may terminate this Agreement at any time by providing written notice to Licensor and ceasing all use of and access to the Services. However, if You terminate this Agreement during the Initial Term or any Renewal Term, Licensor is not obligated to refund any fees to You.

**8.4. Effects of Termination.** If this Agreement is terminated, (a) You shall immediately cease use of and access to the Services, (b) all fees and other amounts owed to Licensor as may be applicable shall be immediately due and payable by You, and (c) upon written request from Licensor, You will certify in writing to the Licensor within thirty (30) days after such termination that You have either destroyed, permanently erased or returned to Licensor the Services, Documentation and all items of Confidential Information, including any copies, extracts or portions thereof.

# Terms of Service

## 9. General Terms

**9.1. Law.** This Agreement and all matters arising out of or relating to this Agreement will be governed by the internal laws of the State of California and the federal U.S. laws applicable therein, without giving effect to any choice of law rules. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (if both parties reside in the US) or its JAMS International Arbitration Rules (if any party resides outside the US). Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Notwithstanding the above, nothing in this Agreement shall be deemed as preventing a party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as necessary to protect that party's name, proprietary information, trade secrets, know-how, or any other intellectual property or proprietary rights.

**9.2. Disclaimer of Consequential Damages.** IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY YOU, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

**9.3. Limitation of Liability.** IN NO EVENT WILL LICENSOR'S LIABILITY HEREUNDER FOR CUMULATIVE, AGGREGATE DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO LICENSOR FOR THE SERVICES IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR SUCH DAMAGES.

**9.4. Allocation of Liability.** THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS ARTICLE 9 AND IN THE OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH LICENSOR WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

**9.5. Severability and Waiver.** If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.



# Terms of Service

**9.6. No Assignment.** You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Licensor; provided however that in the case of a merger or sale of all or substantially all of Your assets, You may request a waiver and Licensor will not unreasonably withhold its consent. Any purported assignment, transfer or delegation by You will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**9.7. Government Contracting.** The Services under this Agreement utilize software and technology that is “commercial computer software” (as that term is described in DFAR 252.227-7014(a)(1)). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors. If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**9.8. Export Administration.** You will comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations (collectively “Export Controls”). Without limiting the generality of the foregoing, You will not, and You will require Your representatives not to, export, direct or transfer the Services, or any of the underlying information, software, or technology, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

**9.9. Entire Agreement.** This Agreement, including all applicable Order Forms, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior or simultaneous agreements or understandings with respect thereto. No modification, extension or waiver of or under this Agreement is valid unless it is made in a writing which identifies itself as an amendment to this Agreement and that writing is signed by an authorized representative of the party sought to be charged therewith. No waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of any paragraph or in any way affect the section.

**9.10. Relationship of the Parties.** Licensor is an independent contractor to You. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

**9.11. Force Majeure.** Licensor shall not be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service attacks; war, civil unrest, acts of terror, insurrection, riot, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation, decree, regulation, ordinance,

# Terms of Service

or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction; or any other event beyond the reasonable control of Licensor.

## Service Level Agreement

This Service Level Agreement (the “SLA”) applies to Services purchased from OPMANTEK SOFTWARE PTY LTD (“Licensor”). This SLA is incorporated into, and forms part of, the terms of service applicable to your access to and use of the Services (the “Terms”). Capitalized terms not defined in this SLA have the meanings given to them in the applicable Terms.

- 1. Availability.** Subject to the terms and conditions of the Terms, Licensor will use commercially reasonable efforts to make the Services available with minimal downtime 24 hours a day, 7 days a week; provided, however, that the following are excepted from availability commitments: (a) planned downtime (with regard to which Licensor will use commercially reasonable efforts to provide at least 48 hours advance notice), (b) routine maintenance times currently scheduled for every Sunday, 10:01 p.m. to 04:00 a.m. CST and as otherwise specified by Licensor, and (c) any unavailability caused by the circumstances described in Section 9.11 (Force Majeure) of the Terms.

**Support.** Licensor may make a variety of support services offerings available to its customers and will provide You with the applicable level of support to which You are entitled based on Your purchase, if any, as specified in the Order Form.