

SALESWARP® SOFTWARE AS A SERVICE AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT AND CONSTITUTES THE TERMS AND CONDITIONS GOVERNING YOUR USE OF THE SERVICE (AS DEFINED BELOW) PROVIDED BY 6TH STREET, INC., A DELAWARE CORPORATION (THE “COMPANY”). BY CLICKING THE “I ACCEPT” BUTTON OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (SUCH ORDERING DOCUMENT AN “ORDER FORM” AS FURTHER DEFINED BELOW), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, “YOU,” “YOUR,” AND “CUSTOMER” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MUST SELECT THE “I DECLINE” BUTTON AND MAY NOT USE THE SERVICE.

1. **DEFINITIONS.** In addition to terms defined elsewhere in this Agreement, the following capitalized terms will have the following respective meanings for the purposes of this Agreement:
 - a. “Agreement” means this Software as a Service Agreement, any Order Forms, whether written or submitted online, and any materials specifically incorporated by reference herein.
 - b. “Effective Date” means the date of acceptance of this Agreement which date shall be the earlier of (i) the date upon which you click “I Accept” or (ii) the earliest date of any Order Form.
 - c. “Order Form(s)” means the form that accompanies, incorporates, and evidences the subscription for the software as a service agreement, and any subsequent order forms contracted, in written or digital form. Such forms specify, among other things, the services contracted for, restrictions on users, the applicable Fees, the billing period, and other charges as agreed to between the parties. Each such Order Form shall be incorporated into and become a part of this Agreement, with this Agreement prevailing (in the event of any conflict between the two documents).
 - d. “Service” means the Company’s provision of access to the copyrighted Internet-based software-as-a-service application titled *SalesWarp*, provided by the Company, and described in the Order Form.
 - e. “Documentation” means program documentation, user manuals, handbooks, and other materials describing the use, design, installation, operation and maintenance of the Service made available by the Company.
 - f. “Users” means those individuals authorized by you and the Company to use the Service, and having user identifications and passwords registered under the name of such individuals.
 - g. “Customer Data” means any data, information, trademarks, logos, files, images, text, or other material that you or any Users provide or submit to the Service in the course of using the Service.
2. **LICENSE GRANT.** Upon the Company’s acceptance of Customer’s [Order Form] and for the duration of the Term (defined hereunder in Section 13(a)), and contingent upon Customer’s timely continued payment of all fees stated on the Order Form, the Company hereby grants Customer a non-exclusive, non-assignable, terminable license to use the Service solely for Customer’s internal business operations (the “Purpose”) and subject to the terms and condition of this Agreement. Any new features or

enhancements to the Service, and any new service(s) subsequently purchased by Customer will be subject to this Agreement.

- a. INTERNET ACCESS. Customer understands that Customer must have or must acquire access to the Internet, provide all equipment necessary to maintain such connection, and obtain software that will access and display Web-based content. The Company shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, Customer uses in accessing the Internet to access the Service.
- b. SECURITY. Customer shall provide adequate industry “best practice” standards to ensure reasonably secure access to the Internet, a remote computer network, and the Service provided by the Company.
- c. USER COMPLIANCE. Customer may allow Users to utilize the Service in connection with the Purpose and is responsible for the conduct of Users and their compliance with this Agreement.
- d. PROVISION OF FUTURE SERVICES. Customer agrees that the subscription to the Service hereunder is neither dependent on the delivery or availability of any future functionality nor any oral or written comments made by the Company regarding future functionality or features.
- e. PROVISION OF IMPROVEMENTS. The Company agrees, subject to and during the Term of this Agreement, to provide ongoing maintenance, upgrades, and enhancements to the Service on an “as available” basis.

3. CUSTOMER OBLIGATIONS. Customer agrees to abide by and uphold the obligations listed hereunder:

- a. CUSTOMER CONDUCT. Customer hereby agrees to comply with all applicable local, state, federal and foreign laws, treaties, regulations, and conventions in connection with its use of the Service. Customer agrees that Customer shall not:
 - i. modify, make derivative works of, disassemble, decompile, or reverse engineer the Service;
 - ii. make any attempt to ascertain, derive, or obtain the source code of the Service;
 - iii. except as expressly provided in this Agreement or the Order Form, copy, reproduce, distribute, republish, display, post, transmit, frame or mirror any content or part of the Service or Documentation;
 - iv. (1) build a competitive product or Service, (2) build a product using similar features, functions, or graphics of the Service, (3) copy any features, functions, or graphics of the Service, or (4) assist a third party in building, supporting, or copying products or services competitive to the Company;
 - v. transmit, publish, or store (1) infringing, obscene, threatening, harmful, libelous, defamatory, or otherwise unlawful or tortious material, (2) material violative of third party privacy rights promotes bigotry, racism, or hatred, or

- (3) any material containing software viruses, worms, time bombs, Trojan horses, or other harmful or malicious computer code, files, scripts, agents, or programs;
 - vi. (1) send any electronic communications from the Service that are unlawful, harassing, libelous, defamatory, or threatening, or (2) express or imply that the Company endorses Customer's electronic communications;
 - vii. interfere with or disrupt the integrity or performance of the Service, or use the Service to menace or harass any person or cause damage or injury to any person or property; and
 - viii. violate any provision or subsection of Section 3(a), and Customer understands that any attempt to execute, or the execution of, any actions prohibited under Section 3(a) shall void the Company's warranty obligations, and be grounds for immediate suspension or termination of this Agreement by the Company.
- b. USER ACCESS. Customer hereby agrees that Customer shall neither make the Service available to anyone other than the Users nor license, sell, resell, rent, lease, transfer, distribute, or assign the Service. Customer further understands and agrees that Customer:
- i. shall not exceed the level of usage purchased by Customer from the Company, as specified in the Order Form, under this Agreement;
 - ii. may designate only the number of Users allowed under this Agreement;
 - iii. is prohibited, as well as Users, from sharing user identifications and passwords with any unauthorized users and must notify the Company if any such information becomes unsecured;
 - iv. must use all commercially reasonable efforts to prevent any unauthorized access to or use of the Service, Documentation and passwords or other logins, and notify the Company promptly of any such unauthorized use; and
 - v. shall not use the Software for the benefit of any third parties.

4. **SERVICE AVAILABILITY.**

- a. DEFINING AVAILABILITY. During the Term, the Company will use commercially reasonable efforts to make the Service available at least 95% of the time during the Term ("Availability"), excluding when the Service is not available owing to an Exception (defined in Section 4(b) below).
- b. SERVICE AVAILABILITY EXCEPTIONS. Down time of the Service owing to any of the following events will not be included in calculating Availability (collectively, "Exceptions"):
 - i. Customer's or any of its Users' failure to meet any minimum hardware or software requirements set forth in any specifications or Documentation

provided by the Company;

- ii. a lack of network availability between Customer and the Company's hosting servers or other network traffic problems, as network availability can involve numerous third parties and is beyond the control of the Company;
- iii. any downtime caused by the Company's internet provider or for any downtime that Customer experiences as a result of Customer's own network connectivity issues;
- iv. Customer's or User's misuse of the Service, including use in violation of the terms and conditions of this Agreement; and
- v. any Scheduled Downtime (defined in Section 4(c) below).

- c. **SCHEDULED DOWNTIME.** From time to time the Company may need to schedule downtime for maintenance, upgrades, enhancement, or any other reason, during which the Service will not be available to Customer (collectively, "Scheduled Downtime"). The Company may schedule such downtime at any time, but will endeavor to provide reasonable notice of any Scheduled Downtime and to conduct Scheduled Downtime outside of Customer's normal business hours.
- d. **UNAVAILABILITY PROCEDURE.** If Customer experiences a Service outage and is unable to access the Service, Customer must notify the Company within five (5) business days of such outage through the process set forth in Section 5. The Company will use an internal system to measure the Service's availability to Customer. Customer agrees this system will be the sole basis for resolution of any dispute that may arise regarding Availability.
- e. **CREDIT POLICY.** This Section 4(e) together with Section 5 provide Customer's sole remedy in the event that Availability is not met. If Availability is not met in any given month, and the proper notification/steps were taken by Customer as outlined in section 4(d), then Customer will receive a prorated credit towards future Service fees for that portion of the recurring Service fees corresponding to the amount of time in such month that Availability was not met. In the event that Availability is not met for any four (4) consecutive months, Customer and/or the Company may terminate the Service without fault upon thirty (30) days' prior written notice.

5. TECHNICAL SUPPORT. To report a Service issue and/or to receive technical support, follow the instructions at <http://saleswarp.com/support> and submit a ticket. The Company offers technical and customer support on a first-come, first-served basis. The Company's technical support policies can be found at <http://saleswarp.com/support/> and are subject to review and change at any time without notice.

6. BILLING & PAYMENT.

- a. **ACCOUNT INFORMATION.** Customer agrees to provide the Company with accurate, complete and current billing and contact information, including the Customer's legal business name, street address, mailing address, email address, and telephone number. Customer must promptly update this information should any changes occur. If Customer's information is false or fraudulent, the Company reserves the right to suspend or terminate Customer's access to the Service, including

terminating this Agreement, in addition to any other legal remedies.

- b. BILLING. Customer agrees (i) to pay all fees pertaining to use of the Service, and (ii) to comply with all billing, payment and other terms and conditions as specified hereunder or in the Order Form. Customer agrees to provide and purchase the Service from the Company with a valid and updated credit card, and authorizes the Company to charge such credit card for all Service ordered by Customer. All payment obligations are non-cancelable and all fees paid are nonrefundable. Customer shall reimburse the Company for reasonable expenses related to providing any on-site portion of the Service or related support.
- c. TAXES. Customer understands Customer is responsible for paying all taxes associated with Customer's purchases hereunder and understands that Customer may be invoiced for such taxes in accordance with Section 6(b). Customer agrees to pay any such sales, value-added or other similar taxes imposed by applicable law. The Company is solely responsible for taxes assessable against it based on the Company's income, property, and employees.
- d. OVERDUE FEES. All amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice. If the Company does not receive payment from Customer within the thirty (30) days, the Company may at its sole discretion (i) charge late interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, (ii) condition future subscription renewals and Order Forms on shorter payment terms, and/or (iii) suspend the Service until such outstanding balance is brought current.
- e. UPGRADES & DOWNGRADES. Customer may upgrade or downgrade Customer's subscription to the Service at any time during this Agreement. To upgrade or downgrade Customer's subscription, Customer must provide written notice of Customer's desired change to Customer's subscription to the Company (the "Desired Changes"). The Company shall implement the Desired Changes a minimum of thirty (30) days after receiving written notification. After the Company implements the Desired Changes, Customer shall be billed for the prices of the upgraded or downgraded level of Service (the "New Subscription Level"). Such prices shall be based upon the prices charged by the Company for the New Subscription Level at the time the Company received notification of Desired Changes from Customer. The Company shall charge Customer for the New Subscription Level during the billing cycle after New Subscription Level begins. The Company is not liable for any data loss that may result from Customer downgrading Customer's subscription. Notwithstanding anything in this Section to the contrary, in no event (i) may Customer downgrade Customer's subscription to the Service below the minimum Service levels offered by the Company and (ii) will Customer be entitled to any refund or credit for downgrades to the Service level during the Term. Any upgrades or downgrades of Customer's Service level will apply to the then-current Term and any Renewal Terms.
- f. INCREASING USER USAGE LEVELS. Unless otherwise specified in the applicable Order Form, Customer may increase the level of usage purchased by Customer in the Order Form at the same pricing as that for the pre-existing levels thereunder, prorated for the remainder of the Term in effect. If Customer exceeds the level of usage purchased by Customer from the Company, but chooses not to increase

Customer's subscription, Customer shall compensate the Company for the extra access to Service.

- g. FEE CHANGES. The Company reserves the right to introduce new fees for the Term or modify existing fees for subsequent Renewal Terms at any time, with any such new or modified fees effective at the beginning of a calendar month. The Company must provide at least thirty (30) days' prior notice to Customer before any new or modified fees are implemented. In the event of the addition or modification of any fees, the Customer shall receive an email containing a revised Order Form. If Customer accepts the revised Order Form or does not respond to the email within ten (10) business days of receipt (the "Response Time"), Customer will be deemed to have accepted the revised Order Form, and the revised Order Form shall replace the original Order Form and form part of this Agreement. If Customer does not wish to accept the revised Order Form, Customer may terminate this Agreement by providing the Company with written notice of termination within the Response Time, in which event this Agreement will terminate at the end of the calendar month immediately preceding the first month for which the revised Order Form takes effect.

7. INTELLECTUAL PROPERTY RIGHTS.

- a. COMPANY INTELLECTUAL PROPERTY. The Company and its licensors, if any, retain all right, title and interest, including all intellectual property rights therein, in and to the Service, all software offered or provided access to under this Agreement, all the Company programs, and all Documentation and related materials. The Company retains all right, title and interest, including all intellectual property rights therein, to anything developed and delivered under this Agreement. The limited Service license granted to Customer hereunder does not convey any other rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by the Company. Customer shall not use the Service to upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including but not limited to rights of publicity and privacy) without first obtaining the permission of the owner of such rights.
- b. CUSTOMER INTELLECTUAL PROPERTY. Customer retains all intellectual property rights in Customer Data. Customer agrees and grants the Company a license (i) to intercept, use, and store electronic communications and Customer Data to the extent necessary for the performance of the Service, (ii) to keep an archival copy subject to the provisions of the relevant data protection regulations, and (iii) to use information transmitted or gathered in connection with the Service in an aggregated and anonymized manner as further provided in Section 7(c) below. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, storage, and backup of all Customer Data, and the Company shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Customer acknowledges and understands that Customer's electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by the Company, and that unauthorized parties may access electronic communications communicated across the Internet. The Company reserves the right to review Customer Data from time to time in its discretion and to disable access to or delete, in its sole discretion to be exercised in good faith, any Customer Data or other

material violative of this Section 7(b) or Section 3(a). The Company shall have no liability to Customer in the event that the Company takes such action. In the event of any breach of this Agreement by Customer, including non-payment, the Company reserves the right to disable access to any Customer Data stored on the Company's systems until the breach has been remedied, subject to any applicable laws, rules or regulations.

- c. AGGREGATE DATA. Customer hereby grants the Company a non-exclusive, non-revocable, royalty-free, worldwide, perpetual, sublicensable license to use any statistical and other information and data transmitted, derived or gathered in connection with the Service or Customer's use of the Service, to create an anonymized version or versions of such information and data (the "Aggregate Data") and to disclose and otherwise use the Aggregate Data for any purpose including data and market analysis and aggregation, general reporting, and Service optimization. The Company shall own all right, title and interest, including all intellectual property rights, in and to the Aggregate Data. Notwithstanding anything in this Section 7(c) to the contrary, (i) the Company shall have no right under this section to use Customer's trademarks or logos and (ii) in no event shall Aggregate Data contain any information that identifies Customer or Customer's customers.

8. CONFIDENTIALITY.

- a. CONFIDENTIAL INFORMATION. From time to time during the Term of this Agreement, either party may disclose (as the "Disclosing Party") or make available to the other party (as the "Receiving Party") confidential information, whether orally or in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall include business affairs, price and customer lists, marketing strategies, confidential intellectual property, trade secrets, third-party confidential information for which the Disclosing Party has an obligation of confidentiality, technology and technical information, , and this Agreement. Additionally, the Company's Confidential Information shall include the Service, its source code, the Documentation, the Aggregate Data, and any passwords and log-ins provided hereunder, and Customer's Confidential Information shall include the Customer Data. Each party acknowledges that a Disclosing Party's Confidential Information constitutes such party's valuable proprietary and confidential trade secrets, and that the unauthorized disclosure of such trade secrets or confidential information would cause great harm to the Disclosing Party. Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 8 by the Receiving Party of any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court of governmental agency of competent jurisdiction.
- b. USE AND DISCLOSURE. The Receiving Party shall:

- i. protect and safeguard the confidentiality of the Disclosing Party's Confidential Information, with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
 - ii. not use the Disclosing Party's Confidential Information, or permit it to be accessed and used, for any purpose other than to exercise its rights or perform its obligations under this Agreement;
 - iii. not disclose any such Confidential Information to any person or entity, except to representatives of the Receiving Party who (1) are required to protect the Confidential Information against unauthorized disclosure in a manner no less protective than under this Agreement and (2) need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise the Receiving Party's rights or perform its obligations under this Agreement;
 - iv. upon termination or expiration of this Agreement, and regardless of whether a dispute may exist, return or destroy all Confidential Information upon request and as instructed by Disclosing Party, with the exception that the Company may retain an archive copy of Customer Data as provided hereunder; and
 - v. be responsible and liable for any breach of this Section 8 caused by any of its representatives
- c. EQUITABLE RELIEF. The Disclosing Party may seek equitable relief (including injunctive relief without the need to post bond) against the Receiving Party and its Representatives to prevent the breach or threatened breach of this Section 8 and to secure its enforcement, in addition to all other remedies available at law.

9. WARRANTIES AND DISCLAIMERS.

- a. COMPANY WARRANTIES. The Company warrants that (i) it has the right and power to enter into this Agreement, (ii) it will comply with any applicable laws and regulations pertaining to this Agreement, and (iii) the Service shall perform materially in accordance with the description in the Order Form and in any Documentation. Customer's sole remedy for the Company's breach of the Section 9(a) warranty is for the Company to work to fix such Service performance issue.
- b. CUSTOMER WARRANTIES. Customer warrants that (i) it has the right and power to enter into this Agreement, (ii) it will comply with any applicable laws and regulations pertaining to this Agreement; and (iii) it will not breach this Agreement.
- c. DISCLAIMERS.
 - i. THE EXPRESS WARRANTIES SET FORTH IN SECTION 9(a) ARE THE ONLY WARRANTIES MADE BY THE COMPANY WITH RESPECT TO THE SERVICE AND THIS AGREEMENT, AND ANY OTHER SOFTWARE, SERVICES, OR MATERIALS PROVIDED BY THE COMPANY. THE COMPANY MAKES NO OTHER

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR USE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS," "AS AVAILABLE" BASIS. THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT.

- ii. THE COMPANY AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (1) THE USE OF THE SERVICE BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (2) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (3) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (4) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (5) ERRORS OR DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (6) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
- iii. CUSTOMER UNDERSTANDS THAT THE COMPANY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THEREFORE ACKNOWLEDGES AND AGREES THAT (1) THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES, (2) THE COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS, (3) THE CUSTOMER WILL BE RESPONSIBLE FOR ALL ELECTRONIC COMMUNICATIONS, AND (4) THE COMPANY SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE CUSTOMER DATA.

10. FREE TRIALS & BETA OPPORTUNITIES. If made available by the Company and specified in the Order Form, Customer may order for trial, nonproduction purposes, subject to the terms and conditions of this Agreement, a limited or test version of the Service (a "Preliminary Trial"). Preliminary Trials shall include and clearly be designated as a free trial or beta, pilot, developer-preview, or limited release opportunity, and are not considered part of the Service hereunder. If Customer orders a Preliminary Trial and has a paid subscription to the Service, Customer must still pay for the paid subscription. Preliminary Trials are provided "as is", may contain bugs or errors, and may be subject to additional terms. The Company does not offer any warranties for such Preliminary Trials, including that stated in Section 9(a). Any Preliminary Trials shall be made available to Customer free of charge until

the earlier of (a) the end of the free, trial period for which Customer registered or (b) an upgrade to either a paid or comparable subscription to the Service by Customer. The Company reserves the right to modify, cancel, or limit Preliminary Trials at any time. Customer understands that downgrading Customer's subscription to the Service may cause a loss in features, functionality, or Customer Data. Customer acknowledges and agrees that any Customer Data stored with the Service, and any customizations made to the Service by or for Customer, during the trial period may be permanently lost unless Customer purchases a subscription to the same service as those covered by the Preliminary Trial, purchases an upgraded version of the Service, or exports Customer Data before the end of the trial period.

11. INDEMNIFICATION.

- a. SERVICE INTELLECTUAL PROPERTY INDEMNITY. The Company shall defend or, at its option, settle, any third party claim, action or proceeding brought against Customer on grounds that (i) the Service infringes a United States copyright, trade secret or trademark right, or (ii) the Company does not have the right to grant the licenses granted herein. The Company shall indemnify Customer against all damages, losses and costs finally awarded against Customer in any such action or proceeding which results from any such claim provided Customer does not make any admission as to liability or compromise or agree to any settlement of such claim without the prior written consent of the Company. The Company shall have no liability under this Section 11(a) unless Customer (1) promptly notifies the Company in writing of the claim, (2) reasonably gives the Company full authority, information and assistance in a timely manner to defend such claim, and (3) gives the Company sole control of, and fully cooperates with, the defense of such claim and all negotiations for the compromise or settlement thereof. If the Service or any part thereof becomes, or in the Company's opinion is likely to become, the subject of a valid infringement claim or the like under any intellectual property right, the Company shall have the right, at its option and expense, to procure Customer's right to continue using the Service in accordance with this Agreement, modify the Service so it ceases to be infringing, replace the Service, or terminate this Agreement on seven (7) days' notice. The Company shall not indemnify Customer if (A) Customer alters or uses the Service or Customer Data outside the scope of use identified in this Agreement or Documentation, (B) Customer uses a version of Service that has been superseded, or uses the Service in connection with third party hardware or software not specifically approved by the Company, or (C) if the infringement claim could have been avoided by using an unaltered current version of the Service available to Customer. This Section 11(a) states Customer's exclusive remedy, and the Company's exclusive liability for any claim of infringement or misappropriation.
- b. CUSTOMER INDEMNITY. Customer agrees to indemnify and hold harmless the Company from and against any and all third party claims and resulting damages, losses, costs, liabilities, and expenses (including reasonable attorney's fees), arising as a result of or in connection with (i) any breach by Customer of its obligations under this Agreement, (ii) the negligent or intentional acts or omissions of Customer, its employees, agents, or Users, (iii) any representation, warranty, promise or assurance made or granted by Customer to another customer or other potential purchaser of the Service, (iv) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party, (v) a claim that, if true, constitutes a violation by Customer of Customer's representations and warranties, or (vi) any failure by Customer or Users to comply with applicable laws, rules, ordinances,

decrees and regulations. Should such a claim exist, the Company shall (1) promptly give written notice of the claim to Customer, (2) give Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases the Company of all liability and such settlement does not affect the Company's business or Service, and the Company shall have the ability at its own expense to participate in the defense or settlement of any such claim), (3) provide to Customer all available information and assistance; and (4) not compromise or settle such claim.

12. LIMITATION OF LIABILITY.

- a. LIMITATION ON RECOVERABLE DAMAGES. EXCEPT AS PROVIDED IN SECTION 12(C), NEITHER PARTY (INCLUDING SUCH PARTY'S EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, AFFILIATES, SUBSIDIARIES, LICENSORS, SUBLICENSEES, SUCCESSORS, ASSIGNS AND RELATED PARTIES) HAS ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING CLAIMS FOR BUSINESS INTERRUPTION AND LOSS OF PROFITS, REVENUE, ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, DATA, GOODWILL OR USE OF THE SERVICE), WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. CAP ON DAMAGES. EXCEPT AS PROVIDED IN SECTION 12(C), THE COMPANY'S LIABILITY FOR ANY AND ALL CAUSES OF ACTION, CLAIMS AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL FEES ACTUALLY PAID TO THE COMPANY BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CAUSE OF ACTION ACCRUED.
- c. EXCLUSIONS FROM LIMITATIONS OF LIABILITY. Notwithstanding anything to the contrary herein, the limitations of liability contained in Section 12(a) and 12(b) shall not apply to: (i) damages arising out of or relating to a party's failure to comply with its confidentiality obligations under Section 8; (ii) either party's indemnification obligations under Section 11; or (iii) Customer's payment obligations to the Company under this Agreement.

13. TERM, SUSPENSION & TERMINATION.

- a. TERM. This Agreement shall take effect on the Effective Date and shall continue until the first anniversary thereof (the "Initial Term"), and will thereafter automatically renew for consecutive one-year renewal terms (each, a "Renewal Term") unless either party notifies the other party at least thirty (30) days before the end of the then-current term of its intent not to renew (the Initial Term and any Renewal Terms are referred to collectively as the "Term") or unless this Agreement terminates as otherwise provided hereunder. Either party may terminate this Agreement prior to the expiration of the Term pursuant to the applicable provisions of Section 13(c).

- b. SUSPENSION. The Company shall not be liable to Customer or to any other third party for any suspension of the Service under this Section 13(b), and any suspension by the Company under this Section 13(b) shall not excuse Customer from Customer's obligations to make payment(s) under this Agreement. The Company may, upon written notice to Customer at any time, remove Customer Data or suspend Customer's access to and use of the Service for the occurrence of any of the following, all of which are prohibited hereunder:
 - i. the Company reasonably concludes that Customer is using the Service to engage in denial of service attacks or spamming, or using the Service to engage in illegal activity or activity prohibited hereunder;
 - ii. the Company reasonably concludes that Customer's use of the Service is causing immediate, material and ongoing harm to the Company or others;
 - iii. the Company determines in its sole discretion that Customer violated or continues to violate Sections 3, 7(a), 8, or 14(g) of this Agreement; or
 - iv. for any reasons contained in Section 13(c).
- c. TERMINATION. After written notice to the other party, this Agreement may be terminated:
 - i. by either party if the other party materially or persistently breaches this Agreement (other than a breach of Availability by the Company, for which Customer's sole remedy is stated in Section 4) and either that breach is incapable of remedy, or the breaching party fails to remedy that breach within a thirty (30) day period after receiving written notice thereof.
 - ii. by either party immediately if the other party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction; if the other party makes a general assignment for the benefit of creditors; if the other party has been dissolved, wound up, or liquidated; if a receiver, trustee, or similar agent is appointed with respect to any substantial portion of the property or business of the other party, or by the Company as provided in Section 14(a);
 - iii. by Customer on thirty (30) days' written notice if the Company ceases carrying on or disposes of its business or a material part of its business, in which case the Customer shall have the right to receive a pro-rata refund of the license fees paid under this Agreement for the terminated portion of the Term;
 - iv. by the Company if Customer fails to make payments to the Company when due and the Company provides at least one written notice seven (7) days prior to effective termination; or
 - v. by a either party for its convenience upon thirty (30) days' written notice to the other party.
- d. EFFECT OF TERMINATION. If this Agreement is terminated for any reason, all

licenses granted to Customer hereunder shall cease and Customer shall cease all activities authorized hereby. If this Agreement is terminated by the Company as a result of a material breach under section 13(c)(i), by the Company for Customer's failure to make timely payments under Section 13(c)(iv), or Customer for its convenience under Section 13(c)(v), then Customer shall pay the Company the remaining fees owed for the then-current Term, including, but not limited to, all fees owed hereunder and subscription fees for the terminated portion of the Term. In the event this Agreement is terminated for any reason, the Company shall make Customer Data available to Customer via the Service during the thirty (30) day period following termination notice, if Customer so requests. If Customer makes no such request, the Company shall have no obligation to maintain or provide any Customer Data and reserves the right to remove or discard Customer Data without notice to Customer. The Company may store Customer Data for an additional sixty (60) days and may, in exchange for a fee, permit Customer access to the Service to retrieve Customer Data. Customer acknowledges and agrees that the Company still has no obligation to retain Customer Data after such 60-day period and that Customer data may be irretrievably deleted thereafter.

14. MISCELLANEOUS PROVISIONS.

- a. ASSIGNMENT. Customer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign this Agreement without Customer's consent, including to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any prohibited assignment shall be null and void. This Agreement shall inure to the benefit of and shall be binding on the parties, their successors and permitted assigns of the parties. Any actual or proposed change in control of Customer that results or would result in a direct competitor of the Company directly or indirectly owning or controlling fifty percent (50%) or more of Customer shall entitle the Company to terminate this Agreement for cause immediately upon written notice.
- b. NOTICES. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties and contact persons as set forth in this Agreement or the Order Form. Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent an internationally recognized overnight courier (receipt requested); or (c) on the date sent by facsimile or e-mail (in each case, with confirmation of transmission), if sent during normal business hours of the recipient, and on the next day, if sent after normal business hours of the recipient.
- c. INJUNCTIVE RELIEF. Customer acknowledges and agrees that any breach of Section 2 (License Grant) and/or Section 8 (Confidentiality) may cause irreparable injury to the Company for which there are no adequate remedies at laws. Therefore, in addition to any and all remedies available at law, the Company shall be entitled to injunctive relief or other equitable remedies in all legal proceedings resulting from any threatened or actual violation of the provisions hereof.
- d. GOVERNING LAW & VENUE. The substantive and procedural laws of the State of Maryland (without giving effects to its conflict of laws principles) shall govern this Agreement and all actual or conceived. The Company and Customer agree to

submit to the exclusive jurisdiction of, and venue in, the courts in Baltimore, Maryland in any dispute arising out of or relating to this Agreement. The parties expressly agree that neither the Uniform Computer Information Transactions Act, or any state's version thereof, nor the United Nations Convention on Contracts for the International Sale of Goods apply to this Agreement.

- e. SEVERABILITY. If any provision in this Agreement is in conflict with any applicable rule of law or statutory provision, or is deemed to be, or becomes invalid, illegal, void, or unenforceable under applicable laws, the Company shall amend such provision to conform to applicable laws so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the parties, it will be deleted, but the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way. If such provisions comprise an integral part of the remainder of this Agreement, this Agreement will be terminated.
- f. FORCE MAJEURE. Neither party shall be liable hereunder for any failure or delay in the fulfillment or performance of its obligations under the Agreement due to fire, flood, earthquake, other acts of nature, war, explosions, strike, riots, civil unrest, sabotage, acts of God, embargo, acts or regulations of governments or beyond the reasonable control of the affected party. The party so affected must give prompt notice to the other.
- g. EXPORT. Export and control laws and regulations of the United States and any other relevant local export laws and regulations apply to the Service. Customer agrees to comply with all such laws and regulations. Customer may not download or otherwise export or re-export any underlying software, technology, data, information or other materials from the Service except in full compliance with all U.S. and other applicable laws and regulations including, but without limitation, (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's or State Department's Table of Denial Orders. The Company makes no representation that the Service may be used or accessed outside the United States, and Customer does so at its own risk.
- h. AMENDMENT. This Agreement may be amended by the Company in its sole discretion, with such amendment to begin at the start of a calendar month, by providing at least thirty (30) days' advance notice to Customer by email to the registered email address provided for the administrator(s) for Customer's account as provided in Section 14(b). If Customer does not accept the amendment, Customer must notify the Company within fifteen (15) days of such notice receipt and pay the Company any outstanding recurring fees through the end of the calendar month immediately preceding the first month for which such amendments take place, in which case the end of such calendar month shall also be the termination date of this Agreement. Customer's failure to do both shall constitute agreement to the amended Agreement.
- i. ENTIRE AGREEMENT. This Agreement, the Order Form and information that is incorporated into the Agreement by written reference (including reference to information contained in a URL or referenced policy) constitute the entire agreement of the parties with respect to the subject matter hereof, and supersedes

all previous agreements by and between the parties as well as all proposals, oral or written and all negotiations, conversation or discussions heretofore had between the parties related to the subject matter of this Agreement. The parties acknowledge that they have not been induced to enter into this Agreement by any representations of statements, oral or written, not expressly contained herein.

- j. DELAY OR OMISSION NOT WAIVER. No delay or failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- k. STATUTE OF LIMITATIONS. Except for actions for nonpayment or breach of the Company's proprietary rights, no actions, regardless of form, may be brought by either party arising out of or relating to the Service or this Agreement may be brought by either party more than three (3) years after the cause of action has accrued.
- l. RELATIONSHIP. This Agreement does not make either party the employee, partner, franchisee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement each party shall be acting as an independent contractor.
- m. THIRD PARTY SITES. The Company has no control over and is not responsible for (i) any third party websites, (ii) third party content provided on or through the Service, or (iii) the availability of such external websites or resources. The Company does not endorse and is not responsible or liable for any content, advertizing, products, or other materials on or available from such websites or resources. Customer bears all risks associated with the access and use of such websites and third party content, products and services, including those accessed through the Company's websites.
- n. TRADEMARK INFORMATION. SalesWarp®, 6th Street™ and all other Company marks, logos, and product and service names are the proprietary marks of the Company (the "Company Marks"). Customer agrees not to display or use the Company Marks without the Company's express prior written permission. Customer further agrees not to remove or alter any of the Company Marks or any Company copyright or other notices, located on the Service, Documentation, or any other Company materials.
- o. CUSTOMER REFERENCE. Customer agrees (i) that the Company may identify Customer as a recipient of the Service and use Customer's logo in sales presentations, marketing materials, and press releases, and (ii) to develop a brief Customer profile for use by the Company on 6thStreetCommerce.com and SalesWarp.com for promotional purposes.
- p. INTERPRETATION. For purposes of this Agreement: (i) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (1) to an agreement, instrument or

other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (2) to a law means such law as amended from time to time and includes any successor thereto. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. All Order Forms and other documents incorporated into the Agreement by written reference (including reference to information contained in a URL or referenced policy) shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

- q. FEEDBACK. The Company shall have a perpetual, royalty-free, irrevocable, world-wide license to use and incorporate into the Service any suggestions, ideas, modification requests, feedback or other recommendations related to the service provided by or on behalf of Customer.
- r. SURVIVAL. The termination or expiration of this Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due and payable. The provisions in Sections 1, 3(a), 6(d), 7, 8, 9(c), 11, 12, 13(d) and 14, in addition to any other provision that by its terms is intended to survive the expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.