



## **SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT**

THIS AGREEMENT GOVERNS YOUR USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, EXECUTING THIS AGREEMENT, OR EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

Customer may not access the Service if Customer is a direct competitor of Vendor, except with Vendor’s prior written consent. In addition, Customer may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on June 4, 2019. It is effective between rSquared CRE, LLC and Customer as of the date of Customer’s acceptance of this Agreement.

### **1. DEFINITIONS.**

**1.1 “Customer Data”** means any and all information or data uploaded, submitted, or otherwise provided by or on behalf of Customer in connection with the Service for the purposes of using the Service, and any resulting reports created through the Service using such information or data. For avoidance of doubt, Customer Data does not include suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the operation of the Service.

**1.2 “Documentation”** means the user manuals, technical documentation and all other information related to the Software, in printed or electronic form, that Vendor may provide to Customer with respect to the Software.

**1.3 “Product”** means collectively the Software and the Documentation.

**1.4 “Software”** means the Vendor’s proprietary software application or applications and any third-party or other software that Vendor provides remote access to and use of as part of the Service, including all Updates thereto made during the term of this Agreement.

**1.5 “Order Form”** means either (a) an invoice generated for use of the Service, or (b) the initial order form for the Service which may be provided in electronic format or attached hereto as an exhibit, and any subsequent order forms, agreed to between the parties in writing, including in online

format, from time to time and made a part of this Agreement, specifying, among other things, the services, fees, and other additional terms as agreed to between the parties.

**1.6** “**Service**” means the mobile and online software service as made available to Customer by means of the internet or through other electronic means, as further set forth in any Order Form.

**1.7** “**Source Code**” means human readable source code of the Vendor software to which it relates, in the programming language in which the software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of.

**1.8** “**Vendor Site**” means any website(s) owned and/or operated by Vendor (whether as of acceptance of this Agreement or anytime thereafter), including, but not limited to, rsquaredcre.com.

**1.9** “**Updates**” mean improvements, modifications, alterations, revisions, extensions, and/or enhancements.

**1.10** “**User**” means a Customer’s employee, representative, consultant, contractor or agent who is authorized to use the Service and has been supplied user identifications and passwords by Customer (or by Vendor at Customer’s request).

**1.11** “**Agreement**” means this Software as a Service Subscription Agreement.

**1.12** “**Customer**” means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity on behalf of which the individual is accepting this Agreement.

**1.13** “**Vendor**” means rSquared CRE, LLC.

## **2. VENDOR SERVICE.**

**2.1 Service.** Vendor shall initially make the Service available to Customer on the terms set forth in this Agreement and/or any Order Form. The parties may enter into additional Order Forms during the term of this Agreement. Vendor shall give Customer reasonable prior written notice before making any material changes to the Service that could reasonably be expected to diminish the usefulness of the Service to Customer, such as eliminating an important feature (“**Material Change**”).

**2.2 Customer Responsibilities.** Customer is responsible for all activities that occur under Customer’s User accounts and for Users’ compliance with the terms of this Agreement. Customer shall: (a) upload, submit and otherwise provide Vendor the Customer Data to the extent reasonably necessary for Vendor to perform the Service; (b) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data and any reports created therefrom; (c) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Vendor promptly of any such unauthorized use; (d) not interfere with or disrupt the integrity or performance of the Service or the data contained therein or otherwise attempt to gain unauthorized access to the Service or its related systems or networks; (e) ensure that Users only use or access the Service and/or the Product in compliance with the terms and conditions of this Agreement and be solely responsible for any breach or violation thereof by any User; (f) comply with all applicable local, state, federal and foreign laws in using the Service; and (g) notify Vendor of the existence and content of any

provision of law in the territory in which Customer is located or any other applicable law which conflicts with any provision of this Agreement at the time of its execution or thereafter.

**2.3 Named Users.** All subscriptions provided to Customer hereunder are Named User subscriptions and subject to the terms, conditions, and limitations of this Agreement. The Product and Software may only be used by individual Named Users and only where the number of individual Users does not exceed the number of paid Named User subscriptions purchased. User names and logins may not be shared by multiple individuals. Unless otherwise specified in an applicable Order Form, customer may reassign Named User subscriptions once per quarter. Notwithstanding the foregoing, in the event a Named User's employment with Customer has terminated, Customer may re-allocate the Named User subscription to a different Named User immediately. The number of Named User subscriptions may not be reduced, but Customer may add additional Named User subscriptions during the term at an agreed upon rate. All additional Named User subscriptions purchased shall require a subscription commitment through the remainder of the subscription term with the fee for such subscriptions prorated based on the number of months remaining in the applicable subscription term. For terms longer than one year, Customer may reduce the number of Named User subscriptions once per year effective on each anniversary of the commencement date in an amount not greater than 25% of the then-applicable number of Named User subscriptions. Customer shall provide written notice of any reduction no later than 30 days prior to each anniversary. Furthermore, Customer and its Users shall agree to keep a secure password for his or her use of the Service, and each User shall keep his or her password confidential at all times.

**2.4 Privacy and Security.** Customer hereby acknowledges and agrees that (a) the Service provided by Vendor is subject to Vendor's Privacy Policy and Terms of Use and all other notices, terms and conditions posted on the Vendor Site (as may be amended from time to time), except as otherwise provided herein or in those documents, all of which are incorporated herein by reference, and (b) it authorizes the collection, use and disclosure of information collected by Vendor for the purposes provided for in this Agreement and/or the Privacy Policy and Terms of Use. Customer agrees that it will use the Service in accordance with such Privacy Policy and Terms of Use (as may be amended from time to time). In the event of a conflict between the terms of this Agreement and the Privacy Policy or Terms of Use, the terms of this Agreement shall prevail.

**2.5 Third Party Interactions.** Customer acknowledges that the Service is designed to process data derived from or created by third-party software. Vendor does not guarantee that such third-party software will continue to be supported or that such software will continue to derive or create data in a form that is compatible with or usable by the Service.

**2.6 Data Backup.** Vendor will utilize various technologies to ensure the integrity of Customer's data on Vendor's servers and to prevent data loss in the event of disk failure. Vendor will maintain disaster recover and failover plans for the Services. Vendor performs routine server backups for disaster recover purposes only. Server backup scope and scheduling is at Vendor's sole discretion.

### **3. PROPRIETARY RIGHTS.**

#### **3.1 Grant of Rights.**

(a) By Vendor.

(i) Service. Vendor hereby grants to Customer and its Users a limited, non-exclusive, non-transferable (except as permitted under Section 10.4), non-sublicensable right to access and use the Service for the purpose for which it is made available to Customer and Users and otherwise in accordance with the terms of this Agreement.

(ii) Products. Vendor hereby grants to Customer a limited, worldwide non-exclusive, non-transferable (except as permitted under Section 10.4), non-sublicensable right to use the Product solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by Vendor and its licensors. Vendor shall be under no obligation to provide upgrades or enhancements to the Software. Images of the Service may not be used for third-party educational purposes without the express written authorization of Vendor.

(iii) Trademark. With Vendor's prior written approval, Customer may use Vendor trademarks and logos applicable to the Service in connection with the activities contemplated under this Agreement. Customer's use of trademarks and logos applicable to the Service shall not suggest that Customer and its products or services are affiliated with Vendor. Upon Vendor's request, Customer will furnish Vendor with a sample of such trademark usage.

(b) By Customer.

(i) Customer Data. Customer retains full right and title to the Customer Data. Customer hereby grants to Vendor a royalty-free, non-exclusive license to use, copy, reproduce, store, display, modify and make derivative works of the Customer Data for purpose of providing the Service. Vendor may access Customer accounts, including without limitation Customer Data, to respond to service or technical problems. Customer hereby further acknowledges and agrees that Vendor may use the Customer Data, solely in aggregate and anonymous format, for other business and commercial purposes, including statistical analysis with respect to Customer usage and traffic patterns, provided that such information does not include Customer or personally identifiable information.

(ii) Trademark. Customer agrees to allow Vendor to mention Customer's name and the products and services provided for Customer by Vendor in promotional and marketing materials distributed by Vendor. Furthermore, Vendor and its channels of distribution may use Customer's trademarks and logos in connection with the provision of the Service and/or for marketing purposes. Upon Customer's request, Vendor will furnish Customer with a sample of such trademark usage.

**3.2 Reservation of Rights.** Customer shall not use the Product except as expressly authorized in this Agreement. Vendor hereby retains all right, title and interest in and to the Service and the Products. Other than the explicit rights granted herein, nothing in this Agreement shall be construed or interpreted as granting to Customer any rights or licenses, including any rights of ownership or any other proprietary rights in or to the Product and any portion thereof, or any other software or technology of Vendor or its suppliers and any intellectual property rights embodied therein. Customer acknowledges Vendor's ownership of and proprietary rights in and to the Product and that Customer shall not acquire any ownership of or proprietary right in or to the Product. The Product (and all Updates thereto) is protected by the copyright laws of the United States and international copyright treaties. Customer shall not acquire any rights to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the operation of the Service.

**3.3 Restrictions.** Customer shall not, and shall not instruct, permit, allow or induce agents or others to (a) sell, resell, lease, license, sublicense, copy, market or distribute, directly or indirectly, the Service or the Product except as explicitly permitted hereunder, (b) modify, port, translate, or create derivative works of the Product, in whole or in part, except as may be explicitly permitted hereunder, (c) reverse engineer, decompile, or disassemble the Product, in whole or in part, or its techniques, or assist third parties in these activities, (d) release or otherwise provide access, directly or indirectly, to any third party to the Service or the Product, (e) remove or alter any copyright notices on the Service or the Product, or (f) create a product that provides similar services to those of the Product.

Vendor reserves the right, with reasonable notice to Customer, to audit Customer's compliance with the terms of this Agreement.

#### **4. PAYMENTS AND ACCOUNTING.**

**4.1 Fees.** Customer shall pay the fees specified in the Order Form. All fees are quoted in United States Dollars and are non-refundable. As specified in an Order Form, all fees shall be billed on a per Named User basis. Noncompliant use of the Services, including the failure to register and pay fees for additional users, shall constitute a material breach of this Agreement. All fees are non-refundable.

**4.2 Payment Terms.** Charges are due from Customer prior to the subscription commencement date. All payments made under this Agreement shall be in United States Dollars. For any renewal pursuant to Section 9.1, the renewal charge per Named User will be equal to the Vendor's standard rate per Named User currently in effect as of the date of issuance of the renewal invoice. For monthly subscriptions, payment must be made by credit card or ACH and Vendor will automatically charge Customer monthly unless this Agreement is terminated in accordance with Section 9 of this Agreement.

**4.3 Overdue Payments.** Any payment not received from Customer by the due date shall accrue late charges at the rate of one and a half percent (1.5%) or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Suspension of Service.** If Customer's account is overdue, in addition to any of its other rights or remedies, Vendor reserves the right to suspend the Service provided to Customer, without liability to the Vendor, until such amounts are paid in full. Reestablishment of Service following payment may be subject to additional fees.

**4.5 Taxes.** Vendor's fees are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("Taxes"), and Customer is responsible for payment of all Taxes, excluding only United States and foreign taxes based on Vendor's income. If Vendor has the legal obligation to pay or collect taxes for which Customer is responsible pursuant to this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority.

**4.6 Verification of Appropriate Usage.** Vendor reserves the right to inspect and verify Customer's compliance with the terms of this Agreement, including but not limited to compliance with appropriate use by Named Users of the Service. Customer will maintain proper records of all Users of the Service. Vendor may inspect any such records up to once per calendar quarter in order to verify Customer's compliance with this Agreement. Any inspection will be conducted during regular business hours, upon at least five (5) business days' prior written notice, at Customer's office in a manner that does not unreasonably interfere with Customer's business activities. Without limiting any other rights available to Vendor under this Agreement, such inspection shall be at Vendor's sole cost and expense, unless such inspection reveals that Customer underpaid the amount actually owing by 1.5% or more, in which case Customer shall reimburse Vendor for such cost and expense, in addition to paying all amounts owed.

#### **5. CONFIDENTIALITY.**

**5.1 Definition of Confidential Information.** As used herein, “**Confidential Information**” means all information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”) that is confidential or proprietary to the Disclosing Party. Confidential Information includes, without limitation, the terms and conditions of this Agreement including pricing, Customer Data, Source Code, the Products, the Service, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Confidential Information shall not include any information that (a) is or becomes generally known to the public without the Receiving Party’s breach of any obligation owed to the Disclosing Party, (b) was independently developed by the Receiving Party without the Receiving Party’s breach of any obligation owed to the Disclosing Party, or (c) is received from a third party who obtained such Confidential Information without any third party’s breach of any obligation owed to the Disclosing Party.

**5.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission. Notwithstanding the foregoing, it shall not be a breach of this Agreement to disclose the terms and conditions of this Agreement to (a) those employees, contractors and Users of the Receiving Party who have a need to know and are bound by confidentiality and nondisclosure terms that are no less protective than the terms in this Agreement or (b) a party’s attorneys, accountants, bankers, or other professional advisors in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets which does not involve a direct competitor of the other party, or to the acquirer in such event pursuant to a confidentiality agreement.

**5.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

**5.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party’s cost) if the Disclosing Party wishes to contest the disclosure.

**5.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 5.5, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **6. REPRESENTATIONS AND WARRANTIES.**

**6.1 Representations and Warranties.** Each party represents and warrants that it has the power and authority to enter into this Agreement. Vendor warrants that it will provide the Service in a manner consistent with generally accepted industry standards, provided that Customer’s sole and exclusive remedy and Vendor’s sole liability for a breach of the foregoing warranty shall be as set forth in Section 8.

**6.2 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6.1 ABOVE, VENDOR HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, AND CONDITIONS WITH REGARD TO THE SERVICE AND THE PRODUCT, INCLUDING BUT NOT LIMITED TO ALL GUARANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND QUALITY OF SERVICE. WITHOUT LIMITING

THE GENERALITY OF THE FOREGOING AND EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6.1 ABOVE, VENDOR DOES NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE SERVICE WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR (B) THE QUALITY OF ANY PRODUCTS, SERVICES OR INFORMATION OR OTHER MATERIALS CUSTOMER PURCHASES OR OBTAINS THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY VENDOR, THE SERVICE AND THE PRODUCTS ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT EXCLUDE LIABILITY TO THE EXTENT SUCH LIABILITY MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW UNDER THE JURISDICTION IN WHICH THE CUSTOMER IS LOCATED, DOING BUSINESS OR OTHERWISE BECOMES SUBJECT TO.

## **7. INDEMNIFICATION.**

### **7.1 Indemnification by Vendor.**

(a) Subject to the terms and conditions set forth herein, Vendor shall, at its cost and expense, (i) defend, or at its option, settle any claim brought against Customer and its respective directors, officers and employees ("**Customer Indemnitee(s)**") by a third party alleging that any use of the Service and/or the Product infringes or violates any third party intellectual property right (the "**Claim**"), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of the Claim or any damages awarded to such third party as a result of the Claim; provided that Customer Indemnitee(s): (A) give Vendor prompt written notice of the Claim; and (B) permit Vendor to solely control and direct the defense or settlement of the Claim; and (C) provide Vendor all reasonable assistance in connection with the defense or settlement of the Claim, at Vendor's cost and expense. Customer may participate in the defense and settlement at Customer's sole expense.

(b) If a Claim occurs, or in Vendor's opinion is reasonably likely to occur, Vendor, at its expense and at its sole discretion, may, in addition to its indemnification obligations hereunder: (i) procure the right to allow Customer to continue to use the Service and/or the applicable Product; or (ii) modify or replace the applicable Product or infringing portions thereof to become non-infringing; or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer's access to the affected portion of the applicable Product and, as applicable, refund any prepaid fees paid by Customer corresponding to such Product, covering the remainder of the term of the terminated subscription.

(c) Notwithstanding the foregoing, Vendor shall have no obligation under this Section to the extent any Claim is based upon, arises out of or related to: (i) any modification or alteration to the applicable Product not made by or on behalf of Vendor; and/or (ii) any combination or use of the applicable Product with any third party equipment, products or systems that are not expressly permitted by Vendor under this Agreement, to the extent that the Claim is based on such combination or use; and/or (iii) Customer's continuance of allegedly infringing activity a reasonable period after being notified thereof; and/or (v) damages attributable to the value of the use of a non-Vendor product or service; and/or (vi) use of the applicable Software not in accordance with the applicable Documentation or outside the scope of the subscription granted under this Agreement.

(d) TO THE EXTENT PERMITTED BY LAW, THE PROVISIONS OF THIS SECTION 7.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF VENDOR, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SERVICE OR THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT EXCLUDE LIABILITY TO THE EXTENT THAT SUCH LIABILITY MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW UNDER THE

JURISDICTION IN WHICH THE CUSTOMER IS LOCATED, DOING BUSINESS OR OTHERWISE BECOMES SUBJECT TO.

**7.2 Indemnification by Customer.** Subject to the terms and conditions set forth herein, Customer shall defend, indemnify and hold Vendor and its respective directors, officers and employees (“**Vendor Indemnitee(s)**”) harmless against any loss or damage (including without limitation reasonable attorneys’ fees) incurred in connection with claims made or brought against Vendor by a third party alleging that the Customer Data or the use thereof by either party infringes or violates any third party intellectual property right or otherwise has caused harm to a third party; provided that Vendor Indemnitee(s): (a) give Customer prompt written notice of any such claim; and (b) permit Customer to solely control and direct the defense or settlement of any such claim; and (c) provide Customer all reasonable assistance in connection with the defense or settlement of such claim, at Customer’s cost and expense. Vendor may participate in the defense and settlement at Vendor’s sole expense. Customer shall have no obligations to the Vendor Indemnitee(s) under this Section 7.2 to the extent such claims arise from Vendor’s breach of this Agreement or Customer’s use of Customer Data as authorized and contemplated by this Agreement.

## **8. LIMITATION OF LIABILITY.**

**8.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$100,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER FOR THE SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

**8.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PROVISIONS OF THIS AGREEMENT UNDER WHICH THE LIABILITY OF VENDOR IS EXCLUDED OR LIMITED SHALL NOT APPLY TO THE EXTENT THAT SUCH EXCLUSIONS OR LIMITATIONS ARE DECLARED ILLEGAL OR VOID UNDER THE LAWS APPLICABLE IN THE JURISDICTION IN WHICH THE CUSTOMER IS LOCATED, DOING BUSINESS OR OTHERWISE BECOMES SUBJECT TO.

**8.3 Limitation of Action.** Except for actions for non-payment or breach of either party’s intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than one (1) year after the cause of action has accrued.

## **9. TERM AND TERMINATION.**

**9.1 Term.** This Agreement commences upon acceptance and will remain effective throughout the term specified in the applicable Order Form including any such renewals. The term of the Service or other offerings set forth in an Order Form hereunder shall commence as set forth in such Order Form, and shall continue for the period of time set forth in such Order Form. Any outstanding Order Forms in effect upon expiration or termination of this Agreement shall survive such expiration in accordance with their terms. Upon the expiration of the initial term, this Agreement will automatically renew for successive terms equal in length to the current term at Vendor’s then-standard current fees unless Customer notifies Vendor in writing at least thirty (30) days prior to the expiration of the current term that Customer does not wish to renew the Agreement.



**9.2 Termination for Cause.** A party may terminate this Agreement: (a) upon thirty (30) days' prior written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (b) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Customer may also terminate this Agreement for cause upon thirty (30) days' prior written notice in the event that it receives notice of a Material Change, or failing such notice, in the event that it discovers a Material Change.

**9.3 Outstanding Fees.** Expiration or termination of this Agreement shall not relieve Customer of the obligation to pay any fees accrued or payable to Vendor prior to the effective date of termination.

**9.4 Removal of Customer Data.** Upon written request by Customer either during the term of this Agreement or within thirty (30) days after the effective date of termination, Vendor shall remove all Customer Data from its systems and deliver to Customer written confirmation that such removal has been completed. After such thirty (30) day period, Vendor shall have no obligation to maintain any Customer Data.

**9.5 Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1, 3.2, 4, 5, 6, 7, 8, 9.3, 9.4, 9.5 and 10.

**9.6 No Liability.** EXCEPT AS EXPRESSLY REQUIRED BY LAW, IN THE EVENT OF TERMINATION OF THIS AGREEMENT BY EITHER PARTY IN ACCORDANCE WITH ITS TERMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR COMPENSATION, REIMBURSEMENT OR DAMAGES RESULTING FROM SUCH TERMINATION AND RESULTING FROM (A) THE LOSS OF PROSPECTIVE PROFITS OR ANTICIPATED SALES, OR (B) EXPENDITURES, INVENTORY, INVESTMENTS, LEASES OR COMMITMENTS IN CONNECTION WITH THE BUSINESS OR GOODWILL OF VENDOR OR THE CUSTOMER.

## **10. GENERAL.**

**10.1 Governing Law; Venue.** This Agreement will be subject to and governed in all respects by the statutes and laws of the State of Illinois without regard to the conflicts of laws principles thereof. The state and federal courts located in Cook County, Illinois will have exclusive jurisdiction and venue over all disputes or controversies in connection herewith, and each party hereby consents to such exclusive and personal jurisdiction and venue.

**10.2 Free Trials.** If Customer registers on the Vendor website for, or is otherwise provided with, a free trial, Vendor will make one or more Services available to Customer on a trial basis free of charge until the earlier of (A) the end of the free trial period for which Customer registered, or was otherwise provided access, to use the applicable Service(s), (B) the start date of any purchased service subscriptions ordered by Customer for such Service(s), or (c) termination by Vendor in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. ANY DATA ENTERED INTO THE SERVICES AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER DURING THE FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE APPLICABLE UPGRADED SERVICES, OR EXPORT SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. NOTWITHSTANDING SECTION 6.1, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

**10.3 Entire Agreement.** This Agreement, including Exhibits, constitutes the entire Agreement and understanding between the parties and integrates all prior discussions between them related to its subject matter. No modification of any of the terms of this Agreement will be valid unless in writing and signed by an authorized representative of each party.

**10.4 Assignment.** Except as otherwise set forth herein, Customer shall not assign any part or all of this Agreement without Vendor's prior written consent. Vendor may assign this Agreement to a subsidiary or successor-in-interest, or otherwise with notice to Customer. Subject to the foregoing, this Agreement will apply to and bind any successor or assigns of the parties hereto.

**10.5 Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed electronic mail, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address as set forth below or in the applicable Order Form.

If to VENDOR:

rSquared CRE, LLC  
230 W. Monroe, Suite 1050  
Chicago, IL 60606

If to CUSTOMER:

Notices to Customer will be addressed to the relevant billing contact stated on any Order Form.

**10.6 Force Majeure.** Neither party will be responsible for any failure to perform its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, earthquake, floods, severe weather or other natural disasters, epidemics, acts of terror, strikes or other labor problems, power failures, malicious acts of third parties against either party's information technology systems or infrastructure, computer or telecommunications failure, governmental regulations imposed after the fact, or delays involving hardware or software not within Vendor's reasonable control.

**10.7 Waiver.** A waiver, expressed or implied, by either party of any default by the other in the observance and performance of any of the conditions, covenants or duties set forth herein will not constitute or be construed as a waiver of any subsequent or other default.

**10.8 Headings.** The headings to the Sections of this Agreement are included merely for convenience of reference and shall not affect the meaning of the language included therein.

**10.9 Independent Contractors.** The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Nothing contained in this Agreement will be interpreted as constituting either party the joint venturer or partner of the other party or as conferring upon either party the power of authority to bind the other party in any transaction with third parties.

**10.10 Severability.** Except as otherwise set forth in this Agreement, the provisions of this Agreement are severable, and if any one or more such provisions are determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof will not in any way be affected thereby and shall nevertheless be binding

between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof will be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law.

**10.11 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. If Customer clicked a box indicating acceptance of this Agreement, such acceptance shall constitute Customer's execution of this Agreement. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original. Notwithstanding the foregoing, the parties shall deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

## **11. SUPPORT.**

**11.1 General.** Vendor will establish an organization and process to provide support for the Services to the Customer. Vendor will use its commercially reasonable efforts to cure reported and reproducible errors in the Service. Vendor shall also use its commercially reasonable efforts to make the Service available 24 hours a day, seven days a week, except for (a) planned maintenance for which Vendor will use its best efforts to carry out on weekends after 6pm Eastern Standard Time, and (b) unscheduled maintenance performed outside normal business hours (Eastern Standard Time), provided that Vendor has used reasonable efforts to give the Customer at least one hour notice in advance by electronic mail or a posting on the Service. Vendor shall also provide Customer with Vendor's standard customer support services during normal business hours. Standard support shall include responding to Customers regarding the operation of the Service. Standard support shall not include training services. However, such training services may be provided by Vendor for an additional fee. The Vendor may limit support services included in this Agreement at any time and at the Vendor's sole discretion.