

Software Services Agreement

Last Updated: May 13th, 2025

This Software Agreement (“**Agreement**”) is entered into between Noibu Technologies Inc., a Canada corporation, having a place of business at 979 Bank Street, Suite 500, Ottawa, ON K1S 5K5, (“**Noibu**”) and the customer identified on the Order Form. (“**Customer**”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

For the purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them as follows:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**”, for purposes of this Agreement, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity;

“**Customer Content**” means any data, materials, descriptions, photos, graphics, logos, or audio/visual content belonging to Customer or its licensors and provided to Noibu for use with the Service.

“**Customer Data**” means all electronic data or information submitted by Customer and/or its End Users to the Service or collected by Noibu on behalf of Customer in the course of End Users using the Service;

“**Deliverable**” means any software, analytics, reports documentation and/or other materials prepared by Noibu for Customer as described in an Order Form;

“**End User**” means any individual who accesses and uses the Service on behalf of Customer;

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or Programs;

“**Order Form**” means the written or electronic ordering document agreed to by Noibu and by the authorized billing contact of Customer click-accepting or signing the same and which sets out the commercial terms of Customer’s subscription to the Service, as the same may be updated from time to time by mutual agreement.

“**Professional Services**” means any services to be provided by Noibu to Customer, all as described in an Order Form, and may include onboarding, integration, and/or customization services;

“Service” means the software-as-a-service platform provided by Noibu, including the core error monitoring functionality and any additional features, or functionalities made available from time to time, as specified in the applicable Order Form(s). Features and capabilities enabled for the Customer shall be determined by the scope defined in the applicable Order Form and may include, without limitation, performance monitoring, log monitoring, digital experience analytics (DXA), live view, and other modules.

“Service Fees” means the fees for the Service (as specified in the Order Form executed by the parties) payable by Customer to Noibu for the right to receive access to the Service;

“Session” means a group of user interactions with Customer’s website that take place within a given time frame, provided that the session is between one user and one browser. A single session can contain multiple page views, events, social interactions, and ecommerce transactions.

“Subscription Period” means the usage period for permitted access to the Service as specified in the Order Form executed by the parties;

“Term” has the meaning ascribed to that term in Section 10.1; and

“User Guide” means the technical documentation made available by Noibu to Customer describing the specifications of the Service.

2. Grant of License.

2.1 Provision of Service. Conditioned on the provisions in this Section 2 and the other terms and conditions of this Agreement including payment of the applicable Service Fees, Noibu shall make the Service available to Customer for Customer’s internal business use during the Subscription Period. Customer’s right to use the Service during the Subscription Period shall be in accordance with any additional conditions, restrictions or parameters specified in the Order Form or the Service Subscription Order Form(s) executed by Noibu and Customer.

2.2 Customer Affiliates. Customer Affiliates may not use the Service unless otherwise agreed to between Noibu and Customer in the Order Form.

3. Use of the Service.

3.1 Noibu Responsibilities. Noibu shall: (i) in addition to its confidentiality obligations hereunder, not use or modify the Customer Data (except for the purposes of performing its obligations or exercising its rights under this Agreement) or disclose the Customer Data to anyone other than Customer and the applicable End User(s) and to its cloud services providers and other sub-processors; (ii) maintain the security and integrity of the Service and the Customer Data; (iii) provide basic support to Customer’s End Users, at no additional charge; and (iv) use commercially reasonable efforts to make the Service available twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime; or (b) any unavailability caused by circumstances beyond Noibu’s reasonable control, including without limitation, acts of

God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Noibu employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Noibu's possession or reasonable control, and denial of service attacks.

3.2 Customer Responsibilities.

Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content and Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Noibu promptly of any such unauthorized access or use; (iii) comply with all applicable local, provincial, state, federal and foreign laws in using the Service; (iv) notify Noibu if it intends to use the Service to process Personal Data of data subjects located in the European Economic Area, in which case the parties shall enter into Noibu's then-current Data Processing Agreement ("DPA"); and (v) notify Noibu of any data fields, inputs, or content areas that may contain Personal Data the Customer wishes to exclude from session capture, so that Noibu may implement reasonable measures to exclude such data.

3.3 Use Guidelines.

Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party; (ii) use the Service to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) use the Service to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third-party privacy or publicity rights; (iv) use the Service to send or store Malicious Code; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

3.4 Publicity.

Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Each party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.

3.5 Professional Services and/or Features.

If the Customer requests additional Professional Services or Features, including but not limited to modules such as performance monitoring, log monitoring, digital experience analytics (DXA), live view, or other Add-On Features that Noibu may introduce from time to time, the Customer shall notify Noibu, and both parties shall negotiate in good faith an additional or revised Order Form detailing the applicable scope, fees, and terms. Add-On Features are not included in the standard Service unless expressly identified in the applicable Order Form. Access to any such features shall be subject to mutual written agreement and the execution of an updated Order

Form. All such Add-On Features or Professional Services shall be subject to additional Service Fees as set forth in the applicable Order Form.

4. Fees and Payment.

4.1 Fees.

Service fees are calculated based on a price per Session (“**PPS**”) for an agreed number of Sessions for use by Customer within an annual period, as further specified in the applicable Order Form (“**Service Fees**”). All amounts are payable in US dollars. Customer shall be responsible for paying the full Service Fees regardless of whether it uses all of the Sessions and no refunds shall be provided. In the event that Customer’s Sessions in the applicable period exceed the amount of Sessions included for the applicable annual term as quoted on the Order Form, Noibu reserves the right to charge customer for additional Sessions on a per Session basis at the standard PPS without regard to any discounts provided in the initial Order Form, in accordance with Section 4.3 below..

4.2 Service Fees on Renewal.

Unless otherwise agreed in writing, each Renewal Term shall be governed by a new or revised Order Form mutually agreed upon by the parties. However, if no new or revised Order Form is executed before the start of a Renewal Term and the Customer does not provide timely notice of non-renewal in accordance with Section 10.1, this Agreement shall automatically renew on the same terms as the expiring Order Form, subject to any updates to pricing. Noibu will provide Customer with reasonable prior written notice of any changes to Service Fees or pricing for Add-On Features before the commencement of a Renewal Term. Any such changes will only apply to the Renewal Term and will not affect the Fees payable for the then-current Term. For clarity, continued use of the Service including the ongoing deployment of the Noibu tag following the commencement of any Renewal Term without an executed updated Order Form shall constitute acceptance of the Renewal Term and the applicable adjusted Service Fees.

4.3 Flex Usage.

4.3.1 Annual Plans. If the annual Session allocation is exceeded by 5% or more (“**Session Buffer**”), additional Session consumption for the remaining unexpired Term will be billed monthly at the standard PPS as the current Term, excluding any discounts applied in the initial Order Form, unless Customer elects to renew early by executing a new or revised Order Form with Noibu.

4.3.2 Multi-Year Plans. If usage of the Service exceeds the **Session Buffer** in any annual period during the Term, additional Session consumption for the remaining unexpired Term will be billed monthly at the standard PPS as the current Term, excluding any discounts applied in the initial Order Form, unless Customer elects to: (i) renew early by executing a new or revised Order Form with Noibu; or (ii) to use the allotment of Sessions for the next committed annual term (if applicable).

4.5 Invoicing and Payment.

Fees for the Service will be invoiced on an annual basis unless otherwise specified in the applicable Order Form executed by the parties. Unless otherwise stated in an invoice, charges are due net thirty (30) days from the invoice date. Professional Services fees will be invoiced as specified in the applicable Order Form, but unless specified otherwise in the Order Form will be due net thirty (30) days from the date of completion of the applicable Professional Service. Customer is responsible for maintaining complete and accurate billing and contact information with Noibu.

4.6 Overdue Payments.

Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Noibu's discretion, late payment interest at the rate of 1.0% of the outstanding balance per month (12.67% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid and Noibu will be entitled to claim any third party costs of collection in respect of the same.

4.7 Taxes.

Unless otherwise stated, Service Fees do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, goods and services, harmonized, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases pursuant to this Agreement, excluding taxes based on Noibu's net income or property. If Noibu has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Noibu with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.8 Suspension of Service.

If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Noibu reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

5. Proprietary Rights.

5.1 Reservation of Rights.

Subject to the limited rights expressly granted pursuant to this Agreement, Noibu reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

5.2 Restrictions.

Customer shall not (and shall not allow any third party to): (i) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Service except to the extent that enforcement of this restriction is prohibited by applicable law notwithstanding a contractual provision to the contrary; (ii) circumvent any user limits or other timing or use restrictions that are built into the Service; (iii) remove any proprietary notices, labels, or marks from the Service or User Guide; (iv) frame or mirror any content forming part of the Service; or (v) access the Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Service.

5.3 Customer Data.

As between Noibu and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data and Customer Content. Customer hereby grants Noibu a non-exclusive license for the Term (and for thirty (30) days thereafter) to use and otherwise exploit the Customer Data as reasonably required to provide the Service. The forgoing license shall include the right for Noibu to use and copy the Customer Data for the purpose of creating aggregated and anonymized statistical analytics in respect to Service use and other Service and End User parameters and characteristics ("**Aggregated Statistics**"), provided, that the license in respect to Aggregate Statistics shall be perpetual, irrevocable and unlimited. Noibu shall be the exclusive owner of all Aggregated Statistics and any intellectual property rights therein.

5.4 Suggestions.

Customer hereby assigns and will assign all right, title and interest in and to any intellectual property in and to any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its End Users relating to the Service ("**Feedback**"). Customer shall execute or procure any and all documents confirming or transferring such right to Noibu within ten (10) business days of Noibu's request for such documents. Customer hereby waives or hereby agrees to procure waivers for any and all moral rights that may reside in any Feedback and, if requested, Customer shall procure a written waiver of moral rights from its employees, contractors, agents or End Users.

6. Confidentiality.

6.1 Definition of Confidential Information.

As used herein, "**Confidential Information**" means all confidential and proprietary information of a party (the "**Disclosing Party**") disclosed to the other party (the "**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the

public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

6.2 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.

6.3 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 using less than reasonable care).

6.4 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 (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.5 Remedies.

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections in this Agreement, 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 may be inadequate.

7. Warranties and Disclaimers.

7.1 Warranties.

Each party warrants that it has the legal power to enter into this Agreement. Noibu warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the User Guide; and (iii) the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User or Customer-uploaded materials or otherwise originating from Customer or a User).

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, NOIBU MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTIES OR CONDITIONS OF ANY KIND,

WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED MERCHANTABILITY, MERCHANTABILITY, DURABILITY, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. Mutual Indemnification.

8.1 Indemnification by Noibu. Subject to the terms and conditions of this Agreement, Noibu shall, at its own expense, defend Customer in any action, suit or proceeding by a third party alleging that the Service infringes or misappropriates any patent, trademark, trade secret, copyright or any other intellectual property rights of such third party (an “**IP Claim**”) and shall indemnify and hold Customer harmless from and against any settlement amounts agreed in writing by Noibu and/or any losses, damages, expenses or costs (including but not limited to reasonable attorneys’ fees) awarded in respect to such IP Claim to such third party against Customer by a court or tribunal of competent jurisdiction in such IP Claim. As conditions for such defense and indemnification by Noibu, (i) Customer shall notify Noibu promptly in writing upon becoming aware of all pending IP Claims; (ii) Customer shall give Noibu sole control of the defense and settlement of such IP Claims; (iii) Customer shall cooperate fully with Noibu in the defense or settlement of such IP Claims; and (iv) Customer shall not settle any IP Claims without Noibu’s written consent, or compromise the defense of any such IP Claims or make any admissions in respect thereto.

8.2 Mitigation.

If (i) Noibu becomes aware of an actual or potential IP Claim, or (ii) Customer provides Noibu with notice of an actual or potential IP Claim, Noibu may (or in the case of an injunction against Customer, shall), at Noibu’s sole option and determination: (a) procure for Customer the right to continue to use the Service; or (b) replace or modify the Service with equivalent or better functionality so that Customer’s use is no longer infringing; or (c) if (a) or (b) are not commercially reasonable, terminate provision of the Service and refund to Customer any pre-paid Service Fees for any periods after the termination of the Service, less any outstanding moneys owed by Customer to Noibu.

8.3 Exclusions.

The obligations in Sections 8.1 and 8.2 do not extend to (i) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Service furnished by Noibu with other products, software or services not provided by Noibu; (ii) any IP Claim related to any Customer Data or Customer Content, or (iii) any IP Claim related to any use or exercise of any other right in respect to the Service outside the scope of the rights granted in this Agreement.

8.4 Indemnification by Customer.

Subject to the terms and conditions of this Agreement, Customer shall, at its own expense, defend Noibu, its Affiliates and its and their directors, officers, employees and agents (the

“Noibu Indemnitees”) in any action, suit or proceeding brought by a third party against any of the Noibu Indemnitees alleging that the Customer Content, Customer Data, or Customer’s use of the Service in violation of this Agreement, infringes or misappropriates the intellectual property or other rights of, or has otherwise harmed, a third party (**“Customer Claims”**) and shall indemnify and hold the Noibu Indemnitees harmless from and against any settlement amounts agreed in writing by Customer and/or any losses, damages, expenses or costs (including but not limited to reasonable attorneys’ fees) awarded to such third party against any of the Noibu Indemnitees by a court or tribunal of competent jurisdiction in any such Customer Claim. As conditions for such defense and indemnification by Customer, (i) Noibu shall notify Customer promptly in writing upon becoming aware of all pending Customer Claims; (ii) Noibu shall give Customer sole control of the defense and settlement of such Customer Claims; (iii) Noibu shall cooperate fully with Customer in the defense or settlement of such Customer Claims; and (iv) Noibu shall not settle any Customer Claims without Customer’s written consent, or compromise the defense of any such Customer Claims or make any admissions in respect thereto.

9. Limitation of Liability.

9.1 Liability Cap.

IN NO EVENT SHALL NOIBU’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

9.2 Exclusion of Consequential and Related Damages.

IN NO EVENT SHALL NOIBU HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 Beneficiaries.

Every right, exemption from liability, release, defence, immunity and waiver of whatsoever nature applicable to a party under this Agreement shall also be available and shall extend to benefit and to protect such party’s Affiliates, subcontractors, agents, licensors, suppliers, directors and/or employees and for such purposes such party is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such companies and persons in respect to such rights, exemptions, releases, defenses, immunities and waivers.

10. Term and Termination.

10.1 Term of Agreement.

This Agreement shall commence on the start date set out in the Order Form and continue for the Subscription Period specified in the Order Form ("**Initial Term**"). Upon expiry of the Initial Term, the Subscription Period shall automatically renew for additional periods equal to the duration of the Initial Term (each, a "**Renewal Term**"), unless either party provides the other party with at least 90 days' notice of its intent not to renew prior to the expiry of the Initial Term or the then-current Renewal Term. Together, the Initial Term and any Renewal Terms constitute the "**Term**" of this Agreement.

10.2 Termination for Cause.

A party may terminate this Agreement for cause: (i) upon ninety (90) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.3 Outstanding Fees.

Termination, suspension, or expiration of this Agreement shall not relieve Customer of the obligation to pay any fees accrued or payable to Noibu. Upon termination by Noibu under Section 10.2, all applicable fees for the remainder of the Term shall become due immediately.

10.4 Surviving Provisions.

The following provisions shall survive any termination or expiration of this Agreement: Sections 4 through 11.

11. General Provisions.

11.1 Relationship of the Parties.

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.2 No Third-Party Beneficiaries.

Except as expressly provided in this Agreement, there are no third-party beneficiaries to this Agreement.

11.3 Notices.

All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business

day after sending by confirmed facsimile; or (iv) the second business day after sending by email. Notices to Noibu shall be addressed to the attention of the Finance Department at finance@noibu.com. Notices to Customer shall be addressed to Customer's signatory of this Agreement unless otherwise designated on the Order Form.

11.4 Waiver and Cumulative Remedies.

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.6 Assignment.

Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Noibu may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its business, stock or assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.7 Governing Law.

This Agreement shall be governed by the laws of the Province of Ontario, Canada, without regard to its conflict of law principles. No choice of laws or rules of any jurisdiction shall apply to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded. The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

11.8 Venue; Waiver of Jury Trial.

The provincial and federal courts located in Ottawa, Ontario, Canada, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any

right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

11.9 Force Majeure.

Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labour problems (other than those involving the employees of the affected party), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.

11.10 Export.

Customer acknowledges and agrees that the Service may be subject to export and import controls under the regulations of Canada, the United States and other countries, and Customer shall comply with all export and import control regulations of such countries. Customer shall not use the Service for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any subsequent export, import or use of the Service.

11.11 Entire Agreement.

This Agreement, including all schedules, exhibits, addenda hereto, and all Order Forms, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. However, in instances where an Alternative Agreement (hereafter referred to as the "Custom Agreement") has been expressly negotiated and executed in writing by both parties, the terms of the Custom Agreement shall prevail over this Agreement. Notwithstanding any other provisions of this Agreement, changes to the Agreement applicable to customers without a Custom Agreement may be made by Noibu in accordance with the "Amendment and Modification" section 11.12, and such changes will become effective immediately upon their posting on our official website noibu.com/msa or by direct communication to the Customer via email. In the event of any conflict or inconsistency between the provisions of this Agreement and any subsequently posted changes or the Custom Agreement as described above, the provisions of the Custom Agreement or the updated agreement, as applicable, will prevail.

11.12 Amendment and Modification.

Notwithstanding any other provision of this Agreement, Noibu reserves the right, at its sole discretion, to modify or amend this agreement, including any schedules, exhibits, and addenda hereto, at any time in order to improve our Services. Changes may include suspending or

discontinuing any part of the Services, introducing new features, or imposing limits on certain features. We will make reasonable efforts to provide notice to Customer of any material changes that could adversely affect their use of the Services, although immediate notice may not always be available. Changes will be effective immediately upon posting on our official website noibu.com/msa or upon sending an email to the Customer, and your continued use of the Service after such changes will constitute your acceptance of the new Provisions.

11.13 Counterparts.

This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

11.14 Language.

It is the express wish of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.