Standard Terms of Service (MCR)

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY SIGNING AN ORDER, CUSTOMER AGREES TO THESE TERMS AND CONDITIONS.

These Terms of Service constitute an agreement (this "**Agreement**") by and between COMPARATIO USA, LLC, a limited liability company whose principal place of business is 5353 Gamble Drive, Suite 200, St. Louis Park, MN 55416, USA (the "**Provider**") and the corporation, LLC, partnership, sole proprietorship, or other business entity executing an Order with the Provider subject to the terms of this Agreement (the "**Customer**"). This Agreement is effective as of the date Customer signs the applicable Order (the "**Effective Date**"). Customer's use of and Provider's provision of Provider's Solution (as defined below in Definition 1.6) are governed by this Agreement.

Provider may provide the service as an on-premise installation within Customer's IT infrastructure or as hosted solution within Provider's infrastructure as set forth on the applicable Order.

For an on-premise installation, Customer provides a Server on which Provider installs the On-Premise Components on the Server. The On-Premise Components on the Server shall only be accessed remotely by Provider, via VPN and/or RDP connection. The Provider may also provide Customer with access to the data generated by the On-Premise Components on the Cloud Portal.

The Provider may also provide professional services related to implementation, installation, and customization of the Server. The parties have agreed that Provider will provide the EDI Solution to Customer, as well as such professional services as the parties may agree, now and pursuant to future statements of work.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER'S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.

    1.1. "**Associates**" means a party's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

    1.2. "**AUP**" means Provider's acceptable use policy currently posted at comparatio.com/aup

    1.3. "**Cloud Portal**" means such elements of the software hosted on third party computers.

    1.4. "**Confidential Information**" has the meaning set forth in Section 9.1.

    1.5. "**Customer Data**" means information processed or stored through the Solution by Customer or on Customer's behalf.

1.6. "**Documentation**" means Provider's standard manual related to use of the Solution currently posted at comparatio.com/service-description

1.7. "**Excluded Data**" means any information relating to an identified or identifiable individual that is not a name, address or telephone number.

1.8. "**Feedback**" refers to any suggestion or idea for improving or otherwise modifying any of Provider's products or services.

1.9. "**On-Premise Components**" means such elements installed on the Server to run the software on its computers.

1.10. "**Order**" means an order for access to the Solution.

1.11. "**Professional Services**" means such Provider services as are set forth in a Statement of Work.

1.12. "**Statement of Work"** means a statement of work executed by each party.

1.13. "**Server**" means the dedicated application server within Customer's IT infrastructure and provided by Customer. For the avoidance of doubt, Customer's IT infrastructure may also include cloud service providers (e.g Amazon Web Services, Azure, etc) that are contracted by the Customer.

1.14. "**Solution**" means the On-Premise Components and Cloud Portal.

1.15. "**Term**" is defined in Section 14.1 below.

1.16. "**Update(s)**" means any patches, workarounds, improvements, corrections, modifications or derivatives to the On-Premise Components that Provider makes generally available as part of its support service.

1.17. "**User**" means any individual who uses the Cloud Portal on Customer's behalf or through Customer's account or passwords, whether authorized or not.

2. **THE CLOUD PORTAL.**

2.1. Use of the Cloud Portal. During the Term, Customer may access and use the Cloud Portal pursuant to the terms of this Agreement.

2.2. Documentation. Customer may reproduce and use the Documentation solely as necessary to support Users' use of the Cloud Portal.

2.3. Cloud Portal Revisions. During the term, Provider may revise the Cloud Portal features and functions provided that Provider does not materially reduce or eliminate functionality in the Cloud Portal.

3. **ON-PREMISE COMPONENTS.**

3.1.   <u>License</u>. Provider hereby grants Customer a nonexclusive license to use the On-Premise Components, in such quantities as are set forth on the applicable Order, as necessary for Customer's internal business purposes and solely as a component of the Solution, provided Customer complies with the restrictions set forth below in Section 4.1 (*Restrictions on Solution Rights*). Such internal business purposes do not include use by any parent, subsidiary, or affiliate of Customer, or any other third party unless authorized by Provider, and Customer shall not permit any such use.

3.2.   <u>Implementation of On-Premise Components</u>. The scope and fees of the Professional Services required for the implementation of the On-Premise Components shall be mutually agreed to by the Parties in a Statement of Work.

3.3.   <u>Security</u>. Customer shall be responsible for maintaining the security of the Server in order to permit the On-Premise Components to operate in accordance with this Agreement and prevent unauthorized use or disclosure of Customer Data. Provider makes no representation or warranty and shall have no responsibility whatsoever with respect to use or attempted use with the Solution of any.

4. **THE SOLUTION.**

4.1.   <u>Restrictions on Solution Rights</u>. Customer receives no title to or ownership of any copy or of the Solution itself. Furthermore, Customer receives no rights to the Solution other than those specifically granted in in Sections 2.1 and 3.1 above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Solution; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Solution; or (c) use the Solutions in any way forbidden by Section 7.1 below. Provider grants the use right in Section 2.1 and license in Section 3.1 above under copyright and, solely to the extent necessary to exercise such rights, under any other applicable intellectual property rights of Provider.

5. **PROFESSIONAL SERVICES.**

5.1.   <u>Provision of Professional Services</u>. Professional Services and fees related to such Professional Services shall be set out in a Statement of Work. Provider shall provide the Professional Services, and Customer shall provide any assistance and cooperation necessary or convenient to facilitate the Professional Services, or as set out in a Statement of Work.

6. **PAYMENT.**

6.1.   <u>Subscription Fees</u>. Customer shall pay Provider the fee set forth in each Order (the "**Subscription Fee**") for each Term. Provider's invoices are due within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law. Provider will not be required to refund the Subscription Fee under any circumstances.

6.2.   <u>Disputed Fees</u>. Customer may dispute an invoice or any portion thereof only by (i) submitting a written, detailed, request for invoice review to accounting@comparatio.com describing such dispute

within fifteen (15) days of the invoice date and (ii) making full and timely payment of all undisputed amounts.

6.3.   Taxes. Amounts due under this Agreement are payable to Provider without deduction for any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "**Sales Tax"**). Except as forbidden by applicable law, Provider may require that Customer submit applicable Sales Taxes to Provider. However, the preceding sentence does not apply to the extent that Customer is tax exempt, provided it gives Provider a valid tax exemption certificate within 30 days of the Effective Date. Provider's failure to include any applicable tax in an invoice will not waive or dismiss its rights or obligations pursuant to this Section 6.3. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, Customer shall separately pay Provider the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 6.3 does not govern taxes based on Provider's net income.

7. **CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.**

7.1.   Acceptable Use. Customer shall comply with the AUP. Customer shall not: (a) use the Solution for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Solution; (b) provide Cloud Portal passwords or other log-in information to any third party; (c) share non-public Cloud Portal features or content with any third party; (d) access the Solution in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Solution, or to copy any ideas, features, functions or graphics of the Solution; or (e) engage in web scraping or data scraping on or related to the Solution, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. In the event that it suspects any breach of the requirements of this Article 7, including without limitation by Users, Provider may suspend Customer's access to the Solution without advanced notice, in addition to such other remedies as Provider may have. Neither this Agreement nor the AUP requires that Provider take any action against Customer or any User or other third party for violating the AUP, this Section 7.1, or this Agreement, but Provider is free to take any such action it sees fit.

7.2.   Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Solution, including without limitation by protecting its passwords and other log-in information. Customer shall notify Provider immediately of any known or suspected unauthorized use of the Solution or breach of its security and shall use best efforts to stop said breach.

7.3.   Compliance with Laws. In its use of the Solution, Customer shall comply with all applicable laws.

7.4.   Users & Cloud Portal Access. Customer is responsible and liable for: (a) Users' use of the Cloud Portal, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the Cloud Portal through Customer's account, whether authorized or unauthorized.

8. **IP & FEEDBACK.**

8.1.   <u>IP Rights to the Solution</u>. Provider retains all right, title, and interest in and to the Solution, including without limitation all software used to provide the Solution and all graphics, user interfaces, logos, and trademarks reproduced through the Solution. This Agreement does not grant Customer any intellectual property license or rights in or to the Solution or any of its components, except to the limited extent that such rights are necessary for Customer's use of the Solution as specifically authorized by this Agreement. Customer recognizes that the Solution and its components are protected by copyright and other laws.

8.2.   <u>Feedback</u>. Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer, Customer's Clients, or other Users give Provider, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Provider's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer. Feedback will not be considered Customer's trade secret.

9. **CONFIDENTIAL INFORMATION.**

9.1.   <u>Confidential Information</u>. "**Confidential Information**" refers to the following items a disclosing party discloses to the receiving party: (a) any document the disclosing party marks "Confidential"; (b) any information the disclosing party orally designates as "Confidential" at the time of disclosure, provided the Disclosing Party confirms such designation in writing within 10 business days; (c) the Documentation, whether or not marked or designated confidential; and (d); any other nonpublic, sensitive information the receiving party should reasonably consider a trade secret or otherwise confidential. Confidential Information does not include Personal Information as the term is defined in the Data Processing Addendum ("DPA") signed by the parties.

9.2.   <u>Exclusions</u>. Notwithstanding the foregoing, Confidential Information does not include information that:

(a)   is in the receiving party's possession at the time of disclosure;

(b)   is independently developed by the receiving party without use of or reference to Confidential Information;

(c)   becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction;

(d)   is approved for release in writing by the disclosing party; or

(e)   is or becomes available to receiving party, without restriction, from a source other than disclosing party without breach of this Agreement by receiving party and otherwise not in violation of disclosing party's rights.

9.3.   <u>Trade Secrets.</u> Customer is on notice that the Provider's Confidential Information may include Provider's valuable trade secrets.

9.4.   <u>Nondisclosure</u>. The receiving party shall not use Confidential Information for any purpose other than other than as permitted under this Agreement (the "**Purpose**"). The receiving party:

(a)   shall not disclose Confidential Information to any employee or contractor of the receiving party unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with receiving party with terms no less restrictive than those of this Section 9.4; and

(b)   shall not disclose Confidential Information to any other third party without the disclosing party's prior written consent. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.

9.5.   <u>Misuse or misappropriation of Confidential Information</u>. The receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information that comes to the receiving party's attention. Notwithstanding the foregoing, the receiving party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The receiving party shall give the disclosing party prompt notice of any such legal or governmental demand and reasonably cooperate with the disclosing party in any effort to seek a protective order or otherwise to contest such required disclosure, at the disclosing party's expense.

9.6.   <u>Termination & Return</u>. With respect to each item of Confidential Information, the obligations of Section 9.4 above (*Nondisclosure*) will terminate one (1) year after the date of disclosure; provided that such obligations related to Confidential Information constituting Provider's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement or within ten (10) days of the written request from the disclosing party, the receiving party shall return all copies of Confidential Information to the disclosing party or certify, in writing, the destruction thereof. After a 60-day period after termination, Provider has no obligation to maintain any of the Customer Data and may purge all of the Customer Data in its possession. Notwithstanding the provisions in this Section 9.6, the receiving party may retain copies of any Confidential Information: (i) which have been automatically stored via any standard archival or backup procedures; or (ii) retained solely for evidentiary or compliance or corporate governance procedures purposes or as required by law.

9.7.   <u>Injunction</u>. Each party acknowledges that: (i) its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business, (ii) due to the unique nature of the disclosing party's Confidential Information, monetary damages may not alone be sufficient to compensate disclosing party for any breach by receiving party of its covenants and agreements set forth in this Agreement, and (iii) any violation or threatened violation may cause irreparable injury to disclosing party. In addition to any other remedies that may be available, in law, in equity, by statute or otherwise, disclosing party may seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by receiving party.

9.8.   <u>Retention of Rights</u>. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Provider will retain all right, title, and interest in and to all Confidential

Information.

9.9.   Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

(a)   *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b)   *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

10. **CUSTOMER DATA AND PRIVACY.**

10.1.   Data Processing Addendum. Customer is in control of the data that is uploaded to the Solution. If Customer intends to upload Personal Information, Customer shall provide written notice to Provider. The parties shall then enter into a Data Processing Addendum ("**DPA**") that defines how Personal Information (as defined in the DPA) is processed by the Cloud Portal. In conducting business under this Agreement, the parties will exchange business information such as employee emails to correspond about invoices, customer service questions, and similar business contact information. If a DPA is not entered into between the parties, for such data, the parties agree to comply with applicable data protection laws and regulations and to reasonably cooperate with each other as needed to comply with data protection laws and regulations.

10.2.   Customer Owned Data. All Customer Data uploaded by Customer under Customer's account remains the sole property of Customer. Customer grants Provider a non-exclusive license during the term of this Agreement to use, modify, copy and prepare derivate works of the Customer Data or Personal Information (as defined in the DPA) for purposes of performing under this Agreement.

10.3.   Data Accuracy. Provider will have no responsibility or liability for the accuracy of data uploaded to the Solution by Customer, including without limitation Customer Data and any other data uploaded by Users.

10.4.   Excluded Data. Customer warrants that (a) it has not and will not transmit Excluded Data, or permit transmission of Excluded Data, to Provider or its computers or other media and, (b) to the best of its knowledge, Customer Data does not and will not include Excluded Data. Customer shall inform Provider of any Excluded Data within Customer Data promptly after discovery (without limiting Provider's rights or remedies). Customer recognizes and agrees that: (i) the provisions of this

Agreement related to Customer Data do not apply to Excluded Data; (ii) Provider has no liability for any failure to provide protections in the Data Protection Laws (as defined in the DPA) or otherwise to protect Excluded Data; and (iii) Provider's systems are not intended for management or protection of Excluded Data and may not provide adequate or legally required security for Excluded Data. Provider is not responsible or liable for any data exposure or disclosure or related loss to the extent that it involves Excluded Data.

11. **REPRESENTATIONS & WARRANTIES.**

11.1. <u>From Provider</u>.

(a) *Re IP Rights in the Software*. Provider represents and warrants that it is the owner of the Solution and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights to use the Solution set forth in this Agreement. Provider's representations and warranties in the preceding sentence do not apply to use of the Solution in combination with hardware or software not provided by Provider. In case of breach of the warranty above in this Section 11.1, Provider, at its own expense, shall promptly: (a) secure for Customer the right to continue using the Solution; (b) replace or modify the Solution to make it noninfringing; or if such remedies are not commercially practical in Provider's reasonable opinion, (c) refund the fees paid for the Solution for every month remaining in the then-current Term following the date after which Customer access to the Solution ceases as a result of such breach of warranty. If Provider exercises its rights pursuant to Subsection 11.1(c) above, Customer shall promptly cease all use of the Solution and all reproduction and use of the Documentation and erase all copies in its possession or control. This Section 11.1, in conjunction with Customer's right to terminate this Agreement where applicable, states Customer's sole remedy and Provider's entire liability for breach of the warranty above in this Section 11.1.

(b) *Re Professional Services*. Provider warrants that it will perform all Professional Services in a professional and workmanlike manner. In case of breach of the warranty the preceding sentence, Provider, at its own expense, shall re-perform the Professional Services in question. The preceding sentence, in conjunction with Customer's right to terminate this Agreement where applicable, states Customer's sole remedy and Provider's entire liability for breach of the warranty in this Subsection 11.1(b).

11.2. <u>From Customer</u>. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Solution; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

11.3. <u>Warranty Disclaimers</u>. Except to the extent set forth in Section 11.1 above, CUSTOMER ACCEPTS THE SOLUTION "AS IS," WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED,

INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

12. **INDEMNIFICATION.**

12.1. Indemnity from Provider. Provider shall defend and indemnify Customer and the Customer Associates against any "**Indemnified Claim**," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (A) the injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the negligence of Provider or of any of its agents, subcontractors, or employees; and (B) infringement or misappropriation of a third party's patent, copyright, trade secret, or other intellectual property right as a result of Customer's authorized use of the Solution.

(a) *Exceptions to IP Indemnity*. Provider's obligations set forth in Subsection 12.1(B) above do not apply to the extent that an Indemnified Claim arises out of, relates to, or alleges:

(i) Customer's breach of this Agreement;

(ii) revisions to the Solution made without Provider's written consent;

(iii) Customer's failure to incorporate Updates to the Server that would have avoided the alleged infringement;

(iv) Provider's modification of Solution in compliance with specifications provided by Customer; or

(v) use of the Solution in combination with hardware or software not provided by Provider.

(b) *Response to Claims*. In the event of an Indemnified Claim described in Subsection 12.1(B), Provider may exercise any of the rights set forth in Subsections 11.1(a) through 11.1(c) above, including without limitation its right therein to terminate licenses and require return of the Solution.

12.2. Indemnity from Customer. Customer shall defend, indemnify, and hold harmless Provider and the Provider Associates against any Indemnified Claim arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Solution, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to infringement or violation of a copyright, trademark, trade secret, or confidentiality right by written material, images, logos or other content uploaded to the Solution through Customer's account,

including without limitation by Customer Data; and (c) claims that use of the Solution through Customer's account, including by Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. INDEMNIFIED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS ARISING OUT OF OR RELATED TO PROVIDER'S NEGLIGENCE.

12.3. Litigation & Additional Terms. The party indemnified above pursuant to this
Article 12 ("**Indemnified Party**") shall provide prompt notice of any Indemnified Claim and reasonably cooperate with the other party's ("**Indemnitor's**") defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided: (a) if Indemnitor fails to assume the defense on time to avoid prejudicing the defense, Indemnified Party may defend the Indemnified Claim, without loss of rights pursuant to this Article 12, until Indemnitor assumes the defense; and (b) Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or its Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligation. Indemnitor's obligations in Sections 12.1 and 12.2 will be excused if either of the following materially prejudices the defense: (i) Indemnified Party's failure to provide prompt notice of the Indemnified Claim; or (ii) Indemnified Party's or an Indemnified Associate's failure reasonably to cooperate in the defense.

13. **LIMITATION OF LIABILITY.**

13.1. Dollar Cap. PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE LIMIT OF LIABILITY IN THE PRECEDING SENTENCE IS CUMULATIVE AND NOT PER-INCIDENT.

13.2. Excluded Damages. IN NO EVENT WILL PROVIDER BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

13.3. Exceptions. The limitations described in Sections 13.1 *(Dollar Cap)* and 13.2 *(Excluded Damages)* above do not apply to (a) either party's breach of its obligations under Sections 12.1 *(Indemnity from Provider)* and 12.2 *(Indemnity from Customer)*, (b) Customer's breach of Sections 3.1 *(License)*, 4.1 *(Restrictions on Solution Rights)* or 7.1 *(Acceptable Use)*, any Customer infringement or misappropriation of Provider's intellectual property rights, and (c) Customer's failure to pay fees due under this Agreement.

13.4. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 13 APPLY TO THE BENEFIT OF PROVIDER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 13 and 11.3 *(Warranty Disclaimer)*, Provider's liability will be limited to the maximum extent permissible. If applicable law limits the application of any provision listed in the preceding sentence, each party's liability will be limited to the

maximum extent permissible.

14. **TERM& TERMINATION.**

14.1. Term. The term of this Agreement (the "**Term**") will commence on the Effective Date and continue for the period set forth in the Order or, if none, for one (1) year. Thereafter, the Term will renew for successive one-year periods, unless either party refuses such renewal by written notice 60 or more days before the renewal date.

14.2. Termination for Cause. Either party may terminate this Agreement or a Statement of Work for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.

14.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Solution and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 8 (*IP & Feedback*), 9 (*Confidential Information*), 11.3 (*Warranty Disclaimers*), 12 (*Indemnification*), and 13 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

15. **MISCELLANEOUS.**

15.1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

15.2. Non-Solicitation. Customer shall not directly or indirectly solicit for employment, offer employment to or employ Provider's employees during and for a period of two (2) years following termination of this Agreement. In the event of a breach of this provision Customer agrees that appropriate liquidated damages shall be payment by Customer of one hundred (100%) percent of the new annual compensation of the employed individual.

15.3. Marketing. Provider may request permission from Customer to refer to Customer and include a brief description of Customer's business on Provider's website. Customer reserves the right to approve or deny such requests at its discretion and may withdraw consent at any time with written notice. A limited license to use Customer's trade name and trademarks is granted only upon specific written consent from Customer for each usage and will terminate upon withdrawal of such consent.

15.4. Notices. Provider may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to: legal@fogsoftwaregroup.com, and such notices will be deemed received 72 hours after they are sent. In addition, Customer is on notice and agrees that: (a) for claims of copyright infringement, the complaining party may contact Fog Software

Group – Attention: General Counsel – legal@fogsoftwaregroup.com; and (b) Provider will terminate the accounts of subscribers who are repeat copyright infringers.

15.5. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, government orders responding to any of the foregoing, or other causes beyond the performing party's reasonable control.

15.6. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's express written consent. Except to the extent forbidden in this Section 15.6, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

15.7. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

15.8. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

15.9. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of Minnesota, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Minneapolis, Minnesota. This Section 15.9 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

15.10.   Conflicts. In the event of any conflict between this Agreement and any Provider policy posted online, including without limitation the AUP, the terms of this Agreement will govern. In the event of a conflict between this Agreement and the Data Processing Addendum, the Data Processing Addendum shall govern.

15.11.   Technology Export. Customer shall not: (a) permit any third party to access or use the Solution in violation of any U.S. law or regulation; or (b) export any software provided by Provider or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Solution in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).

15.12.   <u>Amendment</u>. Provider may amend this Agreement from time to time by posting an amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless Customer first gives Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Article 14, *Term & Termination*). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Provider may revise the Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted; provided if such amendment materially reduces Customer's rights or protections, notice and consent will be subject to the requirements above in this Section 15.12.

15.13.   <u>Entire Agreement</u>. This Agreement, the Data Processing Addendum and any Order sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

CUSTOMER:

Company

Title

X _ _ _ _ _ _ _ _ _

Signature Certificate

Document name: Standard Terms of Service (MCR)

🔒 Unique Document ID: 7EFC9EF73645E70F6B2D9B32751961EA1D64EA25

LEGALLY SIGNED USING
WP *esignature*
Build. Track. Sign Contracts.

Timestamp	Audit
November 5, 2024 4:41 pm CST	Standard Terms of Service (MCR) Uploaded by Mike Mullane - jan.poehland@comparatio.com IP 174.51.160.209

This audit trail report provides a detailed record of the online activity and events recorded for this contract.

🔒 Audit Trail Serial#190d51902bd3cabad1ea44a42e79e1cc