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## **1. Definitions.**

**Affiliate:** means any entity that directly or indirectly controls, is controlled by, or is under common control with you. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of your voting interests.

**Authorized Partner:** means an authorized Seagull reseller, partner or OEM.

**Contractor:** means those agents, service providers and other independent third parties who perform services related to this Agreement for you.

**Documentation:** means any supporting product help and technical specifications documentation provided by Seagull with the Software to you. Documentation does not include white papers, community forums, training videos, tutorials, Knowledge Base articles or other similar resources which may be made available for your convenience.

**License:** means the electronic information identifying the license or subscription from Seagull. Certain licenses may include a Product Key Code that you receive after your order is fulfilled.

**License Term:** means the Software Product license term specified on the applicable License Certificate from Seagull or by an Authorized Partner. The License Term may be a fixed term, a perpetual term or a limited term for certain editions.

**Personal Data:** means any information that relates to an identified or identifiable living individual. Different pieces of information, which collected together can lead to the identification of a particular person, also constitute Personal Data. (See [2.4. Data Collection](#))

**Product Key Code:** means a valid license key(s), license code, uniquely identifiable user registration or Software activation code ("PKC") provided to you for certain licenses at the time of purchase.

**Software Products:** means the proprietary Seagull software provided in connection with this Agreement in either Source Code or machine code form (or as otherwise specified in any related License Certificate), as more fully described in the Documentation. "Software Product" shall also include any drivers, Support and Maintenance Services releases and updates provided to you under this Agreement.

**Source Code:** means any collection of code, with or without comments, written using a human-readable programming language, usually as plain text. The source code of a program is specially designed to facilitate the work of computer programmers, who specify the actions to be performed by a computer mostly by writing source code. The source code

is often transformed by an assembler or compiler into binary machine code that can be executed by the computer. The machine code might then be stored for execution at a later time. Alternatively, source code may be interpreted and thus immediately executed.

User Content: means any data, email address, file attachments, text, images, reports, Personal Information, or other content that is uploaded or submitted to the online Portal by you and is processed by Seagull on your behalf.

## **2. Seagull Software Products.**

2.1 Seagull Software Activation. In order to use certain of our Software Product under this Agreement, you must activate your copy of the Software Product with the PKC provided to you at the time of purchase and/or submit a uniquely identifiable user registration when prompted, in accordance with the scope of use and other terms specified for each type of Software, the Documentation, and as set forth in this Section 2 of this Agreement. Except as set forth herein, any terms which apply to a Software Product also apply to any updates and upgrades to that Software Product.

2.2 Account and Product Registration. You must register for an account with us and register your product(s) under that account, in order to place orders or access or receive Software and/or Support. Your registration information must be accurate, current, and complete. You must keep your registration current so that we may send notices about your Software Product, our Support and Maintenance, service releases, statements, and other information to you by email or through your account.

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2.5 Seagull may access or disclose information about you or your use of Software Product: (a) when it is required by law (such as when Seagull receives a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when Seagull, in its discretion, think it is necessary to protect Seagull’s rights, property, or personal safety, or that of Seagull’s users, or the public.

**2.6 Seagull License Types and Specific Restrictions.** The following in this Section 2.6 applies to specific Bartender or successor products and services (as referenced and/or supplemented in the signed sales order). Seagull may license the Software Product(s) to you under one or more of the license types described below.

2.6.1 Perpetual License. Software Product that may be licensed to you for as long as you comply with the terms of this Agreement, as it may be modified from time to time. These Software Products are available on a perpetual license.

2.6.2 Subscription License. Software Product that allows you to use the Software Product for a specified license term provided you comply with the terms of this Agreement, as it may be modified from time to time.

2.6.3. Evaluation License. Software Product that allows you to use the Software Product for a pre-determined and/or time-limited term provided you comply with the terms of this Agreement, as it may be modified from time to time. Evaluation licenses may be granted for the following Software Products: Trial, NFR.

2.6.4 Printer-Based License. When your license is based on the maximum number of printers used in each 7-Day Period. Usage of a printer is counted as that printer is used by Software Product directly, or when such usage is by automated usage by any of the companion applications or the software development kit (“SDK”) Seagull Software provides. A usage shall mean use to print a template from a Software Product Document (BTW file) directly to that printer, or to create a PDF or similar type of data stream that is subsequently sent to print at that printer. While the BarTender Licensing Service attempts to monitor the printer count and license compliance, it is your responsibility to ensure that you are licensed for the actual number of printers being used. The total number of printers licensed to use your Software Product must not, in a 7-Day Period, exceed the number of

licenses purchased on the applicable License Certificate(s) or received by you from Seagull, including to the extent applicable, across all production and non-production environments.

**2.6.5 Printed Item-Based License.** When Software Product is used to generate electronic documents such as PDF files, licensing is based on the number of items printed per week, with each printer license granting the right to generate up to 5,000 Printed Items per week. While the BarTender Licensing Service attempts to monitor the number of items printed per week and license compliance, it is your responsibility to ensure that you print no more than 5,000 items per week per printer license. The total number of Printed Items printed in a week must not, in a 7-Day Period, exceed 5,000 per printer license, including to the extent applicable, across all production and non-production environments.

**2.6.6 Printed Label-Based License.** When your license is based on the number of printed labels in a specified timeframe, your license restrictions are identified in the Documentation and/or on the applicable License Certificate associated with your license. While the BarTender Licensing Service attempts to monitor the volume of printed labels in a specific timeframe, it is your responsibility to accurately count the number of labels printed, including to the extent applicable, across all production and non-production environments, in accordance with the terms of the applicable License Certificate(s) and appropriately pay Seagull for the correct label volume.

**2.6.7 Relationship of Various Licenses to an Enterprise Edition License.** Your ability to configure a redundant BarTender Licensing Service is restricted to the Enterprise Edition. The only supported way you may configure a redundant BarTender License is by using the redundancy features built into the Enterprise Edition. Any other method of cloning, copying or duplicating an installed instance of the BarTender Licensing Service, whether on a physical computer or virtual server, in a manner that allows it to support a duplicate of a PKC already in use by another instance of the BarTender Licensing Service is prohibited. A redundant BarTender Licensing Service may be operational only when the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software Product installation(s) shall remain dormant while the primary site (or any other redundant site) is operational.

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**2.6.9 Not For Resale ("NFR") license.** The aforementioned prohibition against competitive analysis in [Section 2.6.8](#) applies, as well, to the Software Product provided with an NFR

license. You may use an NFR license to print labels for commercial or for-profit purposes. Your NFR license to use the Software Product allows your use only during the License Term Seagull designates at the time you receive the NFR license. Seagull may terminate the NFR license to use the Software Product at any time and for any reason in Seagull's sole discretion. Software Product may become inoperable upon termination. Notwithstanding any other provision of this Agreement, the Software Product is licensed to be "AS IS", i.e. without warranty of any kind, express or implied. THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN THE NFR LICENSE TO USE THE SOFTWARE PRODUCT.

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### **3. License.**

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#### **4. Professional Services.**

4.1 We provide consulting and software development services or any integration, education, training or other services (“Professional Services”) pursuant to a Statement of Work signed by the parties (“SOW”). You shall pay for such additional Professional Services at our then current time and materials rates, unless otherwise agreed by the parties in writing or in an applicable SOW. If at any point we determine that the hours incurred will exceed estimate by more than 10%, we will notify you and obtain an amended SOW before proceeding with the Professional Services. Travel time is not included in the estimate in the SOW and will not be included when reviewing the project budget. Travel expenses to be invoiced include, but are not limited to, airfare, lodging, meals, and ground transportation. We may use subcontractors or independent contractors to perform any portion of the work to be performed under this Agreement. We will supervise and be responsible for any work performed by a subcontractor or independent contractor. Any subcontractor and independent contractor that we engage will have a written agreement with us that contains terms consistent with the confidentiality and intellectual property ownership provisions of this Agreement.

4.2 You will: (i) provide qualified personnel who are capable of performing your duties and tasks under the SOW; (ii) provide us with access to your sites and facilities during your normal business hours and that we otherwise reasonably require to perform the Professional Services; (iii) provide us with such working space and office support (including access to telephones, photocopying equipment, and the like) as we may reasonably request; and (iv) perform your duties and tasks under the SOW, and such other duties and tasks as may be reasonably required to permit us to perform the Professional Services. You will also make available to us any software, data, information and any other materials that we require (collectively, “Your Materials”) to perform the Professional Services. You will be responsible for ensuring that Your Materials are accurate, complete and timely delivered. You agree that our performance is dependent on your timely and effective satisfaction of your responsibilities described in this Agreement and the applicable SOW and your decisions and approvals of our work, as required. Each party will designate in the SOW an individual who will be the primary point of contact (the “Primary Contact”) between the parties for all matters relating to the Professional Services to be performed thereunder. A party may designate a new Primary Contact by written notice to the other party.

## **5. Ownership and Intellectual Property Rights.**

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## **7. Term and Termination.**

**7.1 Term of Perpetual Licenses.** If you purchased a Perpetual License, unless sooner terminated as provided herein, you are granted the right to use your perpetual license in perpetuity. Maintenance and Support of your perpetual license is governed by Seagull’s Maintenance and Support Agreement on our website, as expressed at the time of such maintenance or support.

**7.2 Term of Subscription Licenses.** If you purchased a Subscription License, unless sooner terminated as provided herein, your subscription license to the Software Product expires at the end of the applicable License Term and will automatically renew for an additional Term of twelve (12) months unless you provide written notice of your intent to not renew ninety (90) days prior to the Term expiration. License Terms may be renewed in a License Certificate or as otherwise mutually agreed by the parties.

**7.3** As per Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (the “Data Act”), customers located in the European Economic Area (EEA) for whom we provide the Software on a subscription basis may terminate the subscription prior to the expiration of the Term upon sixty (60) days advance written notice, subject to the terms and conditions of the Data Act in addition to any early termination charges described at <https://www.bartendersoftware.com/legal/legal-eu-data-act-transparency-statement>.

The foregoing limited early termination right is available solely to those customers located and who have a subscription within the EEA. For all other customers, the subscription Term is non-cancellable except as set forth herein.

7.4 Term of Evaluation Licenses. Terms vary by edition and are described above in sections [2.6.3](#), [2.6.8](#), [2.6.9](#) and [2.6.10](#).

**7.5 Support and Maintenance.** Subject to the terms and conditions of this Agreement, including payment of any applicable fees, Seagull shall provide support and maintenance services for the Software Product for the period set forth in the License Certificate, pursuant to Seagull's then-current Support and Maintenance policies ("Support and Maintenance Services") published on Seagull's Support website at <https://support.seagullsoftware.com/hc/en-us>. Support and Maintenance is payable on an annual basis and will automatically renew for an additional Term of twelve (12) months unless you provide written notice of your intent to not renew ninety (90) days prior to the Term expiration.

7.6 Term of Agreement. This Agreement commences on the date of your first License Certificate or the activation date of the Software Product (whichever is earlier) and expires at such time as all License Terms and service subscriptions hereunder have expired in accordance with their own terms (the "Term"), unless an alternative term is included in your Sales Order. Each Party may terminate this Agreement (including all related License Certificates as applicable): (a) if the other Party fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, or expiration of the term; (b) if the other party fails to comply with applicable laws, regulations, or in response to U.S. economic sanctions laws, regulations, and requirements, and applicable foreign import and export controls; or (c) the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party (and not dismissed within sixty (60) days). Unless otherwise specified herein, termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Seagull may terminate the Agreement immediately upon Seagull becoming aware that you have committed any breach of Section 2.6 ([Seagull License Types and Specific Restrictions](#)).

7.7 Termination. Upon any expiration or termination of this Agreement, you shall cease any and all use of any Software Product and promptly pay any outstanding fees due hereunder which are undisputed.

7.8 Survival. Sections 2.6 ([Seagull License Types and Specific Restrictions](#)), 5 (Ownership), 6 (Payment), 7 ([Term and Termination](#)), 8.4 ([Disclaimer of Warranties](#)), 9.1, 9.2, 9.3 and 9.5 ([Limitation of Remedies; Indemnification and Damages](#)), 11 ([Export Compliance](#)) and 13 ([General](#)) shall survive any termination or expiration of this Agreement.

## **8. Limited Warranties and Disclaimer.**

8.1 Limited Warranty. Seagull warrants to you that (a) for a period of thirty (30) days from Delivery (the “Warranty Period”), the Software Product shall operate in substantial conformity with the Documentation and (b) as provided by Seagull, the Software Product will be free from any viruses, Trojan Horses, malware, time-bombs, time-outs, backdoors, worms, spyware, bots, denial-of-service attacks, ransomware, spoofing or any mechanism that allows remote or unauthorized access, copy prevention, deletion, disabling, modification or corruption of data, software, or hardware (“Viruses”). If you notify us during the Warranty Period the Software Product does not operate in substantial conformity with the Documentation, Seagull will use commercially reasonable efforts to resolve the reported nonconformity of the Software Product. Such efforts, in Seagull’s sole discretion, may include an error-correction or work-around which corrects the reported nonconformity. SEAGULL SHALL HAVE NO OBLIGATION WITH RESPECT TO A WARRANTY CLAIM UNLESS NOTIFIED OF SUCH CLAIM WITHIN THE WARRANTY PERIOD. The Warranty Period applies only to the initial Delivery of Software Product under a License Certificate and does not renew or reset, for example, with renewal License Terms or the delivery of Software Product updates or maintenance releases or PKCs. For additional information, reference Seagull’s Software Maintenance & Support Agreement attached as Exhibit 1 and incorporated by reference .

8.2 Exclusions. The above warranty shall not apply: (a) if the Software Product is used with hardware or software not authorized in the Documentation; (b) if any modifications are made to the Software Product by you or any third party; (c) to defects in the Software Product due to accident, abuse or improper use by you; (d) to any Trial license, NFR license or other Software Product provided as a beta, preview or an evaluation basis.

8.3 Mutual Warranties. Both parties each hereby warrant to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; and (b) it will comply with all applicable laws and regulations in effect during the term of the Agreement as they apply to such party’s rights and obligations under the Agreement.

8.4 Disclaimer of Warranties. THIS SECTION 8 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE THIRD-PARTY CODE, AND ALL SERVICES ARE PROVIDED “AS IS”. NEITHER SEAGULL NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH YOU.

## **9. Limitation of Remedies; Indemnification and Damages.**

9.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, LOST PROFITS, COSTS OF COVER, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2 EXCEPT FOR: YOUR BREACH OF SECTION 2.6 (SEAGULL LICENSE TYPES AND SPECIFIC RESTRICTIONS), OR SECTION 11 (EXPORT COMPLIANCE), OR FOR A CLAIM SUBJECT TO INDEMNIFICATION UNDER SECTION [9.4](#) AND [9.5](#) OF THIS AGREEMENT, EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AVERAGE FEES PAID AND AMOUNTS ACCRUED BUT NOT YET PAID BY YOU UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD FROM WHEN THE CLAIM ARISES. IN THE CASE WHERE NO AMOUNT WAS PAID FOR THE SOFTWARE OR SERVICE GIVING RISE TO THE CLAIM, SEAGULL AND ITS LICENSORS' ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED USD\$5.00; PROVIDED, HOWEVER, IF YOU HAVE ENTERED INTO A SEAGULL SUBSCRIPTION OR MAINTENANCE AGREEMENT, SEAGULL'S ENTIRE LIABILITY REGARDING SUPPORT SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

9.3 The parties agree that the limitations specified in this [Section 9](#) will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9.4 Seagull Indemnification: Seagull shall defend you from and against any claim by a third party alleging that the Software Product when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark or misappropriates a trade secret and shall indemnify and hold you harmless from and against any damages and costs awarded against you or agreed in settlement by Seagull (including reasonable attorneys' fees) resulting from such claim. You shall tender to Seagull: (a) prompt written notice of such claim (but in any event notice in sufficient time for Seagull to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (c) reasonably necessary cooperation from you. If your use of the Software Product is (or in Seagull's opinion is likely to be) enjoined, if required by settlement or if Seagull determines such actions are reasonably necessary to avoid material liability, Seagull may, in its sole discretion: (i) substitute for the Software Product substantially functionally similar programs and documentation; (ii) procure for you the right to continue using the Software Product; or if (i) and (ii) are not commercially reasonable, (iii) terminate this Agreement and refund to you any prepaid, unused license fees for the duration of the then-current License Term (or, if your License Term is perpetual, your refund will equal the license fee paid by you as reduced to reflect a five year straight-line depreciation from the applicable license purchase date). The foregoing obligations of Seagull shall not apply: (1) if the Software Product is modified by you or any party other than Seagull, but solely to the extent the alleged infringement is caused by such

modification; (2) if the Software Product is combined with products or processes not provided or authorized by Seagull, not included in the Documentation and not agreed to in writing by the Parties, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software Product; (4) to any unsupported release of the Software Product; or (5) if you settle or make any admissions with respect to a claim without Seagull Software's prior written consent. THIS [SECTION 9](#) SETS FORTH SEAGULL SOFTWARE'S AND ITS LICENSORS' SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.5 Indemnification by You. Subject to the limitations in [Section 9.1](#), you shall defend Seagull from and against all claims by third parties resulting from or relating to: (a) or breach of the representations and warranties set forth in [Section 10.2](#); (b) your unauthorized use of the Software Product, or (c) your noncompliance with the licensing restrictions contained herein, and, further, you shall indemnify and hold Seagull harmless from and against any damages and costs awarded against Seagull or agreed in settlement by you (including reasonable attorney's fees) resulting from such claims, provided that you shall have received from Seagull: (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from Seagull. You may not settle any such claim relating to the Software Product without Seagull's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

## **10. Security and Processing.**

10.1 Your use of the Software Product or Support and Maintenance Services is subject to Seagull's Software Privacy Policy, a current version of which is available on the Legal section of our website.

10.2 You represent and warrant that you have all rights, permissions, and consents necessary to: (a) submit your applicable User Content for use of the Software Product; and (b) grant Seagull the limited rights to process your User Content for the provision of the Software Product described herein. You hereby grant Seagull a worldwide, non-exclusive, non-transferable, right to use and otherwise process your User Content under this Agreement during the applicable term only: (i) as required by applicable law; or (ii) as necessary to provide the Software Product, prevent or address technical problems with the Software Product, notify you of Software Product updates, upgrades and Software Product license and/or support and maintenance renewals, as applicable, or violations of this Agreement.

**11. Export Compliance.** You acknowledge that the Software Product is subject to export restrictions by the United States government and may be subject to import restrictions by

certain foreign governments, and you agree to comply with all applicable export and import laws and regulations in your download of, access to, and use of the Software Product. You shall not (and shall not allow any third-party to) remove or export from the United States or allow the export or re-export of any part of the Software Product or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list (collectively, "Prohibited Persons"); (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You represent and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country. You also certify that you are not a Prohibited Person nor owned, controlled by, or acting on behalf of a Prohibited Person. You agree not to use or provide the Software Product for any prohibited end use, including to support any nuclear, chemical, or biological weapons proliferation, or missile technology, without the prior permission of the United States government.

**12. INSURANCE.** Seagull will maintain in full force and effect during the term of the Agreement, with one or more insurance companies having an A.M. Best Rating of at least (A-), insurance policies sufficient to meet its obligations hereunder.

### **13. General.**

13.1 Non-assignment. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without Seagull's prior written consent (not to be unreasonably withheld). Notwithstanding the foregoing, you may assign your right and obligations under this Agreement to (a) an Affiliate or (b) in the event of a Change of Control. For purposes of this Agreement, Change of Control means (a) a merger, consolidation or similar transaction providing for the acquisition of the ownership of more than 50% of your shares or (b) the sale of all or substantially all of your assets related to the subject matter of the Agreement. This Agreement will bind and inure to the benefit of the parties and your respective successor(s) and permitted assign(s).

13.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

13.3 Governing Law; Jurisdiction and Venue. Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of the State of New York, NY, USA, with any claims being brought in the federal or state courts located in New York County, NY, USA. If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall nevertheless be given full force and effect. The United Nations Convention on Contracts for the International Sale of Goods and the

Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

13.4 Notices and Reports. Any notice or report hereunder shall be in writing or in electronic format. If to Seagull Software by mail, such notice or report shall be sent to Seagull Software, LLC at the address set forth at Seagull's website to the attention of "Legal Department". If to Seagull by email, such notice or report shall be sent to: [legal@seagullsoftware.com](mailto:legal@seagullsoftware.com). If to you, such notice or report shall be sent to the mailing or email address you provided upon placing your order. Notices and reports sent by mail shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service. Any notices and reports sent by email shall be effective upon receipt of the same.

13.5 Updates; Waivers. Seagull may update this Agreement from time to time, for which it shall provide notice to you for any material changes in terms. Once updated, your continued use of the Software Products shall be deemed acceptance of such updated terms and conditions. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. IN THE EVENT OF CONFLICT BETWEEN THIS AGREEMENT AND ANY TERMS DOWNLOADED IN CONNECTION WITH INSTALLING THE SOFTWARE PRODUCTS, THIS AGREEMENT SHALL CONTROL AND SUPERSEDE. ALL CONFLICTING TERMS IN ANY PURCHASE ORDER OR OTHER BUSINESS FORM EMPLOYED BY YOU, INCLUDING ANY ELECTRONIC INVOICING PORTALS, VENDOR REGISTRATION PROCESSES, OR FORMS RELATED TO INDIVIDUALS BEING ON YOUR PREMISES FOR PROFESSIONAL SERVICES, ARE VOID, AND ANY SUCH DOCUMENT RELATING TO THIS AGREEMENT SHALL BE FOR ADMINISTRATIVE PURPOSES ONLY AND SHALL HAVE NO LEGAL EFFECT.

13.6 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

13.7 Independent Contractors. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

13.8 Audit Rights. With reasonable prior notice, Seagull may audit your use of the Software Product and compliance with this Agreement, software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have installed, accessed or permitted access to or use of the Software Product in a manner that is not permitted under this Agreement, then Seagull may terminate this Agreement pursuant to Section 7 ([Term and Termination](#)) and you are liable for the

reasonable costs of the audit in addition to any other fees, damages and penalties Seagull may be entitled to under this Agreement and applicable law.

13.9 Government End-Users. The Software Product is commercial computer software. If the user or licensee of the Software Product is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software Product, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software Product was developed fully at private expense. All other use is prohibited.

13.10 Third-Party Beneficiary. There are no third-party beneficiaries under this Agreement.

13.11 Seagull's Customer List. From time to time, the efficacy of our Software Product might be shown by the experience of others using the same Software Product. You agree we may disclose your entity as a customer of Seagull and use your entity's name and logo on our website and in our promotional materials. We will not infer your endorsement of our Software Product. We will simply acknowledge that you are a customer. We will promptly stop disclosing your entity as a customer of ours and remove your entity's name and logo from our customer list upon your request. You can submit requests to us by email: [Legal@SeagullSoftware.com](mailto:Legal@SeagullSoftware.com)

13.12 Language. Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version. In the event of conflict the English-language version of this agreement shall control. The non-english-language version is provided for informational purposes only.