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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.

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**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.

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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.

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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.