

BROMELKAMP ONLINE TERMS OF SERVICE

(eGrant.net, Akoya.net, FundWeb.net)

Last Updated: May 2011

These Terms of Service (the "Agreement") are an agreement between Bromelkamp Company LLC ("Bromelkamp") and Customer. This Agreement consists of the below terms and conditions and the pricing and payment terms made available relating to the Service. The Service also may contain other posted notices or codes of conduct, which are incorporated by reference into this Agreement.

Please read this Agreement carefully. BY SUBSCRIBING TO AND/OR USING ANY OF THE SERVICE, CUSTOMER AGREES TO BE BOUND BY THIS AGREEMENT, INCLUDING ANY MODIFICATIONS MADE TO IT FROM TIME TO TIME. IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, IT MAY NOT SUBSCRIBE TO OR USE THE SERVICE.

1. DEFINITIONS

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under its common ownership.

"Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity. If Customer is an agency of a state, provincial, or local government, "Affiliate" means (1) any government agency, department, office, instrumentality, division, unit or other entity, of Customer's state, provincial or local government that is supervised by, or is part of, Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer; (2) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state or province and located within Customer's state's or province's jurisdiction and geographic boundaries; and (3) any other entity in Customer's state or province expressly authorized by the laws of Customer's state or province to purchase under state or provincial contracts; provided that a state or province and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government or its Affiliates. Notwithstanding the forgoing, provincial Crown corporations are not Affiliates for the purposes of this definition. If Customer is an agency of the U.S. government, "Affiliate" means any other agency of the U.S. government. If Customer is an agency of the Canadian government, "Affiliate" means any other agency of the Canadian government, except for a federal Crown corporation.

"Client Software" means any software provided to Customer related to the Service.

"Customer" means the entity that has entered into this Agreement. If an individual enters this Agreement on behalf of a company or other legal entity, such individual represents that he or she has the authority to bind such entity to this Agreement.

"License" means the rights granted by Bromelkamp to Customer to copy, install, use, access, display, run and/or otherwise interact with the Service and/or Client Software for, as applicable, for Customer's internal business purposes.

"Bromelkamp" means Bromelkamp Company LLC or its Affiliates.

"Order" means an order for Services. An Order may include multiple Subscriptions to Services.

"Service" means all Bromelkamp online services (including pre-release services) and software, including any updates, upgrades, support, and content (e.g., audio and visual information, documents) contained or made available to Customer by Bromelkamp in the course of using the service. Bromelkamp may change the Service at any time and for any reason without notice.

"SLA" means Service Level Agreement representing commitments Bromelkamp publishes and modifies from time to time on its web site <http://www.bromelkamp.com> with regard the Services.

"Subscription" means the part of the Order identifying the specific Services being ordered and may include the User quantity, ship-to address, or other information.

"Term" means the duration of a Subscription.

"Users" means individuals with Customer's organization who have the right to use the Services, as dictated by the number of User Licenses purchased by Customer.

"User licenses" refers to the named licenses that Customer has purchased under its Subscription for Services.

2. LICENSE GRANT – WHAT CUSTOMER IS LICENSED TO USE

2.1 General. Bromelkamp grants Customer a License to the Services ordered by Customer, subject to Customer's obligation to pay and any rights and limitations described in this Agreement. This License is non-exclusive, non-perpetual, and is not transferable. The ability to use Services may be affected by minimum system requirements or other factors. Bromelkamp reserves all rights not expressly granted.

2.2 Client Software. Customer may need to install Client Software to access and use the Service. Customer may make copies of the Client Software solely to support the Service for its Users. Copies must be true and complete copies (including copyright and trademark notices) and be made from a Bromelkamp approved media or a network source. Customer may use a third party to make and install these copies, but Customer agrees that it will be responsible for that third party's actions. Customer agrees to use reasonable efforts to make its employees, agents and other individuals that it allows to use the Client Software aware that it is licensed from Bromelkamp and subject to the terms of this Agreement. Additional rights and restrictions for the Client Software may accompany the provision of such Client Software, and Customer agrees to abide by all such additional rights and restrictions.

2.3 Authorized Users. Only those individuals who Customer designates as authorized Users may use and access the Service. Only Users who have administrator privileges may add additional authorized Users to the Service up to and including the total number of User Licenses purchased during the Subscription period. User Licenses cannot be shared or used by more than one individual authorized User and cannot be reassigned to a new User to replace a current authorized User who has terminated employment or otherwise changed job status or function and no longer uses the Service. However, a User who has administrator privileges may delete an authorized User from the Service and add a new authorized User to the Service to replace the former authorized User.

2.4 External Users. Customer does not need to purchase additional Users accounts for external users who access the Service without using any of the software. "External users" means users that are not Customer, or its employees, Affiliates, contractors or agents.

2.5 Limitations on use. Customer shall not reverse engineer, decompile or disassemble the Service or Client Software, except where applicable law permits it despite this limitation. Customer shall not rent, lease, lend, resell, or host to or for third parties any Service or Client Software.

2.6 Font Components. While using the Service, Customer may use its fonts to display and print content. Customer may only: (i) embed fonts in content as permitted by the embedding restrictions in the fonts; and (ii) temporarily download them to a printer or other output device to print content.

3. ORDERING, PRICING, PAYMENTS, RENEWALS AND TAXES

3.1 Ordering. Customer shall place an Order for each Subscription for a Service via any means made available by Bromelkamp for such Ordering. If Customer desires to use the Service for more than the total number of User Licenses available through the Service level it subscribed to, it must subscribe to the appropriate Service level prior to commencing any such use. Any Services added to a Subscription will expire at the end of the Term. Each Subscription shall be for a defined Term (e.g., 30 days or 12 months). Customer may place Orders for its Affiliates under this Agreement and grant its Affiliates administrative rights to manage the Services. Affiliates may not place Orders under this Agreement. To the extent Customer grants any rights to Affiliates, such Affiliates shall be bound by the terms and conditions of this Agreement. Customer agrees that it is jointly and severally liable for any Services purchased for or other actions taken by any of its Affiliates or any third party to which it provides rights under this Agreement.

3.2 Subscription Fees. "Subscription Fee" means the monthly amount Customer is required to pay for the Subscription to the Service and Client Software. Customer may be required to pay the Subscription Fee in advance, in arrears or both. Bromelkamp may charge Customer at one time for more than one billing period. Subscription Fees are available via the Order or other means made available by Bromelkamp. Payments are due and must be paid in accordance with the Order. Price level changes are not retroactive. Prices for each price level are fixed at the time the Subscription is first placed and apply throughout the Term. Subscription Fees are subject to change at the beginning of any Subscription renewal.

3.3 Renewal. Unless the offer specifically states otherwise, Customer's Subscription will automatically renew at the expiration of the Term.

3.4 New agreement. Prior to placing new Orders, renewing any Subscriptions, or further use of the Services, and upon notice, Bromelkamp may require that Customer enter into an updated agreement to govern Orders, renewal Subscriptions, or usage from that date forward.

3.5 Taxes and other Incidental Charges. The prices and rate plans do not include any taxes, phone and Internet access charges, mobile text messaging, wireless service and other data transmissions, unless stated otherwise.

Customer is responsible for all such incidental charges and any taxes and it is legally obligated to pay including, but not limited to, paying Bromelkamp any applicable value added, sales or use taxes or like taxes that are permitted to be collected from Customer by Bromelkamp under applicable law. If any taxes are required by law to be withheld on payments made by Customer to Bromelkamp, Customer may deduct such taxes from the amount owed Bromelkamp and pay them to the appropriate taxing authority; provided, however, that Customer shall promptly secure and deliver to Bromelkamp an official receipt for any such taxes withheld or other documents necessary to enable Bromelkamp to claim a Foreign Tax Credit. Customer will make certain that any taxes withheld are minimized to the extent possible under applicable law.

3.6 Refunds. All charges are non-refundable unless expressly stated otherwise, or otherwise provided by law.

3.7 Late Payments. Except to the extent prohibited by law, Bromelkamp may assess a late charge if Customer does not pay on time, regardless of any disputes Customer may have raised about its bill. Customer must pay these late charges as and when billed by Bromelkamp. The late charge will be the lesser of 1% of the unpaid amount each month or the maximum rate that is permitted by law. Bromelkamp may use a third party to collect past due amounts. Customer must pay for all reasonable costs incurred by Bromelkamp to collect any past due amounts. These costs may include reasonable attorneys' fees and other legal fees and costs. Bromelkamp may suspend or cancel the Service if Customer does not pay in full and on time.

4. TERM AND TERMINATION

4.1 Termination by Bromelkamp. Bromelkamp may cancel or suspend Customer's use of the Service or a portion of thereof at any time if Customer violates the terms of this Agreement, if Bromelkamp believes that Customer's use of the Service represents a direct or indirect threat to its network function or integrity or anyone else's use of the Service, or if Bromelkamp is otherwise required by law to do so. Upon notification by Bromelkamp of any such cancellation or suspension, Customer's right to use the Service will stop immediately. Cancellation or suspension of the Service for Customer's violation of the terms of this Agreement will not change Customer's obligation to pay any Subscription fees due for the applicable Term.

4.2 Termination by Customer. Customer may cancel the Service at any time for any reason by notifying Bromelkamp in writing or by telephone. Customer will pay any remaining Subscription Fees through the remainder of the Term.

4.3 Reduction of Users. Customer may reduce the number of User Licenses that it has with the Service at any time for any reason by notifying Bromelkamp in writing or by telephone. Customer will pay any remaining Subscription Fees through the remainder of the Term.

4.4 Effect of termination. Upon termination or cancellation of the Service by either party for any reason, Bromelkamp may delete Customer's data permanently from its servers. Notwithstanding the foregoing, Bromelkamp will keep Customer's data for a period of 90 days before it is deleted from Bromelkamp's servers. Customer is solely responsible for taking the necessary steps to back up its data and ensure that it maintains its primary means of business.

4.5 Waiver of rights and obligations. To the extent necessary to implement the termination of this Agreement, each party waives any right and obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.

4.6 No liability for deletion of data. Customer acknowledges that, other than as expressly described in these terms, Bromelkamp will have no obligation to continue to hold, export or return Customer's data. Customer acknowledges that Bromelkamp will have no liability whatsoever for deletion of Customer data pursuant to these terms.

5. PRIVACY

5.1 Access and Disclosure. In order to operate and provide the Services, Bromelkamp collects certain information about its Customer. Bromelkamp uses and reasonably protects that information from third parties. Bromelkamp may access or disclose information about Customer, including the content of its communications, in order to:

- comply with the law or respond to lawful requests or legal process;
- protect the rights or property of Bromelkamp or its customers, including the enforcement of its agreements or policies governing Customer's use of the Services; or
- act when Bromelkamp believes, in good faith, that such access or disclosure is necessary to protect the personal safety of Bromelkamp employees, customers or the public.

Customer hereby consents to the access and disclosures outlined in this section.

5.2 Transfer of personal information. Personal information collected through the Service may be stored and processed in the United States or any other country in which Bromelkamp or its affiliates, subsidiaries, or agents maintain facilities. By using the Service, Customer consents to any such transfer of information outside of its country. Bromelkamp abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union. Customer may read more about transfers of this data in the Privacy Statement.

5.3 Performance and usage data. In order to provide the Service, Bromelkamp may collect certain information about Service performance, Customer's computers and its Service use. Bromelkamp may automatically upload this information from Customer's computers. This data will not personally identify Customer.

5.4 Filtering technology. Bromelkamp may use technology or other means to protect the Service, protect its customers, or stop customers from breaching this Agreement. Examples include filtering to stop spam and viruses or increase security. These means may hinder Customer's use of the Service.

5.5 Customer's privacy practices. In using the Service, Customer may be able to collect personal information about third parties through its dealings with such third parties. If Customer does this, it agrees to: (a) post a privacy policy on its website that, at a minimum, discloses any and all uses of personal information that it collects from such third parties, (b) provide a hypertext link to its privacy policy on the home page of its website and on all pages where it collects personal information from third parties, including on check out pages, and (c) use personal information only as expressly permitted by its privacy policy.

5.6 Communications. Because the Service is a hosted, online application, Bromelkamp may need to notify Users of the Service occasionally of important announcements regarding the operation of the Service. As a condition of the Service, Users may receive marketing and other non-critical Service-related communications from Bromelkamp from time to time.

6. USE RIGHTS AND LIMITATIONS

6.1 SLAs. Bromelkamp will comply with its then-current SLA in place relating to the Services.

6.2 Customer's Use. In using the Service, Customer will:

- comply with all laws;
- comply with any codes of conduct or other notices provided by Bromelkamp;
- keep its password secret, and
- promptly notify Bromelkamp if it learns of a security breach or unauthorized access related to the Service.

Customer may not:

- use the Service in any way that harms Bromelkamp or its Affiliates, resellers, distributors and/or vendors (collectively, the "Bromelkamp parties"), or any customer of a Bromelkamp party or the Service or other Users;
- engage in, facilitate, or further unlawful conduct;
- damage, disable, overburden or impair the Service (or the networks connected to the Service) or interfere with anyone's use and enjoyment of the Service;
- resell or redistribute the Service, or any part of the Service, unless Customer has a contract with Bromelkamp that permits it to do so;
- use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam");
- use any unauthorized automated process or service to access and/or use the Service (such as a BOT, a spider, periodic caching of information stored by Bromelkamp or "meta-searching"), however, periodic automated access to the Service for report creation or scheduling is permitted;
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the Service or work around any of the technical limitations in the Service;
- modify, create derivative works from, reverse engineer, decompile or disassemble or otherwise attempt to discover any trade secret contained in the Service or in any technology, or system used by Bromelkamp in connection with providing the Service, except and only to the extent that applicable law expressly permits Customer to do so despite this limitation;
- create Internet "links" to the Service or "frame" or "mirror" any content of the Service to give the impression that Customer is offering all of the functionality of the Service as its service located on its own servers;
- build a product or service using similar ideas, features, functions or graphics of the Service;
- copy any ideas, features, functions or graphics of the Service; or
- access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

6.3 Limits on Service. Bromelkamp may establish limits on the Service. For example, it may limit the number of days the Service will retain any content that Bromelkamp, Customer or its Users provide, the number and size of email messages that Customer may send or receive through the Service, the maximum storage space on

Bromelkamp's servers available to Customer, the number of Service accounts to which Customer may subscribe, how long Bromelkamp retains an inactive Service account (one where Customer does not sign in to the Service for an extended period of time; the number of transactions Customer can conduct through the Service, and the number of asynchronous transactions that can be executed with an organization

6.4 Use of Other Bromelkamp Services. Customer may need to use certain Bromelkamp websites or services to access and use the Services. If so, the terms of use associated with those websites or services, as applicable, apply to Customer's use of them.

6.5 Third Party Services. Bromelkamp may make services from third parties available to Customer through the Service. These third party services are the responsibility of the third party, not Bromelkamp. The third party service providers may require Customer to accept additional terms and conditions and/or pay a fee in order to use their services. Those additional terms and conditions are between Customer and the third party. Any third party's use of information Customer provides as part of using their service is subject to the privacy statements and practices of that third party and/or their suppliers. Bromelkamp encourages Customer to review the privacy statement of these third party providers. Bromelkamp is not responsible for the privacy statements or privacy practices of these third party providers or their suppliers.

7. USER GENERATED CONTENT

7.1 Content. Bromelkamp, Customer, its Users and associated account users and third parties may be able to post or store materials, including data, documents, information, advertisements, communications, messages and links to third party websites ("content") on the Service. Customer may be able to post or provide materials (including feedback) that are part of the Service in a publicly accessible or other public area that allows Customer to communicate with others ("public areas of the Service"). It also includes areas of the Service to which Customer can control access by authorized users of associated accounts ("private areas of the Service").

7.2 Intellectual property rights. Bromelkamp does not sanction or approve the unauthorized use of content protected by copyright and other intellectual property rights. Customer understands that sharing content that violates others' copyrights and intellectual property rights violates this Agreement. Customer represents and warrants that the use and publication of the content by Customer and others does not violate the intellectual property rights of any third party. Customer understands that Bromelkamp may remove content at any time without notice when the content violates this Agreement or an applicable code of conduct, or when Bromelkamp has a good faith reason to believe it is necessary to do so.

7.3 Posting Content. Customer acknowledges that Bromelkamp does not control or endorse the content that it and others post or provide on the Service. Bromelkamp doesn't claim ownership of content that Customer and others post or provide. By posting or providing content, Customer grants Bromelkamp and the public (for content posted on publicly accessible areas of the Service), or those authorized Users of associated accounts to which Customer has granted access (for content posted on private areas of the Service), free, unlimited worldwide and perpetual permission to use, modify, copy, distribute and display the content and publish Customer's name with the content. Customer also gives the public, or those members of the public to which Customer has granted access, permission to grant these rights to others. Customer represents and warrants that it has all the rights necessary to grant the rights in this section and that the use and publication of the content does not breach any law. Bromelkamp will not pay Customer for content posted on public areas of the Service. This section only applies to legally permissible content and only to the extent that use and publishing of the legally permissible content does not breach the law.

7.4 Private areas of the Service. Customer acknowledges that certain technical processing of content posted on private areas of the Service may be required to store and retrieve the content, conform to connecting networks' technical requirements, or conform to the limitations of the Service.

7.5 Links to third-party Web sites. The Service may contain links to third-party websites. These third-party websites are not under Bromelkamp's control. If Bromelkamp has included these links in the Service, it provides them as a convenience only. The inclusion of these links is not an endorsement by Bromelkamp of any third-party website, service or product. Bromelkamp reserves the right to disable links to any third-party website that Customer posts on the Service.

7.6 Bromelkamp will not own any Customer data. Bromelkamp performs regular backups of Customer data for the purpose of recovery in the event of a failure in Bromelkamp's data centers. However, notwithstanding the foregoing, Customer is solely responsible for maintaining and backing up any Customer data that it uses with the Service. Customer, not Bromelkamp, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use such data. Bromelkamp shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any data that Customer uses with the Service.

8. ASSOCIATED ACCOUNTS

Only Customer may use its Service account. However, Bromelkamp may allow Customer to setup additional member accounts that are dependent on Customer's account (an "associated account"). Bromelkamp may limit associated accounts. Customer is responsible for all activity under its Service account, associated accounts and passwords. Customer is solely responsible for monitoring usage of its Service account and for any use or misuse of its Service account or the Service resulting from any associated account or any third party using any password or user name selected by or issued to Customer. If Customer is the authorized User of an associated account, then the person or entity that gave Customer access to the Service (the account holder) has full control over Customer's associated account. This control includes the right to end the Service, close or alter Customer's associated account at any time, and, in some cases, request and receive machine and Service usage information related to Customer's associated account.

9. PRE-RELEASE SERVICE

If the version of the Service that is Licensed to Customer is a pre-release or early access version ("Beta Version"), then it may not work the way a final version of the feature or Service will. Bromelkamp reserves the right to not release a commercial version of, or to change, any Beta Version of the Service at any time without notice to Customer. Any such Beta Version, including its user interface, features and documentation ("Confidential Information"), is confidential and proprietary to Bromelkamp and its suppliers. For five years after Customer subscribes to the Beta Version of the Service or the subsequent commercial version of the Service, whichever is first, Customer agrees not to disclose any Confidential Information to third parties or to use any Confidential Information other than for its internal purposes in connection with Customer's use of the Service. Customer may disclose Confidential Information only to its employees and consultants who need to know the information and who have signed agreements containing restrictions at least as protective of the Confidential Information as those contained herein. Customer's duty to protect Confidential Information survives this Agreement. Notwithstanding the foregoing, Customer may disclose confidential information in response to a judicial or governmental order, so long as Customer first gives written notice to Bromelkamp to allow it to seek a protective order or otherwise protect the information. Confidential information does not include information that: (1) becomes publicly known through no wrongful act; (2) is received from a third party who did not breach confidentiality obligations to Bromelkamp or its suppliers; or (3) is independently developed by Customer without the use of, or access to, the Confidential Information.

10. CONFIDENTIALITY

Bromelkamp and Customer shall treat the terms and conditions of this Agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other. For government Customers, this Section is subject to the requirements of applicable trade secret, public records, or similar laws.

11. WARRANTIES

11.1 Limited warranty. Bromelkamp warrants that the Services and Client Software will conform substantially to the description of them contained in the applicable Bromelkamp user documentation. This limited warranty is subject to the following limitations:

- this limited warranty applies only during the Term, including any renewals ("Warranty Period");
- any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last only during the Warranty Period;
- this limited warranty does not cover problems caused by accident, abuse or use of the Services in a manner inconsistent with this Agreement, or resulting from events beyond Bromelkamp's reasonable control;
- this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- this limited warranty does not apply to downtime or other interruption in access to the Services, or any other performance metrics that are addressed in an applicable SLA.

11.2 Remedies for breach of limited warranty. If Customer notifies Bromelkamp within the Warranty Period that a Service does not meet the limited warranty, then Bromelkamp will, at its option, either (1) return the amount paid for the Service during the (a) Term or (b) 12 months prior to delivery of notice to Bromelkamp, whichever is less, or (2) update such Service to make it conform. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

11.3 DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, BROMELKAMP PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. BROMELKAMP DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW.

12. DEFENSE OF INFRINGEMENT AND MISAPPROPRIATION CLAIMS

12.1 Agreement to protect. Bromelkamp will defend Customer against any claims made by an unaffiliated third party that any Service or Client Software infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information. Bromelkamp will also pay the amount of any resulting adverse final judgment (or settlement to which Bromelkamp consents). This Section provides Customer's exclusive remedy for these claims. The term "undisclosed information" is as defined in Article 39.2 of the TRIPs agreement.

12.2 What Customer must do. Customer must notify Bromelkamp promptly in writing of the claim and give Bromelkamp sole control over its defense or settlement. Customer must also provide Bromelkamp with reasonable assistance in defending the claim. Bromelkamp will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.

12.3 Limitations on defense obligation. Bromelkamp's obligations will not apply to the extent that the claim or award is based on:

- Customer's use of the Service or Client Software after Bromelkamp notifies it to discontinue its use due to a third party claim;
- Customer's combination of the Service or any related Client Software with a non-Bromelkamp product, data or business process;
- damages attributable to the value of the use of a non-Bromelkamp product, data or business process;
- Customer's use of Bromelkamp's trademark(s) without express written consent to do so; or
- any trade secret or undisclosed information claim, where Customer acquires the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Bromelkamp) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.

Customer will reimburse Bromelkamp for any costs or damages that result from any of the above actions.

12.4 Specific rights and remedies in case of infringement.

(a) Bromelkamp's rights in addressing possible infringement. If Bromelkamp receives information concerning an infringement claim related to a Service or Client Software, Bromelkamp may, at its expense and without obligation to do so: (1) procure for Customer the right to continue to use the allegedly infringing Service and/or Client Software, (2) modify the Service and/or Client Software, or (3) replace the Service and/or Client Software with a functional equivalent, to make it non-infringing, in which case Customer will immediately stop using the allegedly infringing Service and/or Client Software after receiving notice from Bromelkamp.

(b) Customer's specific remedy in case of injunction. If, as a result of an infringement claim, Customer's use of a Service or Client Software is enjoined by a court of competent jurisdiction, Bromelkamp will, at its option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; or (4) terminate the License for the infringing Service and/or related Client Software and refund any amounts paid in advance by Customer for unused Services.

13. LIMITATION OF LIABILITY

13.1 Limitation on liability. Except as otherwise provided in this Section, to the extent permitted by applicable law, the liability of Bromelkamp and of Bromelkamp's contractors to Customer arising under this Agreement is limited to direct damages up to the amount Customer paid Bromelkamp for the Service and/or Client Software giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

- Bromelkamp's obligations under the Section titled "Defense of infringement and misappropriation claims";
- Customer's use of Bromelkamp's trademark(s) without express written consent to do so;
- liability for damages awarded by a court of final adjudication for Bromelkamp's or its employees' or agents' gross negligence or willful misconduct;
- liabilities arising out of any breach by Bromelkamp of its obligations under the Section entitled "Confidentiality"; or
- liability for personal injury or death caused by Bromelkamp's negligence or that of its employees or agents or for fraudulent misrepresentation.

13.2 EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

14. VERIFYING COMPLIANCE

During the Term of any Subscription and for three years thereafter, Customer must keep all usual and proper records relating to the Subscription(s) and Customer's use of the Services and/or Client Software under this Agreement. Bromelkamp may request that Customer conduct an internal audit of all Services in use throughout Customer's organization, comparing the number of User Licenses in use to the number of User Licenses issued to and/or paid for by Customer. By requesting an audit, Bromelkamp does not waive its rights to enforce this Agreement or to protect Bromelkamp's intellectual property by any other means permitted by law. If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient Licenses to cover its past and present use. If material unlicensed use is found, Customer must reimburse Bromelkamp for the costs Bromelkamp has incurred in verification and acquire the necessary additional Licenses at single retail license cost within 30 days.

15. MISCELLANEOUS

15.1 Notices to Bromelkamp. Notices, authorizations, and requests in connection with this Agreement must be sent by regular or overnight mail, or express courier, to Bromelkamp Company LLC, 106 E 24 St, Minneapolis MN 55404-3522 USA. Notices will be treated as delivered on the date shown on the return receipt. Termination of the Agreement, a Subscription, or cancellation of a Subscription should be via its Bromelkamp customer service contact.

15.2 Assignment. Customer may not assign this Agreement. Bromelkamp may assign this Agreement to its Affiliates.

15.3 Severability. If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

15.4 Waiver. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

15.5 Applicable law. This Agreement is governed by the laws of the State of Minnesota without regard to its conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Services are protected by copyright and other intellectual property rights laws and international treaties.

15.6 Dispute resolution. Any action to enforce this Agreement must be brought in the State of Minnesota, USA. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If Customer is an entity of the U.S. Government or an entity of a state or local government, this Section does not apply and jurisdiction and venue will be determined by applicable law.

15.7 This Agreement is not exclusive. Customer is free to enter into agreements to license, use or promote non-Bromelkamp software or services.

15.8 Entire agreement. This Agreement and the pricing and payment terms available set forth in the Order constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications.

15.9 Survival. Provisions regarding fees, restrictions on use, transfer of licenses, export restrictions, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination and the provisions in this Section entitled "Miscellaneous" will survive termination of this Agreement.

15.10 Force majeure. Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services)). This Section will not, however, apply to Customer's payment obligations under this Agreement.

15.11 User Logins. Customer agrees that it is responsible for protecting the confidentiality of any user login IDs and passwords associated with this Agreement.

15.12 U.S. export jurisdiction. The Services are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

15.13 English language controls. The English language version of this Agreement controls. If Customer is in Canada, it is the express wish of both parties that this Agreement, and any associated documentation, be written and signed in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

15.14 Natural disaster. In the event of a natural disaster, Bromelkamp may post information or provide additional assistance or rights on <http://www.Bromelkamp.com>.

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