

BY USING THE SERVICE, YOU (“CUSTOMER”) AGREE TO BE BOUND BY THE TERMS OF THIS SERVICE AGREEMENT (“AGREEMENT”), SUBJECT TO ANY ORDER FORM FOR THE SERVICE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN ALL MATERIALS (INCLUDING ANY ELECTRONIC OR PRINTED MATERIALS) TO ABILITY NETWORK INC. (“ABILITY”).

1. DEFINITIONS.

“Connections” - the number of electronic pathways Customer may establish for the Software as set forth in the Order Form.

“Connection Change Fee” – the fee associated with a change in Connection pathways requested by Customer or necessitated by a change in connectivity.

“Documentation” – the technical manuals made generally available by ABILITY to enable Customer to use and reasonably understand the operation and use of the Software or the Service.

“Order Form” – the fully executed ABILITY Software and Services Order form representing Customer’s purchase of Services.

“Service(s)” – the services specified in the Order Form.

“Software” – software products provided for Customer by ABILITY as part of the Services or otherwise, in object code, machine readable format or pursuant to a software-as-a-service model, all permitted reproductions made pursuant to the license granted as set forth hereinafter, and any updates, revisions, improvements or materials (if any) subsequently provided by ABILITY. Software may include programs of third parties which ABILITY is authorized to include as part of the Software.

2. PERMITTED USE. The Software, Documentation and any accompanying materials are protected, among other ways, by federal copyright law and international treaties. Customer may, on a nonexclusive basis, directly or indirectly, use the Software or the Service only for the processing of Customer’s own information and data, and such customer data as Customer normally processes in the ordinary course of Customer’s business. If installed at Customer, Software must be installed and operated on computer hardware operated by Customer and under Customer’s sole control, and this license does not permit the installation on remote, hosted or application service provider hardware operated by a third-party. Customer shall not itself, or through any affiliate, agent or third party (i) sell, lease, license or sublicense the Software, Documentation or the Services; (ii) use the Software or the Services to provide processing services to third parties or otherwise use the Software or the Services on a service bureau basis; or (iii) remove any trademark, copyright or other proprietary notices, labels or marks on or in the Software or Documentation. Customer will promptly notify ABILITY of any unauthorized disclosure, reproduction, use or distribution of the Software, Documentation or the Services, which comes to Customer’s attention, or which Customer reasonably suspects. Customer is solely responsible for obtaining all equipment and for the compatibility thereof with the Software or the Services, and for paying all fees including, without limitation, all applicable taxes and Internet access fees, necessary to use the Software or the Services.

3. SUPPORT AND RESTRICTIONS

a) Support. ABILITY shall provide 1) configuration and ongoing management of Connections, 2) ongoing monitoring of Service to ensure reliable and efficient operations, 3) routine “bug fixes”, patches and error corrections, 4) troubleshooting, advice and assistance in the form of telephone or e-mail support, and 5) modifications, incremental enhancements, and updates; as ABILITY, at its option, may elect to offer its customers.

b) Restrictions. The purchase of Service shall not entitle Customer to receive any custom modifications or custom updates of the Service. Such services may be provided by ABILITY under separate agreement.

c) Coverage. ABILITY will provide telephone or on-line support during ABILITY’s normal business hours. ABILITY will provide support to evaluate and assist in the resolution of problems related to Customer’s use of the Software and the Services.

4. FEES AND PAYMENT.

a) Fees. Any fees shall be set forth in the Order Form (the “Fee”). Fees shall be subject to adjustment by ABILITY on sixty (60) day written notice to the Customer effective any time one (1) year after the commencement of the service period, provided that any increase in third party charges, such as tariffs or government fees, shall be immediately passed through to Customer. In the event a change in Connections is requested by Customer or is necessitated by a change in connectivity, the Connection Change Fee shall be based on the then current ABILITY standard price list. Customer shall pay directly or reimburse ABILITY for all sales, use or related taxes, exclusive of income taxes.

b) Payment. The Fee shall be payable by Customer subject to the terms of the Order Form. Unpaid fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less. The fee is non-refundable except as provided in the Order Form.

c) Locations. ABILITY shall adjust the Fee as Customer adds locations. Customer shall provide ABILITY prior written notice of any additional locations and ABILITY shall have the right to audit Customer’s Service usage and locations.

5. INTELLECTUAL PROPERTY RIGHTS.

a) Ownership. Customer acknowledges that ABILITY and its licensors retain all intellectual property rights and title (including any patent, copyright, trademark and other rights) in and to all Services, Software and Documentation and their related Confidential Information, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, comprising, embodied in, or practiced in connection therewith, including, without limitation, all modifications, enhancements, configurations, upgrades, and interfaces thereto (“Works”). ABILITY reserves and retains all intellectual property rights and title associated with Works and derivatives of Works. The Software, including its operation, code, architecture and implementation, as well as the look and feel of the Software, is the valuable intellectual property of ABILITY. The Software is protected by United States copyright laws and international treaty provisions. This Agreement does not give Customer any intellectual property rights in the Software except for the license granted in Section 5.b.

b) License. ABILITY grants to Customer during the term of this Agreement a non-exclusive, non-transferable license to use the Software in connection with the Services. If Customer obtains physical possession of any Software, the Software may be used only on a single CPU under Customer’s control. Customer may make one (1) copy of the Software for archival or backup purposes only, and unless otherwise specified in the Order Form, Customer may not use the Software concurrently on multiple CPUs without purchasing one (1) license for each CPU that will be in concurrent use. Customer is expressly prohibited from sublicensing, selling, renting, leasing or otherwise distributing copies of the Software. Customer will not disassemble, decompile, reverse engineer or make any other attempt by any means to discover or obtain the source code for the Software. In the event any modifications are made to the Software by anyone other than ABILITY, all warranties with respect to the Software shall immediately terminate.

c) Proprietary Markings. Customer will not remove or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within any Software or Documentation. The placement of a copyright notice on Software or Documentation shall not constitute publication or otherwise impair the confidential or trade secret nature of the Software or Documentation.

d) Use of Data. Customer acknowledges that ABILITY may retain, access, use and disclose any de-identified data received from Customer in any manner permitted by law. Any access, use or disclosure of protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act will be governed by the Business Associate Agreement (the “BAA”) in effect between the parties. Any information that is not considered PHI may be accessed, used and disclosed by ABILITY in any manner permitted by law.

e) Third Party Websites. The Software or the Services may contain links to third party websites (“Websites”). Such links are provided for convenience only and Websites are not under ABILITY’s control. ABILITY is not responsible for the content of any Websites, and ABILITY does not review, approve, monitor, endorse, warrant or make any representation with respect to Websites. In no event will ABILITY be responsible for the information contained in any Website or for Customer’s use thereof. Websites may have terms and privacy policies different from those of ABILITY, and ABILITY is not responsible therefor.

6. CONFIDENTIAL INFORMATION. The Services, Software and Documentation, including, without limitation, trade secrets, performance data, design, features, layouts, configurations, processes, formulae, specifications, programs, test results, technical know-how, methods and procedures of operation and other information relating to or obtained therefrom, by use, examination or otherwise, which is not generally publicly known are the valuable trade secrets of ABILITY and its licensors, and shall be deemed to be confidential information of ABILITY (“Confidential Information”). In addition, any information or materials disclosed or provided to Customer by ABILITY or its personnel and specified as confidential or proprietary or marked as confidential or proprietary shall be deemed to be Confidential Information of ABILITY. Customer shall use the same degree of care to protect the Confidential Information from improper use or non-disclosure as Customer would use with respect to Customer’s own information of like importance which Customer does not desire to have published or disseminated, but in any event no less than reasonable care. Customer will not use any Confidential Information for any purpose not expressly authorized under this Agreement and will not disclose to third parties any such Confidential Information.

7. TERM AND TERMINATION.

a) Term. Each Service shall have an initial one (1) year term from the commencement of the service period and shall thereafter renew automatically for successive one (1) year terms, unless a different term is specified in the Order Form. Any unused base transactions expire as of any renewal or termination date. ABILITY may terminate this Agreement with written notice of no less than sixty (60) days and Customer may terminate this Agreement as of any renewal date upon no less than sixty (60) days prior written notice.

b.) Termination. If Customer fails to pay any Fee when due, ABILITY may, at its sole discretion (a) terminate this Agreement immediately upon notice to Customer; (b) withhold delivery of all or a portion of the Services, Software, or Documentation; (c) disable all Connections; or (d) seek enforcement of Customer’s obligation to pay the entire Fee as a condition precedent to any other obligation of ABILITY hereunder. This Agreement will terminate (a) immediately upon notice if Customer attempts to reverse engineer the Software, or (b) thirty (30) days after prior written notice of Customer’s breach of this Agreement subject to Customer’s right to cure such breach during the notice period. Upon termination, (a) ABILITY shall disable all Connections, and (b) Customer shall deinstall, remove and destroy all copies of the Software or any part of the Software from any and all computer storage devices under Customer’s control, and destroy all

copies of the Documentation. Upon request by ABILITY, Customer shall certify in writing to ABILITY that all copies of the Software and the Documentation have been destroyed and that none remain in Customer's possession or under Customer's control.

c) Insolvency. This Agreement shall terminate upon the election of and notice from ABILITY to Customer if Customer is adjudged insolvent or bankrupt, or upon the institution of any proceedings by or against Customer seeking relief, reorganization or arrangement under any laws relating to insolvency, or any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of any of Customer's property or assets, or the liquidation, dissolution or conclusion of Customer's business.

d) Effect of Termination. Upon expiration or termination of the Agreement for any reason, all use of the Services by Customer shall cease, and Customer shall pay to ABILITY all accrued Fees and other amounts.

e) Survival of Certain Terms. The provisions of Sections 4, 5 (but not part (b)), 6, 7, 8, 9(b), 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 shall survive expiration or termination of this Agreement.

8. REACTIVATION. Customer may reactivate Service, with the prior written consent of ABILITY, at any time after its expiration, by payment to ABILITY of the Fee then in effect. ABILITY may, at its discretion, refuse to allow such reactivation of Service or charge a reactivation fee.

9. WARRANTIES

a) ABILITY warrants that i) its Services will be of professional quality and will conform to generally accepted professional standards; ii) its personnel shall be competent and qualified to perform the tasks to which they are assigned; and iii) it has the right to grant the licenses provided herein. If the Services fail to comply with such warranty, ABILITY will repair or replace the Services if notified by Customer within ninety (90) days of initial receipt by Customer. These remedies are provided on the condition that (i) ABILITY is promptly notified in writing of the particular defects or nonconformance as delivered by ABILITY; (ii) Customer certifies that all copies of any returned Software have been destroyed; and (iii) examination by ABILITY discloses that such deficiencies actually existed. The foregoing states Customer's sole and exclusive remedy and ABILITY's sole and exclusive liability for breach of warranty.

b) THE FOREGOING WARRANTIES ARE IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PART OF ABILITY AND ITS SUPPLIERS. ABILITY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. ALL THIRD PARTY SOFTWARE IS PROVIDED WITHOUT WARRANTY OF ANY KIND AND CUSTOMER IS RESPONSIBLE FOR THE ENTIRE RISK WITH RESPECT TO ITS QUALITY AND PERFORMANCE.

10. LIMITATION OF LIABILITY. IN NO EVENT SHALL ABILITY OR ITS SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, OR INDEMNITY, EVEN IF ABILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ABILITY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO ABILITY IN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM OR CAUSE OF ACTION.

11. U.S. GOVERNMENT RIGHTS. If Customer is the U.S. Government or an agency thereof, Customer (a) with respect to civilian agencies, will grant protection for the Software as "commercial computer software" and related documentation in accordance with the terms of 48 C.F.R. 12.212 of the Federal Acquisition Regulations; and (b) for use by or on behalf of the Department of Defense, will grant protection for the Software as "commercial computer software" and related documentation in accordance with the terms of 48 C.F.R. 227.7202-1 of the DoD FAR Supplement.

12. EXPORT. Customer will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export, of the Software or the Services to any country for which the United States Export Administration Act, or any similar United States law or regulation requires an export license or other U.S. Government approval, unless the appropriate export license or approval has first been obtained.

13. NOTICES. Unless otherwise specified in this Agreement, all notices, requests, demands and other communications (other than routine operational or administrative communications) required or permitted under this Agreement shall be deemed to have been delivered to a party at the address indicated in the Order Form: (a) when actually received in the case of hand delivery as evidenced by a signed receipt or applicable Order Form; (b) the business day after being given to a reputable overnight courier service, with a reliable system for tracking delivery, for delivery the following day; (c) when sent by confirmed facsimile with a copy sent by United States mail within two (2) business days of the transmission; (d) upon receipt, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid; or (e) upon receipt when sent via email with a S/MIME receipt request. A party may from time to time change its address, facsimile number or designee for notification purposes by giving the other party prior written notice of the new address, facsimile number or designee and the date upon which such change will become effective.

14. CHOICE OF LAW, DISPUTE RESOLUTION, VENUE. This Agreement is governed by the laws of the State of Minnesota without regard to its conflict of laws rules and principles. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement. In the event of a dispute arising out of this Agreement, any document executed pursuant to this Agreement or any of the transactions contemplated by this Agreement ("Dispute"), any Dispute not resolved by the parties shall be submitted to arbitration before an arbitration panel of three (3) arbitrators in accordance with the rules then prevailing of the American Arbitration Association. The AAA shall appoint the panel, with at least one (1) arbitrator having knowledge of and experience in dealing with the computer software industry. All arbitration shall take place in Hennepin County, Minnesota. The award of the arbitrators shall be binding and may be entered as a judgment in any court of competent jurisdiction. The exclusive jurisdiction for all Disputes that are not resolved by arbitration shall be in either a federal or state court located in Hennepin County, Minnesota, and each party submits to the personal jurisdiction of such courts and waives any objection of lack of personal jurisdiction or inconvenient forum. Customer will reimburse ABILITY for all attorneys' fees and costs ABILITY incurs in enforcing any of its rights arising out of or relating to this Agreement.

15. NO LIMITATION. Nothing in this Agreement shall, or is intended to, limit the ability of ABILITY to develop or enhance its Service in any manner whatsoever, including use of knowledge gained as a result of the performance by ABILITY of its obligations hereunder, provided that ABILITY does not use or disclose Customer's confidential information identified as such by Customer in writing.

16. BINDING UPON SUCCESSORS; ASSIGNMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. However, Customer may not effect an assignment of this Agreement, including by operation of law, without ABILITY's prior written consent. Any such purported assignment of this Agreement without obtaining written consent shall be void and of no effect and shall permit ABILITY to terminate this Agreement pursuant to Section 7.

17. SEVERABILITY; ENFORCEMENT; NO WAIVER. The unenforceability of any provision of this Agreement shall not impair the enforceability of any other part of this Agreement. If any provision of this Agreement shall be deemed invalid or unenforceable, in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties. The failure of a party, at any time or from time to time, to require performance of any obligations of the other party hereunder shall not be deemed a waiver and shall not affect its right to enforce any provision of this Agreement at a subsequent time.

18. INDEMNIFICATION.

a) Customer shall defend, indemnify, and hold harmless ABILITY and third party licensors from and against any claims, loss, liability, or damages (including reasonable attorneys' fees) arising out of Customer's use of the Software or the Services, including any improper disclosure of PHI.

b) ABILITY shall defend, indemnify, and hold harmless Customer from and against any claims (including reasonable attorneys' fees) arising out of Customer's proper operation or use of the Software alleging that Customer's use of the Software infringes patent, copyright, or trademark rights or is a misappropriation of trade secrets. Customer shall provide ABILITY prompt notice of any such claim and ABILITY shall have the right to assume the defense thereof. In the event Customer's use of the Software is determined by ABILITY to be likely to be enjoined, ABILITY shall, at its option, modify the Software so that it is non-infringing, replace the Software or terminate this Agreement.

19. CERTIFICATE AUTHORITY. Customer acknowledges that ABILITY may obtain for one or more employees of Customer a digital certificate to be issued in connection with the services provided by ABILITY hereunder. Customer warrants that all facts and information provided by such employees will be accurate, current and complete, that such employees are and will be authorized to receive such digital certificates, accept the personal identifying information to be contained in such certificates, and comply with the responsibilities associated with holding such a certificate, including the terms and conditions found in the [Neutralus Certification Practices Statement \(CPS\)](#) and the [Neutralus Certificate Policy](#). Furthermore, Customer shall cause such employees to represent themselves accurately in all communications using such certificates, to protect their private keys therefor at all times and to notify immediately the authority issuing such certificates if they suspect their private key has been compromised, stolen or lost.

20. INDEPENDENT PARTIES. The relationship of ABILITY and Customer is that of independent contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have any authority to bind the other party by contract or otherwise.

21. COMPLETE AGREEMENT. This Agreement, together with the Order Form and the BAA, constitutes the complete and exclusive agreement between the parties and supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this Agreement.