

TERMS OF SERVICE

BusinessOptix, Inc. ("**BusinessOptix**", "**we**" "**us**" or "**our**") makes the BusinessOptix hosted services, solutions, and proprietary software, services, extensions, and application programming interfaces (collectively, the "**Service**") available for your use subject to the terms and conditions herein and any additional terms contained in an Order Form (defined below), amendment, or other attachment hereto (collectively, this "**Agreement**"). This Agreement is between BusinessOptix and the legal entity or entities that accept(s) this Agreement by physical or electronic signature ("**Customer**", or "**you**") and is effective as of the date set forth in an Order Form or otherwise when executed by Customer and accepted by BusinessOptix (such date, the "**Effective Date**").

The disclaimers, terms, and conditions in this Agreement are of general application and may be supplemented by additional policies, procedures, disclaimers, guidelines, rules, terms, and conditions of specific application that BusinessOptix discloses. If you are an individual executing an Order Form subject to this Agreement, you hereby acknowledge and agree that you have all rights, agency authority, and authorizations from the entity you represent, and such entity shall be deemed "Customer" for purposes of this Agreement.

Each party represents and warrants that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.

1. DEFINITIONS

The terms in this Section 1 shall have the meanings described below, and other terms may be defined within the context of this Agreement.

"**Customer Data**" means your data and your User's data which is uploaded, entered, collected, or otherwise processed by or through the Service.

"**Documentation**" means any documentation distributed by BusinessOptix pertaining to the Service, including without limitation any accompanying or online user guides or technical information relating to the Service, in each case, as may be updated or amended by or on behalf of BusinessOptix from time to time. The Documentation for the Service is available here: <https://helpme.businessoptix.com/hc/en-us/categories/115000214445-Knowledge-Base>.

"**Fees**" means the fees, expenses, and other amounts set forth in the Order Form for the right to access and use the Service.

"**Order Form**" means an ordering document specifying the Service to be provided hereunder including any addenda and supplements thereto. This Agreement shall govern unless the Order Form specifically references a particular Section name and number within this Agreement which is explicitly intended to be superseded by the terms therein.

"**Personal Information**" means any data that identifies, relates to, describes, or could reasonably be linked, directly or indirectly, to a particular individual.

"**Support**" means (1) BusinessOptix subscription support policy, available here: <https://helpme.businessoptix.com/hc/en-us/articles/360015988392-Subscription-Support-Policy>; and (2) infrastructure and security policy here: <https://helpme.businessoptix.com/hc/en-us/articles/360016217351-Uptime-Backup-and-Disaster-Recovery-Explanation>.

"**Third Party Materials**" means software, interfaces, and firmware provided by third parties which may be available, incorporated into, and/or distributed as part of the Service.

"**User**" means an individual who is authorized by you to use the Service, and to whom you have supplied a User identification and password. Users may include, for example, your employees, consultants, and contractors.

2. OUR SERVICE

2.1 **Right to Access.** On the condition you comply with your obligations under this Agreement, and subject to additional terms of any licenses applicable to third-party software included in the Service, BusinessOptix hereby grants to you a limited, revocable, non-exclusive, non-transferable, right to access and use the Service and Documentation solely in connection with your personal or internal business purposes. Other than as expressly granted in this Agreement, no other rights are granted, including without limitation any and all BusinessOptix patents, copyrights, moral rights, trade secrets, trademarks, service marks, publicity rights, and other proprietary rights (whether or not perfected or perfectible) (collectively, "**Intellectual Property Rights**"). All ownership rights, title, interest, and Intellectual Property Rights in and to the Service shall remain with BusinessOptix and/or its licensors. If you do not comply with this Agreement, BusinessOptix reserves the right to revoke any rights granted hereunder and limit your access to the Service. Any use of the Service that exceeds the rights expressly granted in this Agreement is strictly prohibited and constitutes a violation of this Agreement, which may result in the suspension or termination of your right to access and use the Service.

- 2.2 **Modification.** You agree that BusinessOptix has the right to modify any aspect or feature of the Service at any time upon prior notice. For clarity, no such modification will materially diminish the Service as currently delivered to you. From time to time and without notice to you, BusinessOptix may, but is under no obligation to, release upgrades, fixes or new versions of the Service.
- 2.3 **Additional Ordering.** Additional Users, modules, or rights may be procured during the Term of this Agreement. Any such additions will be reflected in a new Order Form. BusinessOptix has no duty to provide additional Service unless and until such additions have been accepted pursuant to an Order Form. Unless otherwise specified in the Order Form, (1) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (2) the added User subscriptions shall renew under the same terms as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require on-going use of the Service. Such reassignment may not occur more frequently than once every 60 days.
- 2.4 **Removal of Access.** BusinessOptix reserves the right to refuse access to the Service to any User. Your access to the Service is provided subject to the terms and conditions of this Agreement and all restrictions set forth herein. You agree that BusinessOptix may immediately suspend or terminate your access to the Service or any part thereof in the event that: (1) you breach or violate this Agreement or other incorporated agreements or guidelines; (2) BusinessOptix discontinues the Service (in which case, for clarity, BusinessOptix will refund to you a pro-rata portion of any pre-paid but unused Fees for the discontinued Service); (3) there is an unexpected technical or security issue or problem; or (4) you engage in fraudulent or illegal activities or a material breach of your obligations under the terms of this Agreement. You further agree that such measures may be taken in BusinessOptix's sole discretion and without any liability to you or any third party.
- 2.5 **Defects and Availability.** BusinessOptix uses commercially reasonable efforts to maintain the Service in accordance with this Agreement. BusinessOptix provides standard Support for the Service in accordance with its then-current Support policies as further set forth in Section 2.6; provided, however, BusinessOptix is not obligated to provide you Support for, and shall not be responsible or liable for, any errors in the Service or any damages resulting from your failure to implement or use the Service in accordance with the Documentation. The Service may be inaccessible or inoperable for any reason, including, without limitation: (1) equipment malfunctions; (2) periodic maintenance procedures or repairs which may be undertaken from time-to-time; or (3) causes beyond BusinessOptix's reasonable control or which could not reasonably be foreseen. You understand that the Service is provided over the Internet and so the quality and availability of the Service may be affected by factors outside of BusinessOptix's control. Except as set forth in Section 2.6, BusinessOptix does not make any guarantees regarding the reliability or availability of the Service and will not be liable to you or any third party for damages or losses related to the Service being unavailable.
- 2.6 **Our Support Responsibilities.** We shall: (1) provide our standard Support for the Service to you at no additional charge, and/or upgraded Support (as defined in the Order Form) if purchased separately, (2) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which we shall give at least 48 hours' notice via the purchased services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday GMT), or (b) any unavailability caused by Force Majeure Events (as defined in Section 12.3), and (3) provide the Service in accordance with applicable laws and government regulations. BusinessOptix does not apply storage usage limits. BusinessOptix retains the right to raise examples of excessive use of storage. Generally expected usage would be storage only of BusinessOptix models and related documents.
- 2.7 **Third Party Materials.** In the course of providing the Service, BusinessOptix may provide or make available access to certain Third Party Materials that are integrated or embedded within the Service. To the extent Third Party Materials are required for use in connection with the receipt of the Service, BusinessOptix agrees, to the extent feasible, to pass through and enforce on your behalf the representations, warranties, covenants, indemnities, service levels, and other material provisions of the respective agreements between BusinessOptix and the providers of Third Party Materials to the extent necessary to ensure your beneficial use of the Service. For all other Third Party Materials that are provided as a convenience but are not required to receive or use the Service, you acknowledge and agree that BusinessOptix is not responsible for the availability of such Third Party Materials, and BusinessOptix does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such Third Party Materials or for any privacy or other practices of such third parties operating those websites or providing such materials. BusinessOptix strongly encourages you to review any separate terms of use and privacy policies governing the use of such third-party websites and Third Party Materials.
- 2.8 **Ownership of Intellectual Property.** The Service, including all systems, databases, information, data, documents, materials, works, images, trademarks, service marks, logos, and all Intellectual Property Rights in and to the foregoing (collectively, the "**BusinessOptix Materials**") shall at all times remain the exclusive intellectual property of BusinessOptix and its third-party licensors. You are not acquiring any Intellectual Property Rights in or to the BusinessOptix Materials other than the non-exclusive

rights set forth in this Agreement. The BusinessOptix Materials may not be reproduced, recreated, sublicensed, modified, accessed, or used in any manner or disseminated or distributed to any other party without BusinessOptix prior written consent. Any unauthorized use of any BusinessOptix Materials, whether owned by BusinessOptix or any other parties, may violate copyright laws, trademark laws, intellectual property, privacy and publicity laws and communications regulations and statutes.

- 2.9 **User Count Audits.** We will review your user counts on an ongoing basis. If you are found to have more Users than contracted, a true-up invoice will be issued. The true-up invoice will be calculated by multiplying the additional Users times the User pricing for each month an overage was found. You will have thirty (30) calendar days to deactivate the additional Users to avoid future additional charges. If you wish to keep the additional Users active, they can be added per the terms in Section 2.3.
- 2.10 **AI Technology.** In the course of providing the Service, BusinessOptix may utilize or make available to you for your use deep learning, machine learning, large language models, generative, and other artificial intelligence technologies, including (1) proprietary algorithms, software or systems that make use of or employ neural networks, statistical learning algorithms (such as linear and logistic regression, support vector machines, random forests, k-means clustering), or reinforcement learning; and (2) proprietary embodied artificial intelligence made available by third parties and related hardware or equipment (collectively, “**AI Technology**”). Customer grants BusinessOptix the right to make Customer Data available to BusinessOptix’s third-party partners, including those providing AI Technology, in connection with providing the Service to Customer. BusinessOptix makes no representations or warranties involving your use of, or the output you generate, from AI Technology (including accuracy). In connection with use of AI Technology, BusinessOptix will employ commercially reasonable measures designed to ensure that Customer Data is not shared with other BusinessOptix customers or used to train any third-party AI Technology.
3. **CUSTOMER RESPONSIBILITIES, REPRESENTATIONS, AND RESTRICTIONS**
- 3.1 **Account Registration and Delegation.** Access to the Service will be managed by you as an administrator or through a single sign-on integration managed by you. You are fully responsible for managing your User’s access to the Service. User subscriptions purchased by you commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein.
- 3.2 **Unauthorized Use and Information Changes.** You must immediately notify BusinessOptix if you learn of or have reason to suspect any unauthorized use of your account or any other breach of security of the Service. You are responsible for maintaining the confidentiality of your User’s access credentials and are fully responsible for all User activities and activities that occur under your Users’ accounts.
- 3.3 **Storing Credentials.** You are responsible for any damages to BusinessOptix or the Service resulting from unauthorized access to the Service from your account or any of your Users’ accounts, and BusinessOptix will have no liability to you, to any User, or any third party for damages or loss related to such unauthorized access or use.
- 3.4 **Representations.** You hereby represent and warrant that: (1) you have the legal capacity and authority to enter into and perform your obligations under this Agreement; (2) you will comply with the terms and conditions of this Agreement and any other agreement to which you are subject that is related to your use of the Service or any part thereof; (3) you have provided and will maintain accurate and complete information, and will provide any additional information BusinessOptix may reasonably require to provide you with the Service; (4) your access to and use of the Service or any part thereof will not constitute a breach or violation of any other agreement, contract, terms of use or any law or regulation to which you are subject; (5) you will immediately notify BusinessOptix in the event that you learn or suspect that any Personal Information for which you are a controller of has been disclosed or otherwise made known to any other person in violation of applicable law in connection with the Service; (6) you will not use the Service in order to gain competitive intelligence about BusinessOptix, the Service, or any product or service offered via the Service or to otherwise compete with BusinessOptix; and (7) the Customer Data you provide does not violate the rights of any third party, including, without limitation, the intellectual property, privacy or publicity rights of any third party, and you have acquired all appropriate consents and authorizations of all third parties as required under applicable law to provide the Customer Data through our Service.
- 3.5 **Restrictions.** You may not: (1) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party any portion of our Service in any way; (2) copy (except as required to place the BusinessOptix JavaScripts on your website), modify, adapt, alter, translate, create derivative works, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, communications protocol, structure, or ideas upon which the Service is based; (3) use the Service or any data, content, or information accessed through the Service to develop a competing service or product; (4) use any device, software, or routine intended to damage or otherwise interfere with the proper functioning of the Service, servers, data centers, or networks connected to the Service or take any other action that interferes with any other person’s use of the Service; (5) decrypt, transfer, create Internet links to the Service, or “frame” or “mirror” the Service on any other server or wireless or Internet-based device; (6) use or merge the Service or any component thereof with other software, databases, or services not

provided or approved by BusinessOptix; (7) circumvent or attempt to circumvent any electronic protection measures in place to regulate or control access to the Service, or remove, obscure, or alter any notices or indications of any Intellectual Property Rights, any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs, or designations, or any electronic notices of the Service; (8) use the Service for any fraudulent or otherwise unlawful purposes or in violation of this Agreement; (9) develop, distribute, or sell any software or other functionality capable of launching, being launched from, or otherwise integrated with the Service; (10) use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Service for any reason; (11) access or attempt to access any other User's account or use the Service in a way that prevents or inhibits another User from enjoying the Service; (12) use any data, content, or information made available through the Service in any manner that misappropriates any trade secret or infringes any copyright, trademark, patent, rights of publicity, or other proprietary right of any party; (13) introduce into the Service any virus, rogue program, Trojan horse, worm or other malicious or intentionally destructive code, software routines, or equipment components designed to permit unauthorized access to or disable, erase, or otherwise harm the Service, or perform any such actions; (14) introduce into the Service any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of an unauthorized person; (15) delete, modify, hack, or attempt to change or alter the Service, any data, content, or information made available through the Service, or any notices on the Service; (16) connect to or access any BusinessOptix computer system or network other than the Service; (17) impersonate any other person or entity to use or gain access to the Service; (18) conduct or otherwise participate in any distributed denial-of-service attack or similar malicious attack intended or designed to artificially delay, disrupt or otherwise adversely affect the Service or any other User's access to or use of the Service; or (19) post or transmit any data which contains Personal Information to the BusinessOptix servers and any controls or inputs required by you will not solicit Personal Information. Further, by using the Service, you confirm that you will not input, and will not solicit Users to input, Personal Information or otherwise use the Service in a manner that could give rise to obligations under applicable laws relating to Personal Information. BusinessOptix reserves the right to fully investigate violations of any of the above of the law. BusinessOptix may involve and cooperate with law enforcement authorities in prosecuting Users who violate this Agreement.

4. DATA RIGHTS, USES, AND LIMITATIONS

- 4.1 **Customer Data; Protections.** BusinessOptix is an ISO27001:2022 compliant business. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. We shall not (1) modify Customer Data, (2) disclose Customer Data except as compelled by law in accordance with Section 7.2.5 (Compelled Disclosure) or as expressly permitted in writing by you, or (c) access Customer Data except to provide the Service and prevent or address service or technical problems, or at your request in connection with customer Support matters. Except as set forth in this Agreement, as between BusinessOptix and you, you retain all right, title, and interest in and to Customer Data. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, and you agree that BusinessOptix shall not be responsible or liable for the unauthorized access to, alteration of, or deletion, correction, destruction, corruption, damage, loss, or failure to secure or store Customer Data arising from your use, or your User's use, of the Service. You acknowledge and agree that you bear sole responsibility for adequately backing up Customer Data. BusinessOptix reserves the right, but not the obligation, to refuse to post or to remove any information or materials, in whole or in part, in the Service that BusinessOptix believes to be unacceptable, undesirable, or in violation of this Agreement or the rights of third parties.
- 4.2 **Customer Data Representations.** You represent, warrant, and covenant that: (1) you have all necessary rights and licenses to grant BusinessOptix the rights set forth herein; (2) you have obtained all consents necessary under applicable law to disclose Customer Data to BusinessOptix; and (3) you will not publish, post, upload, record, or otherwise distribute or transmit any data or other material that: (a) infringes or would infringe any copyright, patent, trademark, trade secret or other Intellectual Property Rights or proprietary right of any party, or any rights of publicity or privacy of any party; (b) violates any law, statute, ordinance, or regulation; (c) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (d) is harmful to minors or otherwise pornographic; (e) is materially false, misleading, or inaccurate; and/or (f) contains information for which you do not have the right to permit BusinessOptix to access and process.
- 4.3 **Privacy.** You are responsible for compliance with all privacy laws and regulations applicable to your use of the Service, including providing any required notice(s) to individuals. You are not to transmit, or allow transmission of, Customer Data that contains Personal Information to the BusinessOptix system by use of any of the Service features without prior written approval of BusinessOptix. Without limitation, you agree to indemnify, defend, and hold BusinessOptix harmless from and against any third-party claims that arise from or are related to your transmission of Personal Information to BusinessOptix in connection with your use of the Service. BusinessOptix processes Personal Information as a controller in compliance with applicable law and in accordance with its privacy statement available here: <https://www.businessoptix.com/privacy-and-cookies-policy>. To the extent you and BusinessOptix have entered into the Data Processing Agreement, BusinessOptix will comply with its obligations as a processor in relation to the Personal Information for which you are a controller of.

- 4.4 **Usage Data.** BusinessOptix may generate de-identified data, statistics, and other performance or usage-related information (“**Usage Data**”) while providing the Service to you. You acknowledge and agree that, as between you and BusinessOptix, all Usage Data is and shall remain the property of BusinessOptix. BusinessOptix may use, aggregate, and share Usage Data for the purposes of providing the Service, conducting research, preparing industry benchmarking reports, product development, and other commercial uses subject to applicable law. BusinessOptix will ensure that Customer, its Users, and/or any other natural person cannot be identified through the Usage Data or any derivative thereof.
- 4.5 **Feedback.** BusinessOptix welcomes comments, feedback, information, or materials regarding the Service or any of the other BusinessOptix products or services (collectively, “**Feedback**”). By submitting Feedback to BusinessOptix, you agree to assign, and hereby irrevocably assign to BusinessOptix, all right, title, and interest, on a worldwide basis, in and to the Feedback and all copyrights, moral rights, and other Intellectual Property Rights embodied in such. BusinessOptix will be free to use, copy, distribute, publish, and modify the Feedback on an unrestricted basis, without compensation to you.
5. **FEES AND PAYMENT**
- 5.1 **Payment Terms.** You agree to pay to BusinessOptix all applicable Fees due for the Service in accordance with terms of this Agreement and the applicable Order Form with any applicable Taxes (as defined herein) required. Except as otherwise specified herein or in any Order Form, (1) Fees are based on the Service purchased and not actual usage, (2) all payment obligations under this Agreement are non-cancelable and non-refundable, and (3) quantities purchased cannot be decreased during the relevant Term. Any payments more than thirty (30) days past due will bear a late payment fee of two percent interest (2.0%) per month or the highest amount permitted by law, whichever is less. You agree to be responsible for payment for all activity by third parties who access or use the Service through your account. You are responsible for all incidental charges related to using the Service such as charges for Internet access, third party software licenses, or other data transmission fees.
- 5.2 **Taxes and Fees.** Service fees are exclusive of all invoice and bank processing fees, taxes, levies, or duties imposed by taxing authorities, and you are responsible for payment of all such fees, taxes, levies, or duties, excluding only United States income (federal or state) taxes imposed on BusinessOptix, including by way of example and not limitation, import duties and fees, sales, use, transfer, excise, value-added, and gross receipts (“**Taxes**”). In the event you are required to withhold any portion of service fees due to payments to banks or taxing authorities, (1) you agree to do so and to indemnify BusinessOptix for any liability resulting from your failure to make such withholdings, and (2) BusinessOptix reserves the right to adjust the pricing of the Service so that you are responsible for payment to BusinessOptix of the full amount for the Service, net of any such withholdings, so that the net amounts received by BusinessOptix after such withholdings is equal to what was invoiced.
- 5.3 **Payment method.** Until all amounts due have been paid in full, you agree to keep your payment information current at all times and authorize BusinessOptix to charge such payment method (including but not limited to wire transfer and/or automated clearing house) provided by you, all amounts due under this Agreement, including without limitation, usage beyond the amount specified in the applicable Order Form.
- 5.4 **Invoicing.** BusinessOptix bills customers in advance annually for recurring annual plans. All amounts due shall be paid in the currency specified on the Order Form within forty-five (45) days of your receipt of invoice. BusinessOptix may invoice you electronically or by paper invoice. You must notify BusinessOptix within thirty (30) days of your receipt of the invoice of any billing errors thereon. If you do not notify BusinessOptix within this time, BusinessOptix will not be required to correct the error and/or make adjustments to your account and you hereby waive any claim, allegation, or contention with respect to such invoice. BusinessOptix will not issue refunds for Fees paid for your Service account, even for periods of inactivity.
- 5.5 **Rate Change.** The per-unit pricing during any renewal Term shall Increase by the lesser of 5% or the increase in the Consumer Price Index (CPI) as published by the Office for National Statistics in January of the renewal year, unless pricing was promotional or otherwise specified on the Order Form.
- 5.6 **Suspension.** If any undisputed amount owing by you for the Service is overdue, we may, upon prior notice, and without limiting our other rights and remedies, suspend access to the Service until such overdue amounts are paid in full.
6. **TERM AND TERMINATION**
- 6.1 **Term.** You will be bound for the entire Term of this Agreement. “**Term**” is defined as the period beginning on the Effective Date and shall continue until terminated in writing by either party or when terminated in accordance with Section 6.2 below. Except as otherwise specified in any Order Form, at the end of any Term, subscriptions will automatically renew for additional Terms equal to the expiring Term length, unless either party gives the other party notice of non-renewal at least sixty (60) days before the end of the applicable Term.

6.2 **Termination of Service.** Your termination rights, if any, will be set forth in your Order Form. Additionally, a party may terminate this Agreement for cause: (1) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (2) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon termination of this Agreement, all rights and services provided by BusinessOptix to you in this Agreement shall cease immediately. Termination of this Agreement, any license granted hereunder, or your access to the Service, shall not limit BusinessOptix from pursuing other remedies available to BusinessOptix, including but not limited to injunctive relief. BusinessOptix may also permanently or temporarily terminate, suspend, or otherwise refuse to permit your use of the Service upon reasonable prior written notice without incurring liability as a result thereof, if in our sole determination, you violate, or are reasonably likely to violate, this Agreement, including without limitation, by your nonpayment of Fees.

6.3 **Effect of Termination; Return of Customer Data.** Before the effective date of termination of a Service subscription, you may download models, attachments and associated data using the then current export features of the Service. BusinessOptix does not warrant all information exported to a specific output format will contain all the model information. You may engage BusinessOptix on a time and materials basis to export your Customer Data. A statement of work detailing the specifics of the project must be signed by both parties prior to the effective date of the termination. After 120 days following the termination effective date, BusinessOptix shall have no obligation to maintain or provide any of your Customer Data and may thereafter, unless legally prohibited, delete all your Customer Data in our systems or otherwise in our possession or under our control.

7. **CONFIDENTIAL INFORMATION; MUTUAL NON-DISCLOSURE**

7.1 Each party to this Agreement may furnish the other party with certain non-public, proprietary information (the “**Confidential Information**”). For the purposes of this Agreement, Confidential Information is defined as:

1. Disclosed information that is marked or identified as “confidential” at the time of disclosure, or which constitutes the trade secrets of a party under the governing law of this Agreement, or which the receiving party knows or should have known is information considered to be confidential and proprietary to the disclosing party;
2. The source code and object code of the Service, the pricing structure for the Service and Service provided to you, and any other proprietary information owned by BusinessOptix, and which is provided or disclosed to you at any time;
3. Disclosed information relating to any unreleased products or service offerings;
4. The terms and conditions of this Agreement; and
5. Customer Data.

7.2 Confidential Information shall not include information that:

1. is or becomes part of the public domain or is generally publicly known through no improper action by the receiving party after the time of the disclosing party’s communication thereof to the receiving party;
2. was rightfully in the receiving party’s possession or known by the receiving party prior to receipt from the disclosing party;
3. is rightfully disclosed without restriction to the receiving party by a third party without violation of any confidentiality covenant by such third party; and
4. is independently developed by the receiving party without use of the Confidential Information of the disclosing party.

7.3 If the receiving party is required by court, regulation or government order to disclose the disclosing party’s Confidential Information, the receiving party shall give notice of such order to the disclosing party (to the extent permitted by law) so that the disclosing party may seek a protective order or other appropriate remedy prior to such disclosure. The receiving party shall reasonably cooperate with the disclosing party in limiting such disclosure to the minimum required and use reasonable efforts to obtain assurance that confidential treatment will be accorded to such portions of the Confidential Information.

7.4 Each party agrees to hold the other party’s Confidential Information in confidence and not to use it for any purpose other than the purposes permitted under this Agreement. Each party agrees to use the same standard of care to protect Confidential Information as it uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care. Confidential Information of the other party may only be disclosed to those third party suppliers, affiliates, employees, contractors, and advisors of you or of BusinessOptix, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions at least as restrictive as those contained in this Agreement. Confidential Information remains at all times the property of the disclosing party. Unless otherwise explicitly set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied with respect to Confidential Information.

8. NO WARRANTY; DISCLAIMER

- 8.1 BUSINESSOPTIX MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. THE SERVICE IS PROVIDED BY BUSINESSOPTIX AND ITS LICENSORS "AS IS" AND "AS AVAILABLE." YOU ASSUME ALL RISK FOR YOUR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY HARM CAUSED BY VIRUSES, WORKS, OR OTHER DAMAGING MATERIALS. IN NO EVENT DOES BUSINESSOPTIX GUARANTEE ANY RESULTS, INCREASED TRAFFIC OR USER ENGAGEMENT FOR YOU. BUSINESSOPTIX DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION THEREOF, IS ACCURATE, ERROR OR BUG FREE, THAT YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, OR THAT THE SERVICE'S OPERATION WILL NOT NEGATIVELY AFFECT OTHER SOFTWARE OR HARDWARE. THIS SECTION APPLIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. BUSINESSOPTIX MAKES NO REPRESENTATIONS THAT THE SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER COUNTRIES. THOSE WHO ACCESS OR USE THE SERVICE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN RISK AND ARE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LAWS.

9. INDEMNIFICATION

- 9.1 **BusinessOptix Indemnification.** BusinessOptix shall defend you against any third party claims that the Service infringes any United States patent, trademark, or copyright or misappropriates any trade secret (to the extent it qualifies as a trade secret under US law) ("**Infringement Claim**"), and shall indemnify you for any costs and damages finally awarded by a court of competent jurisdiction or agreed upon in settlement with respect to such Infringement Claims, provided BusinessOptix is promptly notified of any such Infringement Claim related thereto and given reasonable assistance and sole control over defense and settlement. BusinessOptix will not be responsible for any settlement it does not preapprove in writing. The foregoing obligations do not apply with respect to the Service or portions or components thereof which are: (1) not supplied by BusinessOptix, (2) modified after delivery by BusinessOptix by you or your Users or by a third party that gained unauthorized access to your User's account, or (3) combined by you or your Users or by a third party that gained unauthorized access your User's account with other products, processes, or materials where the alleged infringement relates to such combination. Additionally, BusinessOptix shall have no obligation to indemnify you under this Section 9.1 where you continue any allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or where your use of the Service is not in accordance with this Agreement or with the Documentation. If the Service becomes or is likely to become the subject of an Infringement Claim, then BusinessOptix may, at its expense and option, either: (a) replace or modify the Service to make it non-infringing, while maintaining equivalent functionality; (b) procure for you the right to continue using the Service pursuant to this Agreement; or (c) terminate this Agreement and refund to you, on a pro-rata basis, the amount of any prepaid Fees.
- 9.2 **Your Indemnification.** You agree to defend, indemnify, and hold harmless each of BusinessOptix, its affiliates and respective officers, employees, consultants, shareholders and representative from and against any and all claims, liabilities, damages, and/or costs (including attorneys' and expert witness fees, costs and other expenses) (each, an "**Indemnification Claim**") arising out of or related to any actual or alleged claims involving or resulting from: (1) violation of this Agreement or applicable law, rule or regulation by you or any person accessing or using the Service by or through you; (2) infringement or misappropriation by you, or any person accessing or using the Service by or through you, of any Intellectual Property Right or privacy or other right of any person or entity (except claims of infringement or misappropriation arising solely from use of the Service as provided under this Agreement); (3) your Users, or arising out of or relating to your relationship with any of your Users; (4) Customer Data; or (5) you or your Users' breach of any applicable privacy or data protection law, rule or regulation. BusinessOptix shall notify you of any Indemnification Claim. You may not settle an Indemnification Claim without BusinessOptix prior written consent, which consent may not be unreasonably withheld or delayed, unless such settlement is (a) solely for monetary damages that are fully payable by you, (b) does not involve any finding or determination of wrongdoing or violation of law by BusinessOptix, and (c) provides for BusinessOptix's full, unconditional and irrevocable release from all liability in connection with such Indemnification Claim. BusinessOptix shall provide reasonable assistance to you, at your expense, in defending the Indemnification Claim and may, at its option, participate in the settlement or defense of any Indemnification Claim with its own counsel and at its own expense.

10. LIMITATION OF LIABILITY

- 10.1 **Limitation.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID FROM YOU TO BUSINESSOPTIX AS CONSIDERATION FOR USE OF THE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL BUSINESSOPTIX AND/OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICE, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES RELATED TO OR ARISING FROM YOUR USE, MISUSE, OR INABILITY TO USE THE SERVICE,

INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PERSONAL INJURY OR PROPERTY DAMAGE OF ANY NATURE, UNAUTHORIZED ACCESS TO THE SERVERS, OR SERVER UNAVAILABILITY, HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT BUSINESOPTIX WAS AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU ACKNOWLEDGE AND AGREE THAT BUSINESOPTIX WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH.

11. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 11.1 **Choice of Law.** This Agreement and the rights of the parties hereunder will be governed by and construed in accordance with English Law. It is irrevocably agreed that the English courts shall have exclusive jurisdiction as regards any claim or matter arising out of or in connection with this Agreement. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from the application to this Agreement
- 11.2 **Dispute Resolution.** Before initiating any legal claim or action (except with respect to equitable relief or non-payment of fees due under this Agreement), the parties agree to refer any dispute, controversy or claim arising out of or related to this Agreement (collectively, a “**Claim**”) to members of the parties’ executive management (each such member a “**Representative**”) for resolution, which referral shall be evidenced by a written notice from either party to the other (the “**Referral**”). The parties’ representatives shall meet in person or via conference call within ten (10) business days of such Referral. If the parties have not reached a mutually agreeable resolution of the Claim within ten (10) business days after their initial meeting, or within an additional time period mutually agreed upon, then either party may request that such Claim be submitted to a mediator agreed upon by the parties. The mediator shall assist in attempting to negotiate a resolution of the Claim. The mediation shall be non-binding unless the parties otherwise agree. Unless otherwise agreed by the mediator and parties, the mediation shall be held within twenty-one (21) days of the request for mediation. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Claim. Any information or documents disclosed by a party under this clause: (a) must be kept confidential; and (b) may only be used to attempt to resolve the Claim. Each party shall pay its own costs of complying with this Section 11.2 and shall equally share the cost of the mediator.

12. MISCELLANEOUS

- 12.1 **Independent Contractors.** You understand and expressly agree that you and BusinessOptix are independent contractors and not agents or employees of the other party. Neither you nor BusinessOptix has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.
- 12.2 **Notices.** Any notice given under this Agreement shall be in writing and in the English language and shall be emailed to BusinessOptix at the email contact set forth in Order Form, or if to you, to the email or physical address associated with your account. You hereby consent to receiving any notices relevant to the Service or this Agreement by email.
- 12.3 **Force Majeure.** Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, natural disasters, earthquake, fire, flood, or other acts of God, labor conditions, power failures, and Internet disturbances (each, a “**Force Majeure Event**”).
- 12.4 **Consent to Do Business Electronically.** You agree not to contest the authorization for, or validity or enforceability of, electronic records and electronic signatures, or the admissibility of copies thereof, under any applicable law.
- 12.5 **Government End Users.** The Service and Documentation are comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to any civilian or military branch or agency of the U.S. government in accordance with the policies set forth in 48 C.F.R. 12.212 or 28 C.F.R. 227.7202-1 and 227.7202-3, respectively.
- 12.6 **Compliance with Laws and Export Control.** You shall abide by all applicable local, state, national and foreign laws, rules, treaties, and regulations in connection with your use of the Service, including those related to data privacy, international communications, and the transmission of technical or Personal Information. You acknowledge that BusinessOptix may discontinue provision or performance of the Service or terminate the license to the Service granted hereunder following any changes in any relevant applicable law, which in the sole discretion of BusinessOptix, makes performance impossible, or illegal. You further acknowledge that the Service and related technology and technical data (collectively “**Controlled Technology**”) may be subject to the import and export laws of any country where Controlled Technology is imported or re-exported, including U.S. Export Administration Regulations. You agree not to export, re-export, import or provide any Controlled Technology to any prohibited country (such as embargoed countries), entity, or person (such as designated nationals) for which a license or other governmental approval is required or is otherwise prohibited. All Controlled Technology is prohibited for export or re-export to prohibited countries as listed

at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> or to any country subject to similar trade sanctions.

- 12.7 **Equitable Relief.** You agree that your breach of the terms and responsibilities under this Agreement would cause irreparable harm and significant injury to BusinessOptix which would be both difficult to ascertain and for which there is no adequate remedy at law and that BusinessOptix shall be entitled, in addition to any other rights and remedies it may have, to injunctive relief (without the requirement of posting bond), specific performance and other equitable remedies to restrain any threatened, continuing, or further breach, or other equitable relief without prejudice to any other rights and remedies BusinessOptix may have under this Agreement.
- 12.8 **Entire Agreement.** This Agreement constitutes the entire agreement between you and BusinessOptix with respect to the subject matter hereof and supersedes all prior agreements, both oral and written. BusinessOptix may update this Agreement at any time without notice to you. Any changes to this Agreement will be posted on the BusinessOptix website. You can determine when this Agreement was last revised by referring to the "Last Updated" legend at the top of the first page. **UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THE AGREEMENT, ANY CHANGES TO THIS AGREEMENT ARE EFFECTIVE IMMEDIATELY UPON POSTING.** Your continued use of the Service will constitute your agreement to any new provisions within the revised Agreement.
- 12.9 **Waiver; Severability.** Either party's failure to enforce any provision of this Agreement will not be deemed to be a waiver of its right to enforce them. If any term or provision of this Agreement will be held to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Agreement will remain in full force and effect, and such invalid, illegal, or unenforceable term or provision will be deemed not to be part of this Agreement.
- 12.10 **Publicity.** You hereby consent to inclusion of your name and trademarks or service marks in BusinessOptix customer lists that may be published as part of BusinessOptix's marketing and promotional efforts. BusinessOptix may identify you as a customer when referring to lists of its customers.
- 12.11 **Assignment.** You may not assign, transfer, or sell (voluntarily or by operation of law) your rights or obligations under this Agreement without the prior written consent of BusinessOptix. Any purported assignment without BusinessOptix's consent will be void and will constitute a breach of this Agreement. BusinessOptix may assign this Agreement or delegate or subcontract its obligations under this Agreement at any time.
- 12.12 **Survival.** The provisions of this Agreement that expressly state that they will survive, or that by their nature should survive, the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement, including, without limitation, provisions governing ownership and use of intellectual property, representations, disclaimers, warranties, liability, indemnification, governing law, jurisdiction, venue, remedies, rights after termination, and interpretation of this Agreement.

(Signatures on the following page)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

FOR CUSTOMER:

Signature: _____

Print Name: _____

Print Title: _____

Address for Notice: _____

FOR BUSINESSOPTIX LIMITED.:

Signature: _____

Print Name: _____

Print Title: _____