

End-User License Agreement

Plot Boss, LLC. (Revised October 2019)

The table of contents is empty because you haven't selected paragraph styles to appear in it.

1. ATTENTION! THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT WILL BE LEGALLY BINDING ON CUSTOMER UPON INSTALLING OR OTHERWISE USING THE SOFTWARE OR RECEIVING THE SERVICES OF PLOT BOSS, LLC. CUSTOMER IS STRONGLY ADVISED TO CAREFULLY READ AND UNDERSTAND THE FOLLOWING PARAGRAPHS IN FULL UPON EXECUTING THE AGREEMENT.

1. License Grant. This End-User License Agreement (the "Agreement") grants you, the user, a non-exclusive, non-transferable license to use the Software, in object code for your internal business purposes (and not for managing Third-Party data unless the product you have licensed expressly permits you to) under the terms and conditions stated herein. The Software is to be installed, used, and deployed in accordance with the specific rights and responsibilities set forth in this Agreement. This Agreement can be updated from time to time, in Plot Boss's sole discretion and will be made available online.

2. Permitted Use and Reproduction.

2.1.1 *License Term*: The license is effective for the limited time specified in in the Grant Letter. If no term is specified, the licenses will be perpetual.

2.1.2 *Copies*: Company may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes. The subsequent sale or completion of any action directed toward resale of Plot Boss's software will result in the immediate termination of this Agreement, as well as formal civil and criminal charges filed with the local jurisdiction. Plot Boss will NOT indemnify, protect, or otherwise assist any person or company accused of reproducing and distributing unlicensed copies of the Software.

2.1.3 *Affiliates, Managing Parties*: Company may permit use of the Software in accordance with this Agreement:

(a) by an Affiliate;

(b) by a third party with which Company enters into a contract to manage Company's information technology resources (Managing Party) if:

(i) the Managing Party only uses the Software for Company's internal operations and not for the benefit of another third party or itself;

(ii) the Managing Party agrees to comply with the terms and conditions of this Agreement; and

(iii) Company provides Plot Boss with written notice that a Managing Party will

be using the Software on Company's behalf.

2.1.4. *General restrictions:* Company may not, and may not cause or allow any third party to:

(a) decompile, disassemble or reverse-engineer the Software, or create or recreate the source code for the Software;

(b) remove, erase, obscure or tamper with any copyright or any other product identification or proprietary rights notices, seal or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies Company makes of the Software and Documentation;

(c) lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise;

(d) modify, adapt, tamper with, translate or create Derivative Works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including any routine, script, code, or program) having any functional attributes, visual expressions or other features similar to those of the Software to compete with Plot Boss;

(e) except with Plot Boss's prior written permission, publish any performance or benchmark tests or analysis relating to the Software;

(f) attempt to do any of activities in Subsections (a) to (e); or

(g) run or operate the Software in a cloud, Internet-based computing or similar on-demand computing environment unless Company's Grant Letter or the applicable Product Entitlement Definitions specifically allows the use.

Hardware Requirements. DSL, cable or another high-speed Internet connection is required for proper transmission of the Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Service, including, but not limited to, "browser" software that supports protocol used by Plot Boss, LLC, including Secure Socket Layer (SSL) protocol or other protocols accepted by Plot Boss, LLC, and to follow log-on procedures for services that support such protocols. Plot Boss, LLC is not responsible for notifying Customer of any upgrades, changes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by Plot Boss, LLC. Plot Boss, LLC assumes no responsibility for the reliability or performance of any connections as described in this Section.

2.2. Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

2.3. Users: Passwords, Access, and Notification. Customer shall authorize access to and assign unique passwords and usernames to the number of Users procured by Customer on the Estimate/Order Form. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed, without written approval. Customer will be responsible for the confidentiality and use of User's passwords and usernames. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Plot Boss, LLC will act as though any Electronic Communications it receives under Customer's passwords, username, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify Plot Boss, LLC of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

2.4. Customer's Lawful Conduct during Use. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. The Service allows Customer to send Electronic Communications directly to Plot Boss, LLC and to third parties. Customer is responsible for ensuring that its use of the Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall store credit card and social security data only in the designated fields for such data.

In addition to Customer's other obligations set forth herein, Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance.

Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening.

Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by Plot Boss, LLC. Customer shall not do any "mirroring" or "framing" of any part of the Service or create Internet links to the Service which include log-in information, usernames, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic

Communications are endorsed by Plot Boss, LLC.

Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement, including but not limited to: those Users that are contractors and agents, and Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by Customer and Customer waives all of those defenses that Customer may have as to why Customer should not be liable for Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

2.5. Third-Party Web Sites, Products and Services. Plot Boss, LLC may offer certain Third-Party Applications for sale using Estimate/Order Forms. Any procurement of such Third-Party Applications by Customer shall be subject to the terms specified in such Estimate/Order Forms.

In addition, Plot Boss, LLC or third-party providers may offer Third-Party Applications or services, including implementation, customization and other consulting services related to Customers' use of the Service. Except as set forth in the Estimate/Order Form, Plot Boss, LLC does not warrant any such Third-Party Applications or services, regardless of whether or not such Third-Party Applications or services are provided by a Third-Party that is a member of a Plot Boss, LLC partner program or otherwise designated by Plot Boss, LLC as "certified," "approved" or "recommended." Any procurement by Customer of any Third-Party Applications or services is solely between Customer and the applicable Third-Party provider.

Plot Boss, LLC is not responsible for any other aspect of such Third-Party Applications or services that Customer may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third-Party Applications or services for use with the Service, Customer agrees that Plot Boss, LLC may allow such Third-Party providers to access Customer Data as required for the interoperation of such Third-Party Applications with the Service, and any exchange of data or other interaction between Customer and a Third-Party provider is solely between Customer and such Third-Party provider.

Plot Boss, LLC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Applications or Third-Party providers via the consent, permission, authorization or are otherwise allowed by the Customer to access Customer Data. No procurement of such Third-Party Applications or services is required to use the Service. If Customer was referred to Plot Boss, LLC by a member of one of Plot Boss, LLC' partner programs, Customer hereby authorizes Plot Boss, LLC to provide such member with access to Plot Boss, LLC' business information related to the procurement and use of the Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases, and billing/payment information.

2.6. Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Service. Customer expressly consents to Plot Boss, LLC' collection, extrapolation, storage, distribution or any use, now and/or in the future, of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Plot Boss, LLC.

Customer acknowledges and understands that Electronic Communications may be accessed by

unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Plot Boss, LLC is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks, regardless of whether said networks are owned and/or controlled and operated by Plot Boss, LLC, including, but not limited to, the Internet and Customer's local network.

2.7. Service Level. During the Term, the Plot Boss, LLC Service offerings will meet the service level specified in the "Service Level Commitment" available from Plot Boss, LLC, or such other URL as specified by Plot Boss, LLC, which is hereby incorporated by reference. If the applicable Service fails to achieve the service level, then Customer will be entitled, as its sole and exclusive remedy, to a credit for the applicable Service in accordance with the terms set forth in the Service Level Commitment. The respective Service's system logs and other records shall be used for calculating any service level events.

2.8. Plot Boss, LLC Support. As part of the Service, Plot Boss, LLC will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service. If you have procured Plot Boss, LLC Support Services, the current Plot Boss, LLC URL Terms for support services are available from Plot Boss, LLC, and are hereby incorporated by reference. Customer acknowledges that Plot Boss, LLC has extensive experience helping Customers improve utilization and realization of benefits of the Service, and that not following the advice of Plot Boss, LLC and/or not engaging Plot Boss, LLC or other Plot Boss, LLC authorized implementation partner in the provision of professional services may substantially limit Customer's ability to successfully utilize the Service or to enjoy the power and potential of the Service.

2.9. Customer Payment Data. Plot Boss, LLC shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data. During the Term, Plot Boss, LLC shall maintain PCI DSS compliance for the portions of the Plot Boss, LLC Service that store and process credit card data. Any changes made to the Service by the Customer or at the Customer's direction may affect the Customer's compliance with PCI DSS requirements and Customer shall be solely responsible for ensuring that any such changes are compliant with PCI DSS requirements. Plot Boss, LLC shall ensure performance of an SSAE 16 (SOC 1) / ISAE 3402 Type II Report*. No more than once per year, Customer may request a copy of Plot Boss, LLC's SSAE 16 (SOC 1) / ISAE 3402 Type II Report*. *or similar third-party audit to an established industry standard selected by Plot Boss, LLC.

2.10. Confidentiality. For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, Customer Data, trade secrets, customer lists, source code, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the Parties regarding the Service and any information that is clearly identified in writing at the time of disclosure as confidential.

Notwithstanding the foregoing, Confidential Information shall **not** include information which:

- (1) is known publicly;
- (2) is generally known in the industry before disclosure;

- (3) has become known publicly, without fault of the Receiving Party;
- (4) the Receiving Party becomes aware of from a third-party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; or
- (5) is aggregate data regarding use of Plot Boss, LLC' products and services that does not contain any personally identifiable or Customer-specific information.

Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information, including but not limited to inputting credit card data and social security numbers only in the fields designated for such data in the Service) and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

2.11. Ownership of Customer Data. As between Plot Boss, LLC and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with Service, Plot Boss, LLC as part of its standard Service offering makes daily backup copies of the Customer Data in Customer's account and stores and maintains such data for a period of time consistent with Plot Boss, LLC standard business processes, which period shall not be less than seven (7) days.

2.12. Plot Boss, LLC Intellectual Property Rights. Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Plot Boss, LLC, or are reasonably foreseeable to be developed by Plot Boss, LLC, are owned exclusively by Plot Boss, LLC. Except as provided in this Agreement, the rights granted to Customer do not convey any ownership rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Plot Boss, LLC. Plot Boss, LLC and service marks, logos and product and service names are marks of Plot Boss, LLC (the "Plot Boss, LLC Marks"). Customer agrees not to display or use the Plot Boss, LLC Marks in any manner without Plot Boss, LLC' express prior written permission. The trademarks, logos and service marks of Third-Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such Third-Party which may own theMark.

2.13. Federal Government End User Provisions. If User is the US Federal Government, Plot Boss, LLC provides the Service, including related software and technology, in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR

227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Plot Boss, LLC to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

2.14. Dispute Resolution. The parties agree that any dispute regarding the use of this Service, any underlying agreements/contracts, and/or any dispute relating to the relationship established by the parties to this agreement, shall be decided via arbitration and brought within the jurisdiction of the Washington County, Pennsylvania judiciary. Prior to filing a lawsuit pursuant to this Section, the parties agree to make a good-faith effort to resolve any and all disputes, whether manifested, foreseeable or otherwise, outside of the judicial system, within thirty (30) days of filing suit.

3. **Warranties**

3.1. Warranty of Functionality. Plot Boss, LLC warrants that

- (i) the Service will achieve in all material respects the functionality described in the Help Documentation applicable to the Service procured by Customer, and
- (ii) such functionality of the Service will not be materially decreased during the Term.

Upon proper notice and proof of functional deficiency of the service, Plot Boss, LLC shall use commercially reasonable efforts to deliver the Service at the level proscribed by Plot Boss, LLC, and if Plot Boss, LLC is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid under the Agreement for its use of the Service for the terminated portion of the Term. Plot Boss, LLC shall have no obligation with respect to a warranty claim unless notice of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to Plot Boss, LLC. The warranties set forth in this Section 3.1 are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the Help Documentation, this Agreement and applicable law.

3.2. No Virus Warranty. Plot Boss, LLC warrants that reasonable efforts are made to ensure that the Service will be free of viruses, Trojan horses, worms, spyware, or other malicious code ("Malicious Code"), or conduct engaged in by a malicious actor for the purpose of gaining unauthorized access and exploiting the Service and its Users except for any Malicious Code originating outside of the Service, such as Malicious Code contained in Customer-uploaded attachments, third-party applications/files or content otherwise originating from Customer.

4. Disclaimer of Warranties. EXCEPT AS STATED IN SECTION 3 ABOVE, PLOT BOSS, LLC DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED

BY PLOT BOSS, LLC. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT AS STATED IN SECTIONS 2.7, 3.1, and 3.2 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN “AS IS” AND “AS AVAILABLE” BASIS AND IS FOR COMMERCIAL USE ONLY. PLOT BOSS, LLC OTHERWISE EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER’S USE OF THE SERVICE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION HIPAA OR THE GRAMM-LEACH-BLILEY ACT OF 1999. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSES.

5. Limitations of Liability. CUSTOMER AGREES THAT THE CONSIDERATION WHICH PLOT BOSS, LLC IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY PLOT BOSS, LLC OF THE RISK OF CUSTOMER’S INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND/OR DAMAGES ARISING FROM ACTIONS COMMITTED BY A THIRD-PARTY, WHETHER OR NOT SAID DAMAGES ARE REASONABLY FORESEEABLE BY THE PARTIES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, UNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW) OR OTHERWISE SHALL IN NO EVENT EXCEED THE DIRECT DAMAGE LIMITATIONS AS SET FORTH IN SECTION 5.

5.1 Maximum Liability amongst the Parties. Except with regard to amounts due under this Agreement, and a party’s breach of Section 2.10 (Confidential Information), the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, statutory duty, or otherwise, shall in no case exceed the equivalent of twelve (12) months in subscription fees applicable at the time of the event, and in the event of a breach of Section 2.10 (Confidential Information) of this Terms of Service, such maximum liability of either party shall be an amount equal to three (3) times the equivalent of twelve (12) months of subscription fees applicable at the time of the event. Notwithstanding the previous sentence, neither party shall be liable to the other party to the extent such liability would not have occurred but for the other party’s failure to comply with the terms of this Agreement. The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement.

UNLESS OTHERWISE PROHIBITED BY LOCAL, STATE, AND FEDERAL LAW, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO EITHER PARTY’S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 6 BELOW.

6. Indemnification.

6.1. Infringement. Subject to the limitations set forth in this Section, Plot Boss, LLC shall, at its own expense defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively “Claims”) alleging that the Service, as used in accordance with this Agreement, infringes Third-Party copyrights, trade secrets or trademarks and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys’ fees) (collectively, “Losses”) to the extent based upon such a Claim.

Excluded from the above indemnification obligations are Claims arising from (a) use of the Service in violation of this Agreement, (b) violates applicable law, (c) use of the Service after Plot Boss, LLC prohibits Customer’s use because of an infringement claim, (d) modifications to the Service not made by Plot Boss, LLC, or (e) use of the Service in combination with any software, application or service made or provided other than by Plot Boss, LLC.

If a Claim is brought or threatened, Plot Boss, LLC shall, at its sole option and expense, use commercially reasonable efforts either (b) to modify or replace portions of the Service as needed to avoid infringement, such update or replacement having substantially similar capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this Section 6.1 state Plot Boss, LLC’ entire liability, and Customer’s exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

6.2. Disclosure of Customer Data. Plot Boss, LLC shall, at its own expense and subject to the limitations set forth in this Section 6, defend Customer from and against any Claims that arise out of or result directly from Plot Boss, LLC’ gross negligence or willful misconduct in preventing unauthorized access to confidential Customer Data, as determined by a court of competent jurisdiction in connection with a Claim alleging a breach of confidentiality, and shall hold Customer harmless from and against liability for any Losses to the extent based upon such Claims.

6.3. Customer’s Indemnity. Customer shall, at its own expense and subject to the limitations set forth in this Section 6, defend Plot Boss, LLC from and against any and all Claims (i) alleging that the Customer Data or any trademarks or service marks other than Plot Boss, LLC Marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Customer’s breach of Section 2.4 (Customer’s Lawful Conduct) or 2.10 (Confidential Information) above and shall hold Plot Boss, LLC harmless from and against liability for any Losses to the extent based upon such Claims.

6.4. Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section 6, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party’s cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising thereof. The indemnification obligations under this Section 6 are expressly conditioned upon the indemnified party’s compliance with this Section 6.4 except that

failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 6 but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section 6 shall survive termination of this Agreement for one year.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. Plot Boss, LLC reserves the right to suspend Customer's and any Customer Aliases' access to and/or use of the Service for any accounts (i) for which any payment is due but unpaid but only after Plot Boss, LLC has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice, or (ii) for which Customer has not paid for the Renewal Term and has not notified Plot Boss, LLC of its desire to renew the Service by the End Date of the then current subscription term. The suspension is for the entire account and Customer understands that such suspension would therefore include Alias sub-accounts. Customer agrees that Plot Boss, LLC shall not be liable to Customer or to any Customer Alias or other Third-Party for any suspension of the Service pursuant to this Section 7.1.

7.2. Suspension for Ongoing Harm. Customer agrees that Plot Boss, LLC may with reasonably contemporaneous telephonic notice to Customer suspend access to the Service if Plot Boss, LLC reasonably concludes that Customer's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer's Service is causing immediate, material and ongoing harm to Plot Boss, LLC or others. In the extraordinary event that Plot Boss, LLC suspends Customer's access to the Service, Plot Boss, LLC will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and resolve the issues causing the suspension of Service. Customer further agrees that Plot Boss, LLC shall not be liable to Customer nor to any Third-Party for any suspension of the Service under such circumstances as described in this Section 7.2.

7.3. Termination for Cause, Expiration. Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the nonbreaching party.

Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then Plot Boss, LLC shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Plot Boss, LLC' breach of this Agreement, then Customer shall be entitled to refund of the pro rata portion of any subscription fees paid by Customer to Plot Boss, LLC under this Agreement for the terminated portion of the Term.

7.4. Handling of Customer Data in the Event of Termination. Customer agrees that following termination of Customer's account and/or use of the Service, Plot Boss, LLC may immediately

deactivate Customer's account and that following a reasonable period of not less than ninety (90) days shall be entitled to delete Customer's account from Plot Boss, LLC's "live" site. During this period and upon Customer's request, Plot Boss, LLC will grant Customer limited access to the Service for five (5) days for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to Plot Boss, LLC. Customer further agrees that Plot Boss, LLC shall not be liable to Customer nor to any Third-Party for any termination of Customer access to the Service or deletion of Customer Data, provided that Plot Boss, LLC is in compliance with the terms of this Section 7.4.

8. Modification; Discontinuation of the Service.

8.1 Modification to the Service. Plot Boss, LLC may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. Plot Boss, LLC reserves the right to discontinue offering the Service at the conclusion of Customer's then current subscription term for such Service. Plot Boss, LLC shall not be liable to Customer nor to any Third-Party for any modification of the Service as described in this Section 8.1.

8.2 To Applicable Terms. If Plot Boss, LLC makes a material change to any applicable URL Terms, then Plot Boss, LLC will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's instance of Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Plot Boss, LLC within thirty (30) days after receiving notice of the change. If Customer notifies Plot Boss, LLC as required, then Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then current term for the affected Service. If the affected Service is renewed, it will be renewed under Plot Boss, LLC's then current URL Terms.

9. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Customer.

"Customer Data" means all electronic data or information submitted to the Service by Customer or its Affiliates.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

"Estimate/Order Form" means a Plot Boss, LLC estimate, renewal notification or order form in the name of and executed by Customer or its Affiliates and accepted by Plot Boss, LLC which specifies the Service and implementation services to be provided by Plot Boss, LLC subject to the terms of this Agreement.

"Help Documentation" means the online help center documentation describing the Service features, including User Guides which may be updated from time to time.

“Service” collectively, Plot Boss, LLC’ industry specific websites (the “Plot Boss, LLC Service”) and modules and/or management software as described in the applicable Help Documentation that is procured by Customer from Plot Boss, LLC in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated online components, but excluding Third-Party Applications and implementation services.

“Third-Party Applications” means online, Web-based applications or services and oine software products that are provided by third parties, and interoperate with the Service, including but not limited to those listed on www.siteind.com.

“Users” means individual or organizations [used interchangeably with “Customer(s)”] who are authorized by Customer to use the Service, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by Plot Boss, LLC at Customer’s request). Users may include but are not limited to Customer’s and Customer’s Aliates’ employees, consultants, contractors and agents.

“User Guides” means the online user guides for the Service, accessible via login at the customer’s website (under Help), as updated from time to time. Customer acknowledges that it has had the opportunity to review the User Guide through a trial account or testing period made available by Plot Boss, LLC.

“URL Terms” means the terms with which Customer must comply, which are located at a URL and referenced in this Agreement.