

# DATA SERVICES AGREEMENT

**Updated: August 25, 2020**

IMPORTANT: READ THESE TERMS CAREFULLY BEFORE USING THE SERVICES DESCRIBED HEREIN. BY SELECTING THE "I ACCEPT" BUTTON BELOW OR OTHERWISE USING OR ACCESSING THESE SERVICES (EACH AN "ACCEPTANCE" OF THIS AGREEMENT), YOU OR THE ENTITY IDENTIFIED BY YOU WHEN ACCEPTING THIS AGREEMENT (THE "CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND THAT YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU ARE NOT AN AUTHORIZED USER OF THESE SERVICES AND IT IS YOUR RESPONSIBILITY TO EXIT THIS AUTHORIZATION PROCESS WITHOUT USING THE SERVICES BY SELECTING THE "I DO NOT ACCEPT" BUTTON BELOW.

DUE TO GOVERNMENT PROCUREMENT REGULATIONS AND SIMILAR LAWS AND REGULATIONS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION, THIS AGREEMENT IS NOT INTENDED FOR USE BY NATIONAL, FEDERAL, STATE, PROVINCIAL OR LOCAL GOVERNMENTAL ENTITIES OR OTHER QUASI-GOVERNMENTAL ENTITIES SUCH AS AUTHORITIES, AGENCIES, COMMISSIONS, ETC., OR ANY OTHER ENTITY WHOSE USE OF THE SERVICES IS GOVERNED BY OR SUBJECT TO SUCH LAWS OR REGULATIONS. IF CUSTOMER IS SUCH AN ENTITY, THIS AGREEMENT AND THE LICENSE SHALL NOT APPLY. SUCH ENTITIES SHOULD CONTACT CUSTOMS Info FOR THE APPROPRIATE LICENSE.

## ARTICLE 1-SCOPE OF SERVICES

### 1.1 Description of Service.

**1.1.1 Access to Service.** CUSTOMS Info is the developer and owner of, or has rights to, certain web-based software and content to be provided to customers over the internet; such web-based software, its related content and any related documentation provided by CUSTOMS Info, and the means used to provide the web-based software to customers and the services described herein are collectively referred to as the "Service". Subject to Customer's payment of the applicable fees set forth in Article 3 and Customer's compliance with the terms of this Agreement, Customer, its subsidiaries and its and their employees ("Licensed Users") shall have the right to access and use the Service during the term of the Agreement solely for Customer's and its subsidiaries' internal business purposes. CUSTOMS Info will issue to one Licensed User ("Customer Administrator") an individual logon identifier and password ("Administrator Logon") for purposes of administering the Service. Using the Administrator's Logon, the Customer Administrator shall assign each Licensed User a unique logon identifier and password and provide such information to the Licensed Users and CUSTOMS Info via the Service. Customer shall not permit any individual or entity that is not a Licensed User to use the Service. Customer shall be responsible to ensure, by agreement or otherwise, that each Licensed User will: (a) be responsible for the security and/or use of his or her logon identifier and password; (b) not disclose such logon identifier or password to any person or entity; (c) not permit any other person or entity to use his or her logon identifier or password; (d) use the Service only in accordance with the terms and conditions of this Agreement and on the web site from which the Service is accessed. CUSTOMS Info shall have the right, in its sole discretion, to deactivate, change and/or delete passwords of Licensed Users who have violated any such terms or conditions or are otherwise using or accessing the Service in a manner inconsistent with such terms and conditions and to deny or revoke access to the Service, in whole or in part, if CUSTOMS Info believes Customer and/or its Licensed Users are in breach of such and conditions. Customer shall also be responsible for any and all costs and expenses incurred through the use of each Licensed User's logon identifier and password and for any access or use of the Service by Customer or any person or entity using a password, whether or not such access or use has been

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authorized by Customer. Customer shall be solely responsible for ensuring that the access to the Service by a Licensed User who is no longer an employee of Customer or an affiliate of Customer is terminated. CUSTOMS Info shall have no responsibility for managing, monitoring, and/or overseeing Customers and its Licensed Users' use of the Service. Customer acknowledges that the Service may contain devices to monitor Customer's compliance with the restrictions contained herein and Customer's obligations hereunder.

**1.1.2 Operating Environment.** Customer is solely responsible for acquiring, installing, operating and maintaining the hardware and software environment necessary to access and use the Service remotely via the Internet.

**1.1.3 Changes to Service.** CUSTOMS Info may upgrade, modify, change or enhance the Service and convert Customer to a new version thereof at any time in its sole discretion.

**1.1.4 Help Desk.** Between the hours of 8:00 a.m. and 5:00 p.m., Pacific Standard Time (excluding CUSTOMS Info holidays), CUSTOMS Info shall make available to Customer by email or telephone a help desk that Customer may call to report any problems with the Service. The help desk email address is support@customsinfo.com and phone number is (877) 583-4949 Extension "0". The Help Desk is always subject to availability of our technical staff and clause 1.1.5 below.

**1.1.5 Availability of the Service.** CUSTOMS Info shall exercise commercially reasonable efforts to keep the Service available twenty-four (24) hours a day, seven (7) days a week, subject to downtime for maintenance purposes, system outages and other circumstances beyond CUSTOMS Info's control. The parties acknowledge that, since the Internet is neither owned nor controlled by any one entity, CUSTOMS Info makes no guarantee that any given user will be able to access the Service at any given time. There are no assurances that access will be available at all times and uninterrupted, and CUSTOMS Info shall not be liable to Customer for any unavailability of the Service.

## ARTICLE 2-USE OF THE SERVICE

**2.1 Scope of Use.** Subject to the terms and conditions of this Agreement, including, without limitation, Section 2.2 hereof and Customer's payment of all applicable Fees, CUSTOMS Info hereby grants to Customer a limited, non-exclusive, non-assignable, non-sublicensable, non-transferable license (the "License"), during the Term, to access and use the Service remotely over the Internet, for Customer's and its subsidiaries' internal business purposes only, on a computer or a computer network operated by a Licensed User, only by the number of Licensed Users paid for by Customer and only using the logon identifiers and passwords provided to CUSTOMS Info for such Licensed Users for such use.

**2.2 Restrictions.** Customer and its Licensed Users shall not: (a) copy the Service or any portion thereof or permit unauthorized disclosure or copying of all or any part of the Service other than as required to use the Service remotely as intended by this Agreement; (b) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Service; (c) modify, adapt, translate or create a derivative work from the Service; (d) remove any proprietary notices, labels, or marks on the Service; or (e) sell, lease, loan, license, assign, sublicense, rent, transfer, publish, disclose, divulge, display, make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Service, including, without limitation, by transmitting or providing the Service, or any portion thereof, over the Internet, or otherwise, to any third party; (f) interfere or attempt to interfere with the Service in any way; (g) remove, obscure or

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alter any copyright notice, trademark or other proprietary rights notices affixed to or contained within the Service; (h) create any frames at any other web sites pertaining to or using any of the information provided through the Service or links to the Service; or (i) engage in or allow any action involving the Service that is inconsistent with the terms and conditions of this Agreement or those on the web site from which the Service is accessed. All rights not expressly granted hereunder are reserved to CUSTOMS Info

## ARTICLE 3-FEES AND PAYMENT TERMS

**3.1 Fees.** Customer shall pay CUSTOMS Info: (a) on an annual basis, the amounts set forth below based on the number of Licensed Users who access the service (the "Usage Fee"), and (b) upon invoice, any other set-up, item transaction fee, and other charges which may be set forth below (collectively, the "Fees"). The Fees shall be due on the date of invoice. The Fees may be modified or increased at CUSTOMS Info's election from time to time upon written notice to Customer. Use of the Service by any Licensed User of Customer subsequent to such notice shall constitute Customer's acceptance of such increase in Fees. Customer shall, in addition to the Fees required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transaction(s) contemplated hereby, excluding, however, income taxes on net profits which may be levied against CUSTOMS Info. Customer shall reimburse CUSTOMS Info for the amount of any such taxes or duties paid or accrued directly by CUSTOMS Info as a result of this transaction or the use of the Service by Customer or any of its Licensed Users. If Customer fails to pay any Fees within fifteen (15) business days of the date they are due, Customer shall be liable to pay late fees for billed amounts at a rate of the lesser of 1.5% per month or the highest rate permitted by law, and the Service shall be suspended until all outstanding Fees have been paid. All Fees shall be non-refundable.

**3.2 Time-and-Materials Service.** If Customer requests, and CUSTOMS Info agrees to provide, services that are outside the scope of the Service, such services shall be provided at CUSTOMS Info's then-current hourly service rates.

## ARTICLE 4-REPRESENTATIONS AND WARRANTIES

**4.1 Warranties.** Each party (the "Representing Party") represents and warrants to the other that: (a) it has the authority to enter this Agreement and to perform its obligations under this Agreement; (b) the execution and performance of this Agreement does not and will not violate any agreement to which the Representing Party is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of the Representing Party, enforceable in accordance with its terms. In addition to the foregoing: CUSTOMS Info warrants that the Service will materially conform to the applicable then-current documentation when used in the Operating Environment in accordance with the documentation. In the event that the Service fails to perform in accordance with this warranty, Customer shall promptly inform CUSTOMS Info of such fact, and, as Customer's sole and exclusive remedy, CUSTOMS Info shall either: (i) repair or replace the Service to correct any defects without any additional charge to Customer, or (ii) terminate this Agreement and provide Customer, as Customer's sole and exclusive remedy, with a pro rata refund of the Fees paid to CUSTOMS Info hereunder. Customer represents and warrants to CUSTOMS Info that Customer and its Licensed Users (i) will use the Service only for lawful purposes; (ii) will not attempt to or actually interfere with, disrupt or place an undue burden or demand on the Service or the servers or networks involved with the operation of the Service or violate the regulations, policies or procedures of such networks; (iii) attempt to gain unauthorized access to the Service, other

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accounts, computer systems or networks connected to the Service, through any other means; or (iv) interfere with another user's use and enjoyment of the Service.

**4.2 Export Restrictions.** Customer represents and warrants that it and all Licensed Users will comply with all applicable laws, rules and regulations in the jurisdiction from which they access the Service, including those laws, rules and regulations which apply to the access, import, use and export of controlled technology or other goods. Customer also agrees that it and all Licensed Users will comply with the applicable laws, rules and regulations of the jurisdiction from which CUSTOMS Info operates the Service (currently, the United States of America). In particular, Customer represents, warrants and covenants that it shall not, without obtaining prior written authorization from CUSTOMS Info and, if required, of the Bureau of Export Administration of the United States Department of Commerce or other relevant agency of the United States Government, access, use, export or re-export, directly or indirectly, the Service, or any portion thereof or any Confidential Information of CUSTOMS Info (including without limitation information regarding the use, access, deployment, or functionality of the Service) from the United States to (a) any country destination to which access, use, export or re-export is restricted by the Export Administration Regulations of the United States Department of Commerce; (b) any country subject to sanctions administered by the Office of Foreign Assets Control, United States Department of the Treasury; or (c) such other countries to which access, use, export or re-export is restricted by any other United States government agency. Customer further agrees that it solely responsible for compliance with any import laws and regulations of the country of destination of permitted access, use, export or re-export, and any other import requirement related to a permitted access, use, export or re-export.

**4.3 Warranty Disclaimer.** CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS PROVIDED HEREIN, THE SERVICE IS PROVIDED HEREUNDER WITH NO WARRANTY WHATSOEVER. CUSTOMER ACKNOWLEDGES AND AGREES THAT, WHILE CUSTOMS Info WILL REASONABLY ATTEMPT TO MAINTAIN THE SERVICE SO AS TO REFLECT CHANGES IN TAX LAWS AND REGULATIONS AND OTHERWISE CONTAIN CURRENT INFORMATION, CUSTOMS Info SHALL HAVE NO OBLIGATION TO DO SO AND NO LIABILITY TO CUSTOMER, ANY AUTHORIZED USER OR ANY THIRD PARTY FOR ANY FAILURE ON THE PART OF CUSTOMS Info TO DO SO. CUSTOMER ACKNOWLEDGES THAT ITS USE OF THE SERVICE IS AT ITS OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICE IS PROVIDED SOLELY ON AN "AS-IS" BASIS. CUSTOMS Info MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. CUSTOMS Info EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NONINFRINGEMENT AND ALL DUTIES AND OBLIGATIONS IMPLIED IN LAW. CUSTOMS Info DOES NOT WARRANT THAT THE SERVICE SHALL BE OPERABLE, SHALL PROPERLY STORE DATA, SHALL OPERATE UNINTERRUPTED OR ERROR FREE, SHALL BE SECURE, SHALL KEEP DATA CONFIDENTIAL, SHALL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SHALL MEET CUSTOMER'S NEEDS.

## ARTICLE 5-LIMITATION OF LIABILITY

**5.1 General.** IN NO EVENT SHALL CUSTOMS Info, ITS PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST REVENUE, LOST PROFITS, LOST DATA OR LOST OPPORTUNITIES INCLUDING ANY ANTICIPATED BUSINESS ARISING FROM OR RELATING TO THIS AGREEMENT, THE SUBJECT MATTER HEREOF OR THE SERVICE, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF INFORMATION OR DATA, HOWEVER CAUSED (EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). THE AGGREGATE LIABILITY OF

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CUSTOMS Info WITH RESPECT TO ANY DAMAGES INCURRED FOR ANY OTHER DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, THE SUBJECT MATTER HEREOF, OR THE SERVICE, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, SHALL NOT EXCEED THE AMOUNTS RECEIVED BY CUSTOMS Info FROM CUSTOMER RELATING TO ITS USE OF THE SERVICE DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM FOR DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTIONS OR CLAIMS IN THE AGGREGATE INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PERFORMANCE OF CUSTOMS Info'S SERVICES HEREUNDER, AND OTHER TORTS. FURTHER, NO CAUSE OF ACTION WHICH ACCRUED MORE THAN TWO (2) YEARS PRIOR TO THE FILING OF A SUIT ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED AGAINST CUSTOMS Info. CUSTOMER AND CUSTOMS Info EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN REPRESENT THE PARTIES' AGREEMENT AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES IN CONNECTION WITH CUSTOMS Info's OBLIGATIONS UNDER THIS AGREEMENT. THE PAYMENTS PAYABLE TO CUSTOMS Info IN CONNECTION HERewith REFLECT THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES HEREIN.

**5.2 Indemnification.** Customer agrees to defend, indemnify and hold harmless CUSTOMS Info and its partners, principals, employees and agents with respect to any claim, demand, action, debt, loss, liability, cost and expense (including reasonable attorneys' fees, costs and expenses) arising from breach of this Agreement or any if the representations, warranties, obligations, covenants or agreements herein by Customer or its subsidiaries, or by any of the agents, employees or Licensed Users thereof, or in connection with use of the Service by or through Customer or its subsidiaries or any Licensed User whether or not such use was authorized by Customer. Subject to the term of Section 5.1, CUSTOMS Info shall indemnify, defend, and hold harmless Customer and its affiliates and the directors, officers, employees and agents of the foregoing with respect to any claim, demand, action, debt, loss, liability, cost and expense (including reasonable attorneys' fees, costs and expenses) to the extent based upon any third party claim (an "Infringement Claim") that the Service infringe any (a) European Union, United States or Canadian patent, (b) European Union, United States or Canadian trademark, (c) copyright, or (iv) trade secret of any third party; provided, however, that CUSTOMS Info shall have no obligation pursuant to the foregoing to the extent based on or related to (i) any use of the Service in violation of this Agreement, (ii) any use of the Service in conjunction with any product, data, hardware or software not provided by CUSTOMS Info, or (iii) any data or information of Customer or its affiliates. The foregoing states the entire liability of CUSTOMS Info with respect to any Infringement Claim, and Customer hereby expressly waives any other obligations or liabilities.

**5.3 Indemnification Procedures.** A Party seeking indemnification hereunder (an "Indemnified Party") shall give the Party from whom indemnification is sought (the "Indemnifying Party"): (i) reasonably prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; (ii) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim; and (iii) the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that the Indemnifying Party ought reasonably know will affect the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

## ARTICLE 6-CONFIDENTIAL INFORMATION

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**6.1 Confidential Information.** The Service and information relating thereto and the business affairs or proprietary and trade secret information of CUSTOMS Info relating to the Service in oral, graphic, written, electronic or machine readable form is herein referred to as "Confidential Information."

**6.2 Non-Disclosure.** Customer shall hold confidential all Confidential Information (as defined in Section 6.1) of CUSTOMS Info and shall not disclose or use such Confidential Information without the express written consent of CUSTOMS Info. Confidential Information of CUSTOMS Info shall be protected by the Customer with the same degree of care as Customer uses for its own confidential information, but no less than reasonable care. Customer may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of CUSTOMS Info, the Customer shall promptly and securely destroy all (or, if CUSTOMS Info so requests, any part) of the Confidential Information previously disclosed and all copies thereof, and the Customer shall certify in writing as to its compliance with the foregoing. Customer agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of CUSTOMS Info's rights therein and to take appropriate action by instruction or agreement with its Licensed Users to satisfy its obligations hereunder. Customer shall use its best efforts to assist CUSTOMS Info in identifying and preventing any unauthorized access, use, copying or disclosure of the Confidential Information, or any component thereof. Without limitation of the foregoing, Customer shall advise CUSTOMS Info immediately in the event Customer learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of CUSTOMS Info, and Customer will, at Customer's expense, cooperate with CUSTOMS Info in seeking injunctive or other equitable relief in the name of Customer or CUSTOMS Info against any such person. Confidential Information shall not include information which can be demonstrated by Customer: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of the Customer, its employees, or agents; (ii) to have been supplied to the Customer after the time of disclosure without restriction by a third party who is under no obligation to CUSTOMS Info to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that CUSTOMS Info is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that the Customer apply reasonable to ensure that only such parts of the Confidential Information Customer is obligated by law to provide is provided and that reasonable notice is placed on the recipient that such information is the Confidential Information of CUSTOMS Info.

**6.3 Passwords.** Any and all logon identifiers and passwords provided hereunder are deemed Confidential Information of CUSTOMS Info. Customer and Licensed Users are responsible for maintaining the confidentiality of such logon identifiers and passwords and shall be fully responsible for all activities that occur under such logon identifiers and passwords. Customer agrees to (a) immediately notify CUSTOMS Info of any unauthorized use of such logon identifiers or passwords or any other breach of security pertaining to the Service, and (b) ensure that Licensed Users exit from their accounts at the end of each session. CUSTOMS Info can not and will not be liable for any loss or damage arising from Customer's or any Licensed User's failure to comply with this Section 6.3.

## ARTICLE 7-PROPRIETARY RIGHTS

7.1 Proprietary Rights. No right (except for the License right granted in Article 2), title or interest in any intellectual property or other proprietary rights are granted or transferred to Customer hereunder. CUSTOMS Info and its third-party licensors and service providers retain all right, title

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and interest, including, without limitation, all patent, copyright, trade secret and all other intellectual property and proprietary rights, inherent in and appurtenant to the Service.

## ARTICLE 8-TERM AND TERMINATION

**8.1 Term; Termination.** The term of this Agreement (the "Term") shall commence on the Date of CUSTOMS Info's first invoice for the Fees and shall continue for an initial term of one (1) year thereafter, unless terminated earlier or renewed as set forth herein, and shall automatically renew for additional one (1) year terms unless either party provides notice of their intention not to renew by written notice to the other party at least ninety (90) days in advance of the expiration of the then-current term. CUSTOMS Info may immediately terminate this Agreement and the Service in the event that: (a) Customer or any Licensed User breaches any obligation, warranty, representation or covenant under this Agreement, (b) Customer becomes insolvent or is unable to pay its debts as due, enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of any other jurisdiction or transfers all of its assets to another person or entity, or (c) Customer has not used the Service for a consecutive six (6) month period. If timely payment is not received by its due date, CUSTOMS Info reserves the right to either suspend or terminate Customer's or Licensed User's access to the Service. Upon termination or expiration of this Agreement for any reason, the License and the Service shall terminate, Customer will be obligated to pay any and all Fees due hereunder up through the date of such termination or expiration and CUSTOMS Info shall have no further obligations to Customer. Sections 2.2, 3.1 (solely as it relates to taxes, duties, and late fees), 4.3, 5, 6, 7, 8, and 9 hereof shall survive the expiration or termination of this Agreement for any reason.

## ARTICLE 9-MISCELLANEOUS

**9.1 Notices.** Any written notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier/facsimile, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier; (e) upon transmission if sent via eMail with a telecopy/facsimile sent the same day, in each case addressed as follows (or to such other address as may be specified upon notice):

### If to CUSTOMS Info:

Attn: Ron Lackey  
CUSTOMS Info  
PO Box 1182  
Eden UT 84310  
Fax: (801) 365-3445  
eMail: [contact@customsinfo.com](mailto:contact@customsinfo.com)

With an additional copy to:

Attn: Contract Administration  
CUSTOMS Info  
120 Randall Drive

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Waterloo, Ontario, Canada N2V 1C6  
email: contractadministration@descartes.com

## **If to Customer:**

To the email or mailing address provided by Customer upon registering for this Agreement.

**9.2 Governing Law and Venue.** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York (excluding any conflict of laws provisions of the State of New York). Any suit or proceeding relating to this Agreement shall be brought in the courts, state and federal, located in New York County, State of New York.

**9.3 UCITA Disclaimer.** THE PARTIES AGREE THAT THE UNIFORM COMPUTER TRANSACTIONS ACT OR ANY VERSION THEREOF, ADOPTED BY ANY STATE, IN ANY FORM ("UCITA"), SHALL NOT APPLY TO THIS AGREEMENT. TO THE EXTENT THAT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT OUT OF THE APPLICABILITY OF UCITA PURSUANT TO THE OPT-OUT PROVISION(S) CONTAINED THEREIN.

**9.4 Assignment.** Customer will not assign or otherwise transfer this Agreement, in whole or in part, nor delegate or subcontract any of its rights or obligations hereunder, without CUSTOMS Info's prior written consent.

**9.5 Force Majeure.** Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement where such failure or delay is due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, pandemic, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures.

**9.6 Modifications.** The parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Agreement that are not executed by an authorized representative of CUSTOMS Info and Customer; (b) any oral modifications to this Agreement; and (c) any other amendments based on course of dealing, waiver, reliance, estoppel or similar legal theory. The parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

**9.7 Waiver.** The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement.

**9.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such holding shall not affect the validity or enforceability of the other provisions of this Agreement.



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**9.9 Headings.** The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

**9.10 Publicity.** Neither party shall use the name of the other party or otherwise identify that there is a commercial relationship between the parties, in advertising, publicity, or similar materials distributed or displayed to prospective customers without the prior written consent of that party.

**9.11 Entire Agreement.** This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

[End of terms.]