



EZLYNX TERMS OF SERVICE

Please note that our Terms of Service were updated on October 19, 2020, and that the updated Terms will apply to: (1) all Orders made after this date; (2) all Orders (a) which are subject to different terms and conditions that allow the modification thereof by posting such modifications through the Service, or (b) in or for which Licensee has affirmatively accepted these Terms, including through the Service by “click to accept”; (3) all Orders effective prior to this date, except that these Terms will not apply until the start of the next renewal period unless condition (a) or (b) above is met; and (4) any use of the Service not subject to an Order. These Terms will supersede and replace other terms and conditions in such Orders to which these Terms will apply.

These EZLynx Terms of Service located at <https://www.ezlynx.com/legal/terms> (“**Terms**”), together with any applicable Order and Supplemental Terms (collectively, the “**Agreement**”), constitute a binding Agreement between you (the “**Licensee**”) and Webcetera, L.P. d/b/a EZLynx (“**EZLynx**”). If you are entering into the Agreement on behalf of a corporate or other entity, the entity will be the Licensee and you will be an End User. These Terms supersede any prior agreement or terms related to the Service.

By using or ordering any Service, (a) you accept and agree to be bound by these Terms, (b) you represent that you have full power and authority to enter into the Agreement (including, if you are entering into the Agreement on behalf of another person, to bind that person to this Agreement) and perform all applicable obligations under it, and (c) you represent that your execution and performance of the Agreement will not conflict with or otherwise violate any Applicable Laws or other agreement to which you may be bound.

1. Definitions

1.1 *Defined Terms.* Some terms used throughout the Agreement have special meanings. These are defined terms. Defined terms are capitalized each time they are used and appear with bolded text the first time they are used. Certain defined terms are below:

- (a) “**Add-on Order**” means any Order made after the Initial Order.
- (b) “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party or any successor to it or its business and assets, where “control” means the direct or indirect ownership of more than 50% of an entity’s voting securities.
- (c) “**Analytical Data**” means Customer Data, Platform Data, or other information generated or stored via the Service. “Analytical Data” does not include any Nonpublic Personal Information or any information which could reasonably identify a Customer.
- (d) “**Applicable Laws**” means all applicable United States state and federal laws, regulations, rules, orders, and judgments of U.S. governmental bodies.
- (e) “**Carrier**” means an insurance carrier.
- (f) “**Content**” means (i) the audio and visual information, documentation, training media, software, products, and services contained in or accessible via the Service, other than Customer Data, and (iii) Documentation.
- (g) “**Customer**” means any applicant, suspect, lead, prospect, or customer that Licensee or an End User enters into the Service.
- (h) “**Customer Data**” means any data, information, or material received by the Service from Licensee or an End User in the course of accessing or using the Service.
- (i) “**Documentation**” means technical, educational, security, or other documentation, resource, or material that describes EZLynx Technology, the Service, or their functionality or use.
- (j) “**End User**” means a person who accesses the Service using security credentials.
- (k) “**EZLynx Technology**” means all of EZLynx’s and its licensors’ proprietary technology that EZLynx makes available to Licensee and its End Users as part of or in connection with the Service (including, without limitation, any and all software, hardware, products, processes, APIs, algorithms, user interfaces, trade secrets, know-how, techniques, designs and other tangible or intangible technical material or



information) and the back-end and infrastructure systems and technology that operate or permit access to the Service.

(l) **“Initial Order”** means the first Order made by Licensee.

(m) **“Licensee Consultant”** means a third party that provides Licensee Third-Party Services in connection with the Services provided under this Agreement or processes EZLynx Confidential Information.

(n) **“Malicious Software”** means a virus, worm, Trojan horse, or other malicious, disabling, or harmful computer code, file, script, agent, program, or the like.

(o) **“Nonpublic Personal Information”** means (i) nonpublic personal information as defined in the Gramm-Leach-Bliley Act and corresponding regulations and (ii) personal data of a human Customer that identifies or could reasonably be used to identify the Customer and are subject to protection under Applicable Laws related to data privacy and security. “Nonpublic Personal Information” does not include prohibited data listed in Section 2.4.

(p) **“Order”** means any agreement between EZLynx and Licensee for the use of one or more Services selected by Licensee, whether made online or by a signed order form, addendum, statement of work, sales agreement, or similar agreement.

(q) **“Platform Data”** means Customer Data and any other data, information, or materials relating to access or use of the Service by Licensee or an End User.

(r) **“Security Incident”** means an occurrence in which any of the following is acquired by an unauthorized person: (i) unencrypted Nonpublic Personal Information of a Customer, (ii) encrypted Nonpublic Personal Information of a Customer if the person possesses security credentials that would allow access to the Nonpublic Personal Information in unencrypted form, or (iii) Licensee End User Service security credentials.

(s) **“Service”** means, collectively, the EZLynx® subscription service for comparative rating, management system, and the other products and services offered on the EZLynx® One Platform®. “Service” also includes all other components of the applicable Service, and all related Content and EZLynx Technology.

(t) **“Sublicensing Agreement”** means a provider agreement between Licensee and a Sublicensor whereby the Sublicensor provides Licensee access to the Service through a sublicense.

(u) **“Sublicensor”** means a licensee of the Service who provides another person access to the Service.

(v) **“Supplemental Terms”** means terms and documentation, other than these Terms, that apply to specific Services, Content, or Orders. Supplemental Terms are set forth at <https://www.ezlynx.com/legal> and its sub-pages.

(w) **“Third-Party Services”** means, collectively, any goods, services, software (including open source software and code), data, or other products owned, licensed, or provided by a third party.

(x) **“Third-Party Service Provider”** means a third party that provides EZLynx Third-Party Services in connection with the Services provided under this Agreement or processes Licensee Confidential Information on behalf of EZLynx.

1.2 **Interpretation.** Words such as “including”, “for example”, and “such as” depict non-exhaustive examples. Reference to a person includes a natural person and corporate or unincorporated body (whether or not having separate legal personality). Unless the context requires otherwise, words in the singular include the plural and vice versa and a reference to one gender includes a reference to the other genders. Capitalized words in different forms shall be construed as their defined form. A reference to law (or similar) is to such law as amended from time to time. Any obligation in the Agreement on a person not to do something includes an obligation not to cause, attempt, agree, or allow that thing to be done, whether directly or indirectly.

1.3 **Headings.** The descriptive headings in the Agreement are intended for reference only and do not affect the construction, meaning, or interpretation of the Agreement.



2. Service

2.1 *Scope of Access.* Licensee will have access to the Service because either (a) EZLynx is providing Licensee and permitted End Users with access to the Service pursuant to an Order or (b) a Sublicensor is providing Licensee with access to the Service through a sublicense provided pursuant to a Sublicensing Agreement. Licensee's permitted scope of access to and use of the Service is restricted solely to access and use for its legitimate internal business purposes in accordance with the terms of the Agreement, including the Documentation and any applicable Supplemental Terms (the "**Permitted Purposes**").

2.2 *Grant of License.* Subject to the terms of the Agreement, including payment of fees due hereunder and Licensee's and End Users' compliance with all Applicable Laws, EZLynx grants to Licensee a limited non-exclusive, non-transferable (except as specified in Section 15.4), non-sublicensable, revocable, personal license to access and use the Services selected and paid for by Licensee during Term, but only in accordance with the limitations in this Agreement and the terms of all applicable Orders and solely for a Permitted Purpose. This license is only valid during the Term. Except as otherwise agreed in an Order, Licensee may permit only persons who are employed by or exclusively contracted with Licensee to be End Users. Licensee may allow its Customers to access the external-facing functionality and output of the Service designed for a Customer's use, including portal applications, but solely for the Customers' internal business purposes and for a Permitted Purpose. Licensee is responsible for its Customers' use of any EZLynx Technology or Service. The preceding sentence should not be interpreted to allow any Customer to be an End User. If Licensee provides other persons access to the Service through a Sublicensing Agreement, Licensee will be deemed the End User under this Agreement when accessing the Service in connection with the Sublicensing Agreement.

2.3 *Restrictions on Use.* Licensee shall not: (a) distribute, transfer, sell, resell, rent, lease, sublease, license, sublicense, assign, operate as a service bureau or managed service, or effect any other kind of exploitation of or third-party access to the Service or EZLynx Technology, or any element thereof, except to the extent expressly permitted by this Agreement or to the extent expressly permitted in an Order that allows Licensee to act as a Sublicensor under a Sublicensing Agreement; (b) copy, modify, adapt, alter, translate, or create derivative works of the Service or EZLynx Technology, or any element thereof, including by use of frame or mirror thereof other than on Licensee's own intranets and for a Permitted Purpose, except to the extent expressly permitted by this Agreement; (c) disassemble, decompile, or reverse engineer the Service or EZLynx Technology, including by any attempt to derive source code, customer information that is not Customer Data, or other trade secrets; (d) make any act or omission which may cause the Service to enter into the public domain or to become subject to any open source or open data licenses which could (i) cause the disclosure or distribution of the Service; (ii) cause redistribution of the Service at no charge as a condition for use, modification, or distribution of such other content, services, or code; (iii) result in licensing of the Service for the purpose of making derivative works; or (iv) otherwise restrict or impact the licensing or other use of the Service; (e) make any act or omission which may result in access of any kind to the Customer Data or Service by any person other than an End User authorized by Licensee or for any use other than a Permitted Purpose; (f) attempt to gain unauthorized access to the Service (for example, by impersonation of another user of the Service or provision of false identity information); (g) interfere with, degrade, or disrupt the integrity or performance of the Service, EZLynx Technology, or any data contained therein (for example, via unreasonably excessive API usage, unauthorized benchmark testing, introduction of Malicious Software, or penetration testing); (h) transmit, store, or use any Customer Data in connection with the Service for which Licensee lacks sufficient ownership or other rights; (i) remove, alter, or obscure any proprietary or other notices or labels of EZLynx or its Third-Party Service Providers; (j) build or operate a competitive product or service; copy any ideas, features, functions, or content of the Service; or make any act or omission that would result in access to or use of the Service by a competitor of EZLynx or any employee or agent thereof; or (k) transmit, store, or use any infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material in connection with the Service (including, without limitation, any illegal spam, material that is harmful to children, or material which violates third-party privacy rights).

2.4 *Prohibited Data.* Licensee shall not purchase, rent, or otherwise utilize customer lists or in any way harvest potential customer information, including email addresses, from websites or any other source unless such customers have opted-in to an insurance-related marketing program that allows such use or collection. Licensee shall not transmit or provide EZLynx, through the Service or otherwise, (a) protected



health information (as that term is used in the Health Insurance Portability and Accountability Act of 1996 (HIPAA)); (b) payment card data (as regulated by the Payment Card Industry Security Standards Council); (c) anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark, or other intellectual property right of any third party; or (d) anything that is obscene, defamatory, harassing, offensive, or malicious. Licensee shall not include any such prohibited information and data in Customer Data. If Licensee discovers it has included such information or data in the Customer Data, Licensee shall immediately purge all such information or data.

2.5 Third-Party Access to the Service. Licensee represents that it is not and agrees that it shall not include as an End User: any competitor of EZLynx; employee or contractor of a competitor of EZLynx; managing general agent (MGA); general agent (GA); managing general underwriter (MGU); wholesale insurance broker; wholesale insurance agent; aggregator; huddle; cluster; any person appointed by an insurer to solicit applications from agents for insurance contracts; or any person authorized, to negotiate, effectuate, or countersign insurance contracts on behalf of an insurer. Notwithstanding the foregoing, a Licensee that is an MGA or MGU will not violate the preceding sentence if an Order expressly permits Licensee to act as a Sublicensor under a Sublicensing Agreement. Subject to prior approval by EZLynx, Licensee may use a Licensee Consultant to perform certain supplementary services in connection with the Service purchased by Licensee. For example, a Licensee Consultant may interface the Service with Third-Party Services or update policy information in Licensee's EZLynx account. Licensee and the Licensee Consultant must enter into a separate access agreement with EZLynx, which will become part of the Agreement, before the Licensee Consultant will be authorized to access the Service. Licensee is responsible for all activity of any Licensee Consultant and for complying with all Applicable Laws relating to the Licensee Consultant's use of the Service. Any act or omission of a Licensee Consultant or other person using Licensee security credentials to access the Service that if made by Licensee would constitute a breach of the Agreement shall be deemed to have been made by Licensee. Except as otherwise stated in the Agreement or authorized by EZLynx in writing, providing any third party access to the Service is a material breach of the Agreement and an infringement of the license provided in Section 2.2.

2.6 Licensee Responsibility for Use of Service. Licensee agrees that it is solely responsible for ensuring the compatibility of the Service with its business system requirements at all times and for ensuring, on an ongoing basis, the accuracy, completeness, and legality of all information Licensee provides EZLynx, including as Customer Data or, separately, for functions like billing. LICENSEE ACKNOWLEDGES THAT EZLYNX DOES NOT ACTIVELY MONITOR DATA LICENSEE SUBMITS TO THE SERVICE, AND IT IS LICENSEE'S RESPONSIBILITY TO DETERMINE WHETHER CUSTOMER DATA MAY BE PROCESSED UNDER THIS AGREEMENT AND APPLICABLE LAWS AND TO OBTAIN ALL NECESSARY CONSENTS FROM ITS USERS AND CUSTOMERS FOR THE PROCESSING OF CUSTOMER DATA. Licensee shall use any information received from a Carrier solely for a Permitted Purpose and not make any act or omission which may interfere with or result in wrongful access to any Carrier's business or proprietary systems outside the Permitted Purposes authorized hereunder.

2.7 Licensee Responsibility for End User Accounts. EZLynx will provide each End User a unique username and opportunity to generate security credentials to view and retrieve the information generated through the applicable Services. Sharing of passwords, account numbers, or other access information with persons other than Licensee's authorized End Users of the Service is strictly prohibited. Only one person is permitted to use any set of security credentials, and Licensee shall not and shall ensure its End Users do not share any security credentials among multiple individuals. Licensee is solely responsible for maintaining the confidentiality of all passwords and information provided by EZLynx. Licensee is solely responsible for all activity occurring under the End User accounts (except to the extent any such activity is conducted by EZLynx) and for complying with all Applicable Laws relating to Licensee's use of the Service. The provisions of Section 6 will apply to End Users as to Licensee. If EZLynx incurs any loss or liability arising out of the acts or omissions of an End User, then such act or omission shall be deemed to have been by Licensee. In no event will EZLynx be liable for any delay or damages caused by invalid passwords or unauthorized use of the Service resulting from the misappropriation or unauthorized sharing of passwords or account information.



2.8 *Trial Products and Beta Releases.* The following terms apply to Trial Products and Beta Releases:

(a) *Trial Products.* EZLynx may provide Licensee and certain of its End Users with a free, promotional, trial, or evaluation license to access the Service (Services granted with this license, “**Trial Products**”). Licensee agrees to use Trial Products solely for evaluation purposes and in compliance with the restrictions and other provisions in this Agreement. EZLynx may revoke access to Trial Products at any time without notice. The duration of a Trial Product license (“**Trial Period**”) will not exceed thirty (30) days without the prior written consent of EZLynx. At the end of the trial period, Licensee and End Users must cease use of the Trial Products and delete, and if requested by EZLynx certify its deletion of, any Trial Products and related data they may have been saved. EZLynx will not automatically transition any Trial Products into paid products at the end of a Trial Period, and Licensee may contact EZLynx to acquire a paid license to access the desired Services.

(b) *Beta Releases.* EZLynx occasionally offers select licensees the option to use test, preview, pre-release to production environment, or beta releases (collectively, “**Beta Releases**”) of the Service. Beta Releases may not have been tested or debugged, may contain features that will not be included in the next release to production, or may be provided alongside draft documentation. EZLynx may change or discontinue Beta Releases or Licensee’s or End Users’ access to them at any time without notice.

(c) *Limitations.* Licensee acknowledges that the Trial Products and Beta Releases are not subject to any warranty; may have reduced functionality; may be subject to reduced or different security, compliance, or privacy commitments; and may be subject to additional Supplemental Terms.

(d) *Potential Data Loss.* EZLynx will use commercially reasonable efforts to identify and provide notice of data that will not be ported outside of a Trial Product or Beta Release to the live production version, but Licensee acknowledges that there is no guarantee that all such instances will be identified. LICENSEE ACKNOWLEDGES THAT CUSTOMER DATA ENTERED INTO THE SERVICE IN A TRIAL PRODUCT, AND ANY CONFIGURATIONS MADE BY OR FOR LICENSEE, DURING THE TRIAL PERIOD MAY, AND IN SOME CASES WILL, BE PERMANENTLY LOST AT THE END OF THE TRIAL PERIOD UNLESS LICENSEE PURCHASES A SUBSCRIPTION TO THE SERVICES COVERED BY THE TRIAL PRODUCTS OR, IF SUCH OPTION IS MADE AVAILABLE TO LICENSEE, EXPORTS THE CUSTOMER DATA PRIOR TO EXPIRATION OF THE TRIAL PERIOD. IF LICENSEE WISHES TO RETAIN ANY CUSTOMER DATA, LICENSEE MUST REQUEST CONFIRMATION FROM EZLYNX OF WHICH DATA WILL BE DELETED OR SAVED AT THE END OF THE TRIAL PERIOD.

(e) *No Warranty.* ALL TRIAL PRODUCTS AND BETA RELEASES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND AT LICENSEE’S SOLE RISK. EZLYNX DISCLAIMS ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AND RESPONSIBILITY FOR, AND LICENSEE AGREES THAT EZLYNX WILL NOT BE LIABLE IN ANY WAY WHATSOEVER IN CONNECTION WITH, LICENSEE’S OR END USERS’ USE OF THE TRIAL PRODUCTS OR BETA RELEASES, INCLUDING IN CONNECTION WITH CUSTOMER DATA ENTERED INTO THE SERVICE THROUGH SUCH PRODUCTS. LICENSEE WILL HOLD EZLYNX HARMLESS IN ALL SUCH MATTERS. IF THE PRECEDING LIMITATIONS ON LIABILITY CANNOT APPLY (FOR EXAMPLE, BECAUSE LOCAL LAW LIMITS ITS EFFECTIVENESS), LICENSEE AGREES THAT EZLYNX’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY USE OF THE TRIAL PRODUCTS OR BETA RELEASES WILL NOT EXCEED \$10.00.

(f) *Exclusions.* Sections 4, 5.1, 7, 11.1, and 11.3 will not apply to Trial Products or Beta Releases.

2.9 *Additional Services; Additional End Users.* Subject to approval by EZLynx, Licensee may purchase additional Services by completing a new Order. Purchased Services will be covered by, and the Order for purchased Services will be integrated into, the Agreement. Additionally, an Order may identify and incorporate other Supplemental Terms at the time of purchase, and such additional terms are incorporated into the Agreement as part of the Order. Licensee acknowledges and agrees that any End User who is enabled as an account or billing administrator may add End Users to Licensee’s account and modify which Services Licensee contracts to receive.



3. Fees

3.1 **Fees.** Licensee agrees to pay EZLynx the fees specified in any Order and all other fees due under the Agreement. Licensee agrees that its purchase of Services under the Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by EZLynx regarding future functionality or features. Licensee authorizes EZLynx to charge the payment method provided by Licensee for the amount noted in the applicable Order. EZLynx accepts payment by credit card and bank account draft. Licensee certifies that the individual completing the payment link or providing the payment method is an authorized agent or user of the payment method. Licensee agrees to not dispute with its credit card company or bank any payment charged in accordance with the terms of this Agreement. Unless otherwise specified in an Order, all fees are non-refundable.

3.2 **Pricing Models.** Services are generally provided on a subscription or per-transaction fee model. Prices for recurring Services are monthly prices unless stated otherwise in an Order. The applicable plan will be specified in the Order. If Licensee wishes to reduce the volume of a Service subscription plan, then Licensee must notify EZLynx at least sixty (60) days before the next Renewal Term for that Service, and the reduction will take effect at the start of that Renewal Term. Except as otherwise specified in an Order, fees are based on Services purchased and not actual usage. Licensee is not entitled to any refund of fees paid or relief from fees due if the volume of Services Licensee uses is less than the volume ordered, and Licensee may not carry over any unused volume to the next Renewal Term. Licensee agrees that any increase made to the number of End Users or the Services provided under the Agreement will be effective for the remainder of the Term.

3.3 **Volume and Tiered Pricing.** Licensee acknowledges and agrees that in the event Licensee purchases a Service using a volume pricing model in which Licensee is charged a single rate for a “bucket” of a certain number of transactions (including workflow executions), Licensee will be automatically charged for the next full bucket upon exhausting the number of transactions allocated to that bucket. Unless stated otherwise in the applicable Order (such as for some Orders with tiered pricing for different volumes or tiers with progressively larger volumes), Licensee will be charged for the next bucket according to the same terms and pricing as for the exhausted bucket. For example, if Licensee purchases a bucket of 100 vehicle lookup transactions and then attempts a 101st lookup, Licensee would automatically be charged for the next bucket of 100 lookup transactions at the same rate.

3.4 **Taxes.** All fees charged by EZLynx are exclusive of taxes, usage fees, or any other charges imposed by any local, state, or federal governmental or taxing authority in connection with the transaction and purchased Services (“**Taxes**”). Licensee will be responsible for payment of all Taxes, except for taxes based on EZLynx’s net income. The total amount of any Order will be deemed not to include Taxes unless expressly stated otherwise, and EZLynx may invoice applicable Taxes separately from fees.

3.5 **Billing Notices.** EZLynx will send all invoices and notices of non-payment to Licensee at the email address provided to EZLynx. Email will be effective for any notice of non-payment. Licensee agrees to notify EZLynx in writing of any changes in its account information at least ten (10) days prior to the next billing date. Licensee may update its billing information through the Service at any time.

3.6 **Payment Schedule.** Licensee shall pay all initial fees associated with an Order on the effective date of the Order, or such other date specified therein. Subsequent fees will be invoiced by EZLynx, and the due date for receipt of such fees will be the date of the invoice. Payments invoiced but not received by EZLynx within thirty (30) days after the due date will accrue late charges equal to the lesser of one and one-half percent (1.5%) of the outstanding balance per month or the highest rate allowed by Applicable Laws. EZLynx reserves the right to retroactively bill Licensee for underpayments of fees owed during the Term.

3.7 **Recurring Payments.** Unless otherwise specified in an Order, EZLynx will automatically charge Licensee using the payment information on file for renewals, upgrades, additional Services purchased, and other fees chargeable under the Agreement and Order.

3.8 **Failed and Withheld Payments.** If Licensee is delinquent in its payments or a Licensee payment fails or is returned, EZLynx may, in its sole discretion, (a) terminate the Agreement or Order, (b) suspend or block Licensee’s access to the Service until EZLynx receives payment in full, or (c) require other assurances to secure Licensee’s payment obligations hereunder as a condition of continuing to provide Licensee access



to the Service. Licensee agrees to compensate EZLynx for all of EZLynx's reasonable costs of collection of unpaid amounts owed under the Agreement (including court costs, filing fees, and attorneys' fees) and all charges incurred by EZLynx due to a returned payment.

3.9 *Response Costs.* In connection with the provision of the Services, EZLynx may be required or requested to provide information or documents to third parties in connection with governmental regulations or activities, or a legal or administrative proceeding or other Action (as defined in Section 11.1) (including a grand jury investigation), to which EZLynx is not a party or to which EZLynx has been involuntarily joined as a party. In these circumstances, EZLynx will notify Licensee of the demand in accordance with the provisions of Section 6.5. Licensee may, within the time permitted for EZLynx to respond to such demand, initiate a defense as it deems appropriate. However, if Licensee takes no action during that time, or if Licensee's action does not result in a judicial order protecting EZLynx from supplying the required information, EZLynx may construe the inaction or failure as consent to comply with the request, and a disclosure made with such implied consent will not result in a breach of the Agreement. Notwithstanding any other provision, Licensee will be responsible for and agrees to pay all costs EZLynx incurs in connection with responding to any subpoena, or other legal process or requirement, related to the Agreement or Service. For greater clarity, this obligation includes all costs EZLynx incurs if EZLynx is involuntarily joined as an additional party to an Action related to the Agreement or Service. EZLynx employee time will be billed at EZLynx's current time and materials rate for professional services.

4. Service Level Agreement

4.1 *Uptime and Support.* Subject to the terms of the Agreement and except for (a) emergency maintenance and (b) Excluded Services, EZLynx will use commercially reasonable efforts to make the Service available for access by Licensee 24 hours per day, 7 days per week, 365 days per year and provide basic customer and product support for the Services to Licensee and End Users during regular support hours in the central time zone. "**Excluded Services**" means any area of functionality (x) that is not under the direct control of EZLynx, including any of the Services that are dependent on third-party facilities, networks, or connectivity, or Third Party Services (including third-party products integrated through the EZLynx Technology); (y) affected by any acts or omissions of wireless carriers, governmental entities, or other persons over whom EZLynx has no control; or (z) arising out of Carrier systems, sublicense access provided by Sublicensor, or Customer Data.

4.2 *Downtime.* EZLynx reserves the right to perform maintenance to the Service. EZLynx will use reasonable efforts to perform such maintenance outside normal business hours. EZLynx will use commercially reasonable efforts to notify Licensee via email in advance of any expected periods of downtime, including, if practicable, an estimate of service interruption duration.

5. Warranty

5.1 *Service Warranty.* EZLynx warrants that it will use commercially reasonable efforts to provide the Service to Licensee in accordance with the Agreement and the Services will perform in material compliance with the Documentation. The foregoing warranties are conditioned on the following: (a) Licensee uses only the computer equipment, operating environment, and software recommended or approved by EZLynx for accessing and using the Service, as further specified in the relevant Supplemental Terms; (b) Licensee has paid all amounts due under the Agreement and is not in default of any provision of the Agreement; and (c) no changes to the Service have been made or attempted by Licensee, any End User, or any Licensee Consultant other than by, or with the prior express, written approval of, EZLynx.

5.2 *Updates.* EZLynx is always looking for new ways to improve the Service. EZLynx provides periodic updates to the Service to implement these improvements. Updates may include changes to, or additions or deletions of, Service components. Such updates may not be backwards compatible with Licensee's equipment or materials. Except to the extent EZLynx warrants performance of the Service in Section 5.1, Licensee agrees that EZLynx is not responsible for the effects on Licensee of such updates and that it is Licensee's responsibility to resolve incompatibilities between the Service and Licensee's equipment or materials resulting from such updates.

5.3 *Modifications Exception.* THE WARRANTY SET FORTH IN SECTION 5.1 AND THE SERVICE LEVEL AGREEMENT SET FORTH IN SECTION 4 WILL BE VOID AND NOT APPLY IN THE FOLLOWING



CIRCUMSTANCES: (a) LICENSEE, AN END USER, OR A LICENSEE CONSULTANT MADE OR ATTEMPTED ANY MODIFICATIONS TO THE SERVICE WITHOUT PRIOR AUTHORIZATION BY EZLYNX; (b) THIRD-PARTY SERVICES MODIFIED OR WERE INTEGRATED INTO THE SERVICE OR WERE RESOLD BY EZLYNX TO LICENSEE; OR (c) LICENSEE REQUESTED DOWNGRADES TO DEFAULT SECURITY PRACTICES PURSUANT TO SECTION 7.4.

5.4 *Third-Party Services Exception.* Subject to agreement to applicable terms and conditions, some components of the Service may be used to interface with certain Third-Party Services. EZLYNX DOES NOT GUARANTEE THAT THE INTEROPERATION OF THE SERVICE WITH ANY PARTICULAR THIRD-PARTY SERVICE WILL BE ERROR-FREE. EZLYNX MAKES NO WARRANTY REGARDING THE OPERATION, INTEGRATION, OR FUNCTIONALITY OF ANY THIRD-PARTY SERVICES, AND LICENSEE'S USE OF THIRD-PARTY SERVICES IS ENTIRELY AT ITS OWN RISK.

5.5 *Carrier Operations Exception.* IN NO EVENT SHALL EZLYNX BE RESPONSIBLE FOR THE CONTENT OF A CARRIER'S ONLINE SERVICES. EZLYNX DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE QUALITY, SCOPE, AMOUNT, TIMELINESS, OR DURATION OF ANY QUOTES OR OTHER INFORMATION PROVIDED BY A CARRIER. LICENSEE AGREES THAT ALL SUCH MATTERS ARE STRICTLY CONTRACTUAL BETWEEN LICENSEE AND EACH SUCH CARRIER. LICENSEE SHALL HOLD EZLYNX HARMLESS IN CONNECTION WITH ANY ACTION RELATED THERETO AND NOT JOIN EZLYNX TO ANY SUCH ACTION.

5.6 *No Other Warranties.* LICENSEE ACKNOWLEDGES AND AGREES THAT OTHER THAN AS EXPRESSLY PROVIDED HEREIN, THE EZLYNX TECHNOLOGY, THE CONTENT (INCLUDING "INFORMATIONAL CONTENT" LOCATED IN THE SUPPLEMENTAL TERMS PORTAL), THE SERVICE, AND THE OTHER PRODUCTS AND SERVICES PROVIDED BY EZLYNX ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS; ANY WARRANTY OF AVAILABILITY; AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EZLYNX DOES NOT WARRANT THAT THE SERVICE WILL MEET LICENSEE'S REQUIREMENTS OR BE PROVIDED UNINTERRUPTED OR WITHOUT ERROR; THAT EZLYNX TECHNOLOGY WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR, EXCEPT AS PROVIDED IN SECTION 4, THAT ANY ERRORS OR DEFECTS WILL BE CORRECTED. THE WARRANTY SET FORTH IN SECTION 5.1 IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES AND IS THE SOLE AND EXCLUSIVE WARRANTY FOR ANY FAILURE BY EZLYNX TO PROVIDE THE SERVICE. NO OTHER INFORMATION OR ADVICE GIVEN BY EZLYNX, ORAL OR WRITTEN, WILL EXPAND THE SCOPE OF ANY WARRANTY UNLESS INCLUDED AS AN EXPRESS WARRANTY IN THE AGREEMENT.

6. Confidential Information

6.1 *Confidential Information.* During the Term, EZLynx and Licensee may send or have access (each, a "**Receiving Party**") to certain Confidential Information of the other party (the "**Disclosing Party**"). In this Agreement, "**Confidential Information**" means know-how, trade secrets, models, documentation, templates, artwork, manuals, software architecture, proprietary techniques, website or brand look and feel information, pricing, and other proprietary materials, Customer Data, and other information (a) that may be disclosed, in any manner and both prior to and after the Effective Date, or that may be otherwise received or accessed by such parties in connection with the Agreement; and (b) which is either identified as being Confidential Information or information that a reasonable business person would understand to be confidential. "**Confidential Information**" does not include: (i) information previously known to the Receiving Party without any obligation of confidentiality; (ii) information independently developed by or for the Receiving Party or Receiving Party's employees, consultants, or agents without reference to or use of the Confidential Information, as evidenced at a minimum by prior written records or other tangible documents in the possession of the Receiving Party; (iii) information which was lawfully acquired by the Receiving Party from a third party which at the time of acquisition was not under any obligation of confidentiality with respect to such information; (iv) information which is or becomes publicly available through no fault of the Receiving Party and without breach of the Agreement; (v) information the Disclosing Party authorizes the Receiving Party to share; (vi)



solely with respect to EZLynx as Receiving Party, Platform Data, but only when used as permitted by the Agreement, and Analytical Data; (vii) solely with respect to data shared with Carriers, Licensee and End User identities and usage information; or (viii) solely with respect to Sublicensor as Receiving Party, Customer Data.

6.2 Confidentiality Obligations. Each Receiving Party will use a commercially reasonable level of care, including by implementation of security controls described in Section 7, not to disclose or make available to any third party a Disclosing Party's Confidential Information, and not to use such for its own or for any third party's benefit, other than as necessary in performance of its obligations under or expressly permitted by the Agreement. Licensee agrees to restrict any Licensee Consultant to accessing EZLynx Confidential Information solely within the scope of access authorized by EZLynx in writing prior to Licensee Consultant making such access. If Licensee receives any information through the Service that relates to persons other than Customers, then Licensee shall (a) immediately notify EZLynx of its receipt of such information, including an explanation of how the information was obtained; (b) hold the information in strict confidence and not exploit the information in any manner; (c) cause, or if more applicable permit, deletion of the information from the Service; and (d) delete the information from its own records and systems and confirm such deletion in writing to EZLynx.

6.3 Confidentiality Exceptions. Notwithstanding Section 6.2, and in addition to the exceptions stated in Section 6.1, (a) EZLynx may disclose that Licensee is a customer of EZLynx; (b) EZLynx may disclose any information to Third-Party Services providers as necessary to provide the Services or allow the integration of Third-Party Services selected by Licensee; (c) Licensee may disclose the minimum portion of EZLynx Confidential Information necessary to (i) enable End Users to access and use the Service for Permitted Purposes and (ii) provide search reports to Customers in the ordinary course of Licensee's business; and (d) either party may disclose Confidential Information of the Disclosing Party to its officers, directors, employees, partners, agents, affiliates, or Third-Party Service Providers, but only those who have a need to possess and use the Confidential Information in connection with the Services and who have agreed to confidentiality and use restrictions applicable to the Confidential Information at least as stringent as those in the Agreement.

6.4 Injunctive Relief. Breach of this Agreement may cause irreparable harm for which money damages are insufficient. In addition to monetary damages, either party may seek injunctive or other relief if there is a violation or threatened violation of any intellectual property rights or actual or potential disclosure of Confidential Information. With respect to such relief, the parties agree to submit to the exclusive personal jurisdiction and venue of the appropriate federal or state courts located in Dallas, Texas.

6.5 Government Demands for Confidential Information. If the Receiving Party receives a subpoena or other validly issued administrative or judicial process demanding the disclosure of Confidential Information, then, to the extent legally permitted, it shall promptly notify the Disclosing Party of such receipt and tender to it the opportunity to defend against the demand. After providing such notification, the Receiving Party may comply with the subpoena or other process, but only to the extent required by Applicable Laws. Notwithstanding the fact that a portion of Confidential Information is or may become non-confidential, each party's obligations under the Agreement will continue to apply to all other Confidential Information.

7. Security

7.1 Security Obligations. Each party will use commercially reasonable efforts, including by implementing commercially reasonable technical and organizational controls, to prevent unauthorized access to or use of Customer Data, Confidential Information, and the Services. Each party will maintain levels of security consistent with industry standards and Applicable Laws, but in no event less than a reasonable level of security.

7.2 Reporting Obligations. Upon a party confirming the occurrence of a Security Incident, the confirming party will use commercially reasonable efforts to promptly notify the other party of the Security Incident, provide contact information for its designated data security officer, comply with all applicable notification and reporting requirements under Applicable Law, and provide reasonable assistance to the other party as it meets its notification and reporting obligations.

7.3 Protective Action. EZLynx reserves the right to take all steps reasonably necessary to protect the security, integrity, and availability of the Service, relevant data, and EZLynx Technology. Necessary protective actions may include, without providing advance notice: temporarily suspending access to anyone who



introduces or attempts to introduce Malicious Software; restricting or terminating access to the Service in the event of a security breach until EZLynx has determined the source of the breach; or terminating the Agreement for a breach of the use restrictions in Section 2.3 leading to a Security Incident. Actions reasonably taken under this Section will not result in a breach of the Agreement.

7.4 Licensee-Requested Downgrades. As of the Effective Date (subject to its ongoing obligations in Section 7.1 to implement and maintain reasonable security controls), EZLynx uses Transport Layer Security (TLS) 1.1 or higher by default to protect Customer Data in transit. Some licensees use systems that are incompatible with TLS 1.1, and a downgrade to TLS 1.0 would be required to enable communications between the licensee's systems and the Service. Upon receipt of Licensee's written request, EZLynx may, in its sole discretion, accept Licensee's request to downgrade the connection to TLS 1.0. EZLynx will not downgrade any connection to SSL. If Licensee requests a downgrade under this Section 7.4, Licensee expressly agrees the following provisions will apply:

(a) **Downgrade Risks.** Licensee acknowledges that any downgrade of security comes with risks and in particular that TLS 1.0 is generally recognized as an insecure method of protecting communications. Licensee acknowledges that EZLynx clearly communicated to Licensee that a downgrade is associated with known risks and that Licensee will assume and accept all risks and responsibilities related to the downgrade.

(b) **Downgrade Limits EZLynx Obligations.** LICENSEE UNDERSTANDS AND AGREES THAT ANY DOWNGRADE OF DEFAULT SECURITY PRACTICES WILL: (i) VOID ALL WARRANTIES BY EZLYNX UNDER THE AGREEMENT, INCLUDING THOSE RELATED TO SECURITY PRACTICES, PRODUCT WARRANTIES, OR COMPLIANCE WITH APPLICABLE LAWS; (ii) VOID ANY INDEMNITY OR RELATED OBLIGATIONS AVAILABLE UNDER THE AGREEMENT TO THE EXTENT A COVERED LOSS RELATES IN ANY WAY AND TO ANY DEGREE OF CAUSATION TO THE DOWNGRADE; (iii) ABSOLVE EZLYNX OF ANY RESPONSIBILITY FOR THE CONSEQUENCES OF THE DOWNGRADE; AND (iv) REQUIRE LICENSEE TO INDEMNIFY AND HOLD EZLYNX HARMLESS IN ACCORDANCE WITH THE FOLLOWING PARAGRAPH.

(c) **Downgrade Indemnity.** LICENSEE SHALL INDEMNIFY AND HOLD THE EZLYNX PARTIES COMPLETELY HARMLESS FROM AND AGAINST ANY AND ALL LOSSES WHATSOEVER (INCLUDING ANY AND ALL COSTS RELATED TO BREACH NOTIFICATION AND REMEDIATION) RESULTING FROM ANY ACTION (INCLUDING ANY ACTION BY CUSTOMERS OR GOVERNMENT REGULATORS) IN ANY WAY AND TO ANY DEGREE OF PROXIMITY ARISING OUT OF OR RELATING TO THE DOWNGRADE. LICENSEE EXPRESSLY AGREES THAT THIS PARAGRAPH COVERS LOSSES ARISING OUT OF EZLYNX'S ABROGATION OF THE SECURITY PROVISIONS OF THIS AGREEMENT. FOR GREATER CLARITY, LICENSEE AGREES THAT EZLYNX SHALL HAVE NO LIABILITY WHATSOEVER, AND LICENSEE WILL ASSUME ALL LIABILITY WHATSOEVER, IN CONNECTION WITH THE DOWNGRADE AND ANY POTENTIAL OR ACTUAL CONSEQUENCES THEREOF, REGARDLESS OF WHETHER SUCH CONSEQUENCES WERE FORESEEABLE AT THE TIME OF THE DOWNGRADE. LICENSEE ACKNOWLEDGES THAT THE OBLIGATIONS IN THIS PARAGRAPH ARE INTENTIONALLY WRITTEN TO BE HIGHLY EXPANSIVE, AND LICENSEE AGREES THAT, DUE TO THE ACTUAL AND KNOWN RISKS ASSOCIATED WITH A DOWNGRADE, THE EXPANSIVENESS OF THESE OBLIGATIONS IS REASONABLE, FAIR, AND UNCONDITIONALLY ACCEPTED BY LICENSEE AS A CONDITION OF EZLYNX PROVIDING THE SERVICE TO LICENSEE.

8. Intellectual Property

8.1 EZLynx Proprietary Rights. Exclusive of Customer Data that is Licensee Confidential Information and except as otherwise provided herein, EZLynx will retain all right, title, and interest (including copyright and other intellectual property rights, or informational rights) in and to the EZLynx Technology, the Content, the Service, EZLynx Confidential Information, Platform Data, Analytical Data, the other products and services provided by EZLynx, and all legally-protectable elements or derivative works thereof (collectively, "**EZLynx Property**"). No right (except as provided in and subject to the conditions of Section 2), title, or interest in EZLynx Property will be transferred or assigned to Licensee or any Customer by virtue of the Agreement or Licensee's use of or access to the Service. Licensee shall unconditionally assign and complete all paperwork necessary to assign any and all rights to any intellectual property developed in violation of this Agreement, including in violation of the restrictions in Section 2.3, or as an improvement, new feature, derivative, or



competing product of the EZLynx Property to EZLynx. EZLynx may place copyright and proprietary notices, including hypertext links, within the Service indicating EZLynx's proprietary interest therein. Licensee may not alter or remove such notices without EZLynx's written permission.

8.2 *Licensee Proprietary Rights.* Licensee will retain all right, title, and interest (including copyright and other intellectual property rights, or informational rights) in the Licensee Confidential Information. Licensee represents to EZLynx, and EZLynx agrees that as between EZLynx and Licensee, Licensee has ownership of or the right to use all Customer Data generated or stored via the Service.

8.3 *Analytical Data.* EZLynx is granted the right to collect and use Platform Data for legitimate business purposes, including providing the Service to Licensee and its End Users, providing Customer Data to Sublicensors, requesting quotes from Carriers, providing support (for example, in response to an End User's customer service or training request), testing and making improvements to the Service, developing new products or services, performing statistical/comparative analysis, and reporting or distributing to Licensee or any applicable Sublicensor, and, with respect to Analytical Data, to other insurance companies, regulators, and other third parties. EZLynx is granted the right to use Licensee Confidential Information for statistical and comparative analysis purposes, or, provided that no such information is disclosed in any manner which could reasonably identify Customers, to provide reporting to Carriers. Licensee agrees that Platform Data (except any Customer Data therein) and Analytical Data, and all rights therein, are the exclusive property of EZLynx. Licensee shall ensure that its data use practices and agreements related to Customer Data permit the collection and use of Customer Data, Platform Data, and Analytical Data by EZLynx and its authorized Third-Party Service Providers in accordance with the Agreement.

8.4 *Trademark Usage.* Neither party shall use the name, logo, or other identifying features of the other party, including in any marketing materials, without the other party's prior written consent. All such consent will be conditioned on compliance with the party's trademark usage guidelines. Notwithstanding the foregoing, EZLynx will have the right to use Licensee's name and logo for the sole purpose of identifying Licensee as a customer.

8.5 *Feedback.* EZLynx welcomes all suggestions, requests, ideas, and reports ("**Feedback**") related to the Service. Licensee and End Users are free to provide Feedback at any time. All Feedback provided to EZLynx will become the sole property of EZLynx without any obligation to compensate the provider.

8.6 *Open Source Software.* Some components of the Service, including Third Party Services, are subject to open source or other licenses and may be owned by third parties.

9. Term

Subject to your compliance with the terms of the Agreement, EZLynx will provide the Service components you purchase for the term specified in the applicable Order or if no term is specified, on a recurring month-to-month basis. The "**Term**" of the Agreement is the Initial Term plus all Renewal Terms. The "**Initial Term**" starts on the earlier of the date Licensee or its End Users purchase or begin using any component of the Service, the date the Initial Order is executed by the parties, or the date specified in the applicable Initial Order (the "**Effective Date**"). The Initial Term ends on the last day of the Initial Term as specified in the Initial Order or, if no date is specified and Services are provided on a month-to-month basis, one (1) calendar month after the Effective Date. Unless stated otherwise in the Order or terminated in accordance with Section 10.1 or 10.2, the Agreement will automatically renew for consecutive periods of the same duration as the Initial Term (each such period, a "**Renewal Term**") at the end of the Initial Term and each subsequent Renewal Term. Unless otherwise specified in the applicable Order, the end date of the Initial Term of an Add-on Order will be the end date of the then-current Term of the Initial Order. An Add-on Order will renew at the same time as and for the same Renewal Term as the Initial Order, so that the Initial Order and Add-on Order will share the same Term going forward upon the first renewal of the Add-on Order.

10. Termination

10.1 *Termination for Month-to-Month Orders.* Where the Term is on a month-to-month basis, either party may terminate the Agreement or any Order at any time by providing notice to the other party at least ten (10) days prior to the start of the following Renewal Term, and the Agreement or applicable Order will not be renewed for the following Renewal Term. If Licensee provides notice of termination fewer than ten (10) days



prior to the start of the following Renewal Term, the Agreement or applicable Order will renew once more, termination will take place in the then-following month, and Licensee will be responsible for fees for the Renewal Term following such provision of notice. Termination of one Order will not affect any other active Orders. Termination of all active Orders will constitute termination of the Agreement. Termination of the Agreement will terminate all Orders. Notwithstanding any expiration or termination of the Agreement or any Order, certain provisions of the Agreement will continue to apply as detailed in Section 15.9.

10.2 *Termination for Other-Term Orders.* Where the Term is not on a month-to-month basis, the Agreement or any Order may not be terminated early for convenience. A party may terminate the Agreement or any Order by providing the other party notice of the party's intent to not renew no fewer than sixty (60) days prior to the end of the then-current Term, and such termination will take effect at the end of the Term.

10.3 *Termination for Breach.* Either party may terminate this Agreement and any Order issued under it by giving the other party a written notice of termination if the other party (a) materially breaches the Agreement or applicable order and fails to cure such breach within thirty (30) days of written notice describing such breach or (b) becomes the subject of a voluntary or involuntary petition in bankruptcy, or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, and such petition is not dismissed within sixty (60) days of filing. Additionally, EZLynx may terminate the Agreement and any Order issued under it by giving Licensee written notice of termination if Licensee (w) fails to pay all applicable fees and related costs or expenses; (x) breaches Sections 2.3, 3, 6, 7, or 8; (y) otherwise breaches this Agreement and fails to cure such breach within thirty (30) days of written notice describing such breach; or (z) is sold, merged, or acquired without the prior written consent of EZLynx.

10.4 *Procedure upon Termination.* Upon the effective date of termination of the Agreement or any Order, EZLynx will cease providing access to the Services terminated, or if the Agreement is terminated the Service, and Licensee will cease using and accessing the terminated Service components. Upon any termination, Licensee will pay EZLynx all fees due under the Agreement, including fees for the remainder of the then-current Term as to the Orders or Agreement terminated. Upon any termination, Licensee will immediately return to EZLynx, or, at EZLynx's request, securely destroy, all EZLynx Confidential Information in its possession or under its control and shall subsequently certify in writing that it has completed such action.

10.5 *Deletion of Customer Data on Termination.* Licensee acknowledges and agrees that EZLynx may delete all Customer Data after termination of the Agreement. Licensee may request an exported copy of Customer Data during the Term and for up to ninety (90) days following termination, subject to payment of the standard fee for such copy.

11. Indemnification

11.1 *EZLynx Indemnity.* EZLynx will indemnify and hold harmless Licensee and its officers, directors, managers, partners, members, employees, and agents (collectively, the "**Licensee Parties**") from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "**Losses**") resulting from any claim, suit, action, or proceeding (each an "**Action**") brought by a third party against any of the Licensee Parties arising out of or relating to the infringement or misappropriation of such third party's intellectual property right protected under United States law (including, but not limited, to copyright, trade secret and trademark rights) by the Services (excluding any rights related to any Third-Party Services).

11.2 *Licensee Indemnity.* Licensee will indemnify and hold harmless EZLynx and its officers, directors, managers, partners, members, employees, and agents (collectively the "**EZLynx Parties**") from and against any and all Losses resulting from any Action brought by any third party against any of the EZLynx Parties or Third-Party Service Provider arising out of or relating to (a) fraud, gross negligence, willful misconduct, or breach of Applicable Laws by any of the Licensee Parties, End Users, or Licensee Consultants; (b) breach of any provision of this Agreement, and subsequent failure to cure in the applicable cure period set forth in Section 10 hereof, by any of the Licensee Parties End Users, or Licensee Consultants; (c) use of the Services or any results thereof by any of the Licensee Parties, End Users, or Licensee Consultants; (d) Customer Data; or (e) any arrangement or dispute between Licensee Parties, End Users, Licensee Consultants, and/or Customers.



11.3 *Infringement Remedy.* If a third party initiates an Action in relation to an infringement claim under Section 11.1, EZLynx will have the right, in its sole discretion, to take any of the following options: (a) obtain the right for the Licensee to use to the allegedly infringing portion of the Services; (b) replace the Service with a modified version that does not materially decrease functionality; or (c) terminate the Agreement, in its entirety or partially with respect to the allegedly infringing portion of the Services, and refund Licensee any unused, prepaid fees on a pro-rata basis. Notwithstanding the foregoing, EZLynx will have no obligation under this Section 11 or otherwise with respect to any infringement claim based upon: (w) any use of the Services not permitted by this Agreement; (x) any use of the Services in combination with Third-Party Services; (y) any modification of the Services by any person other than EZLynx; or (z) any use of a prior release of the Services after a more current release has been made available. The indemnity in Section 11.1 and remedies in this Section 11.3 are Licensee's sole and exclusive remedies related to intellectual property infringement claims.

11.4 *Defense.* If a party would be obligated under this Agreement to indemnify or hold harmless for Losses resulting from or in connection with an Action, the party will additionally be obligated to defend the Action in accordance with this Section 11.3. As conditions precedent to the effectiveness of a party's indemnification and defense obligations in this Agreement, (a) a party seeking such indemnification or defense must provide the indemnitor prompt written notice of the commencement of the Action, but the failure to provide prompt written notice will not excuse the indemnitor of its obligations unless and only to the extent such delay or failure materially prejudices the indemnitor's defense of the Action; (b) the indemnitor must be permitted, at its option, to control the defense of the Action; and (c) the indemnified parties must fully cooperate with the indemnitor in the defense of the Action. The indemnified parties may participate in the defense of the Action in an advisory capacity at their own cost. The indemnitor shall not settle any Action that involves an admission of liability or any equitable relief on the part of the indemnified parties without such indemnified parties' prior written consent.

12. Limitations of Liability

12.1 *Limitation of Liability.* THIS SECTION 12, SECTION 5 (WARRANTY), AND SECTION 11 (INDEMNIFICATION) SET FORTH EZLYNX'S ENTIRE, AGGREGATE TOTAL LIABILITY AND LICENSEE'S EXCLUSIVE REMEDIES IN CONNECTION WITH THE AGREEMENT. NOTWITHSTANDING SECTION 15.7, THE PROVISIONS OF THIS SECTION 12 WILL CONTROL IN THE EVENT OF A CONFLICT WITH ANY OTHER PROVISIONS OF THE AGREEMENT. IN NO EVENT WILL EZLYNX BE LIABLE FOR ANY AMOUNT IN EXCESS OF AMOUNTS PAID UNDER THE AGREEMENT DURING THE TWELVE-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LOSS OR LIABILITY. THE CUMULATIVE AMOUNT OF ANY PREVIOUS DISCHARGES OF LIABILITY WILL REDUCE THE REMAINING AMOUNT, IF ANY, AVAILABLE UNDER THIS CAP.

12.2 *Consequential Damages.* UNDER NO CIRCUMSTANCES WILL EZLYNX BE LIABLE FOR ANY LOST PROFITS OR ANY TYPE OF INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, COST OF REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS, OR SERVICES, LOSS OF INFORMATION, LOSS OF REPUTATION OR GOODWILL, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY THEORY OF LAW, INCLUDING WITHOUT LIMITATION CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

12.3 *Claims Period.* LICENSEE MUST BRING ANY ACTION RELATING TO THIS AGREEMENT WITHIN TWO (2) YEARS OF THE DATE OF THE EVENT GIVING RISE TO THE CLAIM OR SUCH CLAIM WILL BE WAIVED.

12.4 *Reliance Rationale.* THE PARTIES ACKNOWLEDGE THAT EZLYNX SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THE AGREEMENT, THAT WITHOUT THESE LIMITATIONS THE SERVICES FEES WOULD BE SIGNIFICANTLY HIGHER, AND THAT THE LIMITATIONS AND DISCLAIMERS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THE AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.



13. Force Majeure

EZLynx will be excused from performance of its obligations under the Agreement and any liability in connection with such failure to perform to the extent that it is prevented or delayed from performing them, in whole or in part, as a result of circumstances beyond its reasonable control, including conditions caused by fire, flood, earthquake, storm, or other act of god; acts of government, war (with or without a formal declaration of hostilities), or terrorism; changes in law adversely affecting EZLynx's methods of distributing or hosting Services; and delays or interruptions caused by Internet failures or interference.

14. Notices

A party shall send any notices or other communications provided for by the Agreement to the other party in writing. Notice to EZLynx must be sent to Webcetera, L.P. / Attn: General Counsel / 350 Highland Drive, Suite 150 / Lewisville, Texas 75067, in all cases with an email copy to legal@ezlynx.com. Notice to Licensee will be sent to the address, fax number, or email address EZLynx has on file for Licensee. Any notice shall be considered effective (a) on the day it is given if personally delivered, (b) on the day after it is given if sent prepaid using a nationally known carrier of overnight mail, (c) four days after it is given if deposited in the United States mail, postage prepaid, sent certified or registered mail, or (d) on the following business day if sent by email. Any notice sent to EZLynx under clause (d) must be accompanied by notice sent under clauses (a), (b), or (c) as a condition of its effectiveness, but routine communications as contemplated by the terms of the Agreement, and other notices which the Agreement specifies will be effective if sent by email, do not require an accompanying notice. Either party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective or by updating its contact information in the EZLynx Service. Licensee must provide current billing contact information in its EZLynx Service account. Missed invoices or payment notices not received due to Licensee's failure to update its billing information will not absolve Licensee from liability for failure to make timely payment.

14.1

15. General Provisions

15.1 *Independent Contractors.* Nothing herein shall create any association, joint venture, partnership, or agency relationship of any kind between the parties. Neither party is authorized to incur any liability, obligation, or expense on behalf of the other or use the other's monetary credit in conducting any activities under the Agreement.

15.2 *Non-exclusivity.* The agreements and rights in this Agreement are non-exclusive, and each party will have the right, without liability or accountability to the other, to engage in its own business activities, alone or in conjunction with contractual relationships with others, subject to the limitations in this Agreement.

15.3 *Dispute Resolution.* In the event a dispute arising out of or related to the Agreement occurs, the following provisions will apply:

(a) The parties agree first to make all reasonable efforts to settle the dispute by direct negotiations with a view to reaching a mutually satisfactory solution. If the parties are unable to settle the dispute by direct negotiations, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration.

(b) Subject to Section 6.4 and subsection 15.3(a), the parties agree to settle any dispute arising out of or related to the Agreement, or the breach thereof, by arbitration in Dallas, Texas in accordance with the rules of the American Arbitration Association. A single arbitrator shall be agreed upon by the parties knowledgeable in the matters covered by the Agreement or, if the parties cannot agree upon an arbitrator within thirty (30) days, then the parties agree that a single arbitrator shall be appointed by the American Arbitration Association. The arbitrator may award reasonable attorneys' fees and costs as part of the award. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

15.4 *Successors and Assigns.* The Agreement will be binding upon and inure to the benefit of the parties to the Agreement and their respective heirs, successors, and permitted assigns. Licensee may not assign or transfer, by operation or law or in any other manner, any of its rights, duties, or obligations under the



Agreement without the prior express written consent of EZLynx, and any attempt to do so without the prior express written consent of EZLynx will be void. A sale of all or substantially all of the assets of Licensee, or any merger, consolidation, or other reorganization which results in the change of control (as defined in Section 1.1(b) of Licensee, will be deemed an assignment and subject to this Section 15.4.

15.5 *Entire Agreement.* The Agreement, including all Orders, these Terms, any Supplemental Terms, and any terms and conditions referenced therein, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements (including any prior confidentiality or non-disclosure agreement), oral or written, between the parties relating thereto. No documents (including any purchase orders or statements of work) or terms supplied by Licensee or any other party will be incorporated into the Agreement regardless of any contrary language therein or in any Order.

15.6 *Amendment.* EZLynx may modify the Agreement or any part thereof, other than an Order, at any time, in its sole discretion, by posting amended terms on the EZLynx One Platform accessed by the administrative user or by updating the terms at the corresponding URLs specified in the Agreement. Unless otherwise indicated through the Service or in the updated terms, any modifications will be effective immediately. EZLynx may, but is not required to, provide notice of the modifications by email or other form of communication. Licensee acknowledges that it has the responsibility to periodically check the terms posted in the Service or referenced in the Agreement to remain aware of any updates. Licensee agrees that its continued use of the Service after any such modification will be governed by the Agreement as modified. Except for modifications that EZLynx makes pursuant to this Section, or as otherwise agreed between Licensee and EZLynx in a writing signed by both parties, no other modifications to the Agreement shall be effective.

15.7 *Conflicts.* In the event of a conflict between any parts of the Agreement, the following order of precedence will control: an amendment made pursuant to Section 15.6 (except with respect to a conflict with the express terms of an Order), Supplemental Terms, Orders, and these Terms. Where the provisions of multiple documents at the same level conflict, the provisions of the most recent document will control.

15.8 *Governing Law; Venue.* The Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of law rules. For any claims or causes of action arising out of or connected to the Agreement that are not covered by the jurisdiction and venue provisions in Sections 6.4 and 15.3(b), the parties agree to the exclusive personal jurisdiction and venue of the federal and state courts located in Dallas, Texas.

15.9 *Survival.* The following provisions, and any provisions which by their nature should survive termination of the Agreement, will survive termination of the Agreement for any reason: Sections 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 14, and 15.

15.10 *Severability.* All provisions of the Agreement are severable. If any provision or portion of the Agreement is determined to be unenforceable, then it shall be modified to the minimum extent necessary to capture the original intent of the language, and the remaining portions of the Agreement shall remain in full effect.

15.11 *Waiver.* A party may waive any provision of the terms of the Agreement, or a failure of the other party to comply with it, but only by a writing signed by the waiving party. A waiver in one instance will not operate as a waiver in any others, and a party's failure to object to the other party's violation of the Agreement will not prevent the party from making such objection later. No usage of trade or course of dealing between or among any persons will be deemed effective to modify, amend, or discharge any part of the Agreement or any rights or obligations of any party hereunder.

15.12 *No Third-Party Beneficiaries.* The Agreement is made for the sole protection and benefit of Licensee and EZLynx and their respective successors and permitted assigns, and no other person or entity shall be deemed a third-party beneficiary hereof or have any right of action on the Agreement.

15.13 *Electronic Records.* Licensee consents to the use of electronic signatures, including by means of click-to-accept, when necessary to effectuate any part of the Agreement. Licensee consents to receive electronic delivery of communications related to the Agreement or Service, including product notices and



marketing communications. Licensee may opt out of marketing emails by following the Unsubscribe link at the bottom of the email or emailing sales@ezlynx.com.

15.14 *Construction.* By signing the Agreement, Licensee represents and agrees that it is a sophisticated person with experience in the industry, it has fully reviewed the Agreement, and it has had the opportunity to consult legal counsel prior to entering into the Agreement, and that as a result there will not be applied against any party any rule of construction that vague or ambiguous terms are to be construed against the drafting party or a party attempting to rely on the terms.