**PACVUE**

**MASTER SUBSCRIPTION AGREEMENT**

**Revised Effective: April 1, 2019**

THIS MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) GOVERNS CUSTOMER’S ACCESS TO AND USE OF PACVUE SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF PACVUE SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) ACCESSING OR USING PACVUE’S SERVICES, (3) CREATING OR ACCESSING AN ACCOUNT ON PACVUE’S WEBSITE, OR (4) ACCESSING OR USING FREE SERVICES, CUSTOMER ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

PACVUE’s direct competitors are prohibited from accessing or using the Services, except with PACVUE’s prior written consent. In addition, the Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on April 1, 2019. It is effective between Customer and PACVUE Corporation as of the date of Customer’s accepting this Agreement.

**1. DEFINITIONS**

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Master Subscription Agreement.

“Bug” means any defect, error, flaw, failure, fault, or mistake in the code, files, scripts, agents, program, software, system, or service.

“Content” means information obtained by PACVUE from publicly available sources or its third-party content providers and made available to Customer through the Services.

“Customer” means any company or other legal entity, Affiliates of that company or entity (for so long as they remain Affiliates), or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement.

“Customer Data” means the Customer’s electronic data and information which is (a) available on or accessible from [www.amazon.com](http://www.amazon.com) or its affiliated links or sources, or (b) generated by the Services. Customer Data does not include Content and Non-PACVUE Applications.

“Free Edition” means any modified version of the Services that contains a limited set of features which PACVUE makes available to Customer free of charge.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-PACVUE Application” means a Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party.

“PACVUE” refers to **Pacvue Corporation**, a corporation incorporated under the laws of the State of Washington, U.S.A.

“Purchased Services” means Services that Customer or Customer’s Affiliate (1) purchases from PACVUE, or (2) makes payment to PACVUE for. Purchased Services are distinguished from the Free Edition.

“Services” means the products and services provided by PACVUE and made available to Customer or Customer’s Affiliate, which may be (1) Purchased Services, or (2) the Free Edition. “Services” exclude Content and Non-PACVUE Applications.

“User” means the Customer, or any individual employed by the Customer who has been authorized by the Customer to access or use the Services, to whom PACVUE has either provided access or use of (a) Purchased Services, or (b) the Free Edition.

**2. PACVUE RESPONSIBILITIES**

**2.1 Provision of Purchased Services.** PACVUE will (a) make the Services and Content available to Customer pursuant to this Agreement; (b) provide applicable PACVUE standard support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased; (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which PACVUE shall give advance electronic notice), (ii) any unavailability or outage caused by circumstances beyond PACVUE’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, tornado, typhoon, avalanche, or snowstorm, civil unrest, act of terror, strike or other labor problem, Internet service provider interruption, failure, or delay, interruption, failure, or delay of PACVUE’s server(s), Non-PACVUE Application interruption, error, or termination, or denial of service attack or hack, and (iii) any error, unavailability, outage, or suspension caused by any Bug in the Services, provided that PACVUE will work to remedy such Bug within a reasonable time; and (d) provide the Services in accordance with laws and government regulations applicable to PACVUE’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement.

**2.2 Protection of Customer Data.** PACVUE does not directly collect or receive Customer Data from the Customer. PACVUE’s access to or use of Customer Data is derived from third parties (for example, Amazon Services LLC an/or its affiliates) whom Customer has authorized the collection of or access to Customer Data. That said, PACVUE will maintain reasonable administrative, physical, and technical safeguards for protection of the confidentiality of Customer Data. In the event of unavailability or outage, Customer may be unable to retrieve or at risk of losing Customer Data. PACVUE recommends that Customer regularly backup Customer Data.

**2.3 PACVUE Personnel.** PACVUE will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with PACVUE’s obligations under this Agreement, except as otherwise specified in this Agreement.

**2.4 Free Edition.** PACVUE may make a Free Edition available to Customer. Use of any Free Edition is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Any Free Edition is provided to Customer without charge but does not include any type of service or support by PACVUE, nor is PACVUE liable to Customer, its Affiliates, or any third party in connection with the Free Edition. Usage over these limits requires Customer’s purchase of additional resources or services. Customer agrees that PACVUE, in its sole discretion and for any or no reason, may terminate Customer’s access to the Free Edition or any part thereof. Customer agrees that any termination of Customer’s access to the Free Edition may be without prior notice, and Customer agrees that PACVUE will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data from the Free Edition prior to termination of Customer’s access to the Free Edition for any reason, provided that PACVUE will, except as required by law, provide Customer with a reasonable opportunity to export Customer Data if PACVUE terminates Customer’s account.

**3. USE OF SERVICES AND CONTENT**

**3.1 Subscriptions.** Unless otherwise provided in this Agreement or subsequently agreed to by the parties in writing, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in this Agreement or subsequently agreed to by the parties in writing, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by PACVUE regarding future functionality or features.

**3.2 Usage Limits.** Customer agrees to a reasonable usage of the Services. Services and Content are subject to usage limits specified by PACVUE, if applicable. If Customer exceeds its usage limit, PACVUE may work with Customer to seek to reduce Customer’s usage so that it conforms to that limit. If, notwithstanding PACVUE’s efforts, Customer is unable or unwilling to abide by a usage limit, PACVUE will directly charge an amount mutually agreed to by PACVUE and Customer from Customer’s credit card or other mutually agreed to method of payment.

**3.3 Customer Responsibilities.** Customer will (a) be responsible for Users’ compliance with this Agreement or any other applicable requirements, terms, or conditions provided by PACVUE in writing, (b) be responsible for the interoperation of any Non-PACVUE Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify PACVUE promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement and applicable laws and government regulations, and (e) comply with terms of service of any Non-PACVUE Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in PACVUE’s judgment threatens the security, integrity, or availability of PACVUE’s services, may result in PACVUE’s immediate suspension of the Services. However, PACVUE will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**3.4 Usage Restrictions.** Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in this Agreement or by PACVUE; (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering; (c) use a Service or Non-PACVUE Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use a Service or Non- PACVUE Application to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein; (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks; (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of PACVUE intellectual property except as permitted under this Agreement or with PACVUE’s express written consent; (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof; (i) copy Content except as permitted herein or with PACVUE’s express written consent, (j) frame or mirror any part of any Service or Content; (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent; (l) use a Service for any unlawful purpose; or (m) use a Service for any purpose prohibited by PACVUE, provided that PACVUE will use commercially reasonable efforts to give Customer prior notice of Customer’s violation of such prohibition.

**3.5 Removal of Content and Non-PACVUE Applications.** If Customer receives notice that Content or a Non-PACVUE Application must be removed, modified and/or disabled to avoid violating applicable law or third-party rights, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in PACVUE’s judgment continued violation is likely to reoccur, PACVUE may disable the applicable Content, Service and/or Non-PACVUE Application. If requested by PACVUE, Customer shall confirm such deletion and discontinuance of use in writing and PACVUE shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if PACVUE is required by any third-party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, PACVUE may discontinue Customer’s access to Content through the Services.

**4. NON-PACVUE PRODUCTS AND SERVICES**

**4.1 Non-PACVUE Products and Services.** PACVUE or third parties may make available third-party products or services, including, for example, Non-PACVUE Applications and consulting services. Any acquisition or subscription by Customer of such products or services, and any exchange of data between Customer and any Non-PACVUE provider, product or service is solely between Customer and the applicable Non-PACVUE provider. PACVUE does not warrant or support Non-PACVUE Applications or other Non-PACVUE products or services, whether or not they are designated by PACVUE as “certified” or otherwise, unless expressly provided in writing by PACVUE. PACVUE is not responsible for any disclosure, modification, loss or deletion of Customer Data resulting from access by such Non-PACVUE Application or its provider, or for any economic loss arising from such Non-PACVUE Application.

**4.2 Integration with Non-PACVUE Applications.** The Services may contain features designed to interoperate with Non-PACVUE Applications. PACVUE cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-PACVUE Application ceases to make the Non-PACVUE Application available for interoperation with the corresponding Service features in a manner acceptable to PACVUE.

**5. FEES AND PAYMENT**

**5.1 Fees.** Customer will pay all fees subsequently agreed to by the parties in writing. Except as otherwise specified herein or by the parties in writing, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

**5.2 Payment.** Customer will provide PACVUE with valid and updated credit card information or alternative financial or payment documentation or information (for example, bank account information) reasonably acceptable to PACVUE. Customer authorizes PACVUE to directly charge such credit card or alternative source of payment for all Purchased Services agreed to by the parties in advance of Customer’s access or use of the Purchased Services as set forth herein or otherwise subsequently agreed to by the parties.

**5.3 Suspension of Service.** If PACVUE is unable to charge or withdraw payment from Customer’s credit card or other source of payment set forth in Section 5.2 above, or such payment is declined, then PACVUE may, without limiting its rights or remedies, suspend Services until such amounts are paid in full, provided that PACVUE will give Customer at least 10 days’ prior notice, in accordance with the “Manner of Giving Notice” section below, before suspending services to Customer.

**5.4 Taxes.** PACVUE’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases or subscriptions hereunder. If PACVUE has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, PACVUE will invoice Customer and Customer will pay that amount unless Customer provides PACVUE with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PACVUE is solely responsible for taxes assessable against it based on its income, property and employees.

**6. PROPRIETARY RIGHTS AND LICENSES**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, PACVUE, its Affiliates, its licensors, and its Content providers reserve all of their right, title, and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2 Access to and Use of Content.** Customer has the right to access and use applicable Content subject to the terms of this Agreement.

**6.3 License by Customer to PACVUE.** Customer grants PACVUE, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-PACVUE Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for PACVUE to provide and ensure proper operation of, the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-PACVUE Application with a Service, Customer grants PACVUE permission to allow the Non-PACVUE Application and its provider to access Customer Data and information about Customer’s usage of the Non-PACVUE Application as appropriate for the interoperation of that Non-PACVUE Application with the Service. Subject to the limited licenses granted herein, PACVUE acquires no right, title, or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non- PACVUE Application, or such program code.

**6.4 License by Customer to Use Feedback.** Customer grants to PACVUE and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of PACVUE’s or its Affiliates’ services.

**6.5 Federal Government End Use Provisions.** PACVUE provides the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

**7. CONFIDENTIALITY**

**7.1 Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of PACVUE includes the Services and Content, and the terms and conditions of this Agreement and all related written documentation by PACVUE. Confidential Information of each party includes business and marketing plans, financial data and information, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional PACVUE services.

**7.2 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or other relevant written information to any third party other than its Affiliates, legal counsel, and accountants, without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel, or accountants will remain responsible for such Affiliate’s, legal counsel’s, or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, PACVUE may disclose the terms of this Agreement and any relevant written information to a subcontractor or Non-PACVUE Application Provider to the extent necessary to perform PACVUE’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

**8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**8.2 PACVUE Warranties.** PACVUE warrants that during an applicable subscription term (a) the Services will perform materially in accordance with the applicable descriptions provided by PACVUE in writing, and (b) subject to the “Integration with Non-PACVUE Applications” section above, PACVUE will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

**8.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, PACVUE AND OUR AFFILIATES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES, OR CONDITIONS WITH RESPECT TO CUSTOMER’S USE OF THE SERVICES. PACVUE ALSO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER UNDERSTANDS THAT USE OF THE SERVICES IS AT CUSTOMER’S OWN RISK AND THAT PACVUE PROVIDES THE SERVICES ON AN “AS IS” BASIS “WITH ALL FAULTS” AND “AS AVAILABLE.” CUSTOMER BEARS THE ENTIRE RISK OF USING THE SERVICES.

**9. INDEMNIFICATION**

Customer will defend PACVUE and its Affiliates against any claim, demand, suit or proceeding made or brought against PACVUE by a third party alleging (a) that any Customer Data or Customer’s use of Customer Data with the Services, (b) a Non-PACVUE Application provided by Customer, or (c) the combination of a Non-PACVUE Application provided by Customer and used with the Services, infringes or misappropriates such third party’s intellectual property rights, or arising from Customer’s use of the Services or Content in an unlawful manner or in violation of the Agreement or any other terms or conditions subsequently agreed to by the parties in writing (each a “Claim Against **PACVUE**”), and will indemnify PACVUE from any damages, attorney fees, and costs finally awarded against PACVUE as a result of, or for any amounts paid by PACVUE under a settlement approved by Customer in writing of, a Claim Against PACVUE, provided PACVUE (a) promptly gives Customer written notice of the Claim Against PACVUE, (b) gives Customer sole control of the defense and settlement of the Claim Against PACVUE (except that Customer may not settle any Claim Against PACVUE unless it unconditionally releases PACVUE of all liability), and (c) gives Customer all reasonable assistance, at Customer’s expense. The above defense and indemnification obligations do not apply if a Claim Against PACVUE arises from PACVUE’s breach of this Agreement.

**10. LIMITATION OF LIABILITY**

**10.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY, TOGETHER WITH ALL OF ITS AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER’S AND ITS AFFILIATES’ PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION ABOVE.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY’S OR ITS AFFILIATES’ REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**11. TERM AND TERMINATION**

**11.1 Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

**11.2 Term of Purchased Subscriptions.** Subject to the terms and conditions set forth in this Agreement, the term of each subscription shall be as agreed to by the parties in writing. Except as otherwise subsequently agreed to by the parties in writing, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to 7% above the applicable pricing in the prior term, unless PACVUE provides Customer notice of different pricing at least 30 days prior to the applicable renewal term. Except as subsequently expressly agreed to by the parties in writing, renewal of promotional or one-time priced subscriptions will be at PACVUE’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term’s per-unit pricing.

**11.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4 Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the “Termination” section above, PACVUE will refund Customer any prepaid fees covering the remainder of the term after the effective date of termination. If this Agreement is terminated by PACVUE in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to PACVUE for the period prior to the effective date of termination.

**11.5 Surviving Provisions.** The sections titled “Free Services,” “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-PACVUE Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement.

**12. GENERAL PROVISIONS**

**12.1 Export Compliance.** The Services, Content, other PACVUE technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. PACVUE and Customer each represents that it is not named on any U.S. government denied-party list.

**12.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between PACVUE and Customer regarding Customer’s use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the most recent terms and conditions agreed to by the parties in writing subsequent to Customer’s acceptance of this Agreement, and (2) this Agreement. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

**12.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**12.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**12.6 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**12.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**12.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party’s consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, PACVUE will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.9 Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

**12.10** **Applicable Law.** By using the Services, Customer agrees that the Federal Arbitration Act, applicable federal law, and the laws of the State of Washington, without regard to principles of conflicts of laws, will govern this Agreement any other terms and conditions subsequently agreed to by the parties in connection with the Services, and any dispute of any sort that might arise between Customer and PACVUE.

**12.11** **Binding Arbitration and Class Action Waiver.** Each party and its Affiliates agree to try for 60 days to resolve any dispute informally. If the parties and their Affiliates cannot resolve any such dispute, the parties agree to **binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury**. Instead, a neutral arbitrator will decide, and the arbitrator’s decision will be final, except for a limited right of review under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren’t allowed. Nor is combining individual proceedings without the consent of all parties.**