



# Master Subscription Agreement

02 July 2020

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THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF PASSFORT SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CUSTOMER 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.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

PASSFORT's direct competitors are prohibited from accessing the Services, except with PASSFORT's prior written consent.

This Agreement is effective between Customer and PASSFORT 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.

“**Content**” means information obtained by PASSFORT from publicly available sources or its third party content providers and made available to Customer through the Services or pursuant to an Order Form, as more fully described in the Documentation.

“**Customer**” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, 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, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

“**Customer Data**” means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-PASSFORT Applications.

“**Documentation**” means the applicable Service’s Trust and Compliance documentation at <https://passfort.com/terms> and its usage guides and policies, as updated from time to time, accessible via <https://help.passfort.com> or login to the applicable Service.

“**Free Services**” means Services that PASSFORT makes available to Customer free of charge. Free Services exclude Purchased Services.

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

“**Marketplace**” means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the Integration Hub (a.k.a PassFort Connect) at <https://integrationhub.passfort.com>, and any successor websites.

“**Non-PASSFORT 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 and/or listed on a Marketplace. Non-PASSFORT Applications, other than those obtained or provided by Customer, will be identifiable as such.

“**Order Form**” means an ordering document or online order specifying the Services to be provided

hereunder that is entered into between Customer and PASSFORT or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“**Purchased Services**” means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services.

“**Services**” means the products and services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable), and made available online by PASSFORT, including associated PASSFORT offline or mobile components, as described in the Documentation.

“**Services**” exclude Content and Non-PASSFORT Applications.

“**PASSFORT**” means the PassFort company described in the “PASSFORT Contracting Entity, Notices, Governing Law, and Venue” section below.

“**User**” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by PASSFORT without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, PASSFORT at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## **2 PASSFORT Responsibilities**

### **2.1 Provision of Purchased Services**

PASSFORT will (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) provide applicable PASSFORT 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 PASSFORT shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond PASSFORT's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving PASSFORT employees), Internet service provider failure or delay, Non-PASSFORT Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to PASSFORT'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, the Documentation and the applicable Order Form.

### **2.2 Protection of Customer Data**

PASSFORT will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). The terms of the data processing addendum at <https://passfort.com/terms> ("DPA") are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by PASSFORT in the US the EU-US and/or Swiss-US Privacy Shield, and/or the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices. Upon request by Customer made within 60 days after the effective date of termination or expiration of this Agreement, PASSFORT will make Customer Data available to Customer for export or download as provided in the Documentation. After such 60-day period, PASSFORT will have no

obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

### **2.3 PASSFORT Personnel**

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

### **2.4 Free Services**

PASSFORT may make Free Services available to Customer. Use of Free Services 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. Free Services are provided to Customer without charge up to certain limits as described in the Documentation. Usage over these limits requires Customer's purchase of additional resources or services. Customer agrees that PASSFORT, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Services or any part thereof. Customer agrees that any termination of Customer's access to the Free Services may be without prior notice, and Customer agrees that PASSFORT will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data from the Free Services prior to termination of Customer's access to the Free Services for any reason, provided that if PASSFORT terminates Customer's account, except as required by law PASSFORT will provide Customer a reasonable opportunity to retrieve its Customer Data.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY PASSFORT" SECTION BELOW, THE FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND PASSFORT SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE PASSFORT'S LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED £1,000.00. WITHOUT LIMITING THE FOREGOING, PASSFORT AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE FREE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C)



USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO PASSFORT AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER’S USE OF THE FREE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER.

## **3 Use Of Services And Content**

### **3.1 Subscriptions**

Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (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 PASSFORT regarding future functionality or features.

### **3.2 Usage Limits**

Services and Content are subject to usage limits specified in Order Forms and Documentation. If Customer exceeds a contractual usage limit, PASSFORT may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding PASSFORT's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon PASSFORT's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

### **3.3 Customer Responsibilities**

Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-PASSFORT 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 PASSFORT promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, the Acceptable Use and External Facing Services Policy at <https://passfort.com/terms>, Order Forms and applica-

ble laws and government regulations, and (e) comply with terms of service of any Non-PASSFORT Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in PASSFORT's judgment threatens the security, integrity or availability of PASSFORT's services, may result in PASSFORT's immediate suspension of the Services, however PASSFORT 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 an Order Form or the Documentation, (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-PASSFORT Application to store or transmit infringing, libellous, 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-PASSFORT 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 PASSFORT intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (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 in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (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.

### **3.5 Removal of Content and Non-PASSFORT Applications**

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

## **4 Non-PASSFORT Products And Services**

### **4.1 Non-PASSFORT Products and Services**

PASSFORT or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-PASSFORT Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-PASSFORT provider, product or service is solely between Customer and the applicable Non-PASSFORT provider. PASSFORT does not warrant or support Non-PASSFORT Applications or other Non-PASSFORT products or services, whether or not they are designated by PASSFORT as “certified” or otherwise, unless expressly provided otherwise in an Order Form. PASSFORT is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-PASSFORT Application or its provider.

### **4.2 Integration with Non-PASSFORT Applications**

The Services may contain features designed to interoperate with Non-PASSFORT Applications. PASSFORT 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-PASSFORT Application ceases to make the Non-PASSFORT Application available for interoperation with the corresponding Service features in a manner acceptable to PASSFORT.

## **5 Fees And Payment**

### **5.1 Fees**

customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

### **5.2 Invoicing and Payment**

Customer will provide PASSFORT with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to PASSFORT. If Customer provides credit card information to PASSFORT, Customer authorizes PASSFORT to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the “Term of Purchased Subscriptions” section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, PASSFORT will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to PASSFORT and notifying PASSFORT of any changes to such information.

### **5.3 Overdue Charges**

If any invoiced amount is not received by PASSFORT by the due date, then without limiting PASSFORT’s rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) PASSFORT may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.

#### **5.4 Suspension of Service and Acceleration**

If any charge owing by Customer under this or any other agreement for services is 60 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized PASSFORT to charge to Customer's credit card), PASSFORT may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, PASSFORT will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.

#### **5.5 Payment Disputes**

PASSFORT will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

#### **5.6 Taxes**

PASSFORT'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 hereunder. If PASSFORT has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, PASSFORT will invoice Customer and Customer will pay that amount unless Customer provides PASSFORT with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PASSFORT is solely responsible for taxes assessable against it based on its income, property and employees.

## **6 Proprietary Rights And Licences**

### **6.1 Reservation of Rights**

Subject to the limited rights expressly granted hereunder, PASSFORT, its Affiliates, its licensors and 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 applicable Order Forms, this Agreement and the Documentation.

### **6.3 License by Customer to PASSFORT**

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

### **6.4 License by Customer to Use Feedback**

Customer grants to PASSFORT 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 PASSFORT's or its Affiliates' services.



## 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 PASSFORT includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, 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 PASSFORT 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 any Order Form 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, PASSFORT may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or NonPASSFORT Application Provider to the extent necessary to perform PASSFORT'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 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 PASSFORT Warranties**

PASSFORT warrants that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) PASSFORT will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the “Integration with Non-PASSFORT Applications” section above, PASSFORT 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, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY 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. CONTENT IS PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9 Mutual Indemnification**

### **9.1 Indemnification by PASSFORT**

PASSFORT will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by PASSFORT in writing of, a Claim Against Customer, provided Customer (a) promptly gives PASSFORT written notice of the Claim Against Customer, (b) gives PASSFORT sole control of the defence and settlement of the Claim Against Customer (except that PASSFORT may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives PASSFORT all reasonable assistance, at PASSFORT's expense. If PASSFORT receives information about an infringement or misappropriation claim related to a Service, PASSFORT may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching PASSFORT's warranties under "PASSFORT Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 90 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by PASSFORT, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (4) a Claim against Customer arises from Content, a Non-PASSFORT Application or Customer's breach of this Agreement, the Documentation or applicable Order Forms.

### **9.2 Indemnification by Customer**

Customer will defend PASSFORT and its Affiliates against any claim, demand, suit or proceeding made or brought against PASSFORT by a third party alleging (a) that any Customer Data or Customer's use of Customer Data with the Services, (b) a Non-PASSFORT Application provided by Customer, or (c) the combination of a Non-PASSFORT 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, the Documentation, or Order Form (each a "Claim Against PASSFORT"), and will indemnify PASSFORT from any damages, attorney fees and costs finally awarded against PASSFORT as a result of, or for any amounts paid by PASSFORT under a settlement approved by Customer in writing of, a Claim Against PASSFORT, provided PASSFORT (a) promptly gives Customer written notice of the Claim Against PASSFORT, (b) gives Customer sole control of the defense and settlement of the Claim Against PASSFORT (except that Customer may not settle any Claim Against PASSFORT unless it unconditionally releases PASSFORT of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defence and indemnification obligations do not apply if a Claim Against PASSFORT arises from PASSFORT's breach of this Agreement, the Documentation or applicable Order Forms.

### **9.3 Exclusive Remedy**

This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

## **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 200% 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**

The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, 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 written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at PASSFORT's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length 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, PASSFORT will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by PASSFORT in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to PASSFORT 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,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-PASSFORT Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as PASSFORT retains possession of Customer Data.



## **12 General Provisions**

### **12.1 Export Compliance**

The Services, Content, other PASSFORT technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions now or in the future. PASSFORT and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

### **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 PASSFORT 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. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. 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 (including all Order Forms), 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, PASSFORT 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 PASSFORT Contracting Entity, Notices, Governing Law, and Venue

The PASSFORT entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled.

<b>If customer is domiciled in:</b>	<b>The PassFort entity entering into this agreement is:</b>	<b>Notices should be address to:</b>	<b>Governing law is:</b>	<b>Courts with exclusive jurisdiction are:</b>
A country in any continent	PassFort Limited, a limited liability company incorporated in England	Mezzanine Floor, 24 Cornhill, London England EC3V 3ND	England	London, England

## 12.10 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.

## 12.11 Agreement to Governing Law and Jurisdiction

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.