

## CONFIRMIT SODA TERMS AND CONDITIONS

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### END-OF-LIFE NOTIFICATION

Confirmit SODA Software Version 3.4.n, where n increments with each new Updates or Upgrades, is now a Frozen Version. The latest available Frozen Version continues to be a supported version, but it is no longer under active development. Client is encouraged to upgrade to Confirmit Horizons which offers significant benefits and ongoing Updates and Upgrades. CONFIRMIT may issue Updates or Upgrades to supported Frozen Versions of Confirmit SODA, provided however that such Updates or Upgrades will primarily address critical software errors and security vulnerabilities, and will not include new features, and provided that such Updates or Upgrades do not require unreasonable efforts to implement. CONFIRMIT shall provide at least one year's notice in writing (email to the Designated Support Contact will suffice) before withdrawing all support for Confirmit SODA. Irrespective of the Term of this Agreement, after support for Confirmit SODA is withdrawn, CONFIRMIT shall be released from its obligations under this Agreement in relation to Support Services, Updates and Upgrades, and the Limited Warranty made by CONFIRMIT in this Agreement shall be void.

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These terms and conditions are incorporated into and form an integral part of the Order Form between the parties to which these terms are attached, and Ordering Party's right to access and use the Software, Support Services, and SODA SaaS as detailed on said Order Form is subject to the terms and conditions herein. The Confirmit company executing the Order Form is referred to herein as "CONFIRMIT" and the ordering party as "Ordering Party". **BY INSTALLING OR USING CONFIRMIT SODA SOFTWARE THE ORDERING PARTY ACKNOWLEDGES AND CONFIRMS THAT THE ORDERING PARTY HAS READ AND UNDERSTOOD AND AGREES TO THESE TERMS AND CONDITIONS. CONFIRMIT RESERVES THE RIGHT TO AMEND THESE TERMS AND CONDITIONS BY POSTING A NEW VERSION TO THE CONFIRMIT LEGAL SITE, AND SUCH AMENDMENTS WILL IMMEDIATELY BECOME BINDING ON THE ORDERING PARTY.**

The parties agree as follows:

#### 1.0 **DEFINITIONS**

1.1 "**Affiliate**" means with respect to any first entity, any second entity Controlling, Controlled by or under common Control with that first entity. As used in this definition, "Control" and its derivatives means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, person or other entity whether through the ownership of voting securities, or by contract or otherwise.

1.2 "**Agreement**" means collectively the terms and conditions in this document, and the terms and conditions of any Order Form mutually executed between the Parties.

1.3 "**Confidential Information**" means and includes any information, whether in tangible or intangible form, in written or machine readable form, or disclosed orally or visually, relating to the disclosing Party's business that the disclosing Party informs the receiving Party is confidential or which the receiving Party should reasonably know is confidential or not generally known to the public or to other persons who are not bound by obligations of confidentiality and, without limiting the generality of the foregoing, shall include:

- (a) all proprietary information licensed to or acquired, used or developed by the disclosing Party, including proprietary rights protected by any patents, trademarks, copyrights, trade secrets, know-how and all other intellectual and industrial property rights whatsoever,
- (b) all information relating to the disclosing Party's business, the operation of the Support Services or SODA SaaS as applicable, and to all other aspects of the disclosing Party's structure, personnel,

operations, financial, marketing, advertising, commercial strategies, customer lists, compilations, agreements and contractual records and correspondence, programs, devices, concepts, inventions, designs, methods, processes, data (including Ordering Party's Data), know-how, unique combinations of separate items that individually may or may not be generally known and items provided or disclosed to the disclosing Party by third parties subject to restrictions on use or disclosure, and

- (c) all information provided by the disclosing Party's agents, consultants, lawyers, contractors, licensors or licensees to the disclosing Party and relating to the disclosing Party's business.

For the purpose of this Section 1.3, the use of the term "Party" as it relates to CONFIRMIT, shall mean CONFIRMIT and any of its Affiliates and their respective subcontractors.

1.4 "**Documentation**" means documentation, help, files, user manuals, handbooks, or other written or electronic material provided by or made generally available by CONFIRMIT to its customers in relation to the Software, as revised from time to time.

1.5 "**Equipment**": means the hardware and networking platform, and software infrastructure, on which the CONFIRMIT SODA Server Software will be installed by Ordering Party or Ordering Party's Affiliates, and for which Ordering Party bears the full responsibility. For clarity, this does not apply to Ordering Party's operating solely on SODA SaaS.

1.6 "**Form Term**" means the licensing period appearing on the Order Form which defines the first date and last date that the applicable SODA SaaS, and/or Support Services and/or Software shown on that Order Form are licensed for use.

1.7 "**Hosting Partner**" means such third party server hosting and network infrastructure provider as CONFIRMIT may designate from time to time, which as of the date of this Agreement is Rackspace Managed Hosting, at a data center located in London, UK.

1.8 "**License**" means the license granted to Ordering Party pursuant to Section 2.1.

1.9 "**License Fees**" means the amounts payable by Ordering Party to CONFIRMIT plus applicable taxes in consideration for the License, such amounts being set out in the Order Form.

1.10 "**Order Form**" means the CONFIRMIT generated form utilized for licensing and/or for renewals, to be signed by Ordering Party and CONFIRMIT to be valid, and which incorporates these terms and conditions by reference.

1.11 "**Party**" means Ordering Party or CONFIRMIT, as the context requires, and "**Parties**" means Ordering Party and CONFIRMIT.

1.12 "**Point of Access**" means CONFIRMIT's border router which is used to establish connectivity from the SODA SaaS to CONFIRMIT's internet service provider and the public internet.

1.13 "**Reseller**" means a party authorized by CONFIRMIT to license and distribute the Software.

1.14 "**Server Software**" means the CONFIRMIT SODA Software delivered without SODA SaaS hosting, for Ordering Party to install and manage on Ordering Party's own Equipment .

1.15 "**SODA Mobile**" means mobile applications downloaded to, and installed on, Ordering Party's or third parties' devices (including mobile computing devices and smartphones), for taking surveys and conducting interviews.

1.16 "**SODA Mobile License**" means SODA Mobile when not used as SODA Mobile Seat, and where further payment is required by Ordering Party for each survey completed.

1.17 "**SODA Mobile Seat**" means SODA Mobile when used to collect data and Ordering Party is paying for SODA Mobile to be loaded on one or more seats with no further payment required by Ordering Party for each survey completed.

1.18 "**SODA SaaS**" means the multitenant server environment, managed by the Hosting Partner on behalf of CONFIRMIT, where CONFIRMIT hosts the Software. The SODA SaaS is accessible via the internet on a time limited

subscription basis, and includes the entire physical operation(s) provided to host the Software, including all networks and servers, hardware and software utilized in the provision of the SODA SaaS located behind the Point of Access.

1.19 **“SODA SaaS Fees”** means all amounts payable by Ordering Party to CONFIRMIT plus applicable taxes on account of SODA SaaS in accordance with the terms of the Order Form.

1.20 **“Software”** means:

- (a) the proprietary SODA software of CONFIRMIT including any Updates or Upgrades provided to Ordering Party; and
- (b) all files or materials accompanying the Software, including the Documentation.

1.21 **“Specifications”** means the functional specifications applicable to the Software, as set out in the Documentation.

1.22 **“Support Services”** means maintenance, updates, and technical support services to be provided to Ordering Party by CONFIRMIT pursuant to such services being referenced to in the Order Form, if applicable.

1.23 **“Support Services Fees”** means all amounts payable by Ordering Party to CONFIRMIT plus applicable taxes on account of Support Services in accordance with the terms of the Order Form.

1.24 **“System Maintenance Period”** means, in respect of the SODA SaaS, the time period during which access to the SODA SaaS will not be available to Ordering Party due to required system maintenance, Upgrades, Updates, and other hosting requirements for the SODA SaaS.

1.25 **“Term”** means the initial license period and all subsequent Term Extensions collectively.

1.26 **“Term Extension”** means immediately subsequent licensing periods after the initial license period. Each Term Extension will commence on expiration of the previous Term Extension (or, in the case of the first Term Extension, on expiration of the initial license period) and will have a duration of no less than twelve (12) months.

1.27 **“Update”** means a release of the Software which consists of minor corrections, corrective code, bug fixes, maintenance releases and enhancements without substantial added functionality or features and which is denoted by any change to the numbers to the right of the first decimal point (e.g., a change from 2.0 to 2.1 or from 2.1.1 to 2.1.2).

1.28 **“Upgrade”** means a release of the Software which consists of a new version with substantial enhancements, added functionality or new features and which is denoted by a change to the number to the left of the first decimal point (e.g., a change from 2.x to 3.x).

## 2.0 **LICENSE**

2.1 **License.** Subject to the terms and conditions of the Agreement, CONFIRMIT grants to Ordering Party, a restricted, time-limited, non-exclusive, non-transferable and non-assignable right to access and use the Software, the Documentation and, to the extent set forth in an Order Form, the SODA SaaS (jointly, the **“Licensed Materials”**). Ordering Party may use the Licensed Materials for the duration of the Form Term to process its and their own data for its and their own internal and commercial business purposes, including data collection and reporting activities which Ordering Party and/or any Ordering Party Affiliate performs on behalf of its client. The functionalities of the Software are detailed in the applicable Documentation.

2.2 **Limitation.** Ordering Party will be entitled to install and use the Software for no more than the number of personal computers, mobile computing devices, mobile phones and/or users of the SODA SaaS for which Ordering Party has purchased the license, as set out in the Order Form.

2.3 **Maximum Amount of Data.** Ordering Party will not use the SODA SaaS for the purpose of storing or transferring more than the maximum amount of data permitted pursuant to the Order Form. In absence of any specification of allocation for storage and bandwidth on the Order Form, the following will apply: 15 Gigabyte total storage, and 45 Gigabyte per month of total data transfer.

2.4 **No Copies.** Ordering Party will not make any copies of the Software.

**2.5 Updates and Upgrades.** At any time prior to the termination of the Agreement, CONFIRMIT shall provide to Ordering Party access to any Updates and Upgrades issued by CONFIRMIT on general commercial release, together with any accompanying Documentation, provided that Ordering Party is either licensing the Software on a periodic basis or is within a Support Services Term.

**2.6 SODA Designer.** Use of SODA Designer shall in addition be subject to the terms of the click through license contained with the product and which may be found at [www.confirmit.com/legals/legal-notices.aspx](http://www.confirmit.com/legals/legal-notices.aspx).

**2.7 SODA Mobile.** The terms of the click through license, also found on [www.confirmit.com/legals/legal.aspx](http://www.confirmit.com/legals/legal.aspx), shall apply to SODA Mobile License and SODA Mobile Seat. For SODA Mobile Seat the terms of the Agreement shall apply in addition.

### 3.0 **RESTRICTIONS**

**3.1 Copyright.** The Software is owned by Confirmit Solutions Inc, a company fully owned by CONFIRMIT AS, and is protected by Canadian Copyright law, U.S. Copyright law, international treaty provisions, and intellectual property laws. It is an express term of the Agreement that Ordering Party will acquire no title or ownership to the Software.

**3.2 Restrictions.** CONFIRMIT reserves all rights not expressly granted to Ordering Party under the Agreement. Without limiting the generality of the foregoing, Ordering Party will not do or permit any of the following to be done in relation to the whole or any part of the Software:

- (a) copy or reproduce the Software;
- (b) modify, adapt, translate or alter the Software in any way;
- (c) de-compile, reverse engineer or disassemble the Software or otherwise reduce the Software to any human perceivable form;
- (d) take any steps to produce a source language statement of the Software;
- (e) use the Software to develop any derivative works of functionally compatible or competitive computer programs to the Software or create derivative works based on the Software;
- (f) remove any title, trademark, copyright, or proprietary notice or label from the Software;
- (g) except as expressly permitted in a separate reseller agreement or other written agreement executed between the Parties, transmit, convey, license, sublicense, distribute, export, loan, rent, lease, sell, resell, transfer or otherwise dispose of or grant or transfer rights in whole or in part to the Software to any other persons or organizations; or
- (h) provide use of the Software to any users who are not licensed by CONFIRMIT, whether through a time sharing, interactive cable television, multiple CPU service bureau, public computer based information system, public electronic bulletin board, the internet, or any other public or private computer network.

**3.3 Limited Exception.** Notwithstanding Section 2.4 and Section 3.2(a), Ordering Party may make one copy, for back-up purposes only, of Software other than the Software accessed via the SODA SaaS.

**3.4 Export Laws.** Ordering Party agrees that

- (a) it will be responsible at its own expense for complying with all applicable export and import laws and regulations in using the Software, and
- (b) neither the Software nor any direct product thereof is being or will be shipped, transferred or re-exported, directly or indirectly, into any country or to any foreign entity or foreign person prohibited under any Act or Regulation of the Government of Canada or by the laws of the jurisdiction in which the Software was obtained. By using the Software, Ordering Party is agreeing to the foregoing and represents and warrants that Ordering Party will not download or otherwise export to (or to a national or resident of), and Ordering Party is not located in, any country in which it would not be permitted to export the Software from any jurisdiction in which the Software or related materials was situated prior to Ordering Party obtaining it.

### 4.0 **TERM AND TERMINATION**

**4.1 Term.** Ordering Party's rights pursuant to the Agreement will become effective upon execution of the Order Form by Ordering Party and CONFIRMIT, and will remain in effect for the duration of the Term.

**4.2 Renewal.** Unless the Agreement has already been terminated in accordance with the provisions herein, the Agreement automatically extends for successive Term Extensions, each of one year, unless either Party has sent notification to the other Party in writing no later than thirty (30) days before the expiration of the then-current Term Extension (or, in the case of the first Term Extension, before the expiration of the initial license period) that the Agreement will not be extended. In case of such automatic extension, and where no renewal Order Form has been executed between the Parties, each successive Term Extension will be subject to License Fees (including in respect of licenses and services) and in the same quantities as the total across all Order Forms applicable to the immediately preceding one year term, and at that same price.

**4.3 Application.** Notwithstanding section 4.1, the covenants of Ordering Party pursuant to these Terms and Conditions will continue to apply to the Software and to any Upgrades or Updates for as long as Ordering Party retains a License.

#### **4.4 Termination.**

- (a) Each Party shall have the right, without prejudice to its other rights or remedies and without being liable to the other Party for any loss or damage which may be occasioned, to terminate this Agreement immediately by written notice to the other if the other is in material or persistent breach of this Agreement, and either that breach is incapable of remedy or the breaching Party has failed to remedy that breach within fifteen (15) days after receiving written notice requiring it to do so.
- (b) CONFIRMIT will have the right to terminate the Agreement immediately upon written notice to Ordering Party at any time if Ordering Party (A) is in material breach of any warranty, term, condition or covenant of the Agreement and fails to cure that breach within 10 days after written notice of that breach and of CONFIRMIT's intention to terminate; (B) fails to pay uncontested Invoices in a timely manner in accordance with Section 7.1 and thereafter fails to cure the payment default within ten (10) business days after Ordering party receives written notice of the default from CONFIRMIT; or (C) Ordering Party (i) becomes insolvent; (ii) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; or (iii) admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature; or (iv) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors that is not dismissed with prejudice within thirty (30) days after the institution of such proceeding.  
  
Termination under this subsection will become effective immediately upon written notice of termination at any time after the specified event or the failure of the specified proceeding to be timely dismissed.
- (c) Ordering Party's access to and use of the Licensed Materials and the Support Services will expire upon expiration of the Term or earlier termination of the Agreement in accordance with the terms and conditions of the Agreement, as the case may be.

**4.5 Effect of Termination.** Upon termination of the Agreement pursuant to sections 4.2 or 4.4 or expiration of the Term of the License, all of Ordering Party's rights under the License will expire and:

- (a) Ordering Party will immediately cease using and will return any Software under its control to CONFIRMIT, and delete any copies from its machines or backups;
- (b) Ordering Party will immediately pay to CONFIRMIT and the Reseller (as the case may be) any amounts owing by it to them pursuant to the Order Form or these Terms and Conditions; and
- (c) CONFIRMIT may automatically terminate any Support Services or SODA SaaS, without notice to Ordering Party

Upon expiration of the Term or earlier termination of the Agreement, as the case may be, CONFIRMIT may permanently destroy any of Ordering Party's data remaining on the SODA SaaS, provided however that if Ordering Party has requested so in writing to CONFIRMIT before the last day of the Term, CONFIRMIT shall provide to Ordering Party a copy of any data specified by Ordering Party in a data format supported by the Software, upon payment by Ordering Party of CONFIRMIT's standard charges for such assistance.

**4.6 Suspension of access to SODA SaaS, to the Software and to Support Services.** CONFIRMIT may suspend Ordering Party's access to and use of the SODA SaaS, and provision of Support Service, if Ordering Party breaches any of its obligations under the Agreement, including but not limited to where payment of any uncontested invoice to CONFIRMIT is delayed for more than ten (10) days of a payment reminder having been sent to Ordering Party after expiry of the initial payment term set forth in Section 7.2 below. The suspension may last, at CONFIRMIT's sole discretion, until the breach is remediated or such payments have been received by CONFIRMIT. Any suspension of Support or access to the SODA SaaS under this Section 4.6, shall not remove Ordering Party's obligation of payment hereunder in respect of such period of suspension, and the suspension shall not cause the last date of the current period of the Agreement to be changed.

**4.7 Survival.** The provisions of Articles 3.0.0, 4.5.5, 8.0.0, 9.0 and 11.0 of this Agreement will survive the termination of the Agreement.

## **5.0 SUPPORT AND MAINTENANCE SERVICES**

**5.1 Application.** The provisions of this Article 5.0 apply only to the extent that:

- (a) Ordering Party has purchased Support Services pursuant to the Order Form; or
- (b) the Order Form includes a SODA SaaS license which is hereby deemed to include Support Services.

**5.2 Support Services Purchased from CONFIRMIT.** If Section 5,1 (a) or (b) applies, CONFIRMIT will provide the Support Services to Ordering Party in accordance with the terms of the Agreement and for the Form Term.

**5.3 Support Services Purchased from a Reseller.** If Ordering Party has purchased Support Services from a Reseller, the Reseller will provide the Support Services to Ordering Party in accordance with the terms of any agreement between Ordering Party and the Reseller and CONFIRMIT shall be under no obligation to provide any Support Services to Ordering Party.

**5.4 Support Services.** If Section 5,1 (a) or (b) applies:

- (a) CONFIRMIT will provide Support Services, so that the Software will function substantially in accordance with the Specifications;
- (b) CONFIRMIT will provide the following Support Services by answering Ordering Party's requests for support submitted by the DSC (such term as defined below) by e-mail to support@confirmit.com (or alternative as informed by CONFIRMIT):
  - (i) explanation of installation procedures, functions and features of the Software;
  - (ii) clarification of Documentation; and
  - (iii) error analysis and correction;

during the hours of 9:00 a.m. and 5:00 p.m. in the time zone of CONFIRMIT's office, provided that CONFIRMIT will not provide any such services on statutory holidays.

- (c) Ordering Party shall designate one primary support contact ("Designated Support Contact" or "DSC") who will act as the conduit for all requests from Ordering Party to CONFIRMIT relating to the Support Services matters.
- (d) Ordering Party may at its own option, but subject to written agreement by CONFIRMIT and the payment of an annual fee, designate additional employees as subordinate Support contacts who, once designated, shall be authorized to exercise some or all of the Designated Support Contact's functions.
- (e) Before assuming responsibilities, the DSC(s) must attend training in the use of the SODA SaaS and the Software as prescribed by CONFIRMIT, or must possess skills at least at the same level as those having undertaken such training. Ordering Party agrees and understand that the Support service shall not serve for educational purposes, and CONFIRMIT retains the right to communicate to Ordering Party where DSCs appear to necessitate training.
- (f) Ordering Party shall make reasonable efforts to avoid that parties other than DSC(s) send requests for support directly to CONFIRMIT. CONFIRMIT may however, at its own discretion, offer support directly to licensed users who are not DSCs upon additional charge. Support requests sent to CONFIRMIT from others than DSCs will normally not be handled, and such non-handling shall not

constitute a breach of this Agreement by CONFIRMIT.

**5.5 Customizations.** The Support Services do not include any customizations, adaptations, or modifications to the Software to meet Ordering Party's requirements. Should Ordering Party require any such customization services, Ordering Party will engage CONFIRMIT as CONFIRMIT's standard rates from time to time.

**5.6 Support for Software running on Ordering Party's Equipment** (not applicable to SODA SaaS).

- (a) CONFIRMIT shall support Software installed on Ordering Party's Equipment only in relation to latest version made available by CONFIRMIT to the market at any time. Ordering Party agrees and understands that CONFIRMIT will not provide Updates to previous versions of the Software and that Ordering Party is required to Upgrade to the last version of the Software in order to obtain the latest fixes available for the Software. CONFIRMIT shall have the right suspend support and maintenance to Ordering Party as set forth in Section 4.6 above, until Ordering Party Upgrades to the last version of the Software.
- (b) Ordering Party acknowledges that any guidelines or recommendations given by CONFIRMIT either through the Documentation or by other channels, with regards to hardware platform and supporting infrastructure to run the Software on the Equipment, are to be regarded as guidelines only, and are not subject to any guarantee.
- (c) Ordering Party is responsible throughout the Term (i) for the compliance of the Equipment with the at any time applicable Documentation; (ii) for any aspect related to installations, Upgrades, Updates and day to day operations of the Software on the Equipment; (iii) for the Equipment itself, including any software installed thereon other than the Software. Ordering Party acknowledges that changes in Ordering Party's usage patterns or increased use of the Software may trigger need for Ordering Party to scale up or upgrade the Equipment at Ordering Party's sole cost and risk.

**6.0 SODA SAAS HOSTING**

**6.1 Application.** The provisions of this Article 6.0 apply only to the extent that Ordering Party has purchased SODA SaaS pursuant to the Order Form.

**6.2 SODA SaaS.** If Ordering Party has licensed access to SODA SaaS, as set out on the Order Form, CONFIRMIT will provide such access to Ordering Party for the Form Term subject to the terms and conditions of the Agreement. CONFIRMIT shall use commercially reasonable efforts to host the Software on the SODA SaaS, in accordance with these terms and conditions, for access by Ordering Party's employees for Ordering Party's internal business purposes. Ordering Party will be provided with five (5) project management account (login and password) for the server on the SODA SaaS.

**6.3 Hosting Service Levels.** During the Form Term, CONFIRMIT will perform the SODA SaaS in accordance with the following standards:

- (a) The SODA SaaS will include:
  - (i) a commercial grade server with a RAID disk array to provide ongoing redundant databases;
  - (ii) redundant power;
  - (iii) redundant Internet connection;
  - (iv) storage of data on a secure website Microsoft SQL Server database (or similar) with passwords and in compliance with SSL certification standards;
  - (v) a firewall to filter out network traffic that is not accessing the Enterprise Software; and
  - (vi) reasonable physical security measures at the Hosting Partner co-location facility, including passcode access, dual key locks and a manned security booth, to restrict access to the SODA SaaS, so that only CONFIRMIT and/or Hosting Partner will have physical access to the SODA SaaS;
- (b) CONFIRMIT will be responsible for delivery of access to the Software on the SODA SaaS only up to and including the Point of Access;
- (c) CONFIRMIT shall make reasonable efforts to ensure that the SODA SaaS is available for Ordering

Party's use twenty-four (24) hours per day, seven (7) days per week, excluding the System Maintenance Period. CONFIRMIT however makes no guarantees as to uptime or service, and CONFIRMIT is not responsible for any communications failure;

- (d) CONFIRMIT shall make reasonable efforts to provide users with advanced notification of System Maintenance Periods via e-mail or by means of a banner notification on SODA Server pages;
- (e) CONFIRMIT will perform incremental backups on a daily basis and full data backups on a weekly basis;
- (f) In the event of a hosting server, network or other SODA SaaS failure, CONFIRMIT will use commercially reasonable efforts to complete recovery as soon as possible using the most recent version of the backup data, databases, applications and configuration pieces required to restore Ordering Party data; and
- (g) In the event of (i) substantial deterioration of service impacting users; or (ii) service unavailability of the SODA Server; CONFIRMIT shall, assuming the access to the SODA Server is preserved, and to the extent technically feasible, post a message explaining that the servers are not available and ask the visitors to try to come back later.

#### 6.4 Storage, Archiving and Purging.

- (a) Throughout the Term, Ordering Party shall be entitled to use the SODA SaaS to transfer and store data up to the agreed "Maximum Amount of Data", as defined in the License Section above.
- (b) Throughout the Term, CONFIRMIT retains the right to perform data archiving and data purging activities in relation to projects that have remained inactive on the SODA SaaS for a prolonged period of time. The specific business rules triggering archiving first, and then subsequently purging, are outlined in the SODA Documentation applicable at any time. Ordering Party understands and agreed that purged data is permanently deleted and cannot be recovered from the SODA SaaS.

#### 6.5 Ordering Party Responsibilities. Ordering Party agrees that in its use of the SODA SaaS, it will:

- (a) use its own hardware and software to access the Software and / or the SODA SaaS;
- (b) use its own hardware, and SODA Designer software licensed from CONFIRMIT, to create projects and publish projects to the Software;
- (c) when used in a SODA Mobile Seat environment, use its own mobile hardware, and SODA Mobile software licensed by CONFIRMIT, to enter the data to be processed by the Software;
- (d) comply with the applicable system requirements in effect at any time for SODA, and fully abide by the Acceptable Use Policy, both of which are available from [www.confirmit.com/legal](http://www.confirmit.com/legal);
- (e) if applicable use only the number of mobile computing devices or mobile phones for which Ordering Party has purchased SODA Mobile Licenses, as set out in the Order Form;
- (f) verify and accept data from the SODA SaaS to Ordering Party's servers and/or computers at least once for each month during which Ordering Party data is being actively collected and submitted to the SODA SaaS server;
- (g) be responsible for performing its own backups of any data exported from the CONFIRMIT server; and
- (h) be responsible for, and will pay to CONFIRMIT, a reasonable charge for the completion of data recovery requests to restore any Ordering Party data lost due to the failure of Ordering Party's servers and/or computers.

**6.6 Audit.** Notwithstanding any other provision of this Agreement, CONFIRMIT shall have the right to review Ordering Party's computing environment and the usage of the Software on a monthly basis in order to confirm Ordering Party's compliance with this Agreement and with any related Order Form.

**6.7 Ordering Party Data.** The Parties acknowledge that at all times Ordering Party will remain the owner of its data. CONFIRMIT shall not at any time use Ordering Party's data or disclose Ordering Party's data to any third parties other than CONFIRMIT Affiliates, except that CONFIRMIT may store, back-up, view and archive Ordering Party's data with, and disclose Ordering Party's data to, the Hosting Partner for administrative or support purposes in carrying out the



SODA SaaS, and Ordering Party hereby consents to such use and disclosure. Ordering Party shall ensure that, to the extent required by applicable law, it has obtained from any person whose personal information may be contained in Ordering Party's data consent to use and disclose such personal information as contemplated hereunder.

**6.8 Title.** Ordering Party acknowledges that at all times that it has no title to the SODA SaaS and any other hardware, servers, equipment or networks CONFIRMIT uses in the performance of the SODA SaaS.

## **7.0 FEES AND INTEREST**

**7.1 License Fees.** License Fees are payable in full at the beginning of each one-year period. Subsequent purchases during any one-year period are invoiced at the time of purchase or otherwise as agreed between the Parties.

**7.2** Payments shall be made no later than thirty (30) days after receipt by Ordering Party of an uncontested invoice for the fees and charges in question.

**7.3** If Ordering Party or any Ordering Party Affiliates fail to pay an Uncontested Invoice when due, CONFIRMIT shall be entitled to late charges at the rate of ten percent (10%) per annum of the unpaid balance from the date the invoice originally came due. Imposition of late charges shall be without prejudice to CONFIRMIT's right to seek other remedies.

## **8.0 CONFIDENTIALITY**

**8.1 Confidential Information.** Each Party agrees to hold all Confidential Information of the other Party in strictest confidence, not to make use thereof other than for the performance of obligations pursuant to the Agreement, to release it only to their employees or persons contracted to either Party, including CONFIRMIT Affiliates and the Hosting Partner, requiring such information for the performance of their duties, and not to release or disclose it to any third party, except with the disclosing Party's prior written permission. Each Party agrees not to release Confidential Information of the other Party to any of its employees or contractors who are not under an obligation of confidentiality with respect to the use and disclosure of such Confidential Information. Notwithstanding the foregoing, nothing herein will prevent either Party from using, disclosing or authorizing disclosure of Confidential Information of the other Party:

- (a) that now or hereafter becomes disclosed to the public through no action or failure to act on the receiving Party's part;
- (b) that was received by the receiving Party from a third party who obtained such Confidential Information without any third party's breach of any obligation to the disclosing Party;
- (c) that is independently developed by the receiving Party by individuals or entities who have not had access to the Confidential Information disclosed under the Agreement;
- (d) that is disclosed with the written consent of the disclosing Party; or
- (e) is disclosed pursuant to the requirement or request of a governmental agency or is required by operation of law, regulation or court order, provided that prompt notice is given by the receiving Party to the disclosing Party before making such disclosure.

**8.2 Protection.** Each Party agrees to prevent material in its possession or control that contains or refers to Confidential Information of the other Party from being discovered, used, or copied by third parties, shall protect and safeguard such Confidential Information from all loss, theft or destruction, and shall protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information.

**8.3 Return and destruction of Confidential Information.** Upon request at any time during or after the Term, each Party shall, subject to any legal or regulatory obligations imposed upon the recipient requiring it to retain copies of specific Confidential Information, return such Confidential Information of the other or delete, destroy and make permanently unusable such Confidential Information, and upon written request of the other Party certify destruction in writing within ten (10) days. Any request by Ordering Party for CONFIRMIT to return Confidential Information stored on the SODA SaaS, shall be made in writing during the Term and shall be subject to applicable fees for such assistance. Notwithstanding anything to the contrary herein, copies of the Confidential Information made incidental to normal backup of the Recipient's computer network, including the SODA SaaS, are not required to be returned or destroyed; provided, however, that any such Confidential Information so retained shall remain subject to the confidentiality provisions contained herein for so long as it is retained by the recipient.

**8.4 Limitation.** Neither Party grants to the other Party any right, express or implied, in any manner or fashion, to use the name of the other Party, any logo of the other Party, or any trade name, trademark or service mark of the other Party, provided that Ordering Party hereby agrees that CONFIRMIT may refer to Ordering Party as a customer of CONFIRMIT, and may use Ordering Party's trade name and trademark in CONFIRMIT's marketing materials and on CONFIRMIT's website for such purpose. Any other reference to Ordering Party by CONFIRMIT shall require the prior written consent of Ordering Party.

## 9.0 WARRANTIES

9.1 Each Party warrants that it has the right and authority to enter into and perform its obligations under this Agreement; and that it shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to such Party and to its role under this Agreement, including laws relating to IPR, to the right to privacy and to defamation.

9.2 CONFIRMIT further warrants (the "**Limited Warranty**") that (i) the Software and SODA SaaS will perform during the Term substantially in accordance with the SODA SaaS set forth in the applicable Documentation at any time; (ii) any additional services provided under this Agreement will be performed in accordance with generally accepted industry practices and performance standards; and (iii) the SODA SaaS shall not cause or occasion the introduction of virus to Ordering Party provided that CONFIRMIT shall not be liable in circumstances where: (x) Ordering Party or Ordering Party Affiliates have occasioned the introduction into the SODA SaaS of a virus; or (y) the introduction of a virus could not have been prevented notwithstanding CONFIRMIT's timely deployment of industry standard anti-virus software.

9.3 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS ARTICLE 8.4, THE LICENSED MATERIALS ARE PROVIDED "AS IS", AND "AS AVAILABLE" AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONFIRMIT EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE LICENSED MATERIALS, INCLUDING ANY WARRANTIES, CONDITIONS OR OTHER TERMS AS TO MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY CONFIRMIT OR ITS EMPLOYEES OR REPRESENTATIVES OF CONFIRMIT WILL CREATE ANY WARRANTY, AND THIS WARRANTY DISCLAIMER SUPERSEDES ANY SUCH INFORMATION. ORDERING PARTY ACKNOWLEDGES AND AGREES IT HAS SELECTED THE SODA SAAS AND IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE SODA SAAS AND HAS NOT AND SHALL NOT RELY UPON ANY REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR UTILITY OF THE SODA SAAS TO MEET ORDERING PARTY'S NEEDS OR REQUIREMENTS. CONFIRMIT DOES NOT REPRESENT OR WARRANT THAT THE SODA SAAS SHALL BE UNINTERRUPTED OR ERROR-FREE. NOTHING IN THIS SECTION 10.3 LIMITS OR EXCLUDES CONFIRMIT'S LIABILITY FOR FRAUDULENT MISREPRESENTATION.

9.4 In the event of a breach of the Limited Warranty, Ordering Party's and Ordering Party Affiliates' sole remedy and CONFIRMIT's sole obligation is that CONFIRMIT shall make commercially reasonable efforts to restore the SODA SaaS to the contracted level. If CONFIRMIT is unable to restore the SODA SaaS within a reasonable time or at a reasonable cost, either CONFIRMIT or Ordering Party may terminate this Agreement in writing, and in such case CONFIRMIT will refund a pro rata share of the unused portion of the fees Ordering Party has pre-paid to CONFIRMIT under this Agreement.

9.5 CONFIRMIT shall not be liable for any failures, errors and malfunctions caused in whole or in significant part by

- (a) the use of the Software in combination with apparatus, systems, products or services where such combination was not provided, proposed or recommended by CONFIRMIT or contemplated in the Specifications or Documentation, except to the extent such use reasonably constitutes an intended or expected use of such Software and such use was disclosed in writing by Ordering Party to CONFIRMIT in advance of such use; or
- (b) the alteration or modification of the Software after delivery by CONFIRMIT, if such alteration or modification is made by a person other than CONFIRMIT or otherwise without CONFIRMIT's authorization, direction, request or specification; or
- (c) Ordering Party's failure to incorporate any Update that CONFIRMIT has provided to Ordering Party; or
- (d) Ordering Party's operation of the Software in an erroneous way or outside what described in the Documentation or non-compliance with any of the terms of this Agreement;
- (e) the access to or operation of the Software by someone who is not a licensed user; or

- (f) the failure of Ordering Party's systems to meet the applicable system requirements for SODA (as set forth under [www.confirmit.com/legal-notices.aspx](http://www.confirmit.com/legal-notices.aspx)) in effect at the time of occurrence;
- (g) use by Ordering Party in breach of the Acceptable Use Policy for SODA (as set forth under [www.confirmit.com/legal-notices.aspx](http://www.confirmit.com/legal-notices.aspx)); and
- (h) issues due to general internet latency and connection loss, or issues related to inadequate bandwidth, insufficient network, etc, and not related to the SODA SaaS itself.

9.6 As a condition for invoking the Limited Warranty, Ordering Party must give CONFIRMIT written notice of the failure, error or malfunction Ordering Party complains of as soon as it comes to Ordering Party's attention. Furthermore, Ordering Party will make commercially reasonable efforts to deliver to CONFIRMIT a detailed written explanation of how to reproduce the alleged breach of the Limited Warranty. Ordering Party understands that in lack of Ordering Party's ability to provide such explanation, CONFIRMIT may not be able to address the issue.

9.7 If a problem CONFIRMIT has tried to resolve on the assumption that it falls within the Limited Warranty does not in fact do so, Ordering Party shall pay for the Support and other services CONFIRMIT has provided to investigate the problem at the rates CONFIRMIT ordinarily charges for such services. Such charges and reimbursements are however subject to CONFIRMIT having informed Ordering Party in writing in advance, and Ordering Party having approved in writing, through the relevant support ticket or otherwise, about the chargeability of CONFIRMIT's efforts hereunder.

9.8 Ordering Party represents and warrants that (i) where required by applicable law, it has obtained consents to send emails to those target by email activities via the SODA SaaS; (ii) it shall promptly and thoroughly respond to any request or complaint in relation to emails sent via the SODA SaaS; (iii) it shall process opt-out and unsubscribe requests from email recipients, and promptly cease contacting them; (iv) upon CONFIRMIT's request, it shall promptly provide proof that its email recipients have agreed to receive emails from Ordering Party

## 10.0 LIMITATION OF LIABILITY

10.1 TO THE FULLEST EXTENT ALLOWED BY LAW, CONFIRMIT SHALL NOT UNDER ANY CIRCUMSTANCES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWSOEVER CHARACTERIZED, ARISING FROM OR IN ANY MANNER RELATED TO THIS AGREEMENT, ANY ORDER FORM, THE SODA SAAS, SOFTWARE OR DOCUMENTATION OR THE SUBJECT MATTER HEREOF, INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUE OR PROFITS, WASTED ADMINISTRATIVE TIME, COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, OR DAMAGES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION, LOSS OR DELETION OF DATA, OR DELAYS IN OPERATION OR TRANSMISSION. IN THE EVENT OF ANY BREACH BY EITHER PARTY OF THIS AGREEMENT, WITH THE EXCEPTION OF BREACHES OF ARTICLE 8.0 "CONFIDENTIALITY"; SUB-SECTION 9.1 "APPLICABLE LAWS"; OR ARTICLE 11.0: "INDEMNIFICATION", IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE BREACHING PARTY EXCEED 125% OF THE TOTAL AMOUNT PAID TO CONFIRMIT BY ORDERING PARTY DURING THE PRECEDING TWELVE MONTHS, PLUS, IN THE EVENT ORDERING PARTY IS THE BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO CONFIRMIT AT THE TIME OF THE DAMAGES AWARD. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAID OR PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT.

10.2 EXCEPT AS SET FORTH IN THIS ARTICLE, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, IF ANY, SHALL BE LIMITED SOLELY TO DAMAGES AWARDED BY A COURT OF COMPETENT JURISDICTION, IN ACCORDANCE WITH THE PROVISIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE. EACH PARTY ACKNOWLEDGES AND AGREES THE FOREGOING LIMITATIONS, DISCLAIMER AND EXCLUSIONS ARE REASONABLE AND PART OF THE BARGAINED-FOR ALLOCATION OF RISK AND SHALL NOT, AND WAIVES ANY RIGHT TO, PLEAD, ALLEGE OR CLAIM ANY SOLE OR EXCLUSIVE RIGHT OR REMEDY PROVIDED HEREIN IS INVALID OR UNENFORCEABLE BECAUSE IT WILL OR DOES FAIL OF ITS ESSENTIAL PURPOSE.

10.3 No claim, demand, action, legal, regulatory, administrative, judicial or arbitral proceeding may be initiated, brought or commenced by either Party against the other more than two years after the cause of action first arose

## 11.0 INDEMNIFICATION

11.1 Ordering Party shall defend and hold CONFIRMIT and its Affiliates harmless from, and indemnify CONFIRMIT and its Affiliates against all Losses suffered or incurred by it or them as a result of, any third party claim (including in respect of any actual or alleged infringement of any IPR, defamation or breach of any right to privacy), arising out of or related to any (i) actual or attempted access to or use of the Licensed Materials by Ordering Party or any Ordering Party Affiliates or any third party as occasioned by Ordering Party or any Ordering Party Affiliates in any manner and/or for any purpose that breaches any of the terms of this Agreement and (ii) allegations that any materials inputted into or collected into or distributed from the SODA SaaS at Ordering Party or Ordering Party Affiliate's initiative (the "**Ordering Party Materials**"), infringe any IPR or third party rights or are otherwise unlawful.

11.2 CONFIRMIT will defend and hold Ordering Party and Ordering Party Affiliates harmless from, and indemnify Ordering Party and Ordering Party Affiliates against all Losses suffered or incurred by it or them as a result of, any third party claim that Ordering Party's or any Ordering Party Affiliates' access to or use of the Licensed Materials, in accordance with the terms of this Agreement, infringes any IPR subsisting in Canada, in the United States or any country belonging to the European Economic Area. Notwithstanding anything to the contrary herein, CONFIRMIT will have no obligation under this Section or otherwise with respect to any infringement claim based upon any Ordering Party Materials.

11.3 The indemnification obligations contained in this Article 12 are subject to the Party requesting indemnification (i) promptly notifying the other Party of any claim or litigation that is subject to such indemnification obligation; and (ii) not making any admission, statement or taking any action that will cause an increase to the other Party's liability; and (iii) permitting the indemnifying Party, at its election, to control the defense and/or settlement of any such claim or litigation, provided always that no settlement may be made that involves an admission of liability on the part of the Party requesting indemnification without such Party's prior written consent (not to be unreasonably withheld or delayed). The Party requesting indemnification shall have the right, at its own expense, to participate in the defense of any such claim or litigation through counsel of its own choosing, and shall in any event cooperate reasonably with the indemnifying Party in the defense of such claim or litigation.

11.4 If at any time an allegation of infringement of any third party rights is made, or in CONFIRMIT's opinion is likely to be made, in respect of the Licensed Materials, CONFIRMIT may at its own expense (i) obtain for Ordering Party the right to continue using the Licensed Materials; or (ii) modify or replace the Licensed Materials so as to avoid infringement; or (iii) in the event CONFIRMIT is unable to offer either remedy set out in Sub-Sections 11.4 (i) or 11.4 (ii) at a reasonable cost and within a reasonable time, CONFIRMIT may terminate this Agreement and reimburse Ordering Party a pro rata share of the unused portion of the fees Ordering Party has pre-paid to CONFIRMIT under this Agreement.

11.5 This Article states the entire liability of CONFIRMIT with respect to the infringement or alleged infringement of any third party rights of any kind whatever by the Licensed Materials.

## 12.0 DATA PROTECTION

12.1 Ordering Party acknowledges and agrees that CONFIRMIT stores the information gathered by Ordering Party, including any Personal Data, on servers situated on the premises of the third party supplier responsible for the SODA SaaS. CONFIRMIT reserves the right to, in its sole discretion, to change hosting provider and hosting location upon prior notice to Ordering Party.

12.2 In respect of all Personal Data that CONFIRMIT processes on behalf of Ordering Party, CONFIRMIT:

- (a) maintains (and shall procure that the third party supplier responsible for the SODA SaaS undertakes) that it will act only on the instructions of Ordering Party or any Ordering Party Affiliate (such instructions provided via the use of the Service or otherwise) in relation to the processing of such Personal Data in connection with this Agreement, provided that CONFIRMIT will not be in breach of this Agreement or otherwise liable to Ordering Party or any Ordering Party Affiliate or Contractor to the extent that compliance with any such instructions would otherwise constitute a breach by CONFIRMIT of this Agreement and/or of applicable law or regulation;
- (b) subject to the terms of the Agreement setting forth CONFIRMIT's right of time-limited retention of back-ups of data upon termination of the Agreement, and except as reasonably required for the performance of its obligations under the Agreement or as required by law, agrees it will not (and shall procure that the third party supplier responsible for the SODA SaaS will not) retain any copy, abstract, précis or summaries any of such Personal Data;

- (c) will require any agents and sub-contractors to which CONFIRMIT discloses any of such Personal Data for the purposes of carrying out CONFIRMIT's obligations under this Agreement to enter into contractual obligations as to the processing of such Personal Data substantially equivalent to those set out in this Section 8; and
- (d) will not use or disclose any of such Personal Data which comes to its knowledge or possession under or in respect of this Agreement, save as may be necessary for the provision of the SODA SaaS which shall include disclosure to the third party supplier responsible for the SODA SaaS, subject to confidentiality terms substantially equivalent to those set out in this Agreement; or which CONFIRMIT is compelled to disclose by order of a court or other body having similar authority or pursuant to governmental or other regulations.

### 13.0 **GENERAL**

13.1 **Notice.** Any notice required or permitted to be given under the Agreement will be in writing, and be delivered to the address of the Parties as set out in the Order Form or other address as the Parties may, from time to time, designate. Notice will be delivered by personal delivery, courier, registered mail, via facsimile transmission or via confirmed electronic mail. The delivery of a notice will be deemed effective upon receipt, if delivered personally or by courier, or five (5) business days from sending, if delivered by registered mail or the date of transmission, if delivered by facsimile or upon acknowledged receipt by the recipient if delivered by electronic mail.

13.2 **Entire Agreement.** The Order Form and these Terms and Conditions contain the entire agreement between the Parties respecting the subject matter, and supersede all other agreements whether written, or oral between the Parties, it being expressly understood that there are no other representations, terms, warranties, conditions, guarantees, promises, agreements, collateral contracts or collateral agreements express or implied, or statutory, other than those contained in the Agreement and that the Agreement represents the whole of the Agreement between the Parties, and no alteration, modification or amendment hereof will be binding unless made in writing and signed by the Parties hereto. No resellers or other representatives of CONFIRMIT are authorized to make modifications to these Terms and Conditions or to make any additional representations, commitments or warranties of any kind regarding the Software or the provision of the Support Services or SODA SaaS by CONFIRMIT, except by written agreement signed by an officer of CONFIRMIT. Accordingly, no such additional representations, commitments or warranties will be binding on CONFIRMIT and Ordering Party shall not rely upon such statements. The acceptance by CONFIRMIT of any purchase order placed by Ordering Party will be subject to the prior acceptance by Ordering Party of the terms and conditions of this Agreement, and not any terms and conditions set out in the purchase order.

13.3 **Additional Acts.** The Parties will do such additional acts and execute and deliver such further documents as may be requisite to give full effect to the terms of the Agreement.

13.4 **Severability.** The invalidity of any particular portion, section or paragraph of the Agreement will not affect the validity of any other provision herein and, in such event, such invalid provision will be severable from the Agreement and the remainder of the Agreement will be construed as if such invalid provision was omitted.

13.5 **No Waiver.** No waiver by any Party hereto of any breach of any covenant, representation, warranty, proviso, condition or stipulation herein contained whether express or implied or negative or positive in form by any other Party hereto will have any effect or be binding upon any Party hereto unless same will be in writing and under the authority of such Party, and any waiver whatsoever will extend only to the particular breach so waived, and will not limit or affect the right of any Party with respect to any other or further breach.

13.6 **Governing Law.** The address of the CONFIRMIT company which is party to this Agreement shall determine the laws under which this Agreement shall be governed and interpreted:

- (a) When the address of the CONFIRMIT company which is party to this Agreement is within the US or Canada, this Agreement shall be governed by and interpreted in accordance with the laws of the appropriate US or Canadian state, and for the resolution of any disputes arising from or related to this Agreement, the Parties submit to the exclusive jurisdiction of the courts of that US or Canadian state.
- (b) When the address of the CONFIRMIT company which is party to this Agreement is not within the US or Canada, this Agreement shall be governed by and interpreted in accordance with the laws of England and Wales, and for the resolution of any disputes arising from or related to this Agreement, the Parties submit to the exclusive jurisdiction of the English courts.

13.7 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

13.8 **Gender.** Whenever the singular or the masculine is used herein, same will be deemed to include reference to the plural, feminine and body corporate as necessary.

13.9 **Enurement.** The Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

13.10 **Assignment.** Nothing in the Agreement will prevent CONFIRMIT from transferring or assigning its rights pursuant to the Agreement, whether in whole or in part. Ordering Party is not entitled to assign its rights or obligations under the Agreement except with express written consent from CONFIRMIT.

13.11 **Compliance with Laws.** Ordering Party represents, warrants and covenants to CONFIRMIT that it is and shall in its use of the Software, the Support Services and the SODA SaaS under the Agreement, as applicable, comply with all applicable local, provincial, federal and international laws, including but not limited to those laws regarding:

- (a) court ordered publication bans;
- (b) restrictions on publishing, printing, distributing, possessing, selling, advocating, promoting or exposing, obscene or threatening material, child pornography, or hate propaganda and Ordering Party understands that these situations could generate criminal liability;
- (c) restrictions on the use of trade-marks or trade names, or any work which is protected by copyright, trade secret, patent or other intellectual property laws, including without limitation, software;
- (d) restrictions on defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability; and
- (e) export and import restrictions.

13.12 **Intellectual Property.** This Agreement does not limit any rights that CONFIRMIT or any of its Affiliates may have under trade secret, copyright, patent, trademark or other laws.

13.13 **Taxes.** Ordering Party shall be responsible for the payment of all taxes applicable to any payment hereunder. In the event that CONFIRMIT has paid any such taxes on behalf of Ordering Party, CONFIRMIT shall be entitled to be reimbursed by Ordering Party upon presentation of any proof of such payment. Without limiting the generality of the foregoing, any payments owing to CONFIRMIT are payable in full and any amount applicable to sales or other taxes are payable by Ordering Party in addition to such amount payable.

13.14 Any communication between the Parties with regard to this Agreement, including but not limited to any negotiations, notices, disputes or legal proceedings etc., shall be made and held in the English language.