



Toolio Subscription & Services Agreement

THIS TOOLIO SUBSCRIPTION & SERVICES AGREEMENT (“**AGREEMENT**”) GOVERNS CUSTOMER’S ACQUISITION AND USE OF THE PRODUCTS AND SERVICES PROVIDED BY BOZBURUN, INC., A DELAWARE CORPORATION WITH A PRINCIPAL BUSINESS LOCATION AT 185 WYTHE AVE, BROOKLYN, NY 11249 (“**TOOLIO**”). CUSTOMER ACCEPTS THIS AGREEMENT BY (1) EXECUTING A SUPPLEMENTAL DOCUMENT THAT REFERENCES THIS AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME, OR (2) ACCESSING THE TOOLIO WEBSITE TO USE THE PRODUCTS AND SERVICES (“**EFFECTIVE DATE**”).

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 “**YOU**” or “**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 PRODUCTS AND SERVICES.

This Toolio Subscription & Services Agreement (“**Agreement**”) is between **Customer** and Bozburun, Inc., a Delaware corporation with a principal business location at 185 Wythe Ave, Brooklyn, NY 11249 (“**Toolio**”). In accordance with the applicable Supplemental Documents, the following are the terms and conditions that shall govern Toolio’s provision of the Products and/or Services to Customer.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

Capitalized terms not otherwise defined in the first instance of their use shall have the meanings ascribed to them in this Section 1

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the applicable entity. For purposes of this definition, “control” means, direct or indirect, ownership or control of more than fifty percent (50%) of the applicable entity.

“**Customer Data**” means, other than Generic Data, all data or information submitted, posted or created by or on behalf of Customer in the course of using the Products and/or Services.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Products**” means the online, web-based application provided by Toolio via the Toolio Website or other designated application service providers as described on the Toolio Website and licensed in accordance with the applicable Supplemental Documents.

“**Services**” means services provided by Toolio or Toolio’s third party affiliates as described on the Toolio Website and in accordance with the applicable Supplemental Document.

“**Supplemental Document**” means an ordering document for Customer’s purchases of Products and/or Services from Toolio that is executed by the parties and references this Agreement. Supplemental Documents include, but are not limited to, Statements of Work and Order Forms.

“Toolio Website” means the website operated by Toolio at the URLs <https://toolio.com>, or any successor or affiliated website Toolio designates, through which the Products and Services may be made available to Customer.

“Users” means individuals who are authorized by Customer to use the Cloud Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate/Order Form or amendment to this Agreement, for whom subscriptions to a Cloud Service have been procured. Users may include but are not limited to Customers and Customer’s affiliates’ employees, consultants, contractors and agents.

2. PRODUCTS AND SERVICES

2.1. Supplemental Documents. The parties shall execute a Supplemental Document for any Product(s) to be licensed and/or Service(s) to be purchased by Customer from Toolio hereunder.

2.2. Infrastructure Requirements. Customer agrees that it shall be responsible for the cost of and the providing and maintaining of all necessary telecommunications equipment, including, but not limited to, the following: computers, internet connectivity, software and other materials at Customer’s location(s) necessary for accessing the Toolio Website.

3. USE OF PRODUCTS.

3.1. Toolio’s Responsibilities. Toolio shall provide the Services and make the Products available to Customer pursuant to the terms of the applicable Supplemental Document and this Agreement; provided, however, that Customer acknowledges that the Toolio Website may be unavailable from time to time for maintenance and such unavailability will not be considered a breach of this Agreement. Toolio will use reasonable efforts to give written notice (including by email) to Customer prior to any scheduled service disruption.

3.2. Customer’s Responsibilities. Customer shall be responsible for all activities that occur in User accounts and for Users’ compliance with this Agreement. In addition, Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, notify Toolio promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal and foreign laws in using the Products. Toolio is not responsible for determining the requirements of laws applicable to Customer’s business, including those relating to the Products that Customer acquires under this Agreement, or Toolio’s provision of or Customer’s receipt of a particular Product under this Agreement meets the requirements of such laws. Customer shall also provide all assistance reasonably requested by Toolio and shall permit Toolio to access and use its systems, facilities, and materials (including the Customer Data) for purposes of performing Services and/or providing the Products hereunder.

3.3. Toolio Guidelines. Customer shall use the Products solely for Customer’s internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Products available to any third party, other than to Users or as otherwise contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store Malicious Code; (v) interfere with or disrupt the integrity or performance of the Products or the data contained therein; (vi) attempt to gain unauthorized access to the Products or Toolio’s related systems or networks; (vii) access the Products if Customer is a direct competitor of Toolio, except with Toolio’s prior written consent; or (viii) access the Products for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.4. Security. Each party agrees (i) it shall maintain information security measures designed to protect Customer Data from unauthorized disclosure or use, and (ii) it shall, upon request, provide the other party

with information regarding such security measures upon the reasonable request of such party and promptly provide the requesting party with information regarding any failure of such security measures or any security breach related to Customer Data. Customer acknowledges and agrees that Toolio may use one or more third-party providers to host the Products.

4. FEES AND PAYMENT.

4.1. Fees. Customer shall pay all fees specified in all Supplemental Document(s) hereunder. All fees are quoted and payable in United States dollars. Except as otherwise specified herein or in a Supplemental Document, fees are based on Products and/or Services procured, payment obligations are non-cancelable, fees paid are non-refundable, and the Products and/or Services procured cannot be decreased during the relevant term stated on the Supplemental Document.

4.2. Invoicing and Payment. Toolio will invoice Customer for: (i) Products in advance for the applicable subscription term; and (ii) Services in accordance with the applicable Supplemental Document. Unless otherwise stated in the Supplemental Document, charges are due within thirty (30) days from the invoice date.

4.3. Overdue Payments. Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Toolio's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

4.4. Suspension of Products and/or Services. If Customer's account is thirty (30) days or more overdue, in addition to any of Toolio's other rights or remedies, Toolio reserves the right to suspend the Products and/or Services provided to Customer, without liability to Customer, until such amounts are paid in full.

4.5. Taxes. Unless otherwise stated, Toolio's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes. (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder, excluding taxes based on Toolio's net income or property. If Toolio has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Toolio with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. INTELLECTUAL PROPERTY.

5.1. Residuals. Customer acknowledges that Toolio, in the provision of the Products and/or Services, may use concepts or modifications of concepts developed while serving other clients. Customer acknowledges the benefit which may accrue to Customer, and Customer expressly and irrevocably permits Toolio to continue in perpetuity, and without payment of a royalty, this practice of using concepts developed while serving Customer and modification of such concepts. The terms of this Section do not, however, affect the obligations of the parties under the Section 6 (Confidentiality).

5.2. Toolio Intellectual Property. Toolio and its licensors shall own the Products, Services, Toolio Website, including the underlying structure, functions, methods of operation, and ideas related thereto, and all documents, code, works of authorship, programs, manuals, tools, user interfaces, deliverables, developments, processes, formulae, data, specifications and inventions provided, created, owned, licensed, developed, authored or invented by Toolio (including its employees and contractors) prior to or independently of the Agreement, as well as enhancements, derivative works and/or modifications to the foregoing created by Toolio in the course of this Agreement and any Supplemental Document; all of such right, title and interest in them shall remain vested with Toolio (collectively, "**Toolio Materials**"). Except for the limited, express license and access grant provided to Customer pursuant to this Agreement, nothing in this Agreement shall grant to or confer upon Customer expressly or by implication any rights to such Toolio Materials.

5.3. Generic Data. If Toolio uses any Customer Data to improve or in connection with any Products and/or Services (“**Generic Data**”), Toolio shall anonymize any reference to Customer in the Generic Data, and the Generic Data shall be otherwise aggregated, de-identified and/or compiled on a generic basis. Subject to the foregoing, Customer hereby grants to Toolio a non-exclusive, worldwide, perpetual, fully-paid up license to use, copy, perform, display, distribute, and create derivative works of the Generic Data.

5.4. Suggestions. Toolio shall have and is hereby granted a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Products and/or Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer’s or Customer’s users relating to the Products and/or Services.

6. CONFIDENTIALITY.

6.1. Definition of Confidential Information. As used herein, “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Supplemental Document hereunder), the Products and/or Services, the Customer data, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall 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) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

6.2. Protection. Each party agrees to 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 using less than reasonable care).

6.3. Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.4. Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief.

6.5. Access to Data. During the term of this Agreement, Customer shall have access to Customer Data. Customer is solely responsible for retrieving any data stored or used with the Products while Customer has access to the Products, and upon the effective date of the termination of the Products, Customer will not have access to the Products. Toolio shall also be permitted to retain Generic Data. For the avoidance of doubt, Toolio shall have no obligation to retain any data after the effective date of termination.

7. INDEMNIFICATION.

7.1. Indemnification by Toolio. Subject to this Agreement, Toolio shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively, “**Claims**”) made or brought against Customer by a third party alleging that the use of the Products as contemplated hereunder infringes the patents and/or copyrights of a third party; provided, that Customer: (i) promptly gives written notice of the Claim to Toolio; (ii) gives Toolio sole control of the defense and settlement of the Claim (provided that Toolio may not settle or defend any Claim absent Customer’s written consent (not to be unreasonably withheld)

unless it unconditionally releases Customer of all liability); and (iii) provides to Toolio, at Toolio's cost, all reasonable assistance. Toolio shall have no obligation regarding any claim arising from or relating to, in whole or in part, any of the following: (a) anything provided by Customer or a third party on Customer's behalf; (b) modification of Products by Customer or a third party on Customer's behalf; (c) the Products' use other than in accordance with its applicable licenses and restrictions; (d) the combination, operation, or use of the Products with anything not provided by Toolio; or (e) the distribution, operation, or use of the Products outside Customer and Customer's Affiliates or for the benefit of any third party.

7.2. Indemnification by Customer. Subject to this Agreement, Customer shall defend, indemnify and hold Toolio, its Affiliates and the officers, directors, employees, contractors and agents of Toolio and its Affiliates harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Toolio by a third party arising out of or resulting from: (i) any negligent, willful or unlawful act or omission by Customer; (ii) violation of any applicable laws or regulation by Customer; (iii) Customer's breach of this Agreement; (iv) Customer's relationship with its employee(s), contractors or other third parties performing services or providing products on behalf of Customer (including in connection with any procurement activities related to any Supplemental Document); and (v) any allegations that the Customer Data, any materials provided by Customer (e.g., any intellectual property that Customer may provide hereunder) or Customer's use of the Products in violation of this Agreement, infringes the intellectual property rights of a third party; provided, that Toolio (i) promptly gives written notice of the Claim to Customer; (ii) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim absent Toolio's written consent (not to be unreasonably withheld) unless it unconditionally releases Toolio of all liability); and (iii) provides to Customer, at Customer's cost, all reasonable assistance.

8. WARRANTIES AND DISCLAIMERS.

8.1. Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement. Further, Toolio represents and warrants that: (i) Toolio will provide the Products and Services in accordance with the applicable Supplemental Document; (ii) the functionality of the Products will not be materially decreased during a subscription term, except during a scheduled service disruption as provided herein or in the applicable Supplemental Document; and (iii) Toolio will implement reasonable measures to assure that the Products will not contain or transmit to Customer any Malicious Code.

8.2. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TOOLIO AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES (INCLUDING IMPLIED AND STATUTORY WARRANTIES) OTHER THAN THOSE EXPRESSLY PROVIDED IN SECTION 8.1, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. FURTHER, TOOLIO AND ITS SUPPLIERS DO NOT WARRANT THAT ANY PRODUCTS AND/OR SERVICES SHALL MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR ARE ERROR FREE. TOOLIO DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, MAINTENANCE OR PERFORMANCE THEREOF. ANY ESTIMATE REGARDING SCOPE, TIME OF COMPLETION, COSTS, OR OTHER MATTERS WHICH MAY BE PROVIDED BY TOOLIO ORALLY OR IN WRITING (WHETHER IN A SUPPLEMENTAL DOCUMENT OR OTHERWISE) ARE GIVEN USING COMMERCIALY REASONABLE METHODS OF ESTIMATION AND ARE IN GOOD FAITH, BUT SHALL NOT BE CONSTRUED AS A WARRANTY OR GUARANTEE OF ANY TYPE. TOOLIO DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY DATA (INCLUDING ANY CUSTOMER DATA) AND/OR INPUT OR REPRESENTATIONS BY THIRD PARTY SUPPLIERS.

9. LIMITATION OF LIABILITY.

9.1. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY

CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS.

9.2. Exclusion of Consequential and Related Damages. CUSTOMER AGREES THAT THE CONSIDERATION WHICH TOOLIO IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY TOOLIO OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND OR LOSS OF CUSTOMER DATA, REVENUE, PROFITS, OR ANTICIPATED SAVINGS OR ACCURACY OF ANY DATA AND/OR INPUT OR REPRESENTATIONS BY THIRD PARTY SUPPLIERS, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. TERM AND TERMINATION.

10.1. Term of Agreement. Unless otherwise provided in an Order Form, this Agreement shall commence on the Effective Date listed above and shall continue until expiration or termination of this Agreement or Order Forms executed hereunder.

10.2. Subscription Term. Except as specified otherwise in an Order Form, a standard Subscription Term is for a one (1) year Subscription Term commencing on the Effective Date. Customer's subscription to the Hosted Service will automatically renew for additional one (1) year periods unless either party notifies the other of its intent not to renew in writing at least fifteen (15) days prior to the expiration of the then-current Subscription Term. In the event that any Subscription Term expires before Customer makes a payment for a renewal Subscription Term, Carta reserves the right to charge: (a) a proportionate fee for the elapsed time period during which the Subscription Term was expired and (b) a reactivation fee to process the renewal.

10.3. Termination for Cause. A party may terminate this Agreement and any Supplemental Document for cause: (i) upon thirty (30) days written notice of a material breach of the Agreement to the other party 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. Upon any termination for cause by Customer, Toolio shall refund Customer the pro-rata portion of any prepaid fees covering the remainder of the subscription term after the date of termination.

10.4. Termination by Toolio. Toolio may at any time terminate this Agreement and any applicable Supplemental Document in the event that: (i) Toolio is required to do so by law (e.g., the provision of the Services to Customer is, or becomes, unlawful); (ii) the provision of the Services to Customer by Toolio is, in Toolio's opinion, no longer commercially viable; or (iii) Toolio has elected to discontinue the Services (or any part thereof). Upon any termination by Toolio pursuant to Section 10.3(ii) or Section 10.3(iii) above, Toolio shall refund Customer the pro-rata portion of any prepaid fees covering the remainder of the subscription term after the date of termination.

10.5. Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Toolio prior to the effective date of termination. Notwithstanding anything to the contrary in this Agreement or the applicable Supplemental Document, if Toolio terminates Customer's access to the Products and/or Services due to Customer's breach of any of the applicable terms of this Agreement, Toolio is not obligated to issue a refund or credit for any unused portion of such Services.

10.6. Return and/or Deletion of Customer Data. Within a reasonable period after the termination or expiration of the applicable Supplemental Document and in accordance with Section 6.5, Toolio will return and (if so requested by Customer in writing or otherwise elected by Toolio) delete all Customer Data in Toolio's systems or otherwise in Toolio's possession or under Toolio's control; provided, however, the foregoing shall not affect Toolio's rights to Generic Data set forth in Section 5.3 above, and Toolio shall be permitted to retain Generic Data after the termination or expiration of the applicable Supplemental Document and this Agreement.

10.7. Effect of Termination and Surviving Provisions. If this Agreement and/or the Supplemental Document is terminated, Toolio will cease to provide all Products and Services hereunder for Customer's account and all licenses and access rights granted to Customer hereunder shall immediately terminate. Accordingly Customer must immediately cease all access to and use of the Products and Services and the Toolio Website. The following provisions shall survive any termination or expiration of this Agreement: Sections 3.2 through 3.5 and Sections 4 through 12.

11. DISPUTE RESOLUTION.

11.1. Informal Dispute Resolution Procedures. Any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including, but not limited to, disputes as to the creation, validity, interpretation, breach or termination of this Agreement or any Supplemental Document) (a "**Dispute**") will be considered in accordance with the dispute resolution procedures set forth in this Section

11. The dispute resolution process will be initiated upon receipt by a party of a notice from the other party specifying the nature of the Dispute. Notwithstanding the foregoing, either party may commence proceedings if delay in doing so would be prejudicial, because of the need for immediate provisional remedies, imminent expiration of applicable statutes of limitation, or other good cause.

11.2. Resolution Without Proceedings. The parties intend to use reasonable measures to avoid the litigation of any dispute under this Agreement. As a result, the parties mutually agree that any Dispute arising under or in connection with this Agreement will be resolved using the alternative dispute resolution provisions and procedures described in the Sections below. Except as otherwise agreed, the parties will each bear all of their own expenses incurred during the procedures and will pay one-half of any applicable fees of any mediator or third-party agency engaged to assist in resolution of disputes short of legal or arbitral proceedings. All negotiations pursuant to this Section 11 are confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. No proposals, offers, counter-offers or other communications will be admissible in evidence in any proceeding for any purpose; provided, however, that this will not be construed to render confidential, inadmissible or non-discoverable any otherwise admissible documents or other evidence merely because they were referred to, transmitted or otherwise used in any such settlement negotiations.

11.3. Negotiation. Upon written notice by either party, a Dispute will be submitted to the other party, who will meet and employ their best efforts to negotiate an amicable resolution of the Dispute. Unless the parties otherwise agree, this meeting and negotiation will occur no later than ten (10) days from the date of submission of the Dispute to such party, whichever occurs last.

11.4. Arbitration. Except as otherwise expressly set forth in an Agreement, any dispute that the parties are unable to resolve through negotiation will be submitted to binding arbitration in New York City, New York, administered by JAMS. In all disputes there shall be one (1) arbitrator agreed to by the parties. The arbitrator shall have a minimum of seven (7) years of experience in business process outsourcing engagements. The arbitrator shall issue a decision in writing, stating reasons therefor, including both findings of fact and conclusions of law, and may award any remedy available at law or in equity (consistent with the terms of this Agreement). The arbitrator shall have no power to amend or supplement this Agreement to award damages other than as permitted by this Agreement, or to fail to follow applicable law. Any award rendered by the arbitrator shall be final and binding on the parties, and may be confirmed by the judgment of a court of competent jurisdiction.

12. GENERAL PROVISIONS.

12.1. 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. Toolio may subcontract the performance of its obligations under this Agreement to a third party without the prior approval of Customer; provided, however, Toolio shall remain responsible for the performance of any such obligations under this Agreement.

12.2. No Third-Party Beneficiaries. Except for the indemnities set out in Section 7 (Indemnification) and solely for purpose of such indemnities, there are no third-party beneficiaries to this Agreement.

12.3. Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email.

12.4. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.5. Force Majeure. If and to the extent that a party's performance of any of its obligations pursuant to the Agreement (other than its obligation to pay amounts due thereunder) is prevented, hindered or delayed by fire, flood, hurricane, earthquake, other elements of nature or acts of God, acts of war, acts of a public enemy, acts of a nation or any state, territory, province or other political division, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, theft, quarantine restrictions, freight embargoes or any other similar cause in each case beyond the reasonable control and without the fault or negligence of such party (each, a "**Force Majeure Event**"), then the non-performing, hindered or delayed party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues.

12.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.7. Attorney Fees. Customer shall pay on demand all of Toolio's reasonable attorney fees and other costs incurred by Toolio to collect any fees or charges due Toolio under this Agreement following Customer's breach of Section 4 (Fees and Payment).

12.8. Publicity. Unless a party objects in writing, either party may identify the other as a user or customer, as applicable, and may use the other's name and logo in customer or vendor lists, press releases, blog posts, advertisements, and on their respective websites.

12.9. Excuse from Performance. Toolio will be excused from failures to perform the Services and providing the Products to the extent that Customer or its agents fail to perform any of its obligations as identified in the applicable Supplemental Document in a timely manner or commit any other act or omission that causes Toolio's failure to perform the Services or provide the Products. Toolio shall be entitled to be compensated for any additional material costs incurred as a result of any delay or failure to perform on the part of Customer.

12.10. Assignment. Subject to Toolio's right to subcontract pursuant to Section 12.1, neither party shall assign or otherwise transfer this Agreement or any rights or obligations contained herein without the prior written consent of the other party. Notwithstanding the above, Toolio may assign its rights and obligations under this Agreement, without the consent of Customer, to an Affiliate or to a successor in interest to all or substantially all of its business or assets that relates to the subject matter of this Agreement.

12.11. Governing Law. This Agreement shall be governed exclusively by the laws of the State of New York, without regard to its conflicts of laws rules.

12.12. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in connection with this Agreement. Without limiting the foregoing, each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports.

12.13. Entire Agreement. This Agreement, including all Supplemental Documents and appendices thereto, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions of this Agreement and a Supplemental Document, the descending order of precedence shall be as follows: (i) this Agreement; and (ii) the applicable Supplemental Document. Notwithstanding the foregoing, this Agreement may be modified by specifically referencing the relevant conflicting provision of this Agreement. Notwithstanding any language to the contrary therein, no terms or conditions stated in a purchase order or in any other order documentation (excluding duly executed Supplemental Documents) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction.