



SERVICES AGREEMENT AND TERMS OF USE

This Services Agreement and Terms of Use (as amended from time to time, the “Terms of Use”) is by and between you (together with any legal entity by which you are employed or which you otherwise represent, “you” or “your”) and Newforma, Inc., a New Hampshire corporation with a principal office address of 1750 Elm Street, 10th Floor, Manchester, New Hampshire 03104, USA., together with each of its subsidiaries performing services on its behalf (collectively, “Newforma” or “SmartUse”).

The purpose of the Terms of Use is to set forth the general terms and conditions applicable to your use of the Site and any Application, and the provision of products and services relating thereto by Newforma, including without limitation, the software-supported services, including all software, platforms and applications used by SmartUse to display and perform such services, including the Application and the Site (collectively, the “Services”). For avoidance of doubt, the Services do not include the Consulting Services (defined below in Section 1). By using the Site or the Application or by registering with Newforma, you acknowledge and agree that you are bound by these Terms of Use, as amended.

DO NOT USE THE SERVICES UNTIL YOU HAVE CAREFULLY READ THESE TERMS OF USE. BY USING THE SERVICES, YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING THE LIMITATIONS ON LIABILITY SET FORTH HEREIN. If you do not agree with any part of these Terms of Use, you must stop using the Site and the Application immediately.

1. DEFINITIONS. As used in the Terms of Use, the following terms have the following meanings:

- “Agreement” shall individually and collectively refer to these Terms of Use, together with any Order Form, and any Consulting Services Agreement.
- “Application” refers to the SmartUse Application and/or any other application owned, developed or maintained by Newforma and made available for download, access, or use, as context may require, including any such software associated therewith.
- “Authorized User” means any natural person, entity, business, enterprise and/or computer application or process that Subscriber permits to access the Application, including without limitation (i) an employee, or (ii) any third party (including any, consultant, subcontractor, agent, vendor, client or other person) designated by Subscriber as a person who is permitted to access the Application by or on its behalf.
- “Consulting Services Agreement” means the Consulting Services Agreement if any, by and between you and Newforma for the provision of Consulting Services by Newforma.
- “Consulting Services” shall mean certain consulting, implementation, and technical consulting services that may be provided by Newforma for Subscriber in accordance with the Consulting Services Agreement, as more specifically set forth in statement(s) of work attached thereto. Consulting Services shall not include the Services.
- “Content” refers to all PDF files, data and any other information or materials uploaded by or on behalf of you to the Site or the Application in connection with your use of the Services.
- “Device” means any device upon which the Application can be downloaded, installed, accessed and used.
- “Documentation” means the online or other documentation provided by SmartUse as part of, or in the course of providing the Services or the Consulting Services, including without limitation, any documentation describing the Application or its use. Subscriber shall use the Documentation only as expressly permitted in this Agreement.
- “Site” collectively refers to www.smartuse.com, www.newforma.com, and all related URLs owned or operated by Newforma.
- “Order” means an order for the Services placed by a Subscriber, whether by executing an Order Form, by purchasing access to the Services by downloading the Application and making payment for

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such access by credit card or other electronic means, or by downloading the Application from the Site for a free trial.

- “Order Form” means an order form or other document executed by the parties that specifies the Services and certain Consulting Services, if any, purchased by the Subscriber under this Agreement, the Subscription Term, fees and payment terms.
- “Privacy Policy” means the Newforma Privacy Policy, as amended from time to time in accordance with its terms, and posted to the Site at www.newforma.com/privacy-policy/.
- “Subscriber” means the person or entity that placed an Order.
- “Subscription Term” means the period during which the Services may be used, or provided, as specified in the Order Form, and as may be renewed pursuant to Section 7.1.

2. LICENSE TO USE SERVICES. The Services include, without limitation, the SmartUse Application, all functionality associated therewith, and the password restricted and unrestricted access portions of the Site. Unless explicitly stated otherwise, any new features that augment or enhance the current products or services shall be subject to this Agreement. Upon placing an Order, the following provisions of this Article 2 shall apply:

2.1 Service, Grant of License.

(a) Subject to your compliance with this Agreement, upon registration and during the Subscription Term, SmartUse grants to you a non-exclusive, non-transferable, revocable right to download, install, access and use the Application on any Device by using your designated e-mail address and password (“Credentials”), and to use the Documentation solely in conjunction with Subscriber’s licensed use of the Services. Except for the limited rights expressly granted to Subscriber hereunder, Newforma reserves all rights, title and interest in and to the Services, the underlying software, the Documentation, and the Consulting Services, including all related intellectual property rights inherent therein. Newforma does not grant you any rights whatsoever in relation to the Services other than as expressly set forth in this Agreement. You can download and install the Application on as many Devices as you want.

(b) You can register with Newforma by visiting the Site, or by downloading the Application, and clicking the “sign up” button. During registration, you will need to provide an email address and create a password. The Credentials are used by SmartUse to authenticate your use and access of the Application on any Device and your account on the Site. You are responsible for all access granted and uses of the Application or the Site by users that have logged in using your Credentials, including use by others to whom you may have given your Credentials. You shall be responsible for maintaining and protecting your Credentials and your Content. You must keep your information current and notify SmartUse promptly of any changes. You are solely responsible for any activity of users logged in to your account, whether or not you authorized that activity. You should immediately notify SmartUse of any unauthorized use of your account or if your email or password has been hacked, stolen or compromised in any way. If you discover that someone is using your password or account without your consent, you shall notify SmartUse immediately. SmartUse reserves the right to suspend or discontinue all or part of the Services at any time with or without prior notice.

2.2 Ownership. You acknowledge that (i) all right, title and interest in and to the Services, the Application, Site and the Documentation, and all patents, copyrights, trade secret rights, trademarks, trade names, services marks and other proprietary rights embodied therein or associated therewith, are and shall remain with SmartUse and/or its third party licensors if applicable; (ii) this Agreement conveys no right or interest in the Services, the Application, Site or Documentation other than a limited right to use the Services in accordance herewith; (iii) the Services, Application, Site and Documentation are protected by the copyright laws of the United States and international treaties; and (iv) SmartUse asserts that the Services, Application, Site and Documentation embody valuable confidential and secret information of



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SmartUse, the development of which required the expenditure of considerable time and money.

2.3 Your Content (a) You may upload Content through the Application in connection with your use of the Services. SmartUse does not own any of Your Content. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of Your Content. Such Content shall be stored and/or backed-up on SmartUse's servers or on servers of trusted third parties as necessary for SmartUse to provide its Services. SmartUse will not share your Content with others without your permission, except as otherwise may be provided in the Privacy Policy.

(b) You represent and warrant that (i) you are the owner of or legal custodian of all your Content and have the full authority to transmit and store your Content using the Services; and (ii) you will not upload, record, publish, post, link to, or otherwise transmit or distribute Content that: (A) advocates, promotes, incites, instructs, informs, assists or otherwise encourages violence or any illegal activities; (B) infringes or violates the copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property rights of any third party or SmartUse, or any rights of publicity or privacy of any party; (C) attempts to mislead others about your identity or the origin of a message or other communication, or impersonates or otherwise misrepresents your affiliation with any other person or entity, or is otherwise materially false, misleading, or inaccurate; (D) promotes, solicits or comprises inappropriate, harassing, abusive, profane, hateful, defamatory, libelous, threatening, obscene, indecent, vulgar, pornographic or otherwise objectionable or unlawful content or activity; (E) is harmful to minors; (F) contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, personal information, or property of another; or (G) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising).

(c) You acknowledge that other Authorized Users will have access to your Content, and you acknowledge the risks in allowing other Authorized Users access to your Content, including the risk that (i) your Content is deleted, modified, corrupted or destroyed by other Authorized Users; (ii) that files containing your Content are contaminated by viruses or other malware introduced by other Authorized Users; (iii) that confidential information in such Content is made available to other Authorized Users; and (iv) that such Content could be subsequently disclosed or otherwise made available to third parties by other Authorized Users under circumstances where the confidentiality of such Content is not protected. SmartUse shall not be responsible for the deletion, modification, corruption, destruction or loss of your Content resulting from any action or inaction of Subscriber or any other Authorized User.

(d) You acknowledge that the Services are automated (e.g., Content is uploaded and submitted using software tools) and that SmartUse personnel may access any Content to perform the Services, including but not limited to the following: (i) during any service interruption, as necessary to restore the applicable Content; (ii) to troubleshoot any issue with the Services or to help improve the Services; or (iii) as deemed necessary or advisable by SmartUse to ensure compliance with this Agreement or to conform to legal requirements or comply with legal process.

(e) The Services include features that allow you to share Content with others or to make it public. There are many things that users may do with that Content (including copying it, modifying it, re-sharing it). SmartUse has no responsibility for such activity. You should consider carefully what you choose to share or make public.

2.4 Restrictions on Use. In connection with your access or use of the Services, you agree to comply with the following use restrictions. You agree not to misuse the Services. For example, you must not, and

must not attempt to, use the Site or Application to do the following things:

- Breach any law, third party rights or any applicable codes or regulations;
- probe, scan, or test the vulnerability of any system or network;
- send unsolicited or unwelcome messages;
- collect or store personal data about others without permission;
- access, tamper with, or use non-public areas of the Site or Application, shared areas you have not been invited to, or SmartUse computer systems;
- breach or otherwise circumvent any security or authentication measures;
- plant malware or otherwise use the Site or the Application to distribute malware;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Site or Application;
- send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- publish anything that is fraudulent, misleading, or infringes another's rights;
- undertake promotions or commercial activity;
- impersonate or misrepresent your affiliation with any person or entity; or
- publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry, religious, racial or ethnic hatred.

2.5 Certain Obligations. (a) You are responsible, at your expense, for obtaining and maintaining all of the hardware, software, internet and other services that you may need to use the Services. You are responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user ID's or other login information (collectively, "Passwords") that are provided to you or that are generated in connection with your use of the Services. (b) You (i) shall not interfere with or attempt to interfere with or disrupt the integrity, security, functionality or proper operation of the Services; (ii) shall not attempt to copy, alter, modify, adapt, translate or create derivative works of the Services, Application or Documentation; (iii) shall not attempt to reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of, the Application or Services; (iv) shall not attempt to discover or use any license keys, access codes, passwords or similar information made available to Newforma or others from time to time in connection with the Services; (v) shall not attempt to discover, access, read, alter, destroy, or damage any data or other information stored via the Services by any other party; (vi) shall not disclose or make any Password(s) available to any other person; and (vii) shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Services. (c) You are fully responsible for all activities that occur on the Services under your Password(s). You shall notify SmartUse immediately in the event of any threat or actual claim based on the infringement of any third party intellectual property rights, including without limitation regarding the Content or Services.

2.6 Suspension, Limitation or Termination. (a) SmartUse shall be entitled, without liability to you, to suspend, terminate or limit your access to or use of the Services or any portion thereof at any time if you breach any term of this Agreement. (b) In addition, SmartUse shall have the right, without liability to you, to suspend, terminate or limit your access to or use of the Services or any portion thereof if such access is suspended, terminated or limited by SmartUse's service providers for any reason, including, without limitation in the event (i) that a service provider determines that the Services are being used in violation of applicable federal, state or local law or ordinance; (ii) that a service provider determines that the Services are being used in an unauthorized or fraudulent manner; (iii) that a service provider determines that your use of the Services violates such service

provider's acceptable use policy, (iv) that a service provider determines that the use of the Services adversely affects such service provider's equipment or service to others; (v) that a service provider is prohibited by an order of a court or other governmental agency from providing the Services; (vi) of a denial of service attack or any other event which a service provider determines, in its sole discretion, may create a risk to its service or to any other customers if the Services were not suspended; or (vi) of a security incident or other disaster that impacts the Services or the security of any content stored via the Services. Your access to and use of the Services may also be suspended for the duration of any scheduled maintenance or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as a result of power outages, system or internet failures or other interruptions, or any other acts, omissions or failures on the part of SmartUse's service providers.

2.7 Third Party Software. The Services may utilize Third Party Software. As used herein, "Third Party Software" means third party computer programs to which you are provided electronic access in connection with the Services. Your use of Third Party Software in connection with the Services shall be subject to the terms and conditions set forth herein and any other terms and conditions placed on the use of the Third Party Software by its owner.

2.8 Maintenance and Support. SmartUse will provide basic technical and product support to the Subscriber and such other Authorized Users as agreed upon by SmartUse in its sole discretion; provided that SmartUse shall have no obligation to provide any such services in the event Subscriber has failed to pay any amounts due to SmartUse for the Services or the Consulting Services. Basic support for the Series does not include any Consulting Services, which Newforma may provide pursuant to the terms of the Consulting Agreement. Support may be provided on behalf of SmartUse by an independent contractor. In no event will SmartUse be obligated to provide support to outdated versions of the Application or with respect to problems resulting from errors caused by infrastructure, network, other software or hardware with which the Application is used, unless pursuant to a separate written agreement between SmartUse and Subscriber.

3. LIMITED WARRANTY

3.1 Limited Warranty. SmartUse warrants solely to you that, during the Subscription Term, the Services will conform in all material respect to the description of the Services set forth in the Documentation. Without limiting the foregoing, SmartUse does not warrant that (i) the Services will meet your requirements; (ii) the Services will operate without interruption or be error free; or (iii) any Content will be accurate or reliable. Furthermore, SmartUse is not responsible for delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. It is acknowledged that the Services may be subject to limitations, delays and other problems inherent in the use of the internet, servers that are hosted by third party providers and such related network and communications infrastructure. **THE SERVICES ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTY OF ANY KIND.**

3.2 Exclusive Remedy for Breach of Warranty. If the Services do not conform in all material respects to the description thereof set forth in the Documentation, SmartUse shall, at its option and expense, either: (i) use reasonable efforts to correct any such non-conformities in the Services or provide you with a workaround; (ii) correct any errors or discrepancies in the Documentation; or (iii) refund the fee paid by you for the Services for the unused portion of the Subscription Term. SmartUse shall have no liability for any claim based upon (a) improper use of the Services or use of the Services not in accordance with instructions provided by SmartUse; (b) any modification of the Application or Services that is not done by SmartUse; or (c) errors caused by the infrastructure, network, communications facilities, including the internet, other software or hardware used to access the

Services. The foregoing states your sole remedy and the exclusive obligation of SmartUse with respect to claims of breach of warranty.

3.3 Disclaimer of Other Warranties. You acknowledge that the Services and the Application rely on techniques that convert Content into proprietary formats in order to attempt to render images more quickly and efficiently than do other formats. While SmartUse strives to ensure that its conversion techniques do not alter any part of the Content, it does not guarantee that no alteration will ever occur or that what is displayed in the Application or on its Site will at all times be a real-time exact rendering of the Content given the effect of short time delays associated with SmartUse's conversion techniques. SmartUse is not responsible for the accuracy, completeness, appropriateness, or legality of the Content, files, user posts, or any other information you may be able to access using the Services. Ultimately it is your responsibility to check that your Content as displayed on the Site or the Application is an accurate rendering of your Content as originally uploaded. **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, RELATING TO THE APPLICATION, SITE OR SERVICES OR ANY ADDITIONAL SERVICES FURNISHED HEREUNDER. SMARTUSE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF SERVICE, WHETHER MADE BY SMARTUSE EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY SMARTUSE FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SMARTUSE WHATSOEVER. SPECIFICALLY, AND WITHOUT LIMITING THE FOREGOING, SMARTUSE DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT NEWFORMA'S SERVERS, SITE OR APPLICATION ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT SMARTUSE'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO PERSONAL INFORMATION OR CONTENT BY THIRD PARTIES.**

4. LIMITATION OF LIABILITY. Regardless of the form of action (whether in contract, tort, breach of warranty or otherwise), **IN NO EVENT SHALL SMARTUSE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE THE SITE, APPLICATION, SERVICES OR ACCESS CONTENT, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTIONS, OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES OR THE APPLICATION OR SITE AND BASED ON ANY THEORY OF LIABILITY INCLUDING STATUTE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF NEWFORMA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AN REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SMARTUSE'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICE, IF ANY, FOR THE TWELVE-MONTH PERIOD PRECEDING ANY CLAIM FOR SUCH DAMAGES. THE FOREGOING LIMITATION SHALL APPLY TO ALL SUCH CLAIMS IN THE AGGREGATE. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE SERVICES OR AN APPLICATION MUST BE FILED WITHIN SIX (6) MONTHS AFTER**



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SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

5. INDEMNIFICATION. You agree to indemnify, defend and hold harmless SmartUse with respect to any losses, damages and expenses incurred by SmartUse resulting from any breach by you of any representation, warranty or obligation under this Agreement.

6. PRIVACY.

6.1 Policy. The Privacy Policy is expressly incorporated herein by reference. Any information you provide to SmartUse, or that is collected in connection with your use and access of the Services is subject to the terms and conditions of the Privacy Policy. The Privacy Policy may be amended from time to time in accordance with its terms.

6.2 Collection and Storage of Personal Information. By using the Services, you agree and acknowledge that any of your personal information obtained by Newforma through your use of the Site or the Application, or in connection with the provision of the Services may be transferred across national boundaries for storage or process to any of country around the world. The type of transferred information may include the location or the universally unique identifier of any Devices you use to access the Application and their respective phone number(s), if any.

6.3 Communications from SmartUse. SmartUse may send to you service-related emails regarding the functionality or delivery of the Services.

6.4 Tracking Your use of the Site and the Application or portions thereof may be tracked by SmartUse in order to provide better Services and for other purposes as set forth in the Privacy Policy.

7. TERM AND TERMINATION.

7.1 Term. This Agreement will remain in effect until the end of the Subscription Term.

7.2 Termination by SmartUse. This Agreement shall automatically terminate upon the expiration, without renewal, of the Subscription Term. You agree that SmartUse, in its sole discretion and without notice or liability to you or any third party, may terminate or suspend an Authorized User's SmartUse account if SmartUse believes that an Authorized User has violated or acted inconsistently with any term of these Terms and Conditions. SmartUse may terminate this Agreement upon notice to Subscriber if Subscriber or any Authorized User, including you (i) breach(es) any obligations set forth in Sections 2.4 through 2.8 or attempt(s) to assign this Agreement in violation of the provisions of Section 9.3, or (ii) breach(es) any other obligation under this Agreement and fails to cure such breach(es) within 30 days after notice thereof. Upon such termination, SmartUse will terminate your password and remove and may discard any Content uploaded, posted or otherwise stored by you using the Services.

7.3 Termination by You. You may terminate your SmartUse account and Subscriber may terminate the Subscription Term, at any time by providing 30 days advance written notice to SmartUse, provided, however, that Subscriber shall not in any event be entitled to any refund of any fees previously paid.

7.4 Effect of Termination. Upon termination of this Agreement, neither you nor any Authorized User, shall make any further use of the Services, Site or Application. Termination of this Agreement shall not affect any obligations accrued prior thereto. Sections 2.2, 2.4, 2.5, and 3 through 9, inclusive, shall survive termination of this Agreement.

8. CONFIDENTIALITY.

8.1 "Confidential Information" shall mean all information regarding the technology, products or business of a party (or of a party's

customers or suppliers), whether written, oral or graphic, disclosed or made available by one party (the "disclosing party") to the other party (the "receiving party") pursuant to these Terms of Use, (i) which is designated as confidential in writing by the disclosing party prior to or at the time any such information or material is disclosed by the disclosing party to the other party, or (ii) which is orally or visually disclosed by a party, or is disclosed in writing without an appropriate confidentiality designation, if the disclosing party, within thirty (30) days after such disclosure, delivers to the other party a written document describing the information or material and referencing the place and date of such oral, visual or written disclosure and the names of the persons to whom such disclosure was made and denoting the confidential nature of the information, or (iii) as to which it would be apparent to a reasonable person, familiar with the disclosing party's business, that such information is of a confidential nature the maintenance of which is important to the disclosing party.

8.2 Treatment of Confidential Information. You shall not without the prior written consent of Newforma, disclose any Confidential Information of Newforma to any person or entity other than Authorized Users. As a condition to any such consent, Newforma shall require any such third party to enter into Newforma's standard Mutual Non-Disclosure Agreement. Newforma shall not without your prior written consent disclose any of your Confidential Information to anyone other than Newforma's employees or contractors that need to have access to such information, Subscriber, or Authorized Users. Each party shall use the Confidential Information of the other party only in a manner consistent with these Terms of Use, and for the purposes of carrying out a Consulting Services Agreement, if any, and shall otherwise protect such Confidential Information from disclosure to others with the same degree of care accorded to its own proprietary information (but in no event less than a reasonable degree of care).

8.3 Release from Restrictions. The provisions of Section 8.2 shall not apply to any Confidential Information which: (i) was known by the receiving party prior to its date of disclosure to the receiving party without an obligation of confidentiality, as evidenced by the prior written records of the receiving party; or (ii) is disclosed to the receiving party without an obligation of confidentiality by sources other than the disclosing party rightfully in possession of the Confidential Information and having the right to disclose the Confidential Information; or (iii) becomes published or generally known to the public through no fault or omission on the part of the receiving party or an affiliated party; or (iv) is independently developed by the receiving party without reliance upon or resort to any Confidential Information of the other party; or (v) is required to be disclosed by the receiving party to comply with applicable laws, to defend or prosecute litigation or to comply with governmental regulations, provided that, unless prohibited by law, the receiving party provides to the other party prior written notice of such disclosure and a reasonable opportunity to contest such disclosure, and thereafter co-operates with the disclosing party to take reasonable and lawful actions to avoid and/or minimize the degree of such disclosure.

8.4 Return of Confidential Information. Upon termination of this Agreement or at any other time upon a party's request, each party shall use commercially reasonable efforts to immediately destroy all materials in such party's possession reflecting or containing any Confidential Information of the other party.

8.5 Survival of Obligations. Notwithstanding any termination of this Agreement, the obligations of each party under this Section with respect to Confidential Information of the other party shall survive for a period of five (5) years from the date of such termination.

9. MISCELLANEOUS.

9.1 Compliance with Laws. You agree to comply with all laws and regulations relating to your use of the Services, Application or Site, including without limitation those relating to export and import, privacy



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and personal data protection, and shall indemnify SmartUse for any losses it may incur in the event of a breach of any of the foregoing.

9.2 Injunctive Relief. You acknowledge that in the event of a breach or threatened breach by you of any of the provisions of Sections 2.4 through 2.6, or Section 8 of this Agreement, SmartUse may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce those provisions without being required to prove damages or post a bond.

9.3 Assignment. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. You may not assign or otherwise transfer this Agreement or any of your rights or obligations hereunder without the prior written consent of SmartUse.

9.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of New Hampshire (U.S.A.) without regard to its conflict of laws principles. The parties expressly exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. To the extent that any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, such provision shall be without effect and the remainder of the Agreement shall be enforced to the full extent of the law.

9.5 Relationship of the Parties. Nothing in this Agreement shall be construed as making the parties partners or as creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on its behalf.

9.6 Notices. Notices under this Agreement shall be in writing and shall be delivered by hand, sent by facsimile, sent by email, mailed via certified mail, or delivered by commercial courier service. Notices shall be deemed effective when received or upon attempted delivery, in the event that delivery is refused.

9.7 Force Majeure. In no event shall Newforma be liable for any delay or failure to perform any of its obligations if such delay or failure is due to causes beyond its reasonable control, which causes shall include, without limitation, the continued availability of the storage services provided by the third-party service provider engaged to perform such services on behalf Newforma.

9.8 Entire Agreement.

(a) These Terms of Use are incorporated by reference into every Order Form and the Consulting Services Agreement. This Agreement shall apply to all Services and any Consulting Services ordered or used by Subscriber. This Agreement (together, for Subscriber, with the Order and the Consulting Services Agreement) constitutes the complete agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement (including any agreements with any predecessor to Newforma relating to the Services).

(b) Notwithstanding the foregoing, any separate confidentiality agreements entered into between the Parties shall remain in full force and effect, and to the extent that any of the provisions of any such agreement conflict with the provisions of the Agreement, the more restrictive provision shall prevail to the extent of such conflict.

(c) To the extent that any of the provisions of an Order Form, these Terms of Use, or the Consulting Services Agreement conflict with the provisions of any other Agreement, the provision more favorable to

SmartUse as determined by SmartUse in its sole discretion, shall prevail to the extent of such conflict.

(d) You agree that SmartUse shall license the Application, and provide the Services only in accordance with the terms and conditions of the Agreement. The terms and conditions set forth in any purchase order or other document submitted by you shall be null and void and of no effect.

9.9 Connection to the Internet. The Application will cause your Device automatically to connect to the Internet. Your use of the Site or the Application may entail third-party costs (such as phone and data connection charges or data plan costs). SmartUse disclaims any and all liability for such charges and costs.

9.10 Availability. SmartUse tries to ensure that the Site, Application and Services are available 24 hours a day. However, the limitation of liability and disclaimer above apply equally to the availability of the Site and Application. SmartUse is not liable if for any reason the Site, Application or Services are unavailable at any time and for any period and for any reason. Notwithstanding any other provision of this Agreement, SmartUse may change, suspend, add, or remove terms and conditions, or cease, change, suspend, add to, or remove the Application or Site, or any portion of the Services, at any time with or without notice to you. If any future changes are unacceptable to you, you should discontinue using the Services.

9.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the parties, and all other provisions will remain in full force and effect.

9.12 Amendment. SmartUse shall have the right to amend these Terms of Use at any time, without any notice to you, by posting an updated version of the Terms of Use on the Site. The Terms of Use in effect at any given time will be conspicuously posted to the Site, and may be accessed through the Application. Newforma recommends that you regularly check the Site, or review the Terms of Use through the Application to ensure your familiarity with the terms and conditions governing your continued use of the Services and to inform yourself of such any such changes. Changes will be effective upon posting to the Site and will apply to you immediately upon the earlier to occur of the next use of your Credentials to login to the Services on any Device or your first visit to the Site after the posting of such updated terms. Continued use of the Services, whether through any Device or by visiting the Site, after such changes are posted shall constitute your consent to such changes.

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