

## END USER LICENSE AGREEMENT

**THIS END USER LICENSE AGREEMENT (THE “AGREEMENT”) BETWEEN GABI SOLUTIONS, INC.(“GABI”) AND THE PERSON OR ENTITY ENTERING INTO THIS AGREEMENT BY THE METHODS DESCRIBED BELOW (“END USER”) GOVERNS THE END USER'S ACQUISITION AND USE OF THE GABI SOFTWARE SUITE (TRIPLE PLAY) AND RELATED GABI PRODUCTS AND SOFTWARE. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.**

**THIS AGREEMENT MAY BE ACCEPTED BY (1) EXECUTING AN ORDER FORM WITH A RESELLER THAT REFERENCES THIS AGREEMENT, OR (2) USING ANY GABI HARDWARE OR SOFTWARE. THE END USER AGREES TO THE TERMS OF THIS AGREEMENT AS MAY BE AMENDED FROM TIME TO TIME. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL EXPRESSLY REPRESENTS ON THE ORDER FORM THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “END USER” 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 GABI PRODUCTS OR SOFTWARE.**

**GABI SOFTWARE MAY NOT BE ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE, OR FUNCTIONALITY OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES. GABI'S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING GABI SOFTWARE, EXCEPT WITH GABI'S PRIOR WRITTEN CONSENT.**

**THIS AGREEMENT WAS LAST UPDATED ON JULY 19, 2022, AND MAY BE UPDATED DURING THE TERM AS REQUIRED BY GABI. IT IS EFFECTIVE BETWEEN THE END USER AND GABI AS OF THE DATE OF THE END USER'S ACCEPTING THIS AGREEMENT.**

### **Definitions.**

**"Activation"** means Gabi's delivery and installation by the End User of the necessary Hardware and Software to access and use of the services.

**"Affiliates"** shall mean a person or entity that directly, or indirectly through one or more intermediaries, owns or controls, is owned or is controlled by, or is under common ownership or control with a referenced person or entity.

**"Confidential Information"** means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, but is not limited to (i) PII as defined below, (ii) End User Data (iii) any information concerning technology, such as systems, source code, databases, hardware, software, programs, applications, engaging protocols, routines, models, displays, and manuals; (iv) any unpublished information concerning research activities and plans, undisclosed Gabi Intellectual Property, End Users, clients, shareholders, strategies and plans, costs, operational techniques, and (v) any unpublished financial information, including information concerning revenues, profits and profit margins, and costs or expenses. However, Confidential information does not include any information which is publicly available at the time of communication to the Receiving Party, which is in the Receiving Party's possession without any obligation of confidence as of the date received from the Disclosing Party, which becomes publicly available through no fault of the Receiving Party, or which is independently developed by the Receiving Party without reference to any Confidential Information, or which is required to be disclosed under the order of a court or similarly empowered administrative or government tribunal or agency (in which case the Receiving Party shall give the Disclosing Party prompt written notice thereof and reasonable cooperation and assistance in opposing such order or requirement).

**"End User"** means any person or entity that uses Gabi Software or products.

**"End User Data"** means the electronic data or information submitted by End User to the Software including any structured or unstructured information (including, without limitation, text, images, data files, and Software) provided by End User or Enabled Users for capture, storage, analysis, processing, extraction, retrieval, management, and distribution, including any information that can be generated or derived from such information provided by End User, any such information that contains PII, Confidential Information or trade secrets information concerning End User, its Employees and Enabled Users.

**"Dead Space"** means the wait time required by an electronic device or a Multi-Function Printer to complete a command (e.g., copy, scan, print, and fax), thereby creating an opportunity to deliver content to the user while waiting for completion of the command as further detailed in U.S. Patent No. 10,762,058 issued on September 1, 2020.

**"Documentation"** means all written text relating to and customarily needed for the use of the Software, including but not limited to the marketing, technical, and training information described herein and in all formats, including without limitation manuals, brochures, specifications, and Software descriptions, in electronic, printed and camera-ready form, and related materials.

**"Employee"** means End User's Affiliates, employees, consultants, contingent workers, independent contractors, End User authorized visitors, and retirees of End User.

**"Enabled User"** shall mean End User of the Software.

**"Gabi"** means Gabi Solutions, Inc., a Delaware corporation with its principal place of business at 19 Gloria Lane, Fairfield, New Jersey 07004.

**"Gabi Intellectual Property"** means the Gabi Software marks, trademarks, goodwill, trade names or other designations and any copyrights, operating practices and procedures, patents, trade secrets, and all other items tangible or intangible, owned by Gabi relating to Gabi Software and all right, title and interest thereto, including derivatives thereof such as implementation enhancements requested by a End User.

**"Hardware"** means the GabiKiosk used in connection with multifunction printers and other office equipment.

**"Installation"** means the completed process of installation and enablement of the Software and Hardware at any given End User site in full conformance with the Software and Hardware specifications. Gabi shall provide Installation support as required by End Users.

**"Malicious Code"** means any computer code or programming instructions that are constructed with the ability to damage or otherwise adversely affect computer programs, data files or hardware and includes, without limiting the generality of the foregoing, instructions known as worms and viruses.

**"Order Form"** means the order form provided by Gabi or its reseller that subscribes to access and use the Software subject to this Agreement and approval by Gabi.

**"PII" or "Personally Identifiable Information"** means any information provided by End User to Gabi relating to an identified or identifiable individual, including, but not limited to, social security number or other unique identifiers, health or medical information, credit or debit card numbers, bank account numbers or additional financial information, driver's license numbers, and other types of sensitive personal information.

**"Software"** means the Software provided by the Gabi platform in connection with the Triple Play that enables (i) voice control of Compatible Equipment to enhance employee productivity, (ii) Dead Space utilization, and (iii) cyber-secure platform that does not use or sell PII about End Users or Employees in connection with Dead Space utilization transactions.

**"Software Failure"** means any reproducible error, unresolved problem, or defect caused by or resulting from (i) an incorrect functioning of Software or Hardware, or (ii) an incorrect or incomplete statement or diagram in the Documentation, if such error, problem, or defect renders the code inoperable, causes the code to fail to meet specifications thereof, causes Documentation to be inaccurate or incomplete in any material respect, causes

incorrect results, or causes incorrect functions to occur when any such materials are used for their intended purposes.

**"Update"** means a release and any related Documentation that may incorporate into the Licensed Software and Software (i) corrections of any substantial defects; (ii) fixes of any bugs; and (iii) changes, additions, or enhancements that do not necessarily add significant value to warrant additional charges. Major Updates are those releases where the version number following the initial decimal point is incremented.

**"Upgrade"** means releases and any related Documentation that contains significant functionality changes and adds significant value to the Licensed Software and Software. A release that contains error corrections is not an Upgrade. Provisions in this Agreement that reference Software "versions" refer to Upgrades where the initial ordinal in the Triple Play Software nomenclature is incremented.

## **1. End User's Use of the Software.**

**1.1 Provision of the Software.** In exchange for Gabi agreeing to make the Software available to the End User during the Term, the End User appoints Gabi as the exclusive provider of Dead Space utilization to End User on Compatible Equipment during the Term. The Hardware and Software are utilized to display 10-second advertisements and communications from third-party advertisers.

**1.2 End User Obligations.** End User may enable access of the Software for use only by Enabled Users solely for the internal business purposes of End User and its Affiliates under the Documentation and not for the benefit of any third parties. The End User is responsible for all Enabled User use of the Software and compliance with this Agreement. End User shall: (a) have sole responsibility for the accuracy, quality, and legality of all End User Data; and (b) prevent unauthorized access to, or use of, the Software, and notify Gabi promptly of any such unauthorized access or use. End User and its Affiliates shall not: (i) use the Software in violation of applicable Laws; (ii) in connection with the Software, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (iii) send or store Malicious Code in connection with the Software; (iv) interfere with or disrupt the performance of the Software or the data contained therein; or (v) attempt to gain access to the Software, generate false End User transactions by manipulating the Software or its related systems or networks in a manner not outlined in the Documentation. The End User shall cooperate in good faith with Gabi to upgrade new and existing Compatible Equipment with the Gabi Software. End User shall ensure that Enabled Users utilize the Software. Before Activation of the Software, the End User shall provide Gabi with basic industry code, employee counts, locations, and other data required in the Order Form. The End User shall designate a maximum number of named contacts to request and receive support Software from Gabi ("Named Support Contacts"). Named Support Contacts must be assigned to assist with Software or product(s) for which they initiate support requests.

**1.3 Federal Government End Use Provisions (if applicable).** Gabi provides the Software, including related Software and technology (also known as its Triple Play), for federal government end use solely subject to the following: Government technical data and software rights related to the Software include only those rights customarily provided to users pursuant to this Agreement. This customary commercial license is provided under FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202.3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a "need for" rights not conveyed under these terms, it must negotiate with Gabi to determine whether there are acceptable terms for transferring additional rights. A mutually acceptable addendum specifically conveying such rights must be executed by the parties to convey such rights beyond those set forth herein.

## **2. Fees.**

**2.1 Payment.** End User shall pay the fees set forth in the Order Form provided by executed with Reseller.

**2.2 Non-cancelable & non-refundable.** Except as specifically set forth to the contrary under Section 6.3 "Warranty Remedies," Section 7.1 "Indemnification by Gabi" and Section 9.2 "Termination," all End User payment obligations under any Order Forms are non-cancelable and all End User payments are made are non-refundable.

**2.3 Suspension of Software.** If End User or its Employees interfere with the Software in any manner either to prevent the viewing of content, in addition to any other rights or remedies it may have under this Agreement or by Law, Gabi reserves the right to suspend the Software upon thirty (30) days written notice, without liability to End User, until such overpaid amounts are repaid in full.

**2.4 Taxes.** Except as otherwise stated in an Order Form, Gabi'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, excise, use, or withholding taxes (collectively, "Taxes"). End User is responsible for paying all Taxes associated with its acquisitions under this Agreement and the Software, excluding U.S. income taxes on Gabi. If End User must withhold any amounts under any Law or tax regime (other than U.S. income tax Law), End User shall gross up the payments so that Gabi receives the amount quoted and invoiced. If Gabi has a legal obligation to pay or collect Taxes for which End User is responsible under this Section, the appropriate amount shall be invoiced to and paid by End User, unless End User provides Gabi with a valid tax exemption certificate authorized by the relevant taxing authority.

**2.5 Enabled User Count Verification.** To manage and improve the Software, Gabi may periodically confirm the number of Employees that can access the Software.

### **3. Proprietary Rights.**

**3.1 Ownership and Reservation of Rights to Gabi Intellectual Property.** Gabi and its licensors own all rights, title, and interest in and to the Software, Documentation, and other Gabi Intellectual Property rights. Subject to the limited rights expressly granted hereunder, Gabi reserves all rights, title, and interest in and to the Software, and Documentation, including all related Intellectual Property rights. No rights are granted to End User hereunder other than as expressly set forth herein.

**3.2 License Grant.** Gabi grants End User a non-exclusive and non-transferable right to use the Software and Documentation solely for the internal business purposes of End User and its Affiliates and solely during the Term, subject to the terms and conditions of this Agreement. This Agreement shall be governed by Section 365(n) of the Bankruptcy Code, as applicable, if Gabi voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Gabi or the trustee in bankruptcy rejects the Agreement. Gabi agrees that the Software used by Gabi to provide the Software, coupled with the rights granted to the End User in this Section, constitutes "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended. In addition, under Section 3.4, End User owns the End User Data, Gabi shall not list the End User Data as an asset in any bankruptcy filing, nor shall Gabi identify End User's Confidential Information as a Gabi asset.

Gabi grants End User a non-exclusive, limited license, for the Initial Term and any renewal terms of this Agreement, to use GabiWorx, GabiKiosk, and GabiViews (collectively "Licensed Products") and related know-how under all of Gabi's issued patents at Exhibit B relating to the Licensed Products.

Gabi shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any End User Input. Gabi shall have no obligation to make End User Input an Improvement and End User shall have no obligation to provide End User Input.

**3.3 License Restrictions.** End User shall not (i) modify, copy or create any derivative works based on the Software or Documentation; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, timeshare, offer in a Software bureau, or otherwise make the Software or Documentation available to any third party other than to Enabled Users as permitted herein; (iii) reverse engineer or decompile any portion of the Software or Documentation, including but not limited to, any software utilized by Gabi in the provision of the Software and Documentation, except to the extent required by law; (iv) access the Software or Documentation to build any commercially available product or Software; or (v) copy any features, functions, integrations, interfaces or graphics of the Software or Documentation.

**3.4 End User Data and Aggregated Data Use.** Unless expressly requested by End User in connection with End User messaging transactions, Gabi shall not utilize End User Data in connection with the Software. Gabi will maintain appropriate administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of End User Data. Those safeguards will include, but will not be limited to, measures designed to prevent

unauthorized access to or disclosure of End User Data. Gabi owns transaction data generated by Compatible Equipment and the aggregated and statistical data derived from the operation of the Software, including, without limitation, the number of records in the Software, the number and types of transactions, configurations, and reports processed in the Software and the performance results for the Software (the "Aggregated Data"). Nothing herein shall be construed as prohibiting Gabi from utilizing the Aggregated Data for purposes of operating Gabi's business, provided that Gabi's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Software. Aggregated Data that is derived, in whole or in part from PII or information that can be identified as being associated with an individual or with End User shall not be released to any third party unless it has been rendered anonymous in such a way that the data subject is no longer identifiable.

#### **4. Confidentiality.**

**4.1 Confidentiality.** Except as otherwise provided in this Section, no party shall disclose or use any Confidential Information of the other party except as reasonably necessary to perform its obligations or exercise its rights under this Agreement and only with the other party's prior written permission. If the Receiving Party needs to disclose Confidential Information to the Disclosing Party's employees or Enabled Users to perform its obligations or exercise its rights according to this Agreement, it may do so without prior written permission. Disclosures to third parties (other than Enabled Users) needed to perform obligations or exercise rights under this Agreement shall not require prior written consent if the third party recipient is subject to a confidentiality obligation that is equal to or more protective than the confidentiality provisions of this Agreement.

**4.2 Protection.** Confidential Information that is End User Data shall receive protection per Section 5 of this Agreement. Without limiting the foregoing, each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

**4.3 Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by law shall not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted), provides no more Confidential Information than is necessary, and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

**4.4 Remedies.** The Receiving Party's obligations shall apply to any item of Confidential Information for a period of three (3) years from the date of disclosure. If a party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts without first exhausting the informal resolution or mediation processes described in Section 10.11. The parties acknowledge that disclosure of Confidential Information may cause irreparable injury and damages, which may be difficult to ascertain, and that remedies other than injunctive relief may be inadequate. In addition, if a party fails to return or certify destruction of Confidential Information upon termination of this Agreement, each party is entitled to seek injunctive relief, including a preliminary injunction and an order of seizure and impoundment under Section 503 of the Copyright Act upon an ex parte application by Disclosing party to protect and recover its Confidential Information.

#### **5. Security.**

**5.1 Protection and Retrieval of PII.** Unless otherwise requested and expressly agreed in writing by a End User and Gabi via an Order Form submitted by such End User to Gabi under this Agreement, Gabi does not store PII in connection with Monetization Transactions utilizing the Software.

**5.2 Unauthorized Disclosure.** If either party believes that there has been a disclosure of unencrypted End User Data to anyone other than Gabi (a "Security Incident"), such party must promptly notify the other party, but not later than forty-eight (48) hours after identification of the disclosure, unless Law enforcement officials have requested or require a delay in notice. Additionally, each party will reasonably assist the other party in remediating or mitigating any potential damage, including any notification sent to individuals impacted or potentially impacted or the provision of credit reporting Software to such individuals. Each party shall bear the costs of such

remediation or mitigation to the extent the breach or security incident was caused by it. Where the type of End User Data disclosed is such that credit reporting Software should be part of remediation efforts, unless the party financially responsible for the remediation efforts agrees to a longer period, one (1) year of credit reporting Software shall be provided. Subject to the limitation of liability in Section 8, to the extent that Gabi caused the breach or security incident, Gabi's obligation to bear the costs of such remediation or mitigation shall include the cost of defending or settling third-party claims brought against the End User as to the result of the breach or security incident.

After the preceding notice from Gabi to End User of a security incident caused by Gabi, End User will have the right to request from Gabi a report prepared by a nationally recognized independent third party audit firm of the relevant security and controls and, if applicable, a summary report of a penetration test of the application performed by an independent third-party demonstrating remediation of material risks to the unauthorized disclosure of End User Data. As soon as reasonably practicable after any such Security Incident, End User and Gabi will consult in good faith regarding the root cause analysis and any remediation efforts. Gabi will work in good faith to remediate any material security risks identified in the root cause analysis within Gabi's reasonable control.

Except to the extent prohibited by applicable law, each party shall provide the other party with reasonable notice of and the opportunity to comment on and approve the content of all notices, filings, communications, press releases, or reports about unauthorized disclosure of End User Data that identify the other party by name before any publication or communication thereof to any third party other than legal advisors. Notwithstanding the foregoing, each party may provide notice as required by law even if the other party has not provided such consent. Nothing herein will prevent Gabi from making disclosures about a security incident generally. Where applicable law solely allocates the responsibility for giving notice about a Security Incident to End User, Gabi agrees that End User has the sole right to determine: (i) whether or not any notices of a Security Incident are required by law or regulation; (ii) the recipients of each notice of a Security Incident, including individuals, regulators, Law enforcement agencies, and consumer reporting agencies; and (iii) the contents of each notice.

## **6. Warranties & Disclaimers.**

**6.1 Mutual Warranties.** Each party represents and warrants to the other that: (i) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding agreement enforceable against such party under its terms; (ii) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement; (iii) the execution, delivery and performance of this Agreement do not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound; and (iv), concerning its activities under this Agreement, it shall comply with all Laws applicable to it related to data privacy, international communications and the transmission of technical or personal data.

**6.2 Gabi Warranties.** Gabi warrants and represents that during the Term: (i) the Software shall perform materially per the Documentation; (ii) the functionality of the Software will not be materially decreased during the Term; (iii) it will use commercially reasonable efforts to prevent the introduction of Malicious Code into the Software to the extent any such Malicious Code is not submitted by End User or its Enabled Users to the Software. Gabi warrants the Hardware to be free from defects for a period of one (1) year from the date of purchase.

**6.3 Warranty Remedies.** Each party shall promptly remedy its breach of the warranties in Section 6.1 upon receipt of notification of such breach. To receive warranty remedies, the End User must promptly report deficiencies in writing to Gabi, but no later than thirty (30) days of the first date the End User identifies the deficiency. As End User's exclusive remedy and Gabi's sole liability for breach of the warranty outlined in Section 6.2 (i), (ii), and (iii): (a) Gabi shall correct the non-conforming Software or replace the defective Hardware at no additional charge to End User; or (b) in the event Gabi is unable to correct such deficiencies after good-faith efforts, Gabi shall refund End User amounts paid that are attributable to the defective Software from the date Gabi received such notice. Following the expiration of the Hardware warranty, the End User may purchase replacement Hardware units from Gabi or its authorized reseller for use with the Software provided hereunder in place of any defective GabiKiosk unit, without any additional Software charges or other charges.

**6.4 Systemic Defects.** Notwithstanding any other provision of this Agreement, during the one-year Hardware warranty period, Gabi will promptly undertake to remedy any Software Failure without charge and undue delay.

**6.5 Disclaimer. GABI HAS NO INVOLVEMENT IN THE DEVELOPMENT, SALE, OR PROCUREMENT OF ADVERTISEMENTS. GABI ALSO HAS NO INVOLVEMENT IN THE SALE OF MULTI-FUNCTION DEVICES. GABI DEVELOPS AND LICENSES SOFTWARE AND HARDWARE TO ENABLE COMPANIES TO MONETIZE DEAD SPACE. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GABI MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING THE SOFTWARE AND RELATED DOCUMENTATION. GABI DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO THE END USER IN CONNECTION WITH THE PROVISION OF THE SOFTWARE. GABI FURTHER DOES NOT MAKE ANY REPRESENTATION CONCERNING POTENTIAL REVENUE FROM ADVERTISEMENTS, VOLUMES, QUALITY OR NATURE OF ADVERTISEMENTS, OR ANY SUCH MATTER.**

**7. Indemnification.**

**7.1 Indemnification by Gabi.** Gabi shall defend, indemnify and hold End User and its respective officers, directors, successors, assigns, agents, and employees (collectively, the "End User Indemnified Parties") harmless against any loss, damage, or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("Claims") made or brought against the End User Indemnified Parties by a third party alleging that the use of Gabi Software or products by End User as contemplated hereunder infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; provided, however, that End User: (a) promptly gives written notice of the Claim to Gabi; (b) gives Gabi sole control of the defense and settlement of the Claim (provided that Gabi may not settle any Claim unless it unconditionally releases End User of all liability), and (c) provides to Gabi, at Gabi's cost, all reasonable assistance. Gabi shall not be required to indemnify End User in the event of (i) modification of the Software by End User or Enabled Users in conflict with End User's obligations or as a result of any prohibited activity as set forth herein; (ii) use of the Software in a manner inconsistent with the Documentation; (iii) use of the Software in combination with any other product or Software not provided by Gabi; or (iv) use of the Software in a manner not otherwise contemplated by this Agreement. If End User is enjoined from using the Software or Gabi reasonably believes it will be enjoined, Gabi shall have the right, at its sole option, to obtain for End User the right to continue the use of the Software or to replace or modify the Software so that it is no longer infringing. If neither of the foregoing options is reasonably available to Gabi, then use of the Software may be terminated at the option of Gabi, and Gabi's sole liability shall be to refund any prepaid fees for the Software that was to be provided after the effective date of termination.

**7.2 Indemnification by End User.** End User shall defend, indemnify and hold Gabi and its respective officers, directors, successors, assigns, agents, and employees (collectively, the "Gabi Indemnified Parties") harmless from and against any Claims (including reasonable attorney's fees) brought against the Gabi Indemnified Parties arising out of or related to (i) claims by a third party against Gabi based upon End User's use of Gabi products or Software inconsistent with this Agreement, (ii) End User's customizations, updates and/or corrections to the Software, Software, or Hardware, or (iii) a claim that the customizations, updates and/or corrections developed by End User infringe any intellectual property rights of any third parties; provided, however, that Gabi: (a) promptly gives written notice of the Claim to End User; (b) gives End User sole control of the defense and settlement of the Claim (provided that End User may not settle any Claim unless it unconditionally releases Gabi of all liability), and (c) provides to End User, at End User's cost, all reasonable assistance.

**8. Limitation of Liability.**

**8.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR LIABILITY ARISING FROM (I) GABI'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.1 ABOVE CONCERNING SOFTWARE; AND (II) CLAIMS FOR BODILY INJURY OR DEATH OR DAMAGES TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT RESULTING FROM WILLFUL OR INTENTIONAL MISCONDUCT OF THE PARTY LIABLE FOR THE DAMAGES, IN NO EVENT SHALL GABI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES PAID BY END USER TO GABI DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.**

**8.2 IN NO EVENT SHALL GABI HAVE ANY LIABILITY TO THE END USER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SOFTWARE, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SOFTWARE, RECEIVE ADVERTISEMENTS, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT ANY OBLIGATION OF GABI TO RESTORE END USER DATA UNDER THIS AGREEMENT OR ANY OTHER SUPPLEMENTAL AGREEMENT IS NOT AN INDIRECT DAMAGE, WHETHER IN CONTRACT, TORT, OR OTHERWISE.**

## **9. Term & Termination.**

**9.1 Term of Agreement.** The term of this Agreement commences on the Effective Date and continues for an initial period of one (1) year ("Term"). The Agreement will automatically renew for an additional one (1) year periods (each a "Renewal Term"), up to a maximum of five (5) years total, unless either party provides thirty (30) days written notice of the intent not to renew the Agreement.

**9.2 Termination.** Either party may terminate this Agreement, (i) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event 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. In addition, Gabi may terminate the Software for convenience upon sixty (60) days notice to the End User. Upon any termination by End User under this Section, Gabi shall refund End User any prepaid fees for the affected Software that were to be provided after the effective date of termination.

**9.3 Effect of Termination.** Upon any termination of this Agreement, End User shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable Software and Gabi Confidential Information; and Gabi shall immediately cease accessing and otherwise using End User Confidential Information and End User Data. Termination for any reason shall not relieve End User of the obligation to pay any fees to Gabi accrued or due and payable before the effective date of termination. Upon termination, the End User shall return all Hardware to Gabi and deinstall any Software within thirty (30) days.

**9.4 Surviving Provisions.** The following provisions of this Agreement shall not survive and shall have no further force or effect following any termination or expiration of this Agreement: (i) Section 1.1(i) "Provision of the Software"; (ii) Section 3.2 "License Grant"; and (iii) any Order Form(s). All other provisions of this Agreement and related agreements which should by their nature survive termination shall survive any termination or expiration of this Agreement.

## **10. General Provisions.**

**10.1 Relationship of the Parties.** This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. The parties are independent contractors. There are no third-party beneficiaries to this Agreement.

**10.2 Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first-class mailing; or (iii) the second business day after sending by facsimile or email with telephonic or other confirmation of receipt. Notices to Gabi shall be addressed to the attention of Luis J. Diaz at the address listed on the Order Form for Gabi. Notices to End User shall be addressed to End User's address on file per its registration. Each party may modify its recipient of notices by providing notice under this Agreement.

**10.3 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 or any other 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.



**10.4 Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, supply chains issues resulting from viruses, diseases or other similar events, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Gabi or End User employees, respectively), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet Software provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**10.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms) without consent of the other party in connection with a merger, acquisition, reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement and all past due fees are paid in full, except that End User shall have no right to assign this Agreement to a direct competitor of Gabi. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect.

**10.6 Governing Law; Waiver of Jury Trial.** This Agreement shall be governed exclusively by the internal laws of the State of New Jersey, without regard to its conflicts of laws rules. No version of the Uniform Computer Information Transactions Act or any substantially similar Law enacted in any jurisdiction (collectively "UCITA") will apply to or govern any license granted or any party's performance under this Agreement or any of the parties' rights and obligations arising under this Agreement. All claims must be brought in the state or federal courts located in Essex County, New Jersey, and each party agrees to these as the exclusive forums and waives any claim of inconvenient forum. **EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT.** Before commencing any litigation, except for one seeking injunctive relief, the party commencing litigation must exhaust alternative dispute resolution processes described in section 10.11.

**10.7 Export.** Each party shall comply with the Export Laws and regulations of the United States and other applicable jurisdictions in providing and using the Software. Without limiting the generality of the foregoing, End User shall not make the Software available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo or sanctions; (ii) is listed on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**10.8 Miscellaneous.** This Agreement, including Exhibit A and all Order Forms, constitutes the entire Agreement between the parties concerning the subject matter hereof. In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this Agreement and any other Exhibit or Attachment. This Agreement 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 signed by the party against whom the modification or waiver is to be asserted. The enumeration and section headings are used in this Agreement for reference and convenience only and do not have any substantive significance in the construction or interpretation of this Agreement. As used in this Agreement, the word "including" (as well as "include" and "includes") is not limiting and means "including without limitation." This Agreement has been negotiated, and no provision shall be construed against either party for the sole reason that it is the drafter of the provision. 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 to best 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. Notwithstanding any language to the contrary therein, no terms or conditions stated in a End User purchase order or any other End User order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed in counterparts, which taken together shall form one binding legal instrument. The parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

**10.9 Publicity.** Gabi shall not use End User's name, logos, or trademarks in any written press releases, advertisements, and marketing materials, or use End User's name in lists of End Users and on its website, including, but not limited to, Gabi's community portal, without the prior written consent of End User.

**10.10 Alternative Dispute Resolution.** All disputes between the parties arising out of this Agreement or any corresponding Order Form will first be submitted for informal resolution between authorized representatives of Gabi and End User. Should the parties be unable to obtain a resolution within thirty (30) days after commencement of informal resolution negotiation or such other period agreed to in writing by the parties, either party (the "Complaining Party") shall submit the dispute to non-binding mediation under the auspices of the American Arbitration Association ("AAA") or another mediation organization agreed upon by the parties for resolution under its rules then in effect. Except as otherwise limited by each party's indemnity obligations provided in Section 7 and the limitations of that liability in Section 8 of this Agreement, each party shall be responsible for its expenses related to mediation, including attorneys' fees. If the dispute is not resolved within sixty (60) days after submission to mediation, the Complaining Party may commence litigation under Section 10.6. All statutes of limitations and periods of repose shall be tolled during the informal resolution period and the mediation proceedings. Pending final resolution of any dispute, the Parties shall continue to fulfill their respective obligations hereunder except that either party may exercise termination rights if permitted by this Agreement. This Section shall survive completion or termination of this Agreement, but under no circumstances shall either party be allowed to initiate Alternative Dispute Resolution or court action of any claim or dispute arising out of this Agreement after such period as would usually bar the initiation of legal proceedings to litigate such Claim or dispute under the Laws of the State of New Jersey. Notwithstanding anything in this Section 10.11, either party may seek injunctive relief at any time.

