

## Preferred Strategies Subscription Agreement

Important- Subject to this Preferred Strategies Subscription Agreement (this "Agreement"), Preferred Strategies ("PS") provides the Products and Services as defined on and as set forth on the Order Form that Customer executes. By signing an Order Form, using or accessing the Products, Customer acknowledges that Customer has read, understands, and agrees to be bound by this Agreement. If Customer is entering into this Agreement on behalf of a company, business or other legal entity, Customer represents that Customer has the authority to bind such entity to this Agreement, in which case the term "Customer" shall refer to such entity.

### **1. Definitions**

"Billing Period" means a period of time starting from a date of one payment and ending on a day before the next payment.

"Initial Term" means the initial term of this Agreement, which begins on the Effective Date and continues for the specified Initial Term after the Start of Use Date, as set forth in the Order Form.

"Order Form" means the order form executed by Customer and PS that lists the Customer name, Product that is the subject of this Agreement, and other commercial terms Customer has agreed to.

"Product" means the PS software product(s) set forth on the Order Form. "Recurring License Charge" means the periodic fees, due for each Billing Period, that Customer has agreed to pay under the Agreement for the duration of the Initial Term.

"Renewal Date" means a first date, after the Initial Term, on which Agreement can be renewed. See Section 8 for renewal terms.

"Start of Use Date" means the first date that PS will make Product available to Customer.

"Type of Subscription" means a type subscription, such as month-to-month or yearly or multi-yearly term, the Customer has agreed to.

### **2. Subscription Agreement**

This Agreement is made between PS and Customer identified on the Order Form. Under the terms of this Agreement, beginning on the

Start of Use Date, PS will make Product available to Customer for its internal business use.

### **3. License Grant to Customer and Authorized Users**

(a) Subject to payment of all applicable fees and subject to the terms of this Agreement, PS grants to Customer a nonexclusive, nontransferable license to permit its Authorized Users to use the Product for Customer's internal business use.

(b) An Authorized User must be an employee, consultant, contractor, agent, or other person that is performing services for Customer and that uses the Product solely on behalf of Customer. Customer is liable and responsible for all Authorized Users and Customer shall have a written contract in place with all Authorized Users that obligates such Authorized Users to confidentiality terms that are at least as protective of the Product as the terms of Section 9 of this Agreement. Upon request of PS, Customer shall provide the written, signed agreement of any person that is an Authorized User.

(c) No Generic Authorized Users. A generic, group, nested, or shared account (*e.g.*, FinanceUser, SalesUser, or other shared or generic user accounts are not permitted) cannot be an Authorized User. A person who is an Authorized User cannot share or authorize another person to use his or her Authorized User account.

(d) Changes to Authorized Users. Customer may make changes to each Authorized User no more

than twice during a Billing Period. Unless special approval is obtained from PS, when a person is removed or deleted as an Authorized User during a Billing Period, that person cannot be reinstated as one of the Authorized Users for the remainder of the same Billing Period.

(e) Additional Authorized Users and Additional Fees. If Customer adds Authorized Users so a total number of Authorized Users exceeds the Number of Authorized Users, Customer will be responsible for paying any additional license charges set forth in the Order Form or the fees in effect at the time of the change.

(f) Except as set forth herein, Customer shall not: distribute the Product to any third parties; or provide the Product to any third parties on a time sharing basis. In exchange for the terms and conditions set forth below, Customer may, however, engage a third party, who is not considered a competitor (directly or indirectly) of PS, to manage Customer's data and use of the Products ("**Contractor**") pursuant to a written agreement between Contractor and Customer, which shall, at a minimum, include Subsections (1), (2), and (4) below ("**Required Conditions**") and shall name PS as an intended third party beneficiary of such agreement with respect to the Required Conditions. Customer may elect to host the Products or to have a Contractor host the Products: (a) on third party market leader cloud storage companies such as Microsoft Azure, Amazon AWS and Oracle Cloud Infrastructure or (b) the Contractor's own cloud or physical servers; provided that (1) Contractor is bound by written agreements with Customer containing restrictions prohibiting the unauthorized disclosure or use of Confidential Information that are at least as protective as the confidentiality terms set forth herein, (2) the Contractor may only manage, operate, access or use the Products solely for the benefit of Customer and solely for Customer's internal business purposes as permitted herein, (3) the Products hosted by the Contractor remain under Customer's control at all times, (4) the Contractor's management, operation, access or use of the Products is subject to the terms and

conditions of this Agreement, and (5) Customer remains responsible for Contractor's acts or omissions relating to the Products. If Customer becomes aware of any actual or suspected unauthorized use or disclosure of the Products, Customer shall immediately terminate Contractor's use and/or access to the Products. A breach of this Agreement caused by a Contractor will constitute a breach by Customer.

#### **4. Unlimited Authorized Users**

A license can be for an unlimited number of Authorized Users when (i) the Number of Authorized Users is stated on the Order Form as "unlimited" or (ii) Customer has added Authorized Users so a total number of Authorized Users is at or above a number identified in the Order Form as being an unlimited level. When the Number of Authorized Users is unlimited, Customer can authorize any number of Authorized Users without limit, and sections 3(b) and 3(e) are not applicable.

#### **5. Setup Services**

Subject to Customer's payment of the Setup Services fees, PS will provide the Setup Services at the times and in the manner described in each Order Form to this Agreement.

#### **6. Fees for Use**

In consideration of the rights and licenses granted to Customer under this Agreement, Customer will pay PS the fees set forth on the Order Form. The Recurring License Charge is due at the beginning of each of the applicable Billing Periods described on the Order Form. In the event that Customer exceeds the License Level as set forth on the Order Form, Customer's fees will increase to the corresponding fee level then in effect. After the Initial Term, the fees and levels are subject to change at any time, and Customer's fees will increase to the fee level then in effect and existence at that time. PS may change the applicable fees upon thirty (30) days written notice to Customer, e-mail will suffice.

Based on factors such as (i) changes in the fee levels or (ii) changes in the total Authorized Users identified by Customer, the Recurring License Charge can increase to an amount greater than set forth on the Order Form. The amount of the increase will be due immediately in the Billing Period in the event causing the increase occurred, and the increased Recurring License Charge will be due at the beginning of each of the applicable Billing Periods for the remainder of the Initial Term or Renewal Period (see section 8).

Unless agreed to in writing by PS, during the Initial Term or Renewal Period, there will be no decreases in the Recurring License Charge, either from the Recurring License Charge set forth on the Order Form or the increased Recurring License Charge due to an event occurring as described above.

Upon termination or expiration of this Agreement, Customer shall promptly pay PS all fees with respect to the final Billing Period or remaining amounts due from the termination to the end of the Initial Term or Renewal Period, and any other outstanding fees.

### **7. Interest**

Interest on all balances outstanding over thirty (30) days will accrue at the lesser rate of (i) one and one half percent (1.5%) per month, or (ii) the highest rate of interest allowable under applicable law. PS will not be obligated to continue to make Product available to Customer should payment be more than sixty (60) days overdue.

### **8. Term (Length) of Use and Renewal**

This Agreement will take effect as of the Effective Date and will continue through the Initial Term specified on the Order Form or until the Agreement is terminated by either party as specified in section 11. The parties may mutually agree in writing to renew this Agreement for additional renewal terms ("Renewal Period"). The Renewal Period will be the same length as the Initial Term unless

otherwise specified on an Order Form and will start on an anniversary date based on the Start of Use Date as set forth in the Order Form. Renewal rates are subject to change and will be based on the fees included in each Order Form or the fees and levels in existence and effect at that time, at PS's option.

### **9. Confidential Information.**

If the parties have executed a separate NDA, the terms of the more protective Confidential Information provision will control over the terms of this Section. Otherwise, Confidential Information means any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Software and any non-public technical business information. Confidential Information does not include information that (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure. Customer and PS will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The receiving party may disclose the Confidential Information of the disclosing party if required by judicial or administrative process, provided

that the receiving party first provides to the disclosing party prompt notice of such required disclosure to enable the disclosing party to seek a protective order. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information.

#### **10. Audit**

During the term of this Agreement and for three (3) years after termination or expiration, Customer will maintain complete records regarding Customer's use of the Product. Upon reasonable advance notice to Customer, which shall not exceed thirty (30) days, PS may audit, up to once a year, Customer's computer systems, books, and records relating to Customer's payment obligations under this Agreement for the purpose of confirming Customer compliance with this Agreement. At PS's request, Customer will provide a knowledgeable employee to assist in such audit. At PS's option, the audit can include (i) an on-site inspection at any and all Customer locations, (ii) delivery of files, documents, or other records (e.g., computer access records, computer folders or files, or software access records) as requested by PS, (iii) network access to Customer's machines (e.g., remote access or desktop sharing), or any combination of these.

In the event any such audit reveals that Customer has underpaid PS by an amount greater than five percent (5%) of the amounts due PS in the period being audited, or that Customer has knowingly breached any material obligation hereunder, then, in addition to such other remedies as PS may have, Customer shall pay or reimburse to PS the costs of the audit.

#### **11. Termination of Agreement**

Either party may elect not to renew this Agreement for a renewal term after the Initial Term or for any subsequent renewal term by providing the other party with written notice no less than thirty (30) days prior to the first

Renewal Date and any subsequent applicable renewal date.

This Agreement may be terminated at any time by PS if: (i) Customer fails to pay the fees set forth in this Agreement; (ii) the Customer fails to comply with any of the terms and conditions set forth in this Agreement and does not remedy such failure within thirty (30) days after receiving notice of such failure; or (iii) uses the Product for any purpose other than for the internal business of the Customer.

Customer may terminate this Agreement on written notice to PS if PS materially breaches any obligation hereunder and fails to cure the breach within thirty (30) days after receiving notice of the breach.

#### **12. Responsibilities Upon Termination**

Upon the termination or expiration of this Agreement for any reason, the provisions of this Agreement which are intended to survive following expiration or termination of this Agreement will remain in effect in accordance with their terms.

Upon termination or expiration, Customer's license to use the Product will terminate. Customer will uninstall or otherwise remove or delete Product (and associated electronic material and documentation) from all Customer's machines and machines Customer uses to access Product. Customer will destroy or return to PS, at PS's option, all paper documentation and material associated with Product.

Upon any termination of this Agreement, Customer agrees to: (i) immediately cease all use of the Product and any copies thereof, including the use and distribution of any applications incorporating the Product; (ii) either return the Product to PS or destroy same, and certify to PS, in writing, that all copies and partial copies thereof have been returned or completely destroyed and are no longer being used; and (iii) notify all third parties using the Product through the Customer to comply with

the foregoing. Sections 6, 7, 9, 10, 11, 12, and 13 through 26 shall survive any termination of this Agreement.

**13. Indemnification By PS.** PS hereby agrees to indemnify, defend and hold Customer harmless, and its respective officers, directors and employees, (each, an “Indemnified Party”), from and against any and all liability and costs (including, without limitation, attorneys’ fees and costs) incurred by any Indemnified Party in connection with any actual or alleged claim made by a third party arising out of, or relating to Customer’s use of the Product as authorized herein infringing or misappropriating a third party’s copyright, trade secret or patent issued as of the Effective Date (except to the extent Customer is responsible for the event giving rise to PS’s liability under this Section). PS shall have no indemnity obligation to the extent that the infringement arises out of: (a) use of other than the then-current, unaltered version of the Product, unless the infringing portion is also in the then-current, unaltered release; (b) based on Customer’s use of the Product other than in accordance with this Agreement or the applicable documentation; (c) Customer’s combination of the Product with software or hardware not provided by PS; or (d) Customer’s modifications or derivative works of the Product. If Customer’s use of the Product is enjoined or PS reasonably believes Customer’s use of the Product may be enjoined, PS may elect to obtain a license for Customer to continue using the Product or modify the Product so that it no longer infringes. The foregoing shall be Customer’s sole and exclusive remedy and PS’s sole and exclusive obligation with

respect to any claim of intellectual property infringement.

(b) Procedure. PS shall have control of the defense and related settlement of any claims. The Indemnified Party shall provide PS with prompt written notice of the claim. The Indemnified Party will cooperate as fully as reasonably required, and provide such information as reasonably requested, by PS in the defense or settlement of any claim.

**14. Limited Warranty and Remedy**

(a) PS hereby warrants to Customer that for a Warranty Period described in (b), the Product will substantially conform to the functional description set forth in its associated documentation. Any implied warranties on the Product is limited to the Warranty Period, to the extent such warranties cannot be disclaimed under (c) below. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. PS does not warrant that use of the Product will be uninterrupted or error free.

(b) The Warranty Period will continue until the first to occur of: (i) the termination date of the Agreement; (ii) a starting date of a Billing Period for which payment was not received by PS, or (iii) ninety (90) days from Start of Use Date. The warranty cannot be renewed, restarted, or extended beyond the Warranty Period, regardless of a renewal of the Agreement or changes in the Authorized Users.

(c) Customer’s sole and exclusive remedy and PS’ sole and exclusive obligation for breach of the above-stated limited warranty shall be, at PS’s option, either: (i) correction or replacement of the Product with product(s) which materially conform to the above-stated limited warranty; or (ii) return of the price paid for subscription to the Product and termination

of this Agreement. Such remedy shall be provided to Customer by PS only if Customer gives PS written notice of any breach of the above-stated limited warranty, before expiration of the Warranty Period following Customer's receipt of the Product.

(d) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, PS MAKES NO WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCT AND ANY SERVICES FURNISHED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS: (I) OF MERCHANTABILITY; (II) OF SATISFACTORY OR MERCHANTABILITY QUALITY; (III) OF FITNESS FOR A PARTICULAR PURPOSE; (IV) OF TITLE OR NONINFRINGEMENT; OR (V) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER, AND CUSTOMER MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION.

#### **15. *Limitation of Liability***

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PS OR ITS OFFICERS, EMPLOYEES, OR AFFILIATES BE LIABLE FOR: (I) COSTS OF SUBSTITUTE GOODS OR SERVICES; (II) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, WHETHER IN AN ACTION OF CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF PS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (III) ANY DAMAGES, LOSSES OR INJURIES TO CUSTOMER, OR THOSE CLAIMING THROUGH CUSTOMER, IN EXCESS OF THE FEES PAID BY CUSTOMER FOR THE PRODUCT OR SERVICES DIRECTLY CAUSING THE LIABILITY IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION FIRST GIVING RISE TO THE LIABILITY.

THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THIS AGREEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

#### **16. *Export Controls and Government Rights***

None of the Product or underlying information or technology may be exported or re-exported into (or to a national or resident of) any country in violation of the laws and administrative regulations of the United States or any other applicable jurisdiction. Customer specifically agrees not to export or re-export any of the Restricted Components (i) to any country or region to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Crimea—Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria, or to any national of any such country or region, wherever located, who intends to transmit or transport the Product back to such country or region; (ii) to any person or entity who Customer knows or has reason to know will utilize the Product in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Customer warrants and represents that neither the Bureau of Export Administration (BXA) nor any other U.S. federal agency has suspended, revoked or denied Customer's export privileges. By installing or using the Product, or both, Customer is agreeing to the foregoing and Customer is representing and warranting that Customer is not located in, under the control of, or a national or resident of any such country.

The Product licensed to Customer under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

**17. No Transfer or Assignment**

Customer may not sublicense, assign, or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of PS, which consent shall not be unreasonably withheld. Any prohibited assignment will be null and void.

**18. No Rights Granted**

Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant Customer any rights in or to the Product other than the right to use as specified in sections 2 and 3 solely for the purposes contemplated by this Agreement.

Customer may modify the Product solely as necessary to fit the needs of Customer's environment. Any modifications or derivative works of Product shall belong exclusively to PS, and Customer hereby assigns all rights in them (including without limitation moral rights) to PS. Customer expressly waives any rights it may obtain inconsistent with the foregoing through application of the law of another country or otherwise. Customer owns any modules that

are not modifications or derivative works of the Product that Customer develops to use with the Product. The Product in modified form is licensed back to Customer and subject to the terms of this Agreement in the same way as the Product in unmodified form. Customer agrees: (i) not to develop any products containing any of the concepts and ideas contained in the Product; and (ii) not to develop methods to enable other parties to use the Product.

**19. Notice**

Any notice will be deemed sufficient if and when personally delivered in writing or if and when given by United States registered or certified mail, postage prepaid, return receipt requested, properly addressed to the respective addresses.

**20. Incorporation by Reference**

The QuickLaunch Components and Assumptions document provided by PS to Customer is hereby incorporated by reference into this Agreement.

**21. Entire Agreement**

This Agreement, together with each Order Form that references this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all other agreements between the parties related thereto, as well as all proposals, oral or written, and all negotiations, conversations or discussions between the parties related to this Agreement. In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of any documents referenced in Section 20, the terms and conditions of this Agreement will prevail except if the documents referenced in Section 20 expressly references the Section of this Agreement that it is intended to supersede. No product or service specifications, or terms and conditions that are additional or contrary to the terms of this Agreement, whether contained in any purchase order or other communication from Customer or any third party, will be construed as, or constitute a waiver of these terms and

conditions, or acceptance of any such additional terms, conditions or specifications. PS hereby rejects and objects to such additional or contrary terms, conditions, or specifications. Titles and headings in this Agreement are for information only and are not to be utilized in its interpretation.

**22. Modification of Agreement**

This Agreement may not be altered, amended, or otherwise modified without the written agreement signed by both parties.

**23. No Waiver**

No failure by either party to take any action or assert any right hereunder will be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

**24. Severability**

In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from this Agreement, but such invalidity or unenforceability will not invalidate any of the other terms of this Agreement and this Agreement will continue in force.

**25. Governing Law**

This Agreement will be governed by, and interpreted and construed in accordance with, the laws of the State of California, without regard to its conflict of law provisions.

**26. Dispute Proceeding**

Any action or proceeding arising from or relating to this Agreement must be brought in the courts in Santa Clara County, California; provided however that for customers outside of the United States the following terms apply: The parties agree that the Uniform Computer Information Transactions Act (UCITA) is hereby excluded from application to this Agreement and the parties agree that the United Nations

Convention for the International Sale of Goods is excluded in its entirety from this Agreement. All disputes arising out of or in connection with this Agreement shall be finally settled under the rules of JAMS by one arbitrator appointed in accordance with the said Rules. The Arbitration shall be conducted in the English language. The place of arbitration shall be San Jose, California. Except as may be required by law, neither a party nor its representatives nor a witness nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Judgment on the award may be entered in any court having jurisdiction thereof. The parties hereby waive all objection which it may have at any time to the laying of venue of any proceedings brought in such courts, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object with respect to such proceedings that any such court does not have jurisdiction over such party. The arbitrator shall have the authority to grant any temporary, preliminary, or permanent injunctive or other equitable relief in a form substantially similar to that which would otherwise be granted by a court. The arbitrator shall have no authority to award punitive damages or consequential damages. Notwithstanding the foregoing, either party has the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments, a temporary restraining order, temporary injunction and/or order of specific performance, as may appear reasonably necessary to preserve the rights of either party. The application by either party to a judicial authority for such measures shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitrator. The parties agree that this Agreement is written and construed in the English language.

**27. Each Counterpart an Original**

This Agreement may be executed in two or more counterparts and each such counterpart will be deemed an original hereof.