

## AutoRek Software as a Service Agreement

This Software as a Service Agreement (**SaaS Agreement**) should be read in conjunction with: (i) a completed Order Form and SOW, which outline the Services, pricing and other arrangements which are specific to the Client; (ii) Acceptable Use Addendum; (iii) Security Addendum; (iv) Data Protection Addendum; (v) Release Management and Update Addendum; (vi) Support and Maintenance Addendum; (vii) Exit Management Addendum.

### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**AutoRek:** API Software Inc. 251 Little Falls Drive, Wilmington, Delaware 19808, County of New Castle

**Acceptable Use Addendum:** AutoRek's acceptable use policy relating to the Services licensed to the Client, as applicable, available at <https://www.autorek.com/wp-content/uploads/2024/08/Acceptable-Use-Addendum-SaaS-v1.3-08.2024.pdf>.

**Acceptance:** the acceptance by the Client that a Deliverable conforms in all material respects to the applicable Acceptance Criteria and **Accept** and **Accepted** shall be construed accordingly.

**Acceptance Criteria:** for any Deliverable subject to Acceptance, the criteria which is reasonably required in order to assess if a Deliverable has no outstanding Serious Defects or has met other specific criteria as defined in the SOW, Project Plan or Test Plan or otherwise in writing between AutoRek and the Client.

**Acceptance Testing:** the process set out in clause 3 whereby the Client may test the Deliverables for conformance with the Requirements Specification.

**Addenda:** Acceptable Use Addendum, Data Protection Addendum, Release Management and Update Addendum, Security Addendum, Support and Maintenance Addendum and Exit Management Addendum.

**Affiliate:** in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party

**Agreement:** the legally binding terms and conditions agreed between AutoRek and the Client (in relation to the licensing to the Client of

Services) including this Software as a Service Agreement and any ancillary documentation referred to therein including any Order Form, any SOW, and the Addenda.

**Applicable Laws:** THE LAWS OF THE STATE OF NEW YORK, INCLUDING ITS STATUTES OF LIMITATIONS BUT EXCLUDING ITS CONFLICT-OF-LAW RULES OR ANY OTHER LAWS OR RULES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OR STATUTES OF LIMITATION OF A DIFFERENT JURISDICTION, SHALL GOVERN THIS AGREEMENT AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF. THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT IN WHOLE OR IN PART.

**AutoRek Competitor:** any legal person (other than AutoRek or its Affiliates) which provides, markets and commercializes or has publicly announced that it intends to provide, market and commercialize (whether for fees or other consideration) and other than to any of its Affiliates, services or products which are materially similar to AutoRek's services or products and includes any legal person where any Affiliates of that person meet the foregoing definition.

**Authorized Users:** those staff (and in the case of access by systems, systems) and (to the extent access is required for the Client to benefit from the Software Subscription Service and for no other reason) Third Parties Supplier of the Client who are authorized by the Client to use the Software Subscription Service and have been granted a CAL or a Read-Only CAL or N-CAL as appropriate.

**Business Contact Data:** contact information including name, business address, business telephone number and business e-mail address.

**Business Continuity Plan:** the business continuity and disaster recovery plan for the supply of Services (and the people and facilities used to provide them) to minimize the effect of an unplanned interruption or event that would significantly impact on the ability of AutoRek to supply the Services in accordance with the terms of this Agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in New York when banks

in New York are open for business.

**CAL:** a client access license required by each user that uses the Software Subscription Service.

**Change:** (i) any addition, removal, amendment or variation to the scope or the performance of any of the Deliverables or the Services excluding releases or updates made by AutoRek of its Software; or (ii) any variation to the terms of this Agreement in accordance with clause 12 (Change Control) or clause 23 (Variation).

**Change Control Procedure:** the procedure described in clause 12 (Change Control) to manage a Change.

**Change Order:** the document describing the Change agreed between the Parties pursuant to clause 12 (Change Control).

**Client:** the entity identified as the Client in the Order Form.

**Client IPR:** all materials or data provided or made available by or on behalf of the Client to AutoRek pursuant to this Agreement which is not reserved by AutoRek in accordance with clause 10 (Proprietary Rights) including Client Data.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.2.

**Client Competitor:** any legal person (other than Client or its Affiliates) which provides, markets and commercializes other than to any of its Affiliates, as a material part of its business, services which are the same as the business of the Client.

**Client Data:** all data or information inputted by the Client, Authorized Users, or AutoRek on the Client's behalf into the Software Subscription Service.

**Client Responsibilities:** all activities expressly agreed between the Parties and set out in this Agreement or any Order Form or SOW to be the responsibility of the Client.

**Data Allowance:** the data allowance based on the Transactions and if applicable hosting assumptions for the Hosting Services as more particularly described in the Order Form.

**Data Protection Laws:** as defined in the Data Protection Addendum.

**Data Protection Addendum:** AutoRek's policy in regard to compliance with Data Protection Laws

available at <https://www.autorek.com/wp-content/uploads/2024/08/Data-Protection-Addendum-SaaS-v1.3-08.2024.pdf>.

**Defects:** an aspect of a Deliverable that is subject to Acceptance Testing which does not conform in all material respects to the Requirements Specification.

**Deliverable:** any item listed as a deliverable in any SOW.

**Documentation:** the Operating Manuals and Specification as updated by AutoRek and made available to the Client from time to time.

**Effective Date:** the date of, or otherwise identified upon, the Order Form.

**Environment:** A logical tier of a deployment pipeline, which contains at least one Instance

**Exit Fees:** fees payable by the Client to AutoRek for the provision of the Exit Services, which shall be calculated in accordance with Exit Plan.

**Exit Period:** in respect of any termination or expiry of the Agreement, the commencing on the notice of termination of the Agreement up to the effective date of termination or as otherwise agreed in writing between the Parties.

**Exit Plan:** the plan for the provision of the Exit Services in the event of the expiry or termination of this Agreement for any reason, which is developed by the Parties in accordance with clause.

**Exit Management Addendum:** the detailed arrangements for orderly transfer of responsibilities and the Client Data in the event of the expiry or termination of this Agreement available at <https://www.autorek.com/wp-content/uploads/2024/08/Exit-Management-Addendum-SaaS-v1.3-08.2024.pdf>.

**Exit Services:** them Services provided by AutoRek to facilitate the return of Client Data upon expiry or termination of the Agreement as set out in the Exit Plan.

**Financial Outsourcing Regulations:** financial regulations including without limitation Interagency Guidance on Third-Party Relationship Risk Management issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, as applicable which apply to the Client's receipt of the Services.

**Fees:** the fees payable by the Client to AutoRek for the Services, as set out in an Order Form and any SOW or otherwise payable in accordance with this Agreement.

**Fixed Price:** Professional Services are provided on a fixed price basis as expressly set forth in a Statement of Work.

**Good Industry Practice:** means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a reasonably skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

**Hosting Fees:** the fees payable in respect of Hosting Services and the management of the Hosting Services as more particularly set out in the Order Form.

**Hosting Provider:** the hosting provider specified in the Order Form.

**Hosting Provider Terms:** the terms available at the following webpage: [Microsoft Azure Legal Information | Azure](#)

**Hosting Assumptions:** the assumed use of the Software Subscription Services that are expressly stated in a Client Order Form.

**Hosting Services:** the hosting services provided by the Hosting Provider.

**Implementation Services:** the Professional Services provided by AutoRek to the Client pursuant to a SOW in respect of the initial configuration and implementation of the Software Subscription Services.

**Initial Term:** the first and minimum subscription period specified in the Order Form. If no such subscription period is listed, the Initial Term shall be three (3) years from the Effective Date.

**Instance:** an individual installation of the Software, comprising a web application front-end and one database use to hold the Client Data.

**IPR:** rights title and interest in: (i) patents, trademarks, service marks, trade names, goodwill, registered designs, design rights, semiconductor topography rights, database rights, copyrights, trade secrets, moral rights, and other forms of intellectual or industrial property (in each case in any part of the world, whether or not registered or registrable for their full period of registration with all extensions, renewals and revivals, and including all applications for

registration or otherwise); (ii) inventions, formulae, confidential information (including know-how or secret processes); (iii) rights in computer software; and any similar or equivalent rights in assets which may now or in the future subsist anywhere in the world.

**License Fee:** the portion of the Fees attributable to the Software Subscription Service excluding Hosting Fees and any Professional Services Fees, more particularly described in the Order Form.

**Licensee:** means the Client and (a) any member of the Client; (b) any subsidiary company of the Client; (c) any holding company of the Client or a subsidiary of that holding company and (d) any successor in business to the Client from time to time.

**Losses:** all losses, liabilities (including provision for contingent liabilities), fines, penalties, sanctions, damages, costs, awards and expenses (including reasonable legal fees on a solicitor/client basis), amounts paid in settlement and disbursements and reasonable costs of investigation, litigation, settlement, judgment, interest and penalties.

**NCAL:** a form of CAL that allows Authorized Users to add notes and attach documents to Queries which does not use functionality above that of Read-Only CALS

**Non-AutoRek Application(s):** all applications, products and/or services whether online or offline used or accessed by the Client that do not form part of the Deliverables or Services provided by AutoRek or its subcontractors.

**Order Form:** an order for Software Subscription Services placed by the Client generated by AutoRek and agreed by the Client.

**Operating Manuals:** the operating manuals, user instructions, technical literature and all other related materials supplied to the Client by AutoRek for assisting in the use of the Services in whatever form as agreed between the Parties.

**Open-Source Software:** any open software programs which are licensed under any form of Open Source license meeting the Open Source Initiatives open source definition from time to time

**Output Data:** data reports generated by uploading the Client Data to the Software Subscription Services excluding the Client Data and excluding any configurations or modifications to the Software.

**Parties:** the Client and AutoRek.

**PCI Standard:** best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data.

**Platform:** means an underlying set of infrastructure components used by AutoRek to support the delivery of multiple Environments as part of the Software Subscription Service, including system and server software and other associated software services, including but not limited to security, software, and related services, but excluding the Software.

**Productive Use:** use of a Deliverable by the Client for business purposes and not for training or testing purposes.

**Professional Services:** any services provided by AutoRek to the Client pursuant to a SOW.

**Professional Services Day:** means 7.5 hours of Professional Services time.

**PSD Rate:** the chargeable rate in respect of Professional Services as set out in an Order Form or SOW.

**Read-Only CAL:** is a CAL that can be used to connect to the Services for reading or extracting data but which may not be used to perform functions that create or amend data such as performing actions, running functions, executing reports, or executing processes.

**Records:** the records of all Deliverables and Services provided to the Client in connection with this Agreement (including records detailing the time spent in providing Deliverables and Services by number of whole hours and minutes per week) together with all relevant materials and information in connection therewith.

**Release Management and Update Addendum:** AutoRek's policy in respect of release management and updates available at <https://www.autorek.com/wp-content/uploads/2024/08/Release-Management-and-Update-Addendum-SaaS-v1.3-08.2024.pdf>.

**Relief Event:** any act or omission by the Client, including any failure to fulfil client dependencies which are more particularly described in a SOW or Documentation, which has an adverse impact on AutoRek's ability to perform the Services or comply with its obligations under the Agreement and which may be described as an "Exception Event".

**Renewal Period:** the period described in clause 16.1.

**Replacement Provider:** any Third Party Supplier of the Replacement Services appointed by the Client from time to time.

**Representatives:** means in relation to each party (and any member of its Group): (a) its officers and employees that need to know the Confidential Information for the purpose of providing or receiving the Services; (b) its professional advisers or consultants who are engaged to advise that party (and/ or any member of its Group) in connection with this Agreement; any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

**Replacement Services:** any services which are identical or substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Client internally or by any Replacement Supplier.

**Replacement Supplier:** a third party appointed by the Client for the purposes of providing services similar to the Services following the termination or expiry of this Agreement.

**Requirements Specification:** the specification agreed between the Client and AutoRek in accordance with clause 3.11 which sets out the Client's requirements regarding the Software or a Deliverable.

**Security Addendum:** AutoRek's security policy available at <https://www.autorek.com/wp-content/uploads/2024/08/Security-Addendum-short-form-SaaS-v1.3-08.2024.pdf>.

**Serious Defect:** P1 and/or P2 Defects as more particularly described in the Support and Maintenance Addendum.

**Services:** the Software subscription services, Support Services, Hosting Services and Professional Services, as more particularly described in the Documentation as revised by AutoRek from time to time.

**Service Levels:** the service levels set out in the Support and Maintenance Addendum which are more particularly set out in the Order Form.

**SOW:** a statement of work setting out the Professional Services and Deliverables to be provided by AutoRek to the Client.



**Software:** the software application provided by AutoRek and all modifications, enhancements and configurations thereof as part of the Software Subscription Service that is specified in the Order Form.

**Software Subscription Service:** the online access provided by AutoRek to the Software together with Support Services.

**Software Subscription Service Fee:** the License Fee and the Hosting Fee.

**Specification:** the functional specification of the Software as defined in the Operating Manuals communicated by and accepted in writing by AutoRek.

**Stages:** the stages of delivery more particularly described in a Test Plan.

**Support Services:** any support services provided by (or on behalf of) AutoRek to the Client under this Agreement in relation to the Software.

**Support and Maintenance Addendum:** AutoRek's policy for support and maintenance provided at <https://www.autorek.com/wp-content/uploads/2024/10/Support-and-Maintenance-Addendum-SaaS-v1.3.1-09.2024.pdf>

**T&M Activity:** any activity which is stated in this Agreement to be provided by AutoRek on a Time and Materials Basis.

**Term:** has the meaning given in clause 16.1 (being the Initial Term together with any subsequent Renewal Periods and Exit Period).

**Test Plan:** the plan to be agreed between AutoRek and the Client pursuant to clause 3.11 which describes the Acceptance Testing between the Parties.

**Third Party Supplier:** a supplier to the Client who is not AutoRek or its sub-contractors.

**Time and Materials Basis:** the basis upon which Professional Services are charged as described in clause 3 (Professional Services).

**Transaction:** a record held within the Software and represented as a line item in an account, reconciliation, or similar structure presented by the Software.

**Virus:** any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or

network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, time bombs, spyware, malware, ransomware, trap doors, disabling code and other similar things or devices.

**Warranty Period:** a period of 30 days after Acceptance as more particularly described in clause 3.19.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement as amended from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.7 A reference to writing or written includes e-mail.
- 1.8 References to clauses are to the clauses of this Agreement unless otherwise expressly stated.
- 1.9 Use of the word "including" shall be construed to mean "including without limitation".
- 1.10 The terms of this Agreement apply to the Services to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.11 In the event of any conflict or inconsistency between the contractual documentation, the following order of precedence applies:
  - 1.11.1 Order Form;
  - 1.11.2 Software as a Service Agreement (together with the Addenda);

- 1.11.3 SOW;
- 1.11.4 Any other appendices, schedules or other documents referred to in the Software as a Service Agreement.

permitted by this Agreement) provide access to the Software, the Software Subscription Services or any part thereof.

**It is agreed:**

2.5 The Software Subscription Services are licensed on an Instance, CAL and (only if so specified in an Order Form) Transaction model as more particularly described in the Acceptable Use Addendum. Each Instance License refers to the installation of one Instance. Each additional Instance database requires its own Instance License. Each CAL:

- 2.5.1 supports one end user connection to the Software Subscription Service;
- 2.5.2 may be used to access an Instance licensed by the Licensee;
- 2.5.3 is associated with one Authorized User at a time; and
- 2.5.4 may only access an Instance from a single location at a time.

**2 Services**

2.1 AutoRek hereby grants to the Licensee for the Term a non-exclusive license to use the Software Subscription Service in the course of the Licensee's businesses from time to time for the duration of the Term in accordance with the license model in clause 2.5. Without limitation to the generality of the foregoing, this license includes the right for the Licensee to:

- 2.1.1 use the Software Subscription Services and Documentation in accordance with the terms of this Agreement for the benefit of their own business; and
- 2.1.2 copy and adapt the Operating Manuals for the express purpose of using and supporting the Software Subscription Service.

**3 Professional Services**

2.2 Where the Licensee engages the services of any consultants or contractors and as part of these services such consultants or contractors require the use of the Software Subscription Services for the purpose of the Client receiving the Software, then AutoRek permits such use provided that the Client shall remain fully liable for the acts or omissions of such persons (not including AutoRek, its officers, employees, agents, suppliers, sub-contractors or personnel) as if such acts and omissions were the Client's under this Agreement, and not grant access to the Software Subscription Services to any AutoRek Competitor.

3.1 Professional Services may be ordered pursuant to an Order Form or a SOW (or both). Implementation Services may be requested to configure the Software and Documentation according to the Client's requirements which will be more particularly set out in a SOW.

2.3 The Client shall remain liable for the acts or omissions of the Authorized Users including any Licensee (not including AutoRek, its officers, employees, agents, suppliers, sub-contractors or personnel) as if such acts and omissions were the Client's under this Agreement. Further, the Client specifically acknowledges and agrees that it is solely the Client's responsibility to maintain the security and confidentiality of the login and account recovery credentials issued to or generated by the Client and/or its Authorized Users, and the Client shall be solely responsible and liable for actions taken by any party using such credentials.

3.2 Unless expressly stated otherwise in a Statement of Work, Professional Services are provided on a Time and Materials Basis and the amount AutoRek shall be entitled to charge shall be equal to: (i) the number of Professional Services Days spent by each individual AutoRek personnel on the performance of the T&M Activity multiplied by the applicable PSD Rate; and (ii) any costs (including expenses) which AutoRek properly and reasonably incurs in the performance of the T&M Activity (together "**T&M Charges**").

2.4 The Client may not resell, sub-license, rent, or (other than to Authorized Users as expressly

3.3 For the avoidance of doubt, where AutoRek personnel spend less than a Professional Services Day on the performance of the T&M Activity, the PSD Rate shall be pro-rated accordingly to reflect the proportion of the Professional Services Day which the AutoRek personnel spends on the performance of the T&M Activity and where AutoRek personnel spend more than a Professional Services Day on the proper performance of the relevant T&M Activity, the additional hours shall be chargeable by AutoRek.

3.4 AutoRek personnel shall complete full and

accurate time sheets recording time spent on the T&M Activity and shall provide such information in relation to time incurred by AutoRek personnel in the provision of the T&M Activity (together with such details and supporting evidence as reasonably required by the Client) when invoicing the Client in respect of the T&M Activity.

- 3.5 If AutoRek provides the Client with an estimate in respect of any T&M Activity, such estimate shall be given in good faith in accordance with Good Industry Practice. Unless otherwise expressly agreed in a SOW, dates or times for delivery provided by or agreed with AutoRek are estimates and indicative only and time is never 'of the essence' in relation to the delivery of any Professional Services. Any estimates, timeframes or quotes provided by AutoRek are subject to adjustment based on changes in scope or the required level of effort, delays in Client making available personnel or performing its responsibilities, the testing and validation process, and other circumstances outside of AutoRek's reasonable control.
- 3.6 AutoRek shall update the Client regularly in respect of Time and Materials costs incurred by reference to estimates provided and all T&M Charges which are properly incurred and calculated in accordance with this clause 3 (Professional Services) shall be payable by the Client notwithstanding estimates provided, provided that such estimates are given in accordance with clause 3.5.
- 3.7 The Client shall permit AutoRek's personnel sufficient access to its premises to enable AutoRek to provide the Professional Services. When working at the Client's premises, the Client shall allow AutoRek's personnel to have the use and benefit of a suitable working area and suitable technical equipment. If AutoRek agrees to supply Professional Services on an hourly basis, during standard working hours, the fee will be the PSD Rate applicable to the Client calculated pro rata plus any associated costs.
- 3.8 Unless otherwise agreed in the Order Form or SOW (as relevant), the Client agrees to pay all expenses in accordance with AutoRek's then current expenses policy.
- 3.9 AutoRek has the right to perform similar Professional Services for third parties, including any Client Competitors. Any IPRs which may be created by AutoRek during the provision of

Professional Services, including, without limitation, ideas, know-how, techniques, enhancements or modifications to Services, source code or Documentation and any software scripts, are the property of AutoRek. AutoRek retains title and full ownership rights to all such IPRs under any applicable law of any jurisdiction.

- 3.10 The Parties agree that it shall be necessary to carry out such testing work on Deliverables as is reasonably necessary to enable the Client to confirm that the Deliverable operates in accordance with the Requirements Specification and the Client shall make available, at its expense, such business, development and technical resources as may be required to promptly undertake such testing work.
- 3.11 The Parties undertake to cooperate in good faith to determine and agree Acceptance Criteria, a Test Plan and Requirements Specification. If the Parties cannot so agree, the Parties shall resolve the matter in accordance with clause 32 (Dispute Resolution).
- 3.12 Prior to delivery, AutoRek shall use all reasonable endeavors to ensure the Deliverables are properly system tested, such that the Client can carry out the Acceptance Testing in accordance with the Test Plan and any further specific requirements set out in the SOW.
- 3.13 AutoRek shall resolve Defects in accordance with the Test Plan.
- 3.14 The Client shall start Acceptance Testing as soon as reasonably practicable following the later of installation or configuration of the Deliverable and shall use its reasonable endeavors to complete such Acceptance Testing in accordance with the time periods identified in the Test Plan. AutoRek shall provide such reasonable assistance as the Client requires in respect of the Acceptance Testing as set forth in the Test Plan. If the Deliverable passes the Acceptance Test, the Client shall promptly deliver a notice confirming Acceptance to AutoRek.
- 3.15 If the Services include customization of Software, AutoRek may deliver the Software in Stages in accordance with the Test Plan. In such cases, Acceptance Testing will be carried out on a stage by stage basis and the acceptance activities and Acceptance Criteria for each Stage will be set out in the Test Plan as may be adjusted by written agreement between the Parties at each stage.

- 3.16 Notwithstanding anything else in this Agreement, any Deliverable (or any agreed Stage or any new Release of the Software) will be deemed to have been Accepted by the Client upon the earlier of (i) the Deliverable being put to Productive Use; or (ii) the Client has completed Acceptance Testing and delivered to AutoRek a notice confirming Acceptance; or (iii) the Deliverable have been available to the Client for Acceptance Testing for a period of twenty eight (28) days, no Serious Defects have been notified to AutoRek that are outstanding for correction and AutoRek offers to make the Deliverable live for use.
- 3.17 In the event the Deliverable fails in some material respect to pass repeat Acceptance Testing in accordance with the Test Plan and Serious Defects remain, the Client may by written notice to AutoRek, choose at its sole discretion:
- 3.17.1. to fix a new reasonable date for carrying out further tests on the same terms and conditions;
- 3.17.2. to Accept the Deliverable subject to a change of Acceptance Criteria and an amendment of the Specification and/ or Requirements Specification in accordance with the Change Control Procedure; or
- 3.17.3. to reject the Deliverable as not being in conformity with the Requirements Specification in which event:
- (a) all rights of the Client to use the rejected Deliverable shall cease immediately and the Client shall immediately (at AutoRek's option) return or delete the rejected Deliverable; and
- (b) subject to clause 3.17.3(a) AutoRek shall refund the proportion of Fees that relate solely to that rejected Deliverable.
- 3.18 The Client's sole and exclusive remedy against AutoRek where it does not Accept a Deliverable shall be in accordance with the provisions of clause 3 (Professional Services).
- 3.19 If, during the Warranty Period, the Client reports a Serious Defect which does not result from a Client Cause, AutoRek shall use all reasonable endeavors to remedy the Serious Defect without charge. The Client acknowledges that AutoRek's obligations pursuant to this clause 3.19 may be discharged under its support obligations as reasonably agreed by the Parties.

## 4 AutoRek's Obligations

- 4.1 AutoRek warrants that the Services will conform in all material respects with the Specification and be provided in accordance with Good Industry Practice;
- 4.2 AutoRek shall take reasonable steps in accordance with Good Industry Practice to prevent any Viruses being introduced into the Software Subscription Services and/ or the Deliverables;
- 4.3 AutoRek warrants that the Documentation provided to the Client from time to time shall be sufficient to enable a person possessing reasonable skill in information technology similar to the Software Subscription Services to use and understand the use and operation of the Software Subscription Services;
- 4.4 AutoRek warrants that it has and shall maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement;
- 4.5 AutoRek will comply with all Applicable Laws with respect to its obligations under this Agreement.
- 4.6 AutoRek shall not be in breach of this Agreement to the extent any non-conformity of the Software Subscription Services arises from use of the Services by the Client contrary to the Documentation or AutoRek's reasonable instructions, or modification or alteration of the Services by any party other than AutoRek or AutoRek's duly authorized contractors or agents (and other than expressly permitted by AutoRek) or combination with any software or materials not supplied by AutoRek.
- 4.7 **AUTOREK:**
- 4.7.1 **DOES NOT WARRANT THAT THE CLIENT'S USE OF THE SOFTWARE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; AND**
- 4.7.2 **IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER PUBLIC COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND THE CLIENT ACKNOWLEDGES THAT THE SOFTWARE SUBSCRIPTION SERVICES AND DOCUMENTATION MAY BE SUBJECT TO LIMITATIONS, DELAYS**



AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

4.8 Where any Open-Source Software is incorporated into the Software Subscription Service (“**OSS Components**”) AutoRek warrants that:

- 4.8.1 the access and use of the OSS Components by the Client in accordance with this Agreement will not violate any license terms applicable to the OSS Components;
- 4.8.2 such OSS Components have been selected in accordance with Good Industry Practice.
- 4.8.3 The OSS Components do not require, as a condition of use, modification and/or distribution of such OSS Components or that other software incorporated into, derived from or distributed with such OSS Components: (a) be disclosed or distributed in source code or object code form, (b) be licensed for the purpose of making derivative works, (c) be redistributable at no charge, or (d) be modified, adapted, decompiled or reverse engineered.
- 4.8.4 Subject to the foregoing, the Client acknowledges that the OSS Components is provided “as is” and is expressly subject to the disclaimer at clause 4.10.

4.9 The Client is responsible for following archiving procedures set out in the Acceptable Use Addendum. AutoRek shall not be liable for any Losses arising from loss or damage to Client Data to the extent such Losses arise from Client’s failure to comply with this Agreement including the Acceptable Use Addendum. In the event of any loss or damage to Client Data, AutoRek shall use reasonable commercial endeavors to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by AutoRek in accordance with the archiving procedure described in AutoRek’s Business Continuity and Disaster Recovery Plan. AutoRek shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by Client or any third party acting on behalf of the Client or any Licensee (other than by an act that is expressly permitted by AutoRek in accordance with this Agreement).

4.10 EXCEPT AS SET FORTH IN THIS CLAUSE

4 (AUTOREK’S OBLIGATIONS), AUTOREK MAKES NO FURTHER WARRANTIES, REPRESENTATIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT AND ALL SUCH WARRANTIES, REPRESENTATIONS AND CONDITIONS ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EXCLUDED.

## 5 Client’s Obligations

5.1 The Client warrants that:

- 5.1.1 it has full capacity and authority to enter into and perform its obligations under this Agreement;
- 5.1.2 this Agreement is executed by a duly authorized representative of the Client;
- 5.1.3 the Client shall:
  - (a) provide AutoRek with all necessary co-operation in relation to this Agreement as may be reasonably required in a timely manner (and in any event in accordance with agreed timescales) in order to receive the Services including but not limited to supplying such relevant data, information, materials, access to premises and assistance, each as reasonably required by AutoRek to the extent necessary to enable AutoRek to perform the Services.
  - (b) comply with all Applicable Laws with respect to its obligations under this Agreement and use of the Services.
  - (c) ensure that to the extent reasonably necessary, any Authorized Users attend training provided or made available by AutoRek and that those involved with the Professional Services and operation of the same undertake sufficient training to carry out that role in line with Good Industry Practice and in accordance with any relevant Documentation and reasonable advice given by or on behalf of AutoRek (or its partners, agents or sub- contractors as applicable);
  - (d) ensure that the Authorized Users use the

- Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorized User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Client to receive the Software Subscription Services;
  - (f) ensure that its network and systems comply with the Documentation;
  - (g) ensure that any transfer of data by the Client into the database used by the Software Subscription Services and/or Deliverables must be carried out using the standard interfacing tools supplied with the relevant Services and/or Deliverables.
  - (h) be responsible for the accuracy of the Client Data;
  - (i) ensure that its operating systems, browsers and software which interfaces to the Software Subscription Service (as applicable) are at all times compatible with the Software Subscription Service and/or Deliverables and are not malfunctioning in a way that adversely affects the operation of Software Subscription Service and/or Deliverables;
  - (j) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to AutoRek's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;
  - (k) be responsible for providing and installing the appropriate web browser to access the Services and/or Deliverables, as advised from time to time by AutoRek;
  - (l) be responsible for procuring and maintaining Client-side equipment, software and services required to remotely access and use the Services and/or Deliverables including network connectivity;
  - (m) use the Services and/or Deliverables only in accordance with this Agreement (including the Acceptable Use Addendum) and applicable laws;
  - (n) Not knowingly distribute or transmit to AutoRek, via the Services, any Viruses or vulnerabilities and shall take all reasonable steps (which shall at a minimum be in accordance with Good Industry Practice), to prevent any Viruses being introduced by or on behalf of the Client into the Software Subscription Services. Such reasonable steps shall include but not be limited to using reputable commercially available anti-virus checking software program on the Client's systems.
- 5.2 The Client shall be responsible for ensuring that the Requirements Specification fully and accurately defines the requirements of the Client's business, although the Requirements Specification shall be a jointly produced document and AutoRek shall provide all reasonable assistance and cooperation as may be requested in the production of the same.
- 6 Subcontracting**
- 6.1 Subject to the Data Protection Addendum, AutoRek may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement provided that in the case of subcontracting AutoRek shall remain responsible for the subcontracted services.
- 7 Relief Events**
- 7.1 If AutoRek is prevented or delayed from performing any of its obligations under this Agreement by reason of any Relief Event then AutoRek shall not be deemed to be in breach of any terms of this Agreement which it might otherwise be in breach of as a result of the said act, default or omission.
- 7.2 AutoRek shall use reasonable endeavors to notify the Client reasonably promptly upon becoming aware of a Relief Event and shall use reasonable endeavors where practicable to mitigate the adverse effect of the Relief Event insofar as it relates to AutoRek's performance of its obligations under this Agreement.
- 7.3 If and to the extent AutoRek incurs additional costs in complying with its obligations as a direct result of any Relief Event, it shall be entitled to recover those additional costs which are reasonably and properly incurred by AutoRek from the Client, provided that wherever

practicable AutoRek promptly notifies the Client in advance of such costs.

## 8 Fees and Payment

- 8.1 The Client shall on the Effective Date provide to AutoRek valid, up-to-date and complete contact and billing details.
- 8.2 AutoRek shall invoice the Client for the Fees for the Services in accordance with the Order Form and SOW as applicable. Subscription Service Fees become payable on the Effective Date. Professional Service Fees are invoiced monthly in arrears unless otherwise specified in the applicable SOW.
- 8.3 The Client shall pay each invoice within 30 days after the date of such invoice.
- 8.4 Interest shall accrue on a daily basis on any amounts due which have not been paid at an annual rate equal to 5% over the then current Bank of Scotland base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment, such interest shall accrue on a daily basis.
- 8.5 All amounts and fees stated or referred to in this Agreement:
  - 8.5.1 shall be payable in pounds sterling (unless stated otherwise in an Order Form);
  - 8.5.2 are, subject to clause 3.17.3(b), non-cancellable and non-refundable.
  - 8.5.3 are exclusive of tax (including sales, use, excise, value-added, gross receipts, services, consumption and other similar transaction taxes however designed that are properly levied by any taxing authority upon the Services provided under this Agreement), excluding taxes on AutoRek's net income paid or payable by AutoRek which shall be payable by the Client;
  - 8.5.4 shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 8.6 In the event of AutoRek's under-calculation of any taxes payable by the Client hereunder, the Client shall be responsible for any additional amounts of tax due. Each Party shall reasonably cooperate with the other to determine liability for taxes accurately, and minimize such liability to the extent legally permissible. Each Party shall provide and make available to the other any

resale certificates, information regarding out-of state sales or use of equipment, materials or services, and any other exemption certificates or information requested by a Party.

- 8.7 If the Client receives an invoice which it reasonably and in good faith believes includes a sum which is not valid and properly due:
  - 8.7.1 the Client shall notify AutoRek in writing as soon as reasonably practicable and in any event within ten (10) days of receipt of the invoice;
  - 8.7.2 the Client's failure to pay the balance of the invoice which is in dispute shall not be deemed a breach of this Agreement;
  - 8.7.3 the Client shall pay the balance of the invoice which is not in dispute by the due date;
  - 8.7.4 to the extent that the Client is obliged, following resolution of the dispute to pay an amount, then AutoRek may charge interest in accordance with clause 8.4.
- 8.8 Hosting Fees are calculated based on the Client's expected Data Allowance and Hosting Assumption. In the event the Client exceeds the anticipated Data Allowance AutoRek shall promptly notify the Client of the Client's data usage and the applicable data allowance the Client requires to accommodate such usage as more particularly described in paragraph 5 of the Acceptable Use Addendum and shall issue an interim invoice in respect of the actual usage and all future invoices shall be adjusted accordingly. Following expiry of the Initial Term, the Hosting Charges shall be payable annually in advance based on the anticipated Data Allowance as reasonably agreed between the parties. Any change to Hosting Assumptions must be agreed via the Change Control Procedure.
- 8.9 In the event the Client's license model is based on Transactions (as specified in an Order Form) in the event any Transactions are in excess of the specified Transaction allowance AutoRek shall issue an interim invoice in respect of the excess Transactions incurred and a pro-rata proportion of the charges in respect of the remaining invoice period and all future invoices shall be adjusted accordingly.
- 8.10 The Fees and any applicable rates shall be increased annually by the greater of one percent (1%) or the percentage increase in the Consumer Price Index (CPI) published by the

U.S. Bureau of Labor Statistics over the preceding twelve (12) month period. AutoRek shall be entitled to increase the Hosting Fees due or payable under this Agreement where such Hosting Fees are increased by the Hosting Provider in accordance with the Hosting Provider Terms. In the event the Hosting Provider increases the Hosting Fees, AutoRek shall promptly notify the Client and upon request shall provide the Client with all information reasonably required to verify the increase in the Hosting Fees.

- 8.11 AutoRek shall be entitled to increase the Fees and applicable rates (i) prior to the start of each Renewal Period upon one hundred and twenty (120) days' notice to the Client ("Notification Period"); or (ii) any time after the Notification Period upon providing one hundred and twenty (120) days' prior written notice provided that the Fees shall not increase more than once in any Renewal Period pursuant to this clause 8.10 and in the event the Client is notified of any increase in Fees pursuant to 8.10(ii) the Client may terminate the Agreement by providing AutoRek with ninety (90) days' notice prior to the commencement of the increase in Fees.
- 8.12 AutoRek may, at its option, assess a late fee on Hosting Fees that are more than fifteen (15) calendar days past due at a rate of two percent (2%) of the Hosting Fees payable, calculated monthly, or the highest amount allowed by law.
- 8.13 For the avoidance of doubt clause 8.10 shall be without prejudice to any increased Fees that may become due pursuant to a Change agreed between the Parties or a SOW.

## 9 Audit

- 9.1 AutoRek shall maintain any relevant cyber certifications throughout the term of this Agreement, namely ISO 27001 and SOC (Service Organization Control) 2 Type 1 Report. Upon written request from the Client, AutoRek shall promptly provide a reasonably detailed summary of the relevant parts of the report and shall not withhold from the report or the summary any instances of non-compliance with the terms of this Agreement or any issues, concerns, and recommendations arising out of the relevant audit relevant to this Agreement or the Services) raised by the external auditor in respect of the audit which relates in whole or in part to security.
- 9.2 To the extent the Client's audit requirements under applicable Financial Outsourcing

Regulations cannot reasonably be satisfied through audit reports, documentation or compliance information AutoRek makes generally available to its customers or to the Client, AutoRek shall promptly respond to the Client's additional audit instructions. Before the commencement of an audit, the Client and AutoRek will mutually agree upon the scope, timing, control, evidence requirements and fees for the audit, provided that this requirement to agree will not permit AutoRek to unreasonably delay performance of the audit. To the extent needed to perform the audit, AutoRek will make the processing systems, facilities and supporting documentation relevant to AutoRek's obligations under this Agreement available.

- 9.3 Such an audit will be conducted by an independent, accredited third-party audit firm or regulator during regular business hours with reasonable advance notice to AutoRek and subject to reasonable confidentiality procedures. Neither the Client nor the auditor shall have access to any data from AutoRek's other customers or to AutoRek's systems or facilities not involved in providing the applicable Services. The Client shall remain responsible for such auditors as if they were the acts or omissions of the Client. Nothing in this Agreement shall oblige AutoRek to provide access to or disclose any: (i) documents or information to the extent that the provision of such access would cause AutoRek to be in breach of its obligations under Applicable Laws; or (ii) provide access to, or disclose, any information to the extent that such information is confidential information of AutoRek's other customers; clients or suppliers or (iii) information to the extent that such information relates to AutoRek's cost- base, margins or profits; or (iv) information, systems, premises or data that do not relate to the Client and/ or the Services or Deliverables. The Client is responsible for the reasonable costs and fees in respect of any such audit. If the audit report generated as a result of the Client's audit includes a finding of material non- compliance, the Client shall share such an audit report with AutoRek.
- 9.4 The Client shall conduct no more than one (1) audit in any twelve (12) month period pursuant to this clause 9 (Audit) unless the audit is expressly mandated by a regulatory authority (including, without limitation, any relevant securities exchange).



## 10 Proprietary Rights

- 10.1 Client acknowledges and agrees on behalf of itself and the Licensee that as between AutoRek, Client, and Licensee, AutoRek and/or its licensors own all rights, title and interest in and to the Deliverables, Services, Documentation and all related IPRs. Subject to the limited rights expressly granted in this Agreement, AutoRek and its licensors reserve all rights, title and interest in and to the Deliverables, Services, Documentation and all related IPRs together with all modifications, configurations, updates, enhancements and improvements thereto (even if requested, undertaken or paid for by the Client), all goodwill associated therewith and all related IPRs whether current or future. No rights are granted to the Client or the Licensee hereunder other than as expressly set forth herein. The Client agrees that any licensing of Deliverables, Services, Documentation and all related IPRs under this Agreement are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by AutoRek or its subcontractors regarding future functionality or features.
- 10.2 The Licensee is hereby granted a royalty-free, non-exclusive, non-sublicensable license for the duration of the Term to use the Software Subscription Services and Documentation in accordance with this Agreement.
- 10.3 To the extent the Client is required by applicable law or regulation to retain the Output Data for regulatory audit purposes (“Regulatory Requirement”), AutoRek grants to the Client a revocable, non-sublicensable license to retain such Output Data after the expiry of this Agreement solely to the extent required and for the minimum term necessary to satisfy the Regulatory Requirement.
- 10.4 AutoRek has the right to perform similar Services for third parties, including any competitors of the Client. Any IPRs which may be created by AutoRek or its licensors during the provision of the Services, including, without limitation, ideas, know-how, techniques, enhancements or modifications to Deliverables or Services, source code or Documentation and any software scripts, are the property of AutoRek or its subcontractor(s). AutoRek retains title and full ownership rights to all such IPRs under any applicable law of any jurisdiction.

10.5 Subject to clause 20.6, the Client reserves all rights, title and interest in and to the Client IPR. The Client grants to AutoRek, a worldwide, royalty-free, non-exclusive, non sub-licensable license (other than to its subcontractors) to use the Client IPR to the extent necessary for AutoRek to perform its obligations (including providing the Services) under this Agreement and to comply with applicable law.

10.6 AutoRek and the Client shall execute all further documents to vest in the other Party the applicable rights in respect of the applicable IPR in accordance with the provisions of clause 10 (Proprietary Rights).

## 11 Insurance

11.1 AutoRek shall obtain and maintain in force throughout the term of this Agreement with a reputable insurer a policy or policies of insurance against risks that would be insured against by a prudent business in accordance with Good Industry Practice.

11.2 AutoRek shall promptly after written request from the Client provide the Client with proof of insurance and evidence of payment of the last premium.

## 12 Change Control

12.1 Either Party may at any time during the Term propose a Change, but no proposed changes shall come into effect until a relevant Change Order has been signed by both Parties.

12.2 A Change Order shall be a document setting out:

12.2.1 the details of the Change;

12.2.2 any impact on the obligations of AutoRek under this Agreement or the provision of the Services arising from such a Change; any impact on the Fees; and

12.2.3 the details of the likely impact (if any) of the Change on working arrangements or other matters identified by the Parties to be of relevance to the provision of the Services.

12.3 If AutoRek wishes to make a Change it shall notify the Client and provide a draft Change Order to the Client. If the Client wishes to make a Change it shall notify AutoRek and provide as much details as AutoRek reasonably requires for the proposed Change including the timing of the proposed Change and AutoRek shall as soon as reasonably practicable upon receipt of such information, provide the Client with a draft

Change Order.

- 12.4 If the Parties agree any Change Order, they shall sign it and that Change Order shall amend this Agreement accordingly.
- 12.5 Until such time as a Change has been agreed by the Parties or determined in terms of clause 12.6 below, the Parties shall continue to conform to this Agreement as if no request for a Change had been made.
- 12.6 In the event that the Parties are unable to agree any Change within ten (10) Business Days of commencing such discussions or such longer period as the Parties may agree, then either Party may refer the matter for resolution in accordance with clause 32 (Dispute Resolution).
- 12.7 To the extent a Change is required by a Party to enable that Party to comply with Applicable Laws, neither party shall unreasonably withhold, condition or delay consent to such Change.

## 13 Confidentiality

- 13.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement.
- 13.2 Confidential Information means all nonpublic confidential information disclosed by a Party (“**Disclosing Party**”) or its authorized representatives to the other Party (“**Receiving Party**”) or that Party’s authorized representatives pursuant to or by virtue of this Agreement including but not limited to (a) the terms of this Agreement (b) any information that would be regarded by a reasonable person as confidential based on its nature or the circumstances of its disclosure, including without limitation information relating to: (i) the business affairs of the Disclosing Party (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party (c) any information developed by a Party in the course of carrying out this Agreement.
- 13.3 A Party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the Receiving Party; (b) was in the other Party's lawful possession before the disclosure; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (d) is independently developed by the Receiving Party, which independent development can be shown by

written evidence; (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body provided that any such information shall be excluded only to the extent necessary to enable the party so compelled to comply with its obligations under law.

- 13.4 Each Party may disclose Confidential Information to its Representatives, a member of its Group or their Representatives (“**Permitted Recipients**”) on the basis that it:
  - 13.4.1 Informs those Permitted Recipients of the confidential nature of the Confidential Information before it is disclosed; and
  - 13.4.2 Procures that those Permitted Recipients comply with the confidentiality obligations in this clause 13.
- 13.5 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 13.6 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 13.7 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute AutoRek's Confidential Information.
- 13.8 AutoRek acknowledges that the Client Data is the Confidential Information of the Client.
- 13.9 Either Party may make a public announcement (or permit any person to make such announcement) concerning this Agreement to the extent such announcement is as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.10 The above provisions of this clause 12.6 (Confidentiality) shall survive termination of this Agreement, however arising.

## 14 Indemnity

- 14.1 AutoRek shall defend the Client, its officers, directors and employees against any claim that the Client’s use of the Services, Deliverables or

Documentation (“**Indemnified Materials**”) infringes the Intellectual Property Rights of any third party, and shall indemnify and keep indemnified the Client for any amounts awarded against the Client in judgment or settlement of such claims.

- 14.2 In the defense or settlement of any claim, AutoRek may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing provided that such replacement or modifications has substantially similar features and functionalities.
- 14.3 In no event shall AutoRek, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement arises from any of the following:
  - 14.3.1 a modification of the Services or Documentation by anyone other than AutoRek and other than as expressly permitted by this Agreement or the Documentation;
  - 14.3.2 the Client's use of the Services or Documentation other than in accordance with this Agreement or the Documentation;
  - 14.3.3 the Client's use of the Services or Documentation after notice of the alleged or actual infringement from AutoRek or any appropriate authority and after AutoRek has made available to the Client at no additional charge, an updated or replacement of the infringing materials in accordance with clause 14.2;
  - 14.3.4 inclusion in any Indemnified Materials or AutoRek IPR of any content or other materials provided by or on behalf of the Client to the extent the infringement arises from such Client materials or provided material;
  - 14.3.5 the use of the Indemnified Materials or AutoRek IPR in combination with any materials which are not supplied by or behalf of AutoRek under or in connection with this Agreement; or are stated to be not recommended for use or incompatible with the Services or failure by the Client to comply with clause 14.6 below.
- 14.4 The foregoing indemnity states the Client's sole and exclusive rights and remedies, and AutoRek's (including AutoRek's employees',

agents' and sub-contractors') entire obligations and liability, for any third party intellectual property infringement claim.

- 14.5 The Client shall indemnify AutoRek against all liabilities, costs, expenses and all other reasonable professional costs suffered or incurred or paid by AutoRek arising out of or in connection with receipt or use of the Client IPR in accordance with this Agreement provided that the Client shall have no liability to indemnify AutoRek pursuant to this clause 14.5 where the indemnified loss the infringement arises from AutoRek's failure to comply with clause 14.6.
- 14.6 If either Party (“**Indemnifying Party**”) is required to indemnify the other Party (“**Indemnified Party**”) under this Agreement, the Indemnified Party shall:
  - 14.6.1 promptly notifying the Indemnifying Party in writing of any claim against it in respect of which the Indemnified Party wishes to rely (“**Indemnified Claim**”);
  - 14.6.2 allowing the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Indemnified Claim;
  - 14.6.3 provide the Indemnifying Party with such reasonable assistance regarding any Indemnified Claim as is required by the Indemnifying Party; and
  - 14.6.4 not, without prior consultation with the Indemnifying Party, making any admission relating to an Indemnified Claim or attempting to settle it, provided that the Indemnifying Party defends any Indemnified Claim diligently and using competent counsel.

## 15 Limitation of Liability

- 15.1 This clause 15 (Limitation of Liability) sets out the entire financial liability of each Party (including any liability for the acts or omissions of its staff, agents and sub-contractors) to the other (i) arising out of or in connection with this Agreement (ii) in respect of any claim made in respect of the Services or any part of them and (iii) in respect of any statement or tortious act or omission (including negligence) arising under or in connection with this Agreement (including for the avoidance of doubt any indemnities).
- 15.2 Nothing in this Agreement shall limit or exclude

the liability of either Party for:

- 15.2.1 Death or personal injury caused by negligence;
  - 15.2.2 Fraud or fraudulent misrepresentation;
  - 15.2.3 Any other liability which it would be unlawful to exclude or attempt to exclude;
- 15.3 Except as expressly and specifically provided in this Agreement the Client assumes sole responsibility for results obtained from the use of the Software Subscription Services and the Documentation by the Client, and for conclusions drawn from such use. Client shall exercise its own independent judgment in taking any business or financial decisions, regardless of Client's use of the Software. AutoRek shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AutoRek or by the Client in connection with the Software Subscription Services, or any actions taken by AutoRek at the Client's direction.
- 15.4 The Hosting Services are provided by the Hosting Provider and AutoRek does not provide any warranty, commitment, undertaking or representation regarding the Hosting Services beyond those made by the Hosting Provider as more particularly described in the Hosting Provider Terms and all exclusions, disclaimers and limitations outlined in the Hosting Provider Terms shall apply to the Client's use of the Hosting Services.
- 15.5 Subject to clause 15.2, AutoRek's total aggregate liability in contract (whether for tort (including negligence), breach of statutory duty, breach of contract, misrepresentation, restitution or otherwise or under any indemnity), tort (including negligence or breach of statutory duty) arising in connection with the performance or contemplated performance of the Hosting Services shall be limited to 100% of the Hosting Fees paid by the Client to AutoRek during the twelve (12) month period directly preceding the relevant claim. This clause 15.5 shall not apply to the extent the liability directly arose from a breach by AutoRek of the Hosting Provider Terms or a breach by AutoRek of this Agreement.
- 15.6 Subject to clause 15.2:
- 15.6.1 Neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of revenue, loss of margin, loss of opportunity, anticipated savings, wasted expenditure, loss of business, depletion of goodwill (including pecuniary losses arising from loss of goodwill), or pure economic loss (in each case, whether direct or indirect), or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
  - 15.6.2 each Party's total aggregate liability in contract (whether for tort (including negligence), breach of statutory duty, breach of contract, misrepresentation, restitution or otherwise or under any indemnity), tort (including negligence or breach of statutory duty), arising in connection with the performance or contemplated performance of this Agreement shall be limited to 150% of the sums paid by the Client to AutoRek under this Agreement during the 12 month period directly preceding the relevant claim.
- 15.7 Nothing in this clause 15 (Limitation of Liability) shall limit the Client's payment obligations under this Agreement.
- 15.8 Each Party shall use reasonable endeavors to mitigate its losses under this agreement, including any losses under any indemnities set out in this Agreement.
- 15.9 Unless a Party notifies the other Party that it intends to make a claim in respect of an event within the notice period, the other Party shall have no liability for that event. The notice period for an event shall start on the day on which the Party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire twenty-four (24) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 16 Term and Termination**
- 16.1 This Agreement shall, unless otherwise terminated as provided in this clause 16 (Term and Termination), commence on the Effective



Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of twelve (12) months, or if an alternative renewal period is stated in an Order Form, the renewal period stated in the Order Form, (each a "Renewal Period"), unless:

inability to pay its debts or is deemed unable to pay its debts ;

- 16.1.1 either Party notifies the other Party of termination, in writing, at least ninety (90) days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period or, if later, the expiry of the Exit Period; or
- 16.1.2 otherwise terminated in accordance with the provisions of this Agreement.
- 16.2 The Client acknowledges and agrees that the Client may be required to accept revised or additional terms upon:
  - 16.2.1 renewing this Agreement, provided that AutoRek shall provide the Client with one hundred and twenty (120) days' prior written notice in advance of the start of the Renewal Period. Such revised or additional terms shall take effect upon the start of the Renewal Period, unless accepted earlier by the Client in writing. The Client agrees that continued use of the Services upon commencement of the Renewal Period will constitute its acceptance of the revised or additional terms; or
  - 16.2.2 placing a new order.
- 16.3 The Initial Term together with any subsequent Renewal Periods and any Exit Period as applicable, shall constitute the Term.
- 16.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
  - 16.4.1 the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so;
  - 16.4.2 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts ;
  - 16.4.3 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3.3.
- 16.5 AutoRek may also terminate this Agreement if the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than sixty (60) days after being notified in writing to make such payment provided that AutoRek has given thirty (30) days prior written notice of such termination to the Client.
- 16.6 On termination or expiry of this Agreement for any reason:
  - 16.6.1 all licenses and rights granted under this Agreement shall immediately terminate;
  - 16.6.2 each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
  - 16.6.3 subject to AutoRek's obligations in respect of the Exit Management Addendum, each Party shall delete all Confidential Information, including in the case of AutoRek, Client Data from its systems (to the extent reasonably practicable) other than to the extent the Confidential Information is required to be retained by Applicable Law.
  - 16.6.4 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 16.7 The Services and/or Deliverables may contain standardized features (APIs designed to interoperate with other Non-AutoRek Applications. To use such features, Client may be required to obtain access to such Non-AutoRek Applications from the third party providers of such products. If the provider of any such Non-AutoRek Application ceases to make the Non-AutoRek Application available for interoperation with the corresponding features of the Services and/or Deliverables on reasonable terms (e.g. uses old integration methods or inadequate

security protocols), AutoRek may cease providing such features. If, for reasons reasonably attributable to a provider of Non-AutoRek Application, it can no longer reasonably be expected for AutoRek to make the Services and/or Deliverables available for interoperability with such Non-AutoRek Application features, AutoRek may cease providing such corresponding features.

16.8 This Agreement shall terminate automatically when all Order Forms and SOW associated with this Agreement have terminated.

16.9 Upon termination of this Agreement, AutoRek shall invoice on a pro-rata basis for any Services that have been provided to the Client which have not yet been invoiced.

## 17 Business Continuity and Disaster Recovery

17.1 AutoRek shall maintain, update and test the Business Continuity Plan and ensure it is able to implement the provisions of the Business Continuity Plan at any time in accordance with its terms.

17.2 AutoRek shall provide a summary of the latest Business Continuity Plan to the Client on request provided that:

17.2.1 AutoRek shall be entitled to remove any information that is subject to confidentiality commitments to third parties which prevent that information being disclosed to the Client; and

17.2.2 The Client shall not disclose the Business Continuity plan to any third party without AutoRek's consent with the exception of the Client's professional advisers and subject to the confidentiality obligations in this Agreement.

17.3 AutoRek shall continually review and update the Business Continuity Plan to ensure its procedures are accurate, appropriate and effective for minimizing any disruption to the supply of the Services. Changes to the Business Continuity Plan may only be made if the revised Business Continuity Plan provides at least the same level of business continuity as the then current Business Continuity Plan.

17.4 The Client may at any time request, in writing, that AutoRek updates the Business Continuity Plan as may be necessary to address the Client's reasonable requirements. Any changes

will be subject to the AutoRek's prior written consent which shall not be unreasonably withheld.

17.5 AutoRek shall test the Business Continuity Plan on a regular basis and, in any event, at least once every twelve (12) months.

## 18 Exit and Service Transfer

18.1 In the event that this Agreement is terminated for any reason, AutoRek shall provide Exit Services to the Client in accordance with the requirements of the Exit Management Addendum and both Parties shall comply with their respective obligations set out in the Exit Plan. AutoRek shall co-operate with the Client and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of responsibilities from AutoRek to the Client and/or the Replacement Supplier.

18.2 The Client shall pay the Exit Fees in respect of the provision of the Exit Services.

## 19 Force Majeure

Neither Party shall be liable to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of AutoRek or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration ("**Force Majeure Event**"). For the avoidance of doubt, no Force Majeure Event shall limit or exclude the liability of the Client to pay Fees under this Agreement.

## 20 Data Protection

20.1 AutoRek warrants that it will comply with Data Protection Laws in the provision of the Services. The Client is responsible for the locations from which it transmits to or receives data from the Services and ensuring it conforms with the Data Protection Laws and any other applicable laws and regulations.

20.2 AutoRek requires the Business Contact Data of

the Client's relevant employees or appointed representatives in order to provide the Services. Business Contact Data will be used in activities such as providing support, invoicing, project delivery, and service management and are processed on the basis of AutoRek's legitimate interests in providing the Services to the Client. They do not form part of other processing activities.

- 20.3 The Client warrants that it has informed (and where necessary, obtained the consent of) all relevant individuals (including, without limitation, those to whom the Business Contact Data or any other personal data provided to AutoRek relates) that their personal data will be provided to and processed by AutoRek for the purposes of this Agreement.
- 20.4 The parties shall adhere to the terms further detailed in the Data Protection Addendum.
- 20.5 The Client warrants and represents that it shall not provide any payment card information to AutoRek unless expressly agreed in advance and in writing between AutoRek and the Client in an Order Form or SOW (as applicable), in which case AutoRek warrants and represents that where in relation to this Agreement AutoRek is involved in processing, transmitting or holding payment card information or in any other way accesses or deals with payment card information (including providing Services that control or could impact the security of payment card information), it shall comply with the PCI Standard.
- 20.6 AutoRek shall periodically collect meta-data information relating to the use of the Services. The data will consist of metrics and configuration detail and will not include any data or information that is Client Data or would be classified as Personal Data. The data will be used by AutoRek to verify compliance, invoicing, and to assist in its product development and providing support services.

## 21 **Publicity**

The Client permits AutoRek the right to publicize information including the Client's name and official logo, and quotations in its marketing and promotional activities, including (but not limited to) advertising, events and website content. If either Party elects to issue a press release or other public content, that Party will prepare any such content and will first submit it to the other Party for

its consent, which consent shall not be unreasonably withheld or delayed.

## 22 **Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and any of the AutoRek policies, the provisions in the main body of this Agreement shall prevail but only to the extent of the inconsistency.

## 23 **Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

## 24 **Waiver**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 25 **Rights and Remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 26 **Severance**

- 26.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 26.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 27 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

## 28 **Assignment**

- 28.1 The Client shall not, without the prior written consent of AutoRek (which shall not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner

with all or any of its rights or obligations under this Agreement.

- 28.2 AutoRek may without the Client's consent and at any time assign all or a portion of its right to receive and obtain payment under this Agreement, providing such assignment does not contravene applicable law, regulation or decree binding upon the Client. Any payment made by the Client to the payee specified in AutoRek's invoice in respect of the Services delivered under this Agreement shall be in full discharge of the Client's payment obligations to AutoRek under this Agreement. AutoRek or its assignee shall have the right to set-off any of its receivables against any amount due by AutoRek or its assignee to the Client.

## 29 No Partnership or Agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 30 Third Party Rights

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 31 Notices

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second Business Day after mailing, or (iii), except for notices of termination, notice of breach of the Agreement or an indemnifiable claim ("**Legal Notices**"), at 9 am GMT/ BST on the first Business Day after sending by email. Notices and Legal Notices shall be addressed as described in the Order Form or SoW as applicable.

## 32 Dispute Resolution

- 32.1 All disputes, claims or controversies related to this Agreement (including any under a statute or regulation, "Disputes") shall be submitted to binding arbitration ("Arbitration"), which shall take place in the State of New York, New York

County, and shall be administered by, and pursuant to the rules of, the American Arbitration Association ("AAA") in effect at the time of filing.

- 32.2 Disputes shall be arbitrated on an individual basis, with no right or authority for any Disputes to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or similarly situated persons or entities. The arbitrator's authority to resolve and make awards for Disputes is limited to Disputes between the Parties to this Agreement alone, and subject to clause 15 (Limitations of Liability). Disputes brought by either Party to this Agreement against the other may not be joined or consolidated in arbitration with other claims brought by or against any third party, unless agreed to in writing by all Parties. No Dispute arbitration award or decision shall be given preclusive effect as to issues or claims in any dispute with any person who is not a Party to the arbitration.

- 32.3 The Parties will be responsible for paying their respective shares of any of the costs associated with the Arbitration.

- 32.4 Any action to recover fees by AutoRek which have not been validly disputed as being due and owing shall not be subject to the provisions of this Dispute Resolution clause.

## 33 Jurisdiction

THE PARTIES AGREE TO SUBMIT TO THE JURISDICTION OF, AND AGREE THAT VENUE IS PROPER IN STATE AND FEDERAL COURTS IN NEW YORK COUNTY, NEW YORK, IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EACH PARTY IS ALSO ENTITLED TO APPLY TO ANY COURT WORLDWIDE FOR INJUNCTIVE OR OTHER REMEDIES IN ORDER TO PROTECT OR ENFORCE ITS INTELLECTUAL PROPERTY RIGHTS AND/OR CONFIDENTIAL INFORMATION.



**In Witness Whereof the parties have duly executed this SaaS Agreement as follows:**

For and on behalf of API Software Inc.

For and on behalf of the Client

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date