

Hosted Services Agreement

This Hosted Services Agreement (the “Agreement”) is made between Tabu, Inc. (“Provider”) with its principal address at 8 Van Brunt Manor Rd, Setauket NY 11733 and the Customer (as defined below) (each a “Party”, collectively, the “Parties”). This Agreement, including the attached Exhibit(s), is effective on the date that both Parties have signed this Agreement (the “Effective Date”).

1. Definitions. The following definitions (and additional definitions provided below) will apply to this Agreement:

1.1. “Affiliate” of a Party means (i) any entity that such Party controls, (ii) any entity that controls such Party, or (iii) any entity under common control with such Party. To “control” means owning or otherwise controlling 50% or more of the voting securities or rights of an entity, or otherwise having the power to dictate its activities.

1.2. “Confidential Information” means non-public information, technical data or know-how of a Party and/or its Affiliates, which is furnished to the other Party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving Party and not subject to a confidentiality obligation to the providing Party; (ii) independently developed by the receiving Party; (iii) publicly disclosed or available through no fault of the receiving Party; (iv) rightfully received by the receiving Party from a third party that is not under any obligation to keep such information confidential; or (v) approved for release by written agreement with the disclosing Party.

1.3. “Customer” means the legal entity or individual that enters into this Agreement with Provider, as indicated in the signature block hereto or on the applicable Purchase Order.

1.4. “Customer Account” means Customer’s account used to access the Software, and all usernames relating thereto, including Customer User accounts.

1.5. “Customer Content” means graphics, text, audio, photos, software, music, sounds, video or similar information or material provided or submitted by Customer or any Customer User to Provider or the Software in the course of utilizing the Software or in connection with this Agreement.

1.6. “Customer User” means one of Customer’s employees, representatives, consultants, contractors or agents and other persons expressly permitted by Customer in connection with Customer’s business affairs who are authorized to use the Software and have been supplied Customer-specific administrative credentials by Customer (or by Provider at Customer’s request).

1.7. “Usage Data” means any information or data provided or submitted by Customer or any Customer User to Provider or the Software in the course of utilizing the Software.

1.8. “Customer Representative” means the Customer Users designated by Customer in an applicable Purchase Order as authorized to create Customer User accounts, administer Customer’s use of the Service and otherwise represent Customer for the purpose of this Agreement.

1.9. “Documentation” means the manuals, specifications, and other written and electronic materials describing the functionality, features, and operating characteristics, maintenance, operation, and use of the Software, as provided or made available by Provider.

1.10. “Fees” means the fees set forth in the applicable Purchase Order for the Services.

1.11. “Platform Agreements” means the Terms of Service and Privacy Policy applicable to the Software.

1.12. “Platform User” means a third-party individual or entity with a personal account for the Software that accesses and uses the Software and may interact with Customer through the Software.

1.13. “Professional Services” means software consulting and management services, information technology services, installation services, or other stipulated services provided to Customer as identified in a Purchase Order.

1.14. “Purchase Order” means a purchase order for the Service submitted to Provider by Customer, through Provider’s website or otherwise, that sets forth, among other things, the elements of the Service to which Customer is subscribing or the Services which are to be rendered to Customer, the Fees associated therewith, and certain additional terms applicable to the Services being ordered under said Purchase Order.

1.15. “Services” means, collectively, all services provided or made available to Customer by Provider under this Agreement or any exhibit, Statement or Work or Purchase Order hereto, and the functionality provided by the Software, including but not limited to the Professional Services.

1.16. “Software” means Provider’s software platform known as “TABu,” including any cloud-based or local extensions or modules thereto, the relevant functionality, content (excluding Customer Content), concepts, features, and documentation related thereto, as well as all updates and customizations to any of the foregoing.

1.17. “Term” means the length of this Agreement as defined herein and/or in the applicable Purchase Order.

2. Provision of Services; Software License.

2.1. Services and Licenses. Subject to payment in full of the Fees due to Provider, and compliance with this Agreement, Provider will provide the Services to Customer, as more fully described in the Purchase Orders that Provider and Customer may enter into from time to time, and Provider grants to Customer a non-transferable, non-exclusive license, without right to sublicense, to access and use the Software to which it subscribes, as more fully identified in the Purchase Orders or Statements of Work. If agreed upon and executed, each

Purchase Order shall form a separate contract governed by this Agreement and the terms of the Purchase Order.

3. Access, Usage and Availability.

3.1. Authorized Users; Platform Users. Only Customer Users may access and use the Software on behalf of Customer. Further, the Software may permit Customer to interact with Platform Users. Customer shall ensure that all Customer Users comply with the terms and conditions of this Agreement and any applicable Purchase Orders, and shall remain responsible for the acts and omissions of such Customer Users and any other person who accesses and uses the Software using the access credentials for Customer's Account. The Customer Representative shall act as the point(s) of contact for Provider under this Agreement and regarding Customer's Account, with authority to bind Customer regarding the Software and this Agreement, and shall administer Customer and Customer User's use of the Software and the Customer Account.

3.1.1. Customer is responsible for maintaining the security and confidentiality of Customer's Account. Customer agrees to notify Provider immediately of any unauthorized use of Customer's Account or any other known or suspected breach of security.

3.2. Availability. Provider does not guarantee, represent or warrant that access to the Software or Services will be uninterrupted or error-free, and Provider does not guarantee that Customer will be able to access or use all of the Software or Service features at all times. Provider will make reasonable efforts notify Customer of system outages and scheduled downtime.

3.3. Suspension. Provider may suspend or interrupt the Services, including but not limited to access to the Software, in whole or in part, if (i) Customer or Customer Users are using the Software or Services in violation of this Agreement or in violation of the law, (ii) Customer's or Customer Users' system or account has been compromised or unlawfully accessed, (iii) suspension of the Software or Services is necessary to protect the infrastructure of Provider or its Affiliates, (iv) suspension is required under the law, or (v) Customer fails to pay the Fees applicable under this Agreement within ten (10) days of when due, provided that Customer has been notified in writing of its failure to pay and given ten (10) days to remedy this failure. If the Software or Services are suspended for non-payment, Provider may charge a re-activation fee to reinstate the Software or Services.

3.4. Cooperation. Customer shall provide Provider with information requested by Provider on a timely and accurate basis. Such information may include business hours or general feedback, at Provider's request or if such information changed since last provided by Customer.

4. Professional Services.

4.1. Services. In the event that Customer requests Professional Services that Provider desires to render, the Parties shall execute a Purchase Order covering such Professional Services.

4.2. Estimates. Unless stated otherwise in an applicable Purchase Order, any estimates of time provided in connection with deliverables or Services, are good faith projections, but are not guarantees.

4.3. Rates. Unless otherwise agreed to by the Parties in writing, in the event that Provider provides Professional Services on a “time and materials” rate basis, Provider shall charge Customer at Provider’s standard rates then in effect. In the event that Provider provides Professional Services hereunder on a “fixed fee” rate basis, such fixed fee will cover only the specific tasks, expenses, and deliverables that the Purchase Order defines as included within the fixed fee. Unless otherwise agreed to by the Parties in writing, any and all deliverables that Customer requests that fall outside the Purchase Order or are otherwise not included within such fixed fee payment schedule will be provided on a time and materials basis at Provider’s standard rates then in effect. Notwithstanding any agreement on a fixed fee or time and materials estimate, prices are subject to change if certain assumptions and responsibilities identified in a Purchase Order are not met by Customer.

5. Ownership

5.1. Retention by Provider. Provider retains all right, title and interest in and to the Software. Title to and ownership of any modifications, upgrades, updates or customizations of the Software shall be held exclusively by Provider. In addition, Customer grants Provider the right and license to make, use, sell, reproduce, modify, sublicense, disclose, distribute and otherwise exploit error reports, corrections, feedback and suggestions provided by Customer concerning the Software and modifications based thereon or incorporated therein, which may include new functional features. Customer agrees to perform such acts, and execute and deliver such instruments and documents, and do all other things as may be reasonably necessary to evidence or perfect the rights of Provider set forth in this section.

5.2. Updates. Customer agrees that Provider may update, upgrade or modify the Software, at any time, including the removal or modification of previously available functionality. Subject to the foregoing, any updates, upgrades, enhancements and/or modifications provided to Customer by Provider will automatically be considered part of the Software and will be subject to the terms of this Agreement.

5.3. Customer Content. All Customer Content is and shall remain the property of Customer or the applicable third party. Customer grants to Provider a nonexclusive, worldwide, royalty-free license to use, reproduce, modify and prepare derivative works of the Customer Content in connection with its provision of the Services and as otherwise provided in this Agreement and an applicable Purchase Order.

6. Limitations and Restrictions; Notices

6.1. Content Restrictions. Customer shall ensure that Customer and Customer Users shall not, nor permit any third party, to distribute, upload, transmit, store, make available or otherwise publish or process through the Software any Customer Content that: (1) is unlawful or encourages another to engage in anything unlawful; (2) contains a virus or any other similar programs or software which may damage the operation of Provider’s or another’s computer; (3) violates the rights of any party or infringes upon the patent,

trademark, trade secret, copyright, or other intellectual property right of any party; or, (4) is libelous, defamatory, obscene, invasive of privacy or publicity rights, abusing, harassing, fraudulent, misleading, illegal, threatening or bullying. Customer understands and agrees that Provider reserves the right to edit, modify or remove content being hosted by Provider, including for violations of the above standards.

6.2. Use Restrictions. Customer shall ensure that Customer and Customer Users shall not (1) use the Software or Services for any conduct or activity that violates applicable law or for any illegal or unlawful purpose; (2) resell, distribute, or sublicense the Software or Services or use any of the foregoing for the benefit of anyone than Customer or the Users; (3) use the Software or Services to build or research a competing product or service; (4) interfere with, impair or disrupt the Software or Services and related Provider systems; (5) introduce any virus or programming routine which is intended to or does disrupt or interrupt the use of the Software or Services or Provider's systems; or (6) reverse engineer or otherwise conduct research into the internal operations of the Software. All rights in and to the Software not expressly granted herein are retained by Provider.

6.3. Platform Agreements. Customer understands and agrees that Provider may enter into additional Platform Agreements with Platform Users prior to and during use of the Software, that such Platform Agreements shall form binding contracts between Provider and Platform Users without Customer's involvement, and that the terms of said Platform Agreements may be in addition to those in this Agreement. Customer agrees that it will not interfere with Provider's implementation or enforcement of the Platform Agreements, including but not limited to the termination, suspension or restriction of Platform Users' use of the Software, and that the Platform Agreements shall govern the relationship between Provider and Platform Users.

7. Usage Data.

7.1. Ownership. All Usage Data, whether posted by Customer or Customer Users, will remain the sole property of Customer or such users or their licensors, as applicable. Customer grants to Provider a non-exclusive, sub-licensable license to use, copy, store, transmit and display Usage Data to the extent necessary for Provider and its vendors to provide and maintain the Software and to provide Services to Customer and its users, and to third parties to the extent instructed by Customer's use of the Software or necessary to accomplish Customer's instruction to the Software. Provider's Privacy Policy, available at <https://www.tabuapp.com/assets/Privacy2.pdf>, shall apply to its collection and use of Usage Data.

7.2. Controls. Customer agrees that Provider may monitor Customer's use of the Software and collect and use data and related information on such use, which may be gathered periodically to ensure compliance with this Agreement, to study and improve the Software and Services, to facilitate the provision of updates, product support and to provide the services under this Agreement. Such aggregated statistical data may include Usage Data on an anonymized basis, may be combined with other data, will be the property of Provider and may be used for Provider's general business purposes.

7.3. Backup Responsibility. The Software is a productivity tool, not a backup system. Customer understands that it is Customer's responsibility to back up its Usage Data in the manner and at intervals of its choosing, and that Provider does not have the obligation to maintain copies or backups of Usage Data.

8. Payment Processing and Fees.

8.1. Processing. Payments by Customer's purchasers are deposited directly into Customer's bank account in batches as determined by Provider, which are generally every 24 hours. Provider processes all payments made through the Software through third-party payment platform (the "Payment Processor").

8.2. Fees and Processing. Fees for payment processing are due and payable as set forth below or in a Purchase Order, as applicable. Customer agrees to pay us, through the Payment Processor, and Customer authorizes us, through the Payment Processor, to charge Customer's chosen payment provider ("Payment Method") for the Fees associated with payment processing or subscription services by Provider.

8.2.1. For recurring subscriptions, Provider will automatically charge Customer's Payment Method for the next period at the end of each subscription period, as further identified in the applicable Purchase Order. If Customer purchases a subscription, it may result in recurring charges to Customer's Payment Method, and Customer agrees that Provider may charge such amounts until such a time as Customer's subscription expires or Customer cancel the subscription, depending on the subscription type. PROVIDER MAY SUBMIT PERIODIC CHARGES WITHOUT FURTHER AUTHORIZATION FROM CUSTOMER, UNTIL CUSTOMER PROVIDES PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED) THAT CUSTOMER HAS TERMINATED THIS AUTHORIZATION OR WISHES TO CHANGE CUSTOMER'S PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE PROVIDER REASONABLY COULD ACT. For any subscriptions, Customer agrees that its license to the Services is not a service, repair or maintenance to real or personal property.

8.2.2. If Customer wishes to cancel, upgrade or downgrade its subscription, Customer may do so at any time through Customer's account. Any charges incurred prior to cancellation or downgrade are non-refundable. If Customer upgrades its subscription, Customer will be charged the difference in Customer's current subscription and the upgraded subscription at that time, and Customer will be charged the price for the upgraded subscription on an ongoing basis until cancellation. If Customer downgrades its subscription, Customer will be charged the reduced price at the beginning of the next term.

8.3. Taxes. Fees and other charges described in a Purchase Order do not include federal, local, foreign, or similar transaction taxes ("Taxes") now or hereafter levied, all of which shall be Customer's responsibility. If Provider is required to pay Taxes on Customer's behalf, Provider shall invoice Customer for such Taxes, and Customer shall reimburse Provider for such amounts in accordance with this Agreement.

8.4. Payments. Provider will invoice Customer for the Fees (other than payment processing and subscription Fees) as set forth in the applicable Purchase Order. If no payment terms are provided in a Purchase Order, Provider will invoice Customer, at Provider's election (i) on a monthly basis in advance, with all invoices due no less than five (5) days before the start of the month to which the invoice applies, or (ii) when such Fees are due, with such invoice being due within five (5) days of issuance by Provider. Provider shall have the right to assess a late payment charge on any overdue amounts equal to the lesser of five percent (5%) per month, or the highest rate allowed by law.

8.5. Non-Cancelable and Non-Refundable. Unless otherwise expressly set forth in this Agreement or the applicable Purchase Order all Fees incurred and payments made under this Agreement are non-cancelable and non-refundable.

9. Indemnification.

9.1. By Provider. Provider will defend, indemnify, and hold Customer (and its officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from any third party claim, suit, action, or proceeding arising from the actual or alleged infringement of any copyright, patent, trademark, or misappropriation of a trade secret by the Software as provided or made available by Customer by Provider (other than that due to Customer Content, third-party content available on the Software, Usage Data or unauthorized use by Customer). In case of such a claim, Provider may, in its discretion, procure a license that will protect Customer against such claim without cost to Customer, replace the Software with non-infringing Software, or if it deems such remedies not practicable, Provider may terminate this Agreement without fault, provided that in case of such a termination, Customer will receive a pro-rata refund of the license fees prepaid for use of the Service not yet furnished as of the termination date. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

9.2. By Customer. Customer will defend, indemnify, and hold Provider (and its officers, directors, employees and agents) harmless from and against all Losses arising out of or in connection with a claim, suit, action, or proceeding by a third party (i) alleging that the Usage Data, Customer Content or other data, content or information supplied by Customer or Customer Users infringes the intellectual property rights or other rights of a third party or has caused harm to a third party; (ii) arising out of claims relating to Customer or Customer Users' use of the Software in violation of the law; or (iii) arising out of or related to any breach or alleged breach of this Agreement by Customer or Customer Users.

9.3. Procedure. In case of any claim that is subject to indemnification under this Agreement, the Party that is indemnified ("Indemnitee") will provide the indemnifying Party ("Indemnitor") reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement. Each Party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement

of any action or proceeding covered by this Section to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

10. Representations and Disclaimers

10.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; (ii) the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; and (iii) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder.

10.2. THE SOFTWARE AND ALL SERVICES SUPPLIED BY PROVIDER ARE PROVIDED “AS IS”, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FUNCTIONALITY, SUITABILITY, AVAILABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SOFTWARE IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSES. PROVIDER DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED.

11. LIMITATION OF LIABILITY

11.1. EXCEPT IN CONNECTION WITH EITHER PARTY’S CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS HEREUNDER: (I) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, COVER, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF; AND (II) EACH PARTY’S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF (A) AMOUNTS OWED BY CUSTOMER TO PROVIDER HEREUNDER, OR (B) THE FEES INCURRED BY CUSTOMER HEREUNDER DURING THE PERIOD SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED.

12. Confidentiality

12.1. Limitations. Neither Party will use the other Party’s Confidential Information except as provided herein and as reasonably required for the performance of this Agreement. Each Party will hold in confidence the other Party’s Confidential Information by means that are

no less restrictive than those used for its own confidential materials. Other than pursuant to the direction of a Party regarding its own Confidential Information, each Party agrees not to disclose the other Party's Confidential Information to anyone other than its employees, confidential advisors, or subcontractors who are bound by confidentiality obligations at least as restrictive as herein and who need to know the same to perform such Party's obligations hereunder or to assist a Party in meeting its legal obligations. The confidentiality obligations set forth in this Section will survive for as long as applicable information meets the definition of Confidential Information.

12.2. Required Disclosures. In the event that a Party is required by subpoena, court process or other applicable law to disclose the other Party's Confidential Information, the Party required to make such disclosure may do so to the extent required by law, but only, where permitted by law, after notifying the other Party and giving said other Party a reasonable opportunity to contest such disclosure.

12.3. Actions Upon Termination. Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each Party will, upon the request of the disclosing Party, either: (i) return all of such Confidential Information of the disclosing Party and all copies thereof in the receiving Party's possession or control to the disclosing Party; or (ii) destroy all Confidential Information and all copies thereof in the receiving Party's possession or control. Notwithstanding the foregoing, nothing herein shall require a Party to remove or delete the other Party's Confidential Information from its long term backup storage, provided that any such retained information shall remain subject to the confidentiality obligations of this Agreement. Further notwithstanding the foregoing, upon any termination or expiration of this Agreement, Provider may retain any Confidential Information that consists of Usage Data shared with or provided by Customer or Customer Users to other Platform Users, and may continue to display and provide said Usage Data to such other Platform Users.

13. Term and Termination.

13.1. Term. The Term commences on the Effective Date and shall continue for the period identified in the applicable Purchase Order, unless terminated early as provided herein.

13.2. Termination.

13.2.1. Either Party may terminate this Agreement on written notice to the other Party at any time when there are no Purchase Orders then in effect.

13.2.2. Either Party may terminate this Agreement and/or any Purchase Orders: (i) upon thirty (30) days' notice to the other Party if the other Party breaches a material term of this Agreement or a Purchase Order, and the breach remains uncured at the expiration of such thirty (30) day period; or (ii) immediately, if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors.

13.2.3. Customer may terminate this Agreement, or individually any Purchase Order, at any time upon five (5) days' notice to Provider, for any reason or no reason,

provided, however, that Customer shall remain responsible for all fees remaining in the Term under the terminated Purchase Order.

13.2.4. Provider may terminate this Agreement, or individually any Purchase Order, without cause on sixty (60) days calendar notice. If Provider terminates without cause, no future fees shall be due under the terminated Purchase Order and Provider shall issue a pro-rata refund of any fees collected covering a period that post-dates the effective date of termination.

13.2.5. Termination of this Agreement shall terminate all open Purchase Orders. Termination of a Purchase Order shall not automatically terminate this Agreement or any other open Purchase Orders.

13.3. Actions Upon Termination. Upon termination of any Purchase Order, or termination of this Agreement, (i) Provider shall cease all work being performed under the terminated Purchase Order, (ii) unless Customer is granted access via another open Purchase Order, Customer's access to the Software provided thereunder will cease and Customer shall delete or return any Software and Documentation to Provider, and (iii) Provider shall issue Customer a final invoice for the terminated Purchase Order.

13.3.1. Termination of a Purchase Order or this Agreement shall not eliminate Customer's obligation to pay for time or deliverables incurred or performed prior to termination. In the event that a Purchase Order with a fixed fee service or deliverable is terminated before such services or deliverables are completed but after they have been commenced by Provider, such Purchase Order shall be converted to a time-and-materials Purchase Order for such commenced but incomplete deliverables, and Provider shall invoice Customer for the reasonable time incurred in connection with such incomplete deliverables.

13.4. Survival. Sections 1 and 6-16 shall survive any termination or expiration of this Agreement.

14. Disputes.

14.1. Arbitration. Each Party agrees to submit any and all disputes, claims and controversies arising between the Parties hereto to final and binding arbitration, which shall be administered by the American Arbitration Association ("AAA") in accordance with its rules then in effect. Any arbitration brought hereunder shall be heard by three (3) independent and impartial arbitrators. Two arbitrators shall be selected by the respective Parties, one by the claimant(s) and one by the respondent(s). The third arbitrator shall be appointed by the two Party-appointed arbitrators or by the AAA if such two arbitrators cannot agree. The place of the arbitration shall be New York, New York. Any Party's refusal to select, or unreasonable delay in selecting, an arbitrator shall be considered a material breach of this Agreement. The arbitrators shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding intended to resolve a dispute. Notwithstanding the foregoing, either Party shall be entitled to bring an action seeking injunctive relief in any court of competent jurisdiction. The award rendered in an arbitration hereunder shall be final and non-appealable. Judgment on the award

rendered may be entered in any court having jurisdiction thereof. Each of the Parties shall keep the proceedings and any and all transcripts, statements, documents, discovery, correspondence and all other non-public information produced or otherwise disclosed in connection with any such arbitration confidential.

14.2. Matters Not Requiring Arbitration. Notwithstanding the foregoing, the Parties agree that Provider may bring suit in court to enjoin infringement or other misuse of intellectual property or other proprietary rights, or for defense and indemnification as provided for herein.

15. Miscellaneous

15.1. Choice of Law; Jurisdiction. This Agreement will be interpreted fairly in accordance with its terms, without any strict construction in favor of or against either Party and in accordance with the laws of the State of New York and applicable US federal law. Except as provided in the arbitration clause, the state and federal courts located in the city of New York will have exclusive jurisdiction and venue over any dispute or controversy arising from or relating to this Agreement or its subject matter, and the Parties expressly agree to the suitability and convenience of such location, and shall not contest the same.

15.2. Notice. Provider may give notice by means of electronic mail to Customer's email address on record in Customer's account or by written communication sent by first class mail or by courier service to Customer's address on record in Customer's account. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier or 12 hours after sending (if sent by email), or, if earlier, when received. Customer may give notice to Provider by e-mail to support@tabu-app.com. Such notice will be deemed to have been given 12 hours after sending, or, if earlier, when received. A Party may, by giving notice, change its applicable address, email, or other contact information.

15.3. Severability. If any provision of this Agreement or any Purchase Order is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

15.4. No Agency. No joint venture, partnership, employment, or agency relationship exists between Customer and Provider as a result of this Agreement or use of the Service. Provider shall at all times be considered an independent contractor to Customer.

15.5. No Waiver. The failure of Provider to enforce any right or provision in this Agreement or any Purchase Order will not constitute a waiver of such right or provision unless acknowledged and agreed to by Provider in writing.

15.6. Compliance with Export Laws. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Software. Without limiting the foregoing, Customer warrants and represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and Customer shall not use, export or re-export the Software in violation of any U.S. export

embargo, prohibition or restriction. Customer shall promptly provide notice to Provider if this warranty and representation is no longer accurate.

15.7. Force Majeure. Except for the payment by Customer, if the performance of this Agreement or any Purchase Order by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of such Party, that Party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

15.8. Assignment. Except for an assignment to an Affiliate, this Agreement and any Purchase Order may not be assigned by either Party without the prior written approval of the non-assigning Party, provided that Provider may assign this Agreement along with any Purchase Orders to (i) an acquirer of all or substantially all of Provider's assets involved in the operations relevant to this Agreement; or (ii) a successor by merger, acquisition or other combination. Any purported assignment in violation of this Section will be void. This Agreement and applicable or any Purchase Orders may be enforced by and are binding on permitted successors and assigns.

15.9. Entire Agreement. This Agreement, together with any applicable Exhibit(s) and Purchase Orders, comprises the entire agreement between Customer and Provider and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each Party.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY IT AND HAVE CAUSED IT TO BE EXECUTED.