

## SOFTWARE AS A SERVICE AGREEMENT

1. Initially Created: December 31, 2020
2. Reviewed and Updated: October 04, 2021
3. Reviewed and Updated: November 10, 2022
4. Corporate Address Updated: April 5, 2023

This Software as a Service (“SaaS”) Agreement (together with all Order Forms, the “Agreement”) is made and entered into on \_\_\_\_\_, 20\_\_ (“Effective Date”) by and between Raindrop Systems, Inc., a California corporation with offices located at 226 Airport Parkway, Suite 250, San Jose, CA 95110 (“Raindrop”), and \_\_\_\_\_, a \_\_\_\_\_ with offices located at \_\_\_\_\_ (“Customer”). In consideration of the mutual promises contained herein, the parties hereby agree to the following:

**1. BACKGROUND.** Raindrop has developed certain software which it provides as part of its Services (defined below). Customer wishes to utilize the Services, and Raindrop desires to make the Services available to Customer, subject to the following terms and conditions.

**2. DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

**2.1 “Access Protocols”** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the Services.

**2.2 “Affiliate”** means any individual, corporation, partnership, limited liability company, or other entity that directly or indirectly, controls, or is controlled by, or is under common control with, a party. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of any such entity or organization, whether through the ownership of securities, by contract, or otherwise.

**2.3 “Application”** means the software described in an Order Form, hosted on Raindrop’s servers or those of its hosting services providers, and accessed and used by Customer via the worldwide web, including all changes, corrections, bug fixes, enhancements, updates and other modifications to such software, whether made by or on behalf of Raindrop, Customer, or any third party.

**2.4 “Authorized User”** means any individual who is an employee of Customer or such other person or entity as may be authorized by an Order Form to access the Services pursuant to Customer’s rights under this Agreement.

**2.5 “Documentation”** means the technical materials and documentation provided by Raindrop to Customer in hard copy or electronic form describing the use and operation of the Application.

**2.6 “Error”** means a reproducible failure of the Software to substantially conform to the Documentation.

**2.7 “Error Corrections”** means bug fixes or workarounds intended to correct Errors in the Software.

**2.8 “Intellectual Property Rights”** means any and all intellectual property, industrial property, and other proprietary rights throughout the world, including all rights in, to, or arising out of patents, patent applications, inventions (whether patentable or not), invention disclosures, trade secrets, know-how, proprietary information, works of authorship, copyrights, mask works, moral rights, trademarks, service marks, software, data, technology,

layout designs, and design rights, and all registrations, applications, renewals, extensions, or reissues of any of the foregoing.

**2.9 “Order Form”** means a document signed by both parties identifying the Services to be made available by Raindrop pursuant to this Agreement, the form of which is set forth in Exhibit A attached hereto.

**2.10 “Services”** means the Application, Documentation, and any related services agreed by the parties in an Order Form.

**2.11 “Customer Data”** means any (a) information provided or transmitted by Customer to the Application, and (b) the configuration data, including but not limited to domain names, IP addresses, policies, and active directory groups, provided or transmitted by Customer to the Application.

### **3. PROVISION OF SERVICES**

**3.1 Access.** Subject to Customer’s payment of the fees set forth in the applicable Order Form(s), Raindrop will provide the Services via an online user interface specified in such Order Form(s). On or as soon as reasonably practicable after the Effective Date, Raindrop shall provide to Customer the necessary Access Protocols to allow Customer and its Authorized Users to access the Application. Customer may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement.

**3.2 Responsibilities of Raindrop.** Raindrop shall, at its own expense, provide for the hosting of the Application on servers operated and maintained by or at the direction of Customer, provided that nothing herein shall be construed to require Raindrop to provide for, or bear any responsibility with respect to any telecommunications, computer hardware, software, and Internet connectivity required by Customer or any Authorized User to provide access from the Internet to the Application. Raindrop shall configure the Customer Data for operation with the Application and manage such Customer Data. Subject to Customer’s payment of the fees set forth in the applicable Order Form, Raindrop shall provide new releases and updates to the Application that it generally provides to its other customers, provided that Raindrop shall not be obligated to provide to Customer any new release or update to the Application, or any module thereof, for which Raindrop generally charges a separate fee, unless otherwise agreed to by the parties in the applicable Order Form. Subject to the terms of this Agreement, Raindrop shall provide Customer with the technical support services set forth in the applicable Order Form(s). Subject to the terms of this Agreement, Raindrop shall provide Customer the Services in accordance with the service level terms set forth in the applicable Order Form(s).

**3.3 Responsibilities of Customer.** Customer shall cooperate with Raindrop in setting up and configuring the Application, including by providing Raindrop with applicable configuration data to be used by the Application. Customer shall be responsible for obtaining and maintaining, at Customer’s expense, all of the necessary telecommunications, computer hardware, software, and Internet connectivity required by Customer or any Authorized User to access the Application from the Internet. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Raindrop promptly of any such unauthorized use known to Customer.

### **4. INTELLECTUAL PROPERTY**

**4.1 License Grant to Customer.** Subject to the terms and conditions of this Agreement, Raindrop grants to Customer and its Affiliates a limited, non-exclusive, non-transferable (except as set forth in Section 12.6), worldwide license during the term of this Agreement, without the right to sublicense, solely for Customer’s internal business purposes and in accordance with the limitations set forth in the applicable Order Form(s), (a) to access, use, perform, and digitally display the Application as required for use of the Services and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer’s use of the Application.

**4.2 Limitations.** Customer agrees that it will not, and will not permit any Authorized User or other party to: (a) permit any party to access the Application or Documentation or use the Services, other than the Authorized Users authorized under this Agreement; (b) modify, adapt, alter, translate, or create derivative works of Raindrop Systems, Inc.

the Application or Documentation, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Application or Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Application; (e) use or copy the Application or Documentation, except as expressly allowed herein. Customer acknowledges and agrees that the Services will not be used, and are not licensed for use, in connection with any of Customer's time-critical or mission-critical functions. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Application. Raindrop shall have the right to review and monitor all use of the Services to ensure compliance with the terms and conditions of this Agreement.

**4.3 Ownership.** The Services (including the Application and Documentation), and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Raindrop and its suppliers. All rights in and to the Services (including the Application and Documentation) not expressly granted to Customer in this Agreement are reserved by Raindrop and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services (including the Application and Documentation), or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the Application.

**4.4 Open Source Software.** Certain items of software may be provided to Customer with the Application and are subject to "open source" or "free software" licenses ("**Open Source Software**"). Such Open Source Software may be owned by third parties. The Open Source Software is not subject to the terms and conditions of [Section 4.1](#) or [Section 10.1](#). Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Raindrop makes such Open Source Software, and Raindrop's modifications to that Open Source Software, available by written request at the notice address specified below.

## **5. FEES AND EXPENSES; PAYMENTS**

**5.1 Fees.** In consideration for the Services, Customer will pay to Raindrop the fees set forth in the applicable Order Form(s). All fees for Services shall be invoiced by Raindrop in USD and are due and payable as set forth in the applicable Order Form. Raindrop shall be entitled to withhold performance and discontinue the Services until all amounts due are paid in full. Except as set forth in an Order Form, all undisputed amounts payable to Raindrop under this Agreement shall be due thirty (30) days after the applicable invoice date. Any undisputed amounts not paid when due shall bear interest at the rate of one percent (1%) per month, or the maximum rate allowed under applicable law, whichever is less.

**5.2 Taxes.** The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Raindrop's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or the license of the Application to Customer. Customer will make all payments of fees to Raindrop free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Raindrop will be Customer's sole responsibility, and Customer will provide Raindrop with official receipts issued by the appropriate taxing authority, or such other evidence as the Raindrop may reasonably request, to establish that such taxes have been paid. Customer shall indemnify, defend, and hold Raindrop harmless in connection with any proceedings brought by any taxing authorities in connection with this Agreement.

**5.3 Expenses.** If pre-approved by Customer in an Order Form, Customer shall reimburse Raindrop for reasonable out-of-pocket expenses (including travel and living) incurred in performing its obligations for specific Services under such Order Form. All costs and expenses incurred by Customer in connection with this Agreement are the sole responsibility of Customer.

**5.4 Audit.** Raindrop may audit Customer's records relating to its use of the Services to verify Customer's compliance with the terms of this Agreement. Raindrop will give Customer at least ten (10) days advance notice of any such audit and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations. If any such audit should disclose any underpayment of fees, Customer shall promptly pay Raindrop such underpaid amount, together with interest thereon at the rate specified in Section 5.1. If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Customer shall also pay Raindrop for Raindrop's reasonable expenses associated with such audit.

## **6. CUSTOMER DATA AND RESPONSIBILITIES**

**6.1 License; Ownership.** Raindrop grants Customer a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Customer Data as necessary for purposes of providing the Services and enabling the operation of the Application, and (b) Customer grants Raindrop use of the Customer trademarks, service marks, and logos as required to provide the Services. The Customer Data hosted by Raindrop as part of the Services, and all worldwide Intellectual Property Rights therein, is, as between Raindrop and Customer, the exclusive property of Customer. All rights in and to the Customer Data not expressly granted to Raindrop in this Agreement are reserved by Customer. Notwithstanding anything to the contrary herein, Raindrop shall have the right to collect and analyze aggregated data and other information relating to the provision, use, and performance of various aspects of the Services and related systems and technologies ("Aggregated Data"), and Raindrop shall be free (during and after the term of this Agreement) to (i) use Aggregated Data to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and any other Raindrop offerings, and (ii) disclose Aggregated Data sole in aggregate or other de-identified form in connection with its business.

**6.2 Customer Warranty.** Customer represents and warrants that any Customer Data hosted by Raindrop as part of the Services shall not (a) infringe or misappropriate any Intellectual Property Rights of any person; (b) be deceptive, defamatory, obscene, or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage Raindrop's systems or data; or (d) otherwise violate the rights of any person. Raindrop is not obligated to back up any Customer Data; the Customer is solely responsible for creating backup copies of any Customer Data at Customer's sole cost and expense. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services.

**6.3 Customer Responsibilities for Data and Security.** Customer and its Authorized Users shall have access to the Customer Data and shall be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other Access Protocols required in order the access the Application. Customer shall have the ability to export Customer Data out of the Application and is encouraged to make its own back-ups of the Customer Data. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

**6.4 Raindrop Responsibilities for Data and Security.** Raindrop shall (a) maintain and enforce an information security program including safety, physical and technical security policies and procedures with respect to its processing of Customer Data that meets or exceeds industry practices and standards applicable to the protection of data similar to Customer Data, (b) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, or processing of Customer Data consistent with industry practice and standards, and designed to ensure a level of security appropriate to the risks presented by the processing of data similar to Customer Data, (c) periodically test its systems for potential areas where security could be breached and monitor for suspected breaches, (d) promptly report to Customer any breach of security or unauthorized access to Customer Data that Raindrop detects or becomes aware of, (e) use diligent efforts to remedy any breach of security or unauthorized access to Customer Data in a timely manner, and (f) refrain from notifying, for or on behalf of Customer (or any Authorized User), any regulatory authority, consumer or other person of any breach of security or unauthorized access to Customer Data unless Customer explicitly requests in writing that Raindrop do so.

## 7. WARRANTIES AND DISCLAIMERS

**7.1 Limited Warranty.** Raindrop warrants to Customer that the Application will operate free from Errors during the term of the Agreement. The foregoing warranty shall not apply to performance issues of the Application (a) caused by factors outside of Raindrop's reasonable control; (b) that result from any actions or inactions of Customer or any third parties; or (iii) that result from Customer's data structures, operating environment, or equipment. Provided that Customer notifies Raindrop in writing of any breach of the foregoing warranty during the term of this Agreement, Raindrop shall, as Customer's sole and exclusive remedy for any Errors with the operation of the Application, (a) provide the technical support services set forth in the applicable Order Form(s) to correct such Error(s), or (b) if Raindrop is unable to correct such Error(s) within a commercially reasonable amount of time, terminate this Agreement and refund to Customer the pro-rated portion of any prepaid fees attributable to any unused Services and this Agreement shall thereafter terminate.

**7.2 Disclaimer.** THE LIMITED WARRANTY SET FORTH IN SECTION 7.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES (INCLUDING THE APPLICATION AND DOCUMENTATION) ARE PROVIDED "AS IS," AND RAINDROP MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE APPLICATION, DOCUMENTATION, OR SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY RAINDROP. RAINDROP DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE APPLICATION SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

## 8. LIMITATION OF LIABILITY

**8.1 Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, MISUSE, OR INABILITY TO USE THE APPLICATION, DOCUMENTATION, SERVICES OR OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

**8.2 Amount of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO RAINDROP DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.

**8.3 Exclusions.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR ITS INDEMNIFICATION LIABILITY ARISING UNDER SECTION 10, FOR ITS BREACH OF SECTION 9, FOR ITS BREACH OF SECTION 4.2, OR FOR GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT, DEATH, OR PERSONAL INJURY.

**8.4 Basis of the Bargain.** The parties agree that the limitations of liability set forth in this Section 8 shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the fees have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## 9. CONFIDENTIALITY

**9.1 Confidential Information.** During the term of this Agreement, each party (the “**Disclosing Party**”) may provide the other party (the “**Receiving Party**”) with certain information regarding the Disclosing Party’s business, technology, products, or services or other confidential or proprietary information (collectively, “**Confidential Information**”). For the avoidance of doubt, the Application, Documentation, and all enhancements and improvements thereto, will be considered Confidential Information of Raindrop, and the Customer Data will be considered Confidential Information of Customer.

**9.2 Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to its employees and contractors who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party’s request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party written notice certifying compliance with this sentence.

**9.3 Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) the Receiving Party can prove, by clear and convincing evidence, was already known to the Receiving Party without restriction at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

## 10. INDEMNIFICATION

**10.1 By Raindrop.** Raindrop will defend at its expense any suit brought against Customer, and will pay any settlement Raindrop makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Application infringes or misappropriates any Intellectual Property Rights of any third party. If any portion of the Application becomes, or in Raindrop’s opinion is likely to become, the subject of a claim of infringement, Raindrop may, at Raindrop’s option: (a) procure for Customer the right to continue using the Application; (b) replace the Application with non-infringing software which does not materially impair the functionality of the Application; (c) modify the Application so that it becomes non-infringing; or (d) terminate this Agreement and refund to Customer the pro-rated portion of any prepaid fees attributable to any unused Services, and upon such termination, Customer will immediately cease all use of the Services. Notwithstanding the foregoing, Raindrop shall have no obligation under this section or otherwise with respect to any infringement claim based upon (w) any use of the Services not in accordance with this Agreement or as specified in the Documentation; (x) any use of the Services in combination with other products, equipment, software or data not supplied or recommended by Raindrop; (y) any modification of the Application by any person other than Raindrop or its authorized agents; or (z) modification of the Application based upon specifications furnished by

Customer. This Section 10.1 states the sole and exclusive remedy of Customer and the entire liability of Raindrop, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for third party claims and actions described in this Section 10.1.

**10.2 By Customer.** Customer will defend at its expense any suit brought against Raindrop, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party arising out of or relating to Customer's breach or alleged breach of Section 6.2 or Section 6.3. This Section 10.2 states the sole and exclusive remedy of Raindrop and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for third party claims and actions described in this Section 10.2.

**10.3 Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 11. TERM AND TERMINATION

**11.1 Term.** This Agreement commences on the Effective Date and remains in effect for a period of three (3) years unless earlier terminated as set forth below. This Agreement shall be automatically renewed as per the terms in the Sales Order (Exhibit A) unless either party provides written notice to the other of its intention not to renew at least ninety (90) days prior to the expiration of the then-current term.

**11.2 Termination.** Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

**11.3 Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate (except that all payment obligations accrued prior to termination or expiration shall survive); and (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in Section 9.2. The following sections will survive expiration or termination of this Agreement for any reason: 2; 4.2; 4.3; 5; 6.1; 7.2; 8; 9; 11.3; and 12.

## 12. MISCELLANEOUS

**12.1 Mandatory Arbitration/Venue/Governing Law.** All controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement hereof and all other disputes between the Company and Contractor shall be resolved by expedited, binding arbitration, to be held in the County of San Jose, California in accordance with the American Arbitration Association Rules governing service agreement disputes. Any award made by such arbitrator shall be final, binding and conclusive on the Parties for all purposes (absent manifest error), and any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Agreement shall be governed by and construed in accordance with the laws California without reference to conflict of laws principles. Except as provided in Section 12, any disputes under this Agreement may be brought in the state courts and the Federal courts located in the City of San Jose, California, and the parties hereby consent to the exclusive personal jurisdiction and venue of these courts.

**12.2 Export.** Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Raindrop, or any products utilizing such data, in violation of the United States export laws or regulations.

**12.3 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**12.4 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.5 Remedies.** Customer acknowledges that the Services contain valuable trade secrets and proprietary information of Raindrop, that any actual or threatened breach of Section 4 or Section 9 or any other breach by Customer of its obligations with respect to Intellectual Property Rights of Raindrop will constitute immediate, irreparable harm to Raindrop for which monetary damages would be an inadequate remedy. In such case, Raindrop will be entitled to seek immediate injunctive relief without the requirement of posting bond.

**12.6 No Assignment.** Customer shall not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of Raindrop, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that Customer may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of Raindrop. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

**12.7 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**12.8 Independent Contractors.** Customer's relationship to Raindrop is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, and will not represent to any third party that it has, any authority to act on behalf of the other.

**12.9 Notices.** Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the first page of the Agreement by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

**12.10 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

**12.11 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and the Raindrop.

**In Witness Whereof,** the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date, and each represents and warrants to the other that it is legally free to enter into this Agreement.

\*\*\*Signature Page Follows\*\*\*

**RAINDROP SYSTEMS, INC.**

**CUSTOMER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_