

APPERIAN® SUBSCRIPTION AND LICENSE AGREEMENT

Date of Last Revisions: [_____], 2012

PLEASE CAREFULLY READ THIS SUBSCRIPTION AND LICENSE AGREEMENT (THIS “AGREEMENT”) BEFORE DOWNLOADING, INSTALLING OR OTHERWISE USING ANY SOFTWARE (AS DEFINED BELOW) OR SERVICES (AS DEFINED BELOW). THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN APPERIAN, INC., A DELAWARE CORPORATION, WITH OFFICES AT 321 SUMMER STREET, BOSTON, MA 02210 (“APPERIAN”) AND THE PERSON OR ENTITY AGREEING TO THIS AGREEMENT (“CUSTOMER”).

[THIS AGREEMENT IS EFFECTIVE AS OF THE DATE YOU CLICK THE “ACCEPT” BUTTON BELOW (OR ANY SIMILAR BUTTON OR LINK AS MAY BE DESIGNATED BY APPERIAN TO SHOW YOUR ACCEPTANCE OF THIS AGREEMENT). IF YOU ARE ACCEPTING ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY, YOU REPRESENT AND WARRANT THAT: (I) YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER, OR THE APPLICABLE ENTITY, TO THIS AGREEMENT; (II) YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; AND (III) YOU AGREE, ON BEHALF OF THE PARTY THAT YOU REPRESENT, TO THIS AGREEMENT. ACCEPTANCE OF THIS AGREEMENT IS REQUIRED AS A CONDITION TO PROCEEDING WITH THE DOWNLOAD, INSTALLATION AND USE OF ANY SOFTWARE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT OR IF YOU DO NOT HAVE THE LEGAL AUTHORITY TO BIND YOUR EMPLOYER OR THE APPLICABLE ENTITY, CLICK THE “DO NOT ACCEPT” BUTTON BELOW OR DO NOT OTHERWISE DOWNLOAD, INSTALL OR USE ANY SOFTWARE.]¹

In addition, access and use of when accessing or using certain Software and Services, Customer and End Users will be subject to any additional terms applicable to such Services that may be posted on or through the Services from time to time, including, without limitation, the privacy policy located at <http://www.apperian.com/Apperian/apperian-privacy-policy> (the “Privacy Policy”). All such terms are hereby incorporated by reference into these terms and conditions. By using the Service, Customer, on behalf of itself and each End User (as defined below), consents to Apperian’s collection and use of personal data as outlined therein

1. CERTAIN DEFINITIONS

As used in this Agreement or in any Order Form, each of the following capitalized terms and each of those terms defined elsewhere in this Agreement will have its indicated meaning, unless the context otherwise requires:

1.1 “App” means any end-user software application made available through EASE for use by End Users. Apps may be developed by Apperian or a third-party as identified on an applicable Order Form and made available to Customer (collectively, “Apperian Apps”) or be developed by Customer and uploaded through the EASE Services (“Customer Apps”).

1.2 “EASE” means the mobile application management solution, made available by Apperian as “Enterprise App Service Environment” or “EASE” for use by enterprise organizations to create secure and manageable mobile apps, and then deploy and manage those apps for an entire organization.

1.3 “EASE SDK” means any software development kit and components thereof, including any sample source code, object code, wrappers, tools, utilities, libraries, API, text files and documentation, that is made available by Apperian and provided to Customer under this Agreement.

1.4 “EASE SDK Distributable Components” means the object code components and files of the EASE SDK that are designated by Apperian in the applicable documentation as “redistributable.”

1.5 “End User” means an employee or consultant of Customer who is authorized by Apperian to access, download and use Apps on or through a device.

¹ Note: This paragraph is required to make a click-through agreement enforceable. Please include this paragraph in only your click-through version of these terms (in other words, this should be in the page pointed to by the on-line order form for the evaluation software, but not at the URL pointed to by the printed Order Form.

1.6 “Evaluation Period” means the period of time allowed for Customer to review, test, and evaluate the EASE Services as provided in Section 9 below.

1.7 “Order Form” means an order form entered into by the parties hereto and that references this Agreement.

1.8 “Services” means any services provided by Apperian under this Agreement, including without limitation any of the mobile application management services provided to Customer and End Users through EASE (the “EASE Services”), and any professional services provided to Customer pursuant to an Order Form or a separate statement of work referencing this Agreement (the “Professional Services”).

1.9 “Software” means any software, documentation or data related to the Services and any Apps.

2. GRANT OF RIGHTS

2.1 Rights and Licenses Granted to Customer. Subject to the terms and conditions of this Agreement, Apperian hereby grants to Customer a non-exclusive, non-assignable and non-transferable (except pursuant to Section 18 below) right and license during the term of this Agreement to do the following:

(a) access and use the EASE Services only for its internal business purposes to create, configure, manage and deploy Apps to End Users, and permit End Users to access and use the EASE Services only for their personal use, and not for further redistribution or remarketing, to download, install, access and use such Apps in accordance with this Agreement and any documentation provided with such App;

(b) download, use, and make a reasonable number of copies of the EASE SDK solely for its internal business purposes to create, configure, manage and deploy Customer Apps to End Users; and

(c) grant sublicenses to End Users to perform, display and use the EASE SDK Distributable Components distributed to such End Users as a component of a Customer App only for such End User’s own use in accordance with Section 2.1(a) above.

2.2 Rights Granted to End Users. Subject to the terms and conditions of this Agreement, Apperian hereby grants to each End User a non-exclusive, non-assignable, non-transferable, royalty-free, perpetual license to download, install, perform, display and use Apperian Apps for their personal use, and not for further redistribution or remarketing, in accordance with this Agreement and any documentation provided with such Apperian App.

2.3 License Grant by Customer to Apperian. Subject to the terms and conditions of this Agreement, Customer hereby grants to Apperian a non-exclusive, royalty-free, license during the term of this Agreement to do the following:

(a) to host, have hosted, copy, display, perform, distribute, have distributed, store, modify, configure, distribute, make available, and otherwise use the Customer Apps in connection with the provision of EASE Services and Customer Apps to End Users and the maintenance and support thereof; and

(b) to use and display Customer’s name, logo, trademarks, service marks and other content provided by Customer for the purpose of performing the Professional Services and resulting EASE Services contemplated under Section 5.1 below.

2.4 Third Party EULA. From time to time, certain Apps will incorporate, and be made available to Customer and End Users under, electronic license agreement, which agreement may be in a “click-through” or “shrink-wrapped” form or an electronic equivalent which permits Customer or End User to view and indicate agreement with such license terms and conditions prior to installing or using such App. In such case, in addition to the terms and conditions of this Agreement, Customer’s and End User’s right to access and use such App will also be subject to and governed by the terms and conditions of such electronic license agreement.

2.5 Reservation of Rights; Notice of Infringement.

(a) Subject only to the rights expressly granted to Customer and End Users under this Agreement, as between Apperian, Customer and End Users, all rights, title and interest in and to the Software, including without limitation all intellectual property rights in and to the Software, will remain with and belong exclusively to Apperian. As between Apperian, Customer and End Users, Apperian will own and retain all right, title and interest in and to (i) the Software, all improvements, enhancements or modifications thereto; (ii) any software,

applications, inventions or other technology developed in connection with Professional Services; and (iii) all intellectual property rights related to any of the foregoing. Customer further acknowledges that no exclusive right of any kind is granted to Customer or End Users by the terms of this Agreement. Customer will promptly notify Apperian of any infringement of Apperian's intellectual property rights that come to the attention of Customer or End Users.

(b) Subject only to the rights expressly granted to Apperian under this Agreement, all rights, title and interest in and to the Customer Apps, including without limitation all intellectual property rights in and to the Customer Apps, will remain with and belong exclusively to Customer.

3. ACCESS AND USE OF EASE SERVICES AND SUPPORT; RESTRICTIONS

3.1 Availability of Services. Subject to the terms and conditions of this Agreement, Apperian will use commercially reasonable efforts to provide the EASE Services to Customer and End Users [24 hours a day, 7 days a week, except for (a) planned downtime for system maintenance or support activities, and (b) any unavailability caused by circumstances beyond Apperian's reasonable control, or third party failures or delays (including those by any hosting provider or Internet service provider).

3.2 Support. Subject to the terms and conditions of this Agreement, Apperian will endeavor to provide Customer with reasonable support services, through telephone, electronic mail or another online mechanism as designated by Apperian between the hours of 8:00 a.m. and 8:00 p.m., U.S. Eastern time, Monday through Friday, excluding U.S. and Apperian holidays, in accordance with Apperian's standard practice. Apperian will endeavor to respond to submissions for Customer's participating in an Evaluation Period within a reasonable period of time, and to submissions for all other Customers within two (2) business days of receipt.

3.3 Registration. As part of the registration process, Customer will identify an administrative user name and password for Customer's EASE Services account. Customer may use the administrative user name and password to cause Apperian to create accounts for End Users (each with a user password) up to the maximum number permitted in an Order Form and Customer agrees to provide and maintain true, accurate, current and complete information about itself and the End Users as prompted by the EASE Services' registration forms. Registration data and certain other information about Customer and End Users are governed by the Privacy Policy. Customer will not allow any individuals under thirteen (13) years of age to use the EASE Services, with or without registering, and will allow individuals under eighteen (18) years of age to use the EASE Services only with the approval of a parent or guardian. Apperian reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

3.4 Member Account, Password and Security. Customer is responsible for maintaining the confidentiality of Customer's and End Users' password(s) and account(s), and is fully responsible for any and all activities that occur under such passwords or accounts. Customer agrees to immediately notify Apperian of any unauthorized use of its or End Users' password(s) or account(s) or any other breach of security. Apperian will not be liable for any loss or damage arising from failure to comply with this Section 3.4.

3.5 General Practices Regarding Use and Storage. Customer acknowledges that Apperian may establish general practices and limits concerning use of the EASE Services, including without limitation the maximum storage space that will be allotted on Apperian's servers on Customer's behalf. Customer agrees that Apperian has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded through the EASE Services. Customer acknowledges that Apperian reserves the right to terminate End User accounts that are inactive for an extended period of time. Customer further acknowledge that Apperian reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

3.6 Equipment. Customer will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the EASE Services, including, without limitation, mobile devices, modems, hardware, servers and software (collectively, "Equipment"). Customer will be responsible for ensuring that such Equipment is compatible with the EASE Services (and, to the extent applicable, the Software) and complies with all configurations and specifications set forth in Apperian's published policies then in effect. Customer will also be responsible for maintaining the security of the Equipment, Customer account, passwords

(including but not limited to administrative and End User passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3.7 Third Party Limitations.

(a) DEVICE SUPPLIERS AND OTHER THIRD PARTIES MAY IMPOSE LIMITATIONS AND REQUIREMENTS THAT IMPACT CUSTOMER'S AND END USERS' USE OF EASE SERVICES AND APPS. Without limitation, here are some examples: (i) in order for certain customers to develop, test, and evaluate Apps for use with iOS devices, such customer must have a so called "ad hoc" license from Apple and each App must have an "ad hoc" profile; (ii) that ad hoc license from Apple effectively limits the number of devices that may access EASE Services; (iii) in order for other customers to use EASE Services with iOS devices, such customers must have a so-called "enterprise" license agreement with Apple; (iv) if such customer develops Apps for use with iOS devices and does so under an enterprise license agreement with Apple, Apple imposes its own limitations on who end users may be; and (v) as to Apps for iOS devices, Apple may from time to time check to see if such Apps has a certificate as required by Apple. Other devices may have similar limitations. IT IS CUSTOMER'S RESPONSIBILITY TO ENTER INTO ALL NECESSARY ARRANGEMENTS WITH DEVICE SUPPLIERS AND OTHER THIRD PARTIES AND TO COMPLY WITH THOSE ARRANGEMENTS AND ANY OTHER APPLICABLE LIMITATIONS AND REQUIREMENTS OF DEVICE SUPPLIERS AND OTHER THIRD PARTIES.

(b) Through the EASE Services, Apperian or third parties may provide links or other access to other sites and resources on the Internet. Apperian has no control over such sites and resources and Apperian is not responsible for and does not endorse such sites and resources. Apperian will not be liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, events, goods or services available on or through any such site or resource. Any dealings Customer or End Users have with third parties found while using the EASE Services are between Customer and such End User and the third party, and Customer agrees that Apperian is not liable for any loss or claim that Customer or such End User may have against any such third party.

3.8 Mobile Services. The EASE Services include use by End Users of Apps made available through the EASE Services. To the extent an End User uses Apps on a device, such End User's wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Apps may be prohibited or restricted by an End User's carrier, and not all Apps may work with all carriers or devices. By using an App, Customer agrees on behalf of each End User that Apperian may communicate with each such End User regarding Apperian and other entities by push, SMS, MMS, text message or other electronic means and that certain information about such End User's usage of the EASE Services may be communicated to Apperian. In the event an End User changes or deactivates its mobile telephone number, Customer agrees to promptly update such End User's Apperian account information to ensure that data is not sent to the person that acquires End User's previous number. Each device that accesses the EASE Services or any App may be uniquely logged by Apperian.

3.9 Audit. From time to time, Apperian may audit, directly or indirectly through its hosting activities, use of the EASE Services and Apps by Customer and End Users for compliance with this Agreement.

3.10 Commercial Use. Unless otherwise expressly authorized herein or in the EASE Services, Customer will not, and will not permit End Users to, display, distribute, license, perform, publish, reproduce, duplicate, copy, create derivative works from, modify, sell, resell, exploit, transfer or upload for any commercial purposes, any portion of the EASE Services, use of the EASE Services or access to the EASE Services, except as explicitly permitted herein. The EASE Services is only for Customer's internal business use and End Users personal use.

4. CUSTOMER APPS

4.1 Customer is solely responsible for Customer Apps and will not use the EASE Services to:

(a) upload any Customer App that (i) infringes any intellectual property or other proprietary rights of any party; (ii) Customer does not have a right to upload under any applicable law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv)

poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “contests,” “sweepstakes,” or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another’s privacy, hateful racially, ethnically or otherwise objectionable; or (vii) in the sole judgment of Apperian, is objectionable or which restricts or inhibits any other person from using or enjoying the EASE Services, or which may expose Apperian or its users to any harm or liability of any type;

(b) interfere with or disrupt the EASE Services or servers or networks connected to the EASE Services, or disobey any requirements, procedures, policies or regulations of networks connected to the EASE Services; or

(c) violate any applicable local, state, national or international law, or any regulations having the force of law;

(d) impersonate any person or entity, or falsely state or otherwise misrepresent Customer’s affiliation with a person or entity;

(e) solicit personal information from anyone under the age of eighteen (18);

(f) harvest or collect email addresses or other contact information of other users from the EASE Services by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;

(g) advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;

(h) further or promote any criminal activity or enterprise or provide instructional information about illegal activities; or

(i) obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the EASE Services.

4.2 Customer acknowledges and agrees that any questions, comments, suggestions, ideas, feedback or other information about the Service, provided by Customer or an End User to Apperian are non-confidential and Apperian will be entitled to the unrestricted use and dissemination of such information for any purpose, commercial or otherwise, without acknowledgment or compensation to Customer or such End User.

4.3 Apperian may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce this Agreement; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Apperian, its users and the public. Customer understands that the technical processing and transmission of the EASE Services, including Customer Apps, may involve (x) transmissions over various networks; and (y) changes to conform and adapt to technical requirements of connecting networks or devices.

4.4 Customer Apps may need to be signed with an issued certificate in order to be installed on certain devices. In such cases, Customer will either (a) sign the Customer app itself with its own issued certificate; or (b) direct Apperian to sign the Customer App with the Customer issued certificate. Apperian provides the foregoing Services merely as a convenience and is not responsible for any errors or liability arising from such Service.

4.5 Under no circumstances will Apperian be liable in any way for Customer Apps, including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any content uploaded or emailed via the EASE Services. Customer acknowledges that Apperian and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any Customer App that is available via the EASE Services. Without limiting the foregoing, Apperian will have the right to remove any Customer App that violates this Agreement or is deemed by Apperian, in its sole discretion, to be otherwise objectionable. Customer agrees that it must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

5. PROFESSIONAL SERVICES

5.1 Customer may order Professional Services from Apperian in accordance with the terms set forth herein and in the applicable Order Form or separate mutually agreed upon statement of work referencing this Agreement. All Professional Services will be charged at Apperian's then current standard rate, or such other rate and fees identified in the applicable Order Form or Statement of Work, and any scheduled service dates will be agreed upon mutually, subject to availability of Apperian personnel.

5.2 EASE Branding Services. Customer may purchase one-time services from Apperian to configure the EASE Services provided to Customer by including Customer's name and logo on the splash and login screens. Apperian may include "Powered by Apperian EASE Services" (or a substantially similar statement) on the splash and login screens, but in less prominence than Customer's branding. Included with this customization are enterprise authentication configuration and testing.

5.3 End User Authentication.

(a) Customer purchases one-time services from Apperian to configure the EASE Services provided to Customer to include enterprise authentication to enable End Users to enable or log in to the EASE Services via Customer's own network or services ("Customer Services"). If Customer orders such Customer Services, Apperian may require End Users to authenticate, register for or log into Customer Services on the Customer website. As part of such Customer Services, Apperian will be provided with access to information that End User provide to or through such Customer Services, and Apperian will use, store and disclose such information as necessary to perform the Customer Services and other Services hereunder and as otherwise provided under its the Privacy Policy. However, the manner in which Customer Services use, store and disclose End User information is governed solely by the policies of Customer, and Apperian will have no liability or responsibility for the privacy practices or other actions of any Customer or third party website or service that may be enabled within the EASE Services as a result of such Customer Services.

(b) Apperian is not responsible for the accuracy, availability or reliability of any information, content, goods, data, opinions, advice or statements made available in connection with Customer Services. As such, Apperian is not liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Customer Services. Apperian enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The EASE Services and Software, including Apperian Apps, may contain content that is protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by Apperian, Customer will not, and will not permit End Users to, modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Software or EASE Services, in whole or in part, except that the foregoing does not apply to Customer Apps that Customer legally uploads through the EASE Services. In connection with Customer and End Users use of the EASE Services, Customer will not, and will not permit End Users to, engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the EASE Services or the Software other than as specifically authorized herein is strictly prohibited. Except for Customer Apps, the Software and EASE Services is the property of Apperian, its affiliates or third party licensor. Customers will not, and will not permit End Users to, copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by Apperian.

6.2 The Apperian® and EASE® names and logos are trademarks and service marks of Apperian (collectively, the "Apperian Trademarks"). Other Apperian, product, and service names and logos used and displayed via the EASE Services may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Apperian. Nothing in this Agreement or the EASE Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Apperian Trademarks displayed on through the EASE Services, without our prior written permission in each instance. All goodwill generated from the use of Apperian Trademarks will inure to Apperian's exclusive benefit.

7. APPLE-ENABLED APPS

Apperian offers Apps that are intended to be operated in connection with devices made commercially available by Apple Inc. (“Apple”), among other platforms. With respect to Apps that are made available for End Users’ use in connection with an Apple-branded devices (such Apps, “Apple-Enabled Apps”), in addition to the other terms and conditions set forth in this Agreement, the following terms and conditions apply:

7.1 Acknowledgement. Apperian and Customer, on behalf of itself and each End User, acknowledges that this Agreement is concluded between Apperian and Customer only, and not with Apple, and that as between Apperian and Apple, Apperian, not Apple, is solely responsible for the Apple-Enabled Apps and the content thereof. Customer may not, and will cause End Users to not, use the Apple-Enabled Apps in any manner that is in violation of or inconsistent with the Usage Rules set forth for Apple-Enabled Apps in, or otherwise be in conflict with, the Apple App Store Terms of Service.

7.2 Scope of License. End Users’ license to use the Apple-Enabled Apps is limited to a non-transferable license to use such Apple-Enabled App on an iOS Product that such End User owns or controls, as permitted by the Usage Rules set forth in the Apple App Store Terms of Service.

7.3 Maintenance and Support. Apple has no obligation whatsoever to provide any maintenance or support services with respect to the Apple-Enabled Apps.

7.4 Warranty. Apple is not responsible for any product warranties, whether express or implied by law. In the event of any failure of any Apple-Enabled App to conform to any applicable warranty, Customer or End Users may notify Apple, and Apple will refund the purchase price for such Apple-Enabled App to Customer or the applicable End User; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to such Apple-Enabled App, or any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty, which will be Apperian’s sole responsibility, to the extent it cannot be disclaimed under applicable law.

7.5 Product Claims. Apperian and Customer, on behalf of itself and each End User, acknowledge that Apperian, not Apple, is responsible for addressing any claims of Customer, End Users or any third party relating to any Apple-Enabled App or Customer or End Users possession and/or use of such Apple-Enabled App, including, but not limited to: (a) product liability claims; (b) any claim that such Apple-Enabled App fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.

7.6 Intellectual Property Rights. In the event of any third party claim that any Apple-Enabled App or the end-user’s possession and use of such Apple-Enabled App infringes that third party’s intellectual property rights, as between Apperian and Apple, Apperian, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

7.7 Legal Compliance. Customer represent and warrant that (a) Customer and each End User are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) Customer and each End User are not listed on any U.S. Government list of prohibited or restricted parties.

7.8 Developer Name and Address. If Customer or any End User have any questions, complaints or claims with respect to any Apple-Enabled App, they may contact Apperian here.

7.9 Third Party Terms of Agreement. Customer will, and will cause End Users to, comply with any applicable third party terms of agreement when using any Apple-Enabled App. For example, if any Apple-Enabled App includes a VoIP application, then the Customer and each End Users must not be in violation of their wireless data service agreement when using such Apple-Enabled App.

7.10 Third Party Beneficiary. Apperian and Customer, on behalf of itself and each End User, acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of this Agreement with respect to any Apple-Enabled App, and that, upon Customer’s acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against Customer and each End Users with respect to any Apple-Enabled App as a third party beneficiary thereof.

8. CONFIDENTIALITY

Each party hereto (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical, financial and user information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). The Receiving Party agrees: (a) to take reasonable precautions to protect such Proprietary Information, and (b) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information after three (3) years following the disclosure thereof or any information that the Receiving Party can document (i) is or becomes generally available to the public, or (ii) was in its possession or known by it prior to receipt from the Disclosing Party, or (iii) was rightfully disclosed to it without restriction by a third party, or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party or (v) is required to be disclosed by law.

9. EVALUATION AND TESTING

Customer may elect to have an Evaluation Period of thirty (30) days commencing upon installation of the EASE Services to review, test, and evaluate the EASE Services to determine whether the EASE Services meets Customer’s needs by completing the evaluation form located on the Apperian website. If Customer elects to participate in such an Evaluation Period, Customer will deliver to Apperian a notice of its acceptance or rejection of the EASE Services no later than the expiration of the Evaluation Period. If Customer accepts the EASE Services, Customer will thereupon be obligated to pay the amounts invoiced as provided in Section 10 below. If Customer rejects the EASE Services, this Agreement and the licenses granted in Section 2.1 above will be terminated without liability, excluding, payment obligations arising from any Professional Services. Upon rejection, Customer will destroy or return to Apperian any downloaded Software. If Customer has not delivered notice of acceptance or rejection by the end of the Evaluation Period, Apperian may give written notice to Customer of such fact, in which event Customer will be deemed to have accepted the EASE Services unless it delivers written notice of rejection within fifteen (15) days after receipt of such notice from Apperian.

10. PAYMENT OF FEES

10.1 Fees. Customer will pay Apperian the applicable subscription fees for the EASE Services, and for the number of users, set forth in each applicable Order Form following completion of the Evaluation Period, if any, and any fees for Professional Services set forth in each applicable Order Form or a separate statement of work (collectively, the “Fees”). Currently applicable Fees are set forth in an Order Form and in any applicable statement of work. Apperian reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial order term as specified in the applicable Order Form or then current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Apperian has billed Customer incorrectly, Customer must contact Apperian no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Apperian’s Customer Support department.

10.2 Invoices; Late Fees. Apperian may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Apperian thirty (30) days after the mailing date of the invoice, or the Services may be terminated. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Customer will be responsible for all taxes associated with Services other than U.S. taxes based on Apperian’s net income.

10.3 Suspension of Services and Acceleration. If any amount owed by Customer under this or any other agreement for Services is thirty (30) or more days overdue, Apperian may, at its discretion and without affecting its other rights and remedies, (a) accelerate Customer’s unpaid fee obligations under any or all such agreements so that all such obligations become immediately due and payable and/or (b) after notice to Customer, suspend any Services to Customer or access to any Software under any or all such agreements, until such amounts are paid in full. No such suspension of service will extend any term of service.

11. TERM AND TERMINATION

11.1 Subject to earlier termination as provided below, this Agreement and each license granted hereunder is for the initial term as specified in the applicable Order Form, and will be automatically renewed for additional periods of the same duration as the initial term, unless either party hereto requests termination at least thirty (30) days prior to the end of the then-current term.

11.2 In addition to any other remedies it may have, either party hereto may also terminate this Agreement upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if the other party hereto breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Apperian may, but is not obligated to, delete archived data.

11.3 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

12. INDEMNITY AND RELEASE

Customer agrees to release, indemnify and hold Apperian, its affiliates and licensors, and their officers, employees, directors and agent harmless from any from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to Customer's or any End Users' use of the Services, any App, Customer or any End Users connection to the Service, Customer's or any End Users' violation of this Agreement, Customer's failure to enter into to comply with agreements with any device supplier or, Customer's or End User's violation of any rights of another. If Customer or any End User is a California resident, Customer, or Customer on behalf of the applicable End User, waives California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If Customer or any End User is a resident of another jurisdiction, Customer, and Customer on behalf of the applicable End User, waives any comparable statute or doctrine.

13. REPRESENTATIONS, WARRANTIES, COVENANTS AND DISCLAIMERS

13.1 Customer. Customer represents, warrants and covenants that Customer will use the EASE Services only in compliance with Apperian's standard policies then in effect and all applicable laws (including but not limited to policies and laws related to spamming, privacy (including but not limited to any European privacy laws), intellectual property, consumer and child protection, obscenity or defamation). Although Apperian has no obligation to monitor the content provided by Customer or Customer's or End Users' use of the EASE Services, Apperian may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

13.2 Apperian. NEITHER APPERIAN NOR ITS LICENSORS WARRANTS THAT THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR SOFTWARE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS" AND APPERIAN AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

14. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, APPERIAN, ITS AFFILIATES, LICENSORS AND THEIR OFFICERS, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES WILL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS;

(B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND APPERIAN'S REASONABLE CONTROL, EVEN IF APPERIAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO APPERIAN FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

15. EXPORT CONTROL; EMBARGO RESTRICTIONS

Certain Software and software components of the EASE Services may be subject to U.S. export control and economic sanctions laws. Customer will comply strictly with all such laws and regulations as they relate to such Software and access and use of the EASE Services. Customer will not export, reexport, or transfer the Software, or use or permit use of the EASE Services to or in Burma (Republic of the Union of Myanmar), Cuba, Iran, Libya, North Korea, Sudan, or Syria (the "Prohibited Jurisdictions"), and Customer will not export, reexport, or transfer the Software, or use or permit use of the Services, to or by any government, entity or individual located in the Prohibited Jurisdictions or to any End User with knowledge or reason to know that such Software or EASE Services will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes.

16. FEDERAL GOVERNMENT CUSTOMER

If Customer or any End User is a U.S. federal government end user, the EASE Services and all Software are a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the EASE Services and all Software are licensed to such Customer and End User only with those rights as expressly provided under the terms and conditions of this Agreement.

17. NOTICE FOR CALIFORNIA USERS

Under California Civil Code Section 1789.3, users of the EASE Services from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

18. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Apperian's prior written consent. Apperian may transfer and assign any of its rights and obligations under this Agreement without consent. Both parties hereto agree that this Agreement (and each Order Form) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Apperian in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions.