MASTER SERVICES AGREEMENT

Revised November 24, 2015

THIS DEVELOPER PROGRAM AGREEMENT ("AGREEMENT") CONSTITUTES A LEGAL AGREEMENT BETWEEN YOU AND SOFTERWARE, INC. ("SOFTERWARE"). BY CHECKING THE BOX INDICATING YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY ACCESSING OR USING THE CONTENT, AS DEFINED BELOW, YOU (A) AGREE TO BE BOUND BY THIS AGREEMENT; (B) ACKNOWLEDGE AND AGREE YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF USING THE CONTENT AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT; AND (C) REPRESENT YOU ARE LAWFULLY ABLE TO ENTER INTO CONTRACTS AND ARE OF THE LEGAL AGE OF MAJORITY IN THE JURISDICTION IN WHICH YOU RESIDE (AT LEAST EIGHTEEN (18) YEARS OF AGE IN MANY COUNTRIES). IN ADDITION, IF THIS AGREEMENT IS BEING AGREED TO BY A COMPANY OR OTHER LEGAL ENTITY, THEN THE PERSON AGREEING TO THIS AGREEMENT ON BEHALF OF THAT COMPANY OR ENTITY REPRESENTS AND WARRANTS THAT HE OR SHE IS AUTHORIZED AND LAWFULLY ABLE TO BIND THAT COMPANY OR ENTITY TO THIS AGREEMENT. YOU SHOULD PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORDS BY USING THE PRINT FUNCTIONALITY IN YOUR BROWSER. IF YOU DO NOT CHECK THE BOX INDICATING YOUR AGREEMENT TO THESE TERMS AND CONDITIONS, YOU MAY NOT PROCEED WITH REGISTRATION OR OTHERWISE PARTICIPATE IN THE DEVELOPER PROGRAM.

1. **Developer Program.** SofterWare has created a program (the "Developer Program") through which it desires to make an application programming interface ("API") and other information available to assist developers in creating applications (the "Applications") to interface, access, and otherwise interact with certain SofterWare services and systems including but not limited to its DonorPerfect Online, EZ-CARE2, and SafeSave products.

   To assist Developers in creating their Applications, SofterWare may make available various Software Development Kits ("SDKs"). In connection with the Developer Program, SofterWare may provide the accompanying Web site, materials, content, blogs, discussion areas, forums, programming, SDKs, API's, data (including without limitation Personal Data) and other information, whether existing now or in the future (collectively, the "Content"). While the Content is currently made available without charge to developers, SofterWare may, in its sole discretion, charge for the Content (or for additional features or functionality) at any time and on a Content by Content basis. For

the purposes of this Agreement, Personal Data shall mean any information relating to an identified or identifiable individual that is accessed or processed through the Developer Program.

2. **Beta Test Program.** You realize that all or certain portions of the Developer Program may be provided in a beta test period, or nonreleased status, and may have errors or problems. No beta test program should be released in a production environment. All beta programs related to the Developer Program are subject to the confidentiality terms and all other terms and conditions set forth in this Agreement. SofterWare will provide you access the beta program, but we will be adding or changing features, and functionality throughout the beta test period, at our discretion. SofterWare reserves the right to suspend any beta program at any time.

3. **Registration.** To participate in the Developer Program and obtain access to the Content, you must accept this Agreement and register for an account. You agree that you will disclose to SofterWare in writing (email, mail, or facsmile is acceptable) any conflicts of interest or potential conflicts of interest (e.g., work for or association with other card associations, issuers, nonprofit software providers, electronic payment providers, payment processors, etc.) you may have in a timely manner. You must also disclose whether you are an employee of any of the following companies or their subsidiaries:
   a. Blackbaud
   b. SalesForce
   c. FrontStream
   d. Bloomerang
   e. MetaFile
   f. Telosa
   g. Little Green Light
   h. Neon
   i. Fundly
   j. Razoo
   k. Firstgiving
   l. Givingfuel
   m. Give2gether
   n. CrowdRise
   o. Indiegogo
   p. Causes
   q. EventBrite
   r. Active.com
   s. PayPal

4. **Restrictions.** In connection with your participation in the Developer Program, use of the Content, and developing, testing, using, and distributing Applications, you may not, and

will not permit or authorize any person, directly or indirectly, to engage in any of the following activities:

    a. Reverse engineer, disassemble, reconstruct, or decompile any object code furnished as part of the Content (except to the extent you are expressly permitted by law to do so);

    b. gain unauthorized access to or use of SofterWare's services or systems;

    c. damage, disrupt, or impede the operation of SofterWare's services or systems;

    d. engage in fraudulent or illegal conduct of any kind;

    e. restrict, inhibit, or engage in any activity that prevents any other developer from using the Content;

    f. request, collect, solicit, or otherwise obtain access to Credentials (as defined in Section 7 (Registration; Developer Credentials; Certification)) through fraudulent or deceptive means;

    g. circumvent or modify any Credentials or other security mechanism used by SofterWare;

    h. use the Content for purposes other than in connection with the Developer Program;

    i. use the Content for the benefit of a SofterWare competitor, such as another fundraising software or CRM solution, credit or debit card association, payment processor, electronic payment providers, or telecommunication provider, or to compete with SofterWare;

    j. Process or use the Personal Data for any purpose other than on behalf of and for the benefit of SofterWare and only to carry out its obligations under this Agreement and in accordance with SofterWare's written instructions;

    k. use any robot, spider, site search/retrieval application or other device to retrieve or index any portion of the Content or collect information about other developers;

    l. create user accounts by automated means or under false or fraudulent pretenses;

    m. transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature;

    n. store or archive the Content to your own or a third party's computer systems or storage devices;

    o. use the Content to create Applications that offer or promote services that may be damaging to, disparaging of, or otherwise detrimental to SofterWare or its licensors, licensees, affiliates, or partners.

5. **Grant of License.** Subject to your full compliance with the terms and conditions of this Agreement, SofterWare grants you a limited, nonexclusive, as-is, revocable, non-transferable, single-use, non-sublicensable license to use the Content solely for purposed of developing, testing, using and distribution the Application. For the purposed of this Agreement, a single-use license shall mean that you cannot use the Content for production or distribution purposes in more than a single session between the Application and the single end user. The foregoing license and your use of the Content

are also subject to any and all instructions and documentation SofterWare may, from time-to-time, provide in connection with the Developer Program. This Agreement relates solely to developing, testing, using, and distributing Applications and does not grant you any right or license to conduct or process transactions using SofterWare's services or systems, which may be subject to a separate agreement between you and SofterWare. As further described in Section 12 (Proprietary Rights) and except as expressly provided in that Section, neither the foregoing license nor any other provision of this Agreement grants you any license or right to use, and you may not use, any SofterWare Brands.

6. **User Agreements.** You are solely responsible for licensing the right to install and use your Applications to users. SofterWare has no liability or obligations to your users. Your agreement with each user must, at a minimum, (a) ensure that the end user is granted a nonexclusive limited license solely to use any Content to solely for the purposes of the Application and solely for its personal use; (b) explicitly disclaim all warranties and liability of your "vendors, licensors, and processors," (c) not use or refer to SofterWare or refer to any SofterWare Brand in any manner, (d) specify that you are solely responsible to each user with respect to claims, liability, and damages that may arise out of the user's use of the Applications, and any support or maintenance with respect to the Applications, including maintaining at all times a customer support telephone or e-mail contact for the users; (e) your vendors, licensors, and processors are third party beneficiaries of the agreement, capable of directly enforcing its provisions; and (f) require that your vendors, licensors, and processors are indemnified from any and all third party claims with respect to your Application.

7. **Registration; Developer Credentials, Certification.**
    a. <u>Registration and Developer Credentials.</u> In connection with the Developer Program and your Applications, you will be issued one or more unique security certificates, tokens, passwords, and other credentials (collectively, "Credentials"), for identifying your Application, authentication, account management, and other purposes. You are solely responsible for securing a public and private key pair. The Credentials, defined above, do not include your public and private keys, but refer only to the security certificates, tokens, passwords, and other credentials provided by SofterWare. You will furnish your public key to SofterWare for certification by SofterWare as part of Credentials issued to you in connection with the Developer Program. As a condition to receiving Credentials, SofterWare may require you to submit certain information to authenticate your identity. The Credentials are, and will remain, the property of SofterWare. SofterWare grants you a non-transferable license to use the Credentials for the sole purpose of participating in the Developer Program or as otherwise directed by SofterWare. You may not sell, transfer, sublicense, or otherwise disclose your Credentials or use Credentials with any other Application or for any other purpose. You are responsible for maintaining the confidentiality and security of your Credentials and for immediately notifying SofterWare if you believe the confidentiality or

security of the Credentials has been compromised. You are responsible for all activities that occur using your Credentials, regardless of whether the activities are undertaken by you or someone else. You are responsible for maintaining up-to-date and accurate information (including a current e-mail address and other required contact information) for your account. From time-to-time, SofterWare may, in its sole discretion, require you to renew your registration for the Developer Program or the Credentials. SofterWare may, in its sole discretion, refuse to issue Credentials, revoke your Credentials, discontinue your participation in the Developer Program, and terminate this Agreement at any time if: (i) your contact information is not up-to-date or you do not respond to communications directed to you; (ii) SofterWare determines, in its sole discretion, that your Application fails to comply with the requirements of the Developer Program; (iii) your Application may interfere with, degrade, or otherwise adversely affect any SofterWare software, system, network, or data; (iv) the information you have provided to obtain the Credentials is false, inaccurate, not current, or incomplete; (v) you or your Application is engaged in illegal activity; (vi) you have breached, or SofterWare has a reasonable apprehension of your imminent breach, of this Agreement or any other agreement between you and SofterWare; or (vii) SofterWare, in its sole discretion, elects to terminate the Developer Program. In any of the foregoing events, your license to use the Credentials will immediately terminate and you must cease all use of your Credentials.

b. <u>Developer Program Modifications.</u> SofterWare reserves the right to discontinue, modify, or change the Developer Program, Content (including the APIs), and its systems and services at any time and from time-to-time, with or without notice to you. You may be required to obtain and use the most recent version of the Content in order to retain functionality of your Application. Modifications and changes to the Developer Program, Content (including the APIs), and SofterWare's services and systems may affect your Application and may require you to make changes to your Application at your own cost so that your Applications remains compatible with, and interfaces accurately with, SofterWare's services and systems. SofterWare will have no liability or obligation to you with regard to any modifications or changes it makes to the Developer Program, Content (including APIs), or its services or systems.

c. <u>Access to Application.</u> You will promptly provide SofterWare with access to your Applications and any other information that SofterWare may request from you from time-to-time regarding use and operation of the Application to verify your compliance with this Agreement and the requirements of the Developer Program, including compatibility testing of the Application. Access will be free of charge to SofterWare. You grant SofterWare a non-exclusive, royalty-free, perpetual license to use your Application for SofterWare's internal business purposes,

including compatibility and security testing. In the event you fail to provide this access, SofterWare may terminate this Agreement or your use of any and all Credentials immediately.

 d. <u>Certification.</u> SofterWare may, in its sole discretion, require or offer certification for certain Applications ("Certification"). In these instances, you are solely responsible for obtaining Certification for your Application. Certification will consist of confirmation by SofterWare or its designee that your Application complies with the applicable SofterWare specifications, including the Application's compatibility and safe operation with SofterWare's services and systems. Depending on the nature of the Application, multiple levels of Certification may be required. You are responsible for all costs associated with Certification and any modifications to your Application that are required in order for it to meet the Certification criteria. You will not be permitted to access SofterWare's services or systems until Certification is achieved. Future modification of your Application may be subject to re-Certification, if applicable. Certification will not constitute an endorsement, representation, guarantee, covenant, or warrant by SofterWare with respect to your Application or, except to the extent expressly approved by SofterWare in Section 12 (Proprietary Rights), your Application's compatibility with the SofterWare services or systems, and you may not represent it as such to any other person.

 e. <u>Rejection of Application.</u> Without incurring any liability or obligation, SofterWare may, in its sole discretion, reject any Application. Unless SofterWare states otherwise, rejection will not terminate this Agreement with respect to any other Application.

8. **Limitation on Usage; Limited Access Content.** SofterWare may, in its sole discretion and with or without notice to you, limit or throttle your Application's interactions with SofterWare's services or systems. Additionally, SofterWare may require usage limitations as part of the Developer Program, which SofterWare may change at any time and from time-to-time, without notice. From time-to-time, SofterWare may in its sole discretion limit access to certain portions or elements of the Content to subsets of the participants in the Developer Program.

9. **Avatars and Similar Identifiers.** In connection with your participation in the Developer Program, you may be permitted to use avatars and other similar identifiers to represent yourself. SofterWare will specify the format and other parameters for the representations. In addition to the requirements of this Agreement, including Section 4 (Restrictions), your representation may not be unlawful, harmful, threatening, intimidating, abusive, harassing, tortuous, defamatory, derogatory, vulgar, obscene,

libelous, invasive of another's privacy or publicity rights, disrespectful, hateful, or racially, ethnically or otherwise objectionable. SofterWare may, in its sole discretion, reject or remove any avatars and similar identifiers at any time, without notice. You are solely responsible for obtaining all rights necessary to furnish your avatar and similar identifiers to SofterWare for use in connection with the Developer Program.

10. **Promotion and Marketing of Your Application**. You may promote your Application, including advertising in traditional and online media and communicating with your users about your Application; provided however, except as expressly provided in Section 12 (Proprietary Rights), you may not use any of the SofterWare Brands and you may not claim or in any way imply in any advertising that your Application is created, certified, sponsored, or endorsed in any manner by SofterWare.

11. **Directory and Demonstrations**
    a. <u>Establishment</u>. SofterWare may establish a Marketplace directory of Applications and developers participating in the Developer Program. And, as provided below, SofterWare may include your information in the directory. However, your inclusion in the directory is not guaranteed.

    b. <u>Submission Requirements</u>. SofterWare may establish certain requirements to be included within its directory, including that (i) you must provide to SofterWare a copy of your Application for use within the directory, in full, demonstration or evaluation format; (ii) you must provide to SofterWare an approved Application description; and (iii) SofterWare or portal users may provide reviews about your Application. No fees or charges will be paid by SofterWare for these uses or otherwise in connection with this Agreement.

    c. <u>Demonstrations and Marketing</u>. You grant SofterWare a non-exclusive, world-wide, royalty-free right and license to use your Application for purposes of featuring, demonstrating, or otherwise marketing the Application in connection with the Developer Program.

    d. <u>Your License to SofterWare</u>. You grant SofterWare a non-exclusive, world-wide, royalty-free license to display the trade names, trademarks, service marks, logos, avatars and other similar identifiers, and domain names ("**Your Marks**") associated with you and your Application in accordance with this Agreement for the purpose of identifying you and your Application in any directory that SofterWare creates and featuring, demonstrating, or otherwise marketing the Application in connection with the Developer Program.

12. **Proprietary Rights.**

a. SofterWare Property. SofterWare retains all right, title, and interest, including, without limitation, all intellectual property rights, in and to (i) the Developer Program and Content and any derivative works and compilations based on the foregoing, (ii) SofterWare's systems and services, (iii) the SofterWare Brands; and (iv) any Feedback, as defined below (collectively, the "SofterWare Property"). You may not use any information or Content provided by SofterWare to dispute or contest the validity of SofterWare's intellectual property rights in the SofterWare Property. Doing so will constitute a material, non-curable breach of this Agreement.

b. <u>Feedback</u>. You may provide feedback, suggestions comments, improvements, ideas, etc. (collectively "**Feedback**"), regarding the SofterWare Property. Feedback is voluntary and SofterWare is not required to hold it in confidence. SofterWare may use Feedback for any purpose without obligation of any kind. You assign all right, title, and interest in and to any Feedback that you provide to SofterWare, and SofterWare may use, implement, and exploit any Feedback in any manner without restriction and without any obligation of confidentiality, attribution, accounting, compensation, or other duty to account. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant SofterWare an irrevocable, non-exclusive, perpetual, world-wide, transferable, sublicensable, royalty-free, fully paid-up license to use the Feedback in connection with SofterWare's business. You forever waive and agree never to assert against SofterWare and its business partners, employees, representatives, affiliates, successors and licensees any and all Moral Rights, as defined below, that you may have in the Feedback even after expiration or termination of this Agreement, to the extent permitted by applicable law. "**Moral Rights**" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

c. <u>SofterWare Brands</u>. Except as expressly provided in this Section 12 (Proprietary Rights subpart D (Limited License to SofterWare Brands)), you may not use the names, trade names, trademarks, service marks, slogans, logos, domain names, or any other use of SofterWare (collectively, the "**SofterWare Brands**") including, without limitation, any use that in any way would:
    i. imply a relationship or affiliation with SofterWare;
    ii. imply that SofterWare sponsors or endorses you or your Applications;
    iii. be reasonably interpreted to suggest your Application has been authored certified, or in any way approved by SofterWare;
    iv. disparage SofterWare, its products or services; or
    v. tarnish, dilute, or otherwise impair SofterWare or any of the SofterWare Brands.

You may not attempt to register and trademarks or service marks or other brand identifiers (including domain names) that are confusingly similar in any way (including, but not limited to, sound, appearance, and spelling) to any of the SofterWare Brands

d. <u>Limited License to SofterWare Brands</u>. In its sole discretion, SofterWare may grant you a limited, non-transferable, non-assignable, terminable-at-will, non-exclusive license to use certain SofterWare Brands, as may be designated by SofterWare from time-to-time, solely for those uses expressly identified and pre-approved by SofterWare in its sole discretion. For the avoidance of doubt, you may make no use of any SofterWare Brands without first obtaining SofterWare's written authorization, in SofterWare's sole discretion. You may not create a unitary composite mark involving the SofterWare Brands. You must display symbols and notices clearly and sufficiently indicating the trademark status and ownership of the SofterWare Brands in accordance with applicable trademark law. All use of the SofterWare Brands is subject to your strict accordance with SofterWare's then current trademark use guidelines (available at WEBSITE?) and any other direction as SofterWare may provide you from time-to-time. You acknowledge and agree that (i) all use of the SofterWare Brands, or goodwill associated with them, will inure to the benefit, and be on behalf, of SofterWare; and (ii) use of the SofterWare Brands will not create in you, nor will you represent you have, any right, title, or interest in or to the SofterWare Brands other than the limited license expressly granted herein. SofterWare may at any time, in its sole discretion and without cause, immediately terminate the license to the SofterWare Brands on written or electronic notice to you. On receipt of the notice, you will immediately cease all use of the SofterWare Brands.

e. <u>SofterWare Application Development</u>. You acknowledge and agree that SofterWare may be independently creating applications, content, and other products or services that may be similar to or competitive with your Applications and their content. Nothing in this Agreement will be construed as restricting or preventing SofterWare from creating and fully exploiting the applications, content, and other items, without any obligation to you. You may not apply for or obtain any patents based on derivative works or modifications you create of the Content or any other SofterWare Confidential Information, as defined in Section 17 (Confidential Information). To the extent you obtain any patents in connection with the Application, you grant SofterWare an irrevocable, royalty-free, fully paid-up, perpetual, world-wide, transferable, sublicensable, non-exclusive license to those patents for use in its business, including, but not limited to, the offering of products and services to its customers.

13. **Disclaimer of Warranties; No Warranties.** THE DEVELOPER PROGRAM, CONTENT, AND CREDENTIALS ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS. SOFTERWARE DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. SOFTERWARE DOES NOT WARRANT THAT THE CONTENT WILL BE ERROR FREE, UNINTERRUPTED, FREE FROM MALWARE, ADWARE, VIRUSES, WORMS, OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET YOUR REQUIREMENTS. SOFTERWARE DOES NOT WARRANT THAT THE CONTENT WILL WORK ON YOUR HARDWARE, WITH YOUR OPERATING SYSTEMS, OR WITH ANY OTHER SOFTWARE INSTALLED ON YOUR COMPUTERS. INFORMATION OBTAINED BY YOU FROM SOFTERWARE WILL NOT CREATE ANY WARRANTIES. YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR PARTICIPATION IN THE DEVELOPER PROGRAM, USE OF THE CONTENT AND CREDENTIALS, AND DEVELOPMENT AND USE OF YOUR APPLICATIONS. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE CONTENT PROVIDED BY SOFTERWARE.

14. **Limitation of Liability.**
    a. REGARDLESS OF WHETHER ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, SOFTERWARE AND ITS BUSINESS PARTNERS, EMPLOYEES, REPRESENTATIVES, AND AFFILIATES ARE NOT AND SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY PROPERTY DAMAGE, LOSS OF USE, LOSS OF BUSINESS, ECONOMIC LOSS, LOSS OF DATA, OR LOSS OF PROFITS, WITHOUT REGARD TO THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTIONS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, YOUR PARTICIPATION IN THE DEVELOPER PROGRAM, THE CONTENT, CREDENTIALS, OR YOUR APPLICATIONS, EVEN IF SOFTERWARE OR ITS BUSINESS PARTNERS, EMPLOYEES, REPRESENTATIVES, OR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR LOSSES. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST SOFTERWARE OR ITS BUSINESS PARTNERS, EMPLOYEES, REPRESENTATIVES, OR AFFILIATES ARISING OUT OF THE DEVELOPER PROGRAM, THE CONTENT, CREDENTIALS, YOUR APPLICATIONS, AND THIS AGREEMENT.
    b. The foregoing limitations and exclusions apply except to the extent expressly precluded by applicable law.

15. **Your Warranties**. You represent and warrant to SofterWare that (a) the information you provide to SofterWare in connection with your registration with and use of the Developer Program and application for Credentials is true and correct, (b) you own or have properly licensed all rights necessary to develop, distribute, and use your Application; (c) use of your Application will not infringe the intellectual property rights of any third party; and (d) you and your Applications will comply with all applicable local, state, federal, and

international laws, rules, and regulations.

16. **Indemnification.** You agree to indemnify, defend, and hold harmless SofterWare, its subsidiaries, affiliates, directors, officers, agents, employees, advertisers, vendors, suppliers, licensors, and partners from and against any and all claims, liabilities, damages (actual and consequential), losses, fines, and expenses (including, but not limited to, legal and other professional fees) arising from or in any way related to (a) your participation in the Developer Program, (b) your use of the Content, (c) your Applications, (d) any breach of this Agreement, (e) use of your Applications by any user, or (f) trademarks, service marks, names, logos, avatars and similar identifiers, and all other intellectual property provided by you in connection with the Developer Program, your Application, or this Agreement, including claims of intellectual property infringement relating to the foregoing. You may not enter into any stipulated judgment or settlement that purports to bind SofterWare without SofterWare's prior express written authorization, which will not be unreasonably withheld or delayed.

17. **Confidential Information.** "**SofterWare's Confidential Information**" includes the Content and any other information which (a) gives SofterWare some competitive business advantage, gives SofterWare the opportunity to obtain some competitive business advantage, or the disclosure of which could be detrimental to the interests of SofterWare, or (b) which is either (i) marked "Confidential," "Restricted," "Proprietary Information," or other similar marking, (ii) known to be considered confidential and proprietary, (iii) is received under circumstances reasonably interpreted as imposing an obligation of confidentiality, or (iv) any confidential transaction data. You will treat all SofterWare Confidential Information as strictly confidential and use the same degree of care to prevent disclosure of SofterWare's Confidential Information as you would use with respect to your own most confidential and proprietary information, which, under no circumstances, shall be less than the standard of care imposed by state and federal laws and regulations relating to the protection of the information and, in the absence of any legally imposed standard of care, the standard shall be that of a reasonable person under the circumstances. All SofterWare Confidential Information is and shall remain the property of SofterWare, and, except as expressly provided in this Agreement, no license or other right in any SofterWare Confidential Information is granted to you. Except as expressly provided in this Agreement, you may not use or disclose any SofterWare Confidential Information without SofterWare's prior written consent, except disclosure to and subsequent uses by your employees and agents on a need-to-know basis in order to fulfill your obligations under this Agreement, provided that those employees or agents have executed written agreements restricting use or disclosure of the SofterWare Confidential Information that are at least as protective of SofterWare's rights to the SofterWare Confidential Information as those contained in this Agreement. On termination of this Agreement or on SofterWare's written request at any time, you will destroy or return to SofterWare all SofterWare Confidential Information in your custody or control. This provision will survive any termination of this Agreement for so long as you have in your possession any SofterWare Confidential Information.

18. **Term and Termination**.
    a. <u>Term and Termination.</u> This Agreement will be effective until terminated as provided herein. SofterWare may suspend or terminate your participation in the

Developer Program, use of the Content, or this Agreement, due to a breach, at which time you will have 30 days to correct such breach. You may terminate this Agreement for any reason or no reason at all, at your convenience, with one hundred eighty days (180) written notice to SofterWare at dpconnect@softerware.com with the word "terminate" in the subject line and by ceasing all use of the Content.

b. <u>Effect of Termination</u>. On termination of this Agreement for any reason the rights and licenses granted to you will immediately terminate. You will, however, remain responsible for providing support to users of your Application (as described in Section 6 (User Agreements)) and notifying them of the termination. Notwithstanding the foregoing, SofterWare may, in its sole discretion, provide a termination notice period to you for certain Applications as may be required by applicable laws.

c. <u>Remedies</u>. You acknowledge and agree that your breach of this Agreement relating to the licenses granted herein and your use of SofterWare's Confidential Information may result in irreparable harm and permanent injury to SofterWare for which monetary damages would be an inadequate remedy. Consequently, you acknowledge and agree that, in such circumstances, SofterWare will be entitled to seek and obtain, without the posting of a bond, in addition to all other remedies available to SofterWare, at law or in equity, immediate injunctive relief to prevent or stop any breach of those provisions.

19. **Government and Export Restrictions**.

a. <u>Government Restrictions</u>. Any software or other programming provided by SofterWare in connection with this Agreement is commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of the United States Department of Defense or any component thereof, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

b. <u>Export and Import Controls</u>. The Content may be subject to U.S. export jurisdiction and the import jurisdiction of other countries. In connection with your use of the Content, you are solely responsible for complying with all applicable export, re-export, and import control laws and regulations of all applicable jurisdictions, including, but not limited to, those of the U.S. Department of Commerce, Export Administration Regulations, 15 CFR Parts 730-774, the International Traffic in Arms Regulations, country-specific economic sanctions programs implemented by the Office of Foreign Assets Control and export and import control laws and regulations of any other countries. You may not, directly or indirectly, use, distribute, transfer or transmit Content, whether by way of a direct product of such materials or products, software, or other technical information into which Content has been incorporated, except in compliance with

all applicable export and import laws and regulations of all relevant jurisdictions.

20. **Privacy**. SofterWare recognizes the importance of respecting the privacy of those who visit its websites. The SofterWare Privacy Notice (linked below) provides a description of how SofterWare collects, uses, shares and protects personal information on its website, as well as the choices and access rights you have in regards to such personal information. Different or more detailed policies may be applicable to certain pages within our country-specific websites. For more information on SofterWare's privacy practices and to review our Privacy Notice please visit (http://www.softerware.com/privacy-policy**)**

21. **Additional Terms**. In addition to the terms and conditions in this Agreement, your participation in the Developer Program and use of the Content is subject to any other agreements between you and SofterWare relating to processing of transactions or other products and services you obtain from SofterWare. SofterWare may make additional material available for download or use which may have additional terms and conditions. All additional terms and conditions are incorporated into and are a part of this Agreement. In the event of a conflict between this Agreement and any additional terms and conditions, the additional terms and conditions will control only with respect to their specific subject matter.

22. **Miscellaneous**.
    a. Audit. On reasonable prior notice, SofterWare and its agents may audit your facilities, systems, and records to confirm your compliance with this Agreement. In connection with the audits, you will make all relevant personnel and records available to SofterWare and otherwise cooperate in the review.
    b. Notifications. Unless provided otherwise by SofterWare in connection with the Developer Program, all notices or notifications required under this Agreement must be sent to developerprogram@softerware.com or any other address(es) specified by SofterWare from time-to-time, in its sole discretion.
    c. Entire Agreement. This Agreement constitutes the entire agreement between you and SofterWare with regard to its subject matter.
    d. Agreement Modifications. SofterWare may, at any time and from time-to-time, change the terms of this Agreement. Any changes will be posted on the Developer Program Web site. In addition, SofterWare may also send you a notice about the amended terms via email. If you do not accept the terms of any modification, your only recourse is to terminate this Agreement by sending a termination notice to apisupport@SofterWare.com with the word "terminate" in the subject line before the effective date of the amendments. The termination will be effective on the date the notice is received by SofterWare. The most current version of the Agreement will be available on the Developer Program Web site and will supersede all previous versions of the Agreement. Your continued participation in the Developer Program will constitute your acceptance of the changes.
    e. Relationship of the Parties. This Agreement does not create and shall not be construed as creating a joint venture, co-ownership, partnership, or agency relationship between you and SofterWare. Neither you or SofterWare will have the authority to, or will hold itself out as having any authority to, incur, assume, or

create, orally or in writing, any liability, obligation, or undertaking of any kind in the name of, or on behalf of, or in any way binding upon, the other.

f. <u>SofterWare Third Party Beneficiaries.</u> You acknowledge and agree that each affiliate of SofterWare is a third party beneficiary to this Agreement and that the affiliates are entitled to directly enforce, and rely upon, any provision of this Agreement which confers a benefit on (or provides rights in favor of) them. No other person or company is a third party beneficiary to this Agreement.

g. <u>Legal Process and Regulators</u>. Notwithstanding any other provision of this Agreement to the contrary, SofterWare may, without notice, furnish any regulator or other governmental authority, both foreign and domestic, with information about your Application and your use of the SofterWare services and systems.

h. <u>Governing Law</u>. This Agreement will be construed, interpreted, and performed exclusively according to the laws of the State of Pennsylvania, United States of America, without giving effect to any principles of conflicts of law. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in Pennsylvania. You and SofterWare consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to this Agreement must be filed within one (1) year after the claim or cause of action arose..

i. <u>Electronic Signatures - Binding</u>. This Agreement and any related documents may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between you and SofterWare. Neither you or SofterWare will contest the validity or enforceability of this Agreement and any related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form. Neither you or SofterWare will not contest the validity or enforceability of a signed facsimile copy of this Agreement and related documents on the basis that it lacks an original handwritten signature. Electronically maintained records when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.

j. <u>Waiver</u>. The failure or delay by SofterWare to exercise or enforce any right or provision of this Agreement or rights under applicable law shall not constitute a waiver of any of those provisions or rights. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court shall endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

k. <u>Survival.</u> The terms, conditions, and warranties contained in this Agreement that by their nature and context are intended to survive the expiration or termination of this Agreement shall survive, including, but not limited to Sections 4 (Restrictions), 6 (User Agreements), and 12 (Proprietary Rights) through 22 (Miscellaneous).

l. <u>Headings</u>. The section headings in this Agreement are for convenience only and have no legal or contractual effect.

m. <u>Assignment.</u> You may not assign or transfer your rights or obligations under this Agreement. Any purported or assignment in violation of the foregoing will be invalid.