

**Kuebix, LLC**

**Terms of Use & Master Subscription Agreement**

THIS MASTER SUBSCRIPTION AGREEMENT (“**AGREEMENT**”) GOVERNS YOUR FREE TRIAL OF THE SERVICES, OR YOUR PURCHASE AND ONGOING USE OF THOSE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A SALES ORDER FORM OR SCHEDULE OF WORK THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on October 24<sup>th</sup>, 2016. It is effective between You and Us as of the date You accept this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS**

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Kuebix**” or “**Software**” means a Kuebix, LLC proprietary Software module or modules.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Non-Kuebix Applications**” means online applications, services and offline software products that are provided by entities or individuals other than Us, and that interoperate with the Services, including but not limited to those provided by salesforce.com (“SFDC”).

**“Provider”** means Kuebix, LLC, as a Provider of a proprietary software product known as Kuebix, a cloud based Transportation Management System.

**“Purchased Services”** means Services that You or Your Affiliates purchase under a Sales Order Form or Schedule of Work, as distinguished from those services provided pursuant to a free trial.

**“Sales Order Forms”** (“SOF”) means the documents for placing orders hereunder that are entered into between You and Us or any of our respective Affiliates from time to time, including addenda and supplements thereto. By entering into a Sales Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Sales Order Forms shall be deemed incorporated herein by reference.

**“Services”** means the products and services that are ordered by You under a Sales Order Form or Schedule of Work and made available by Us online via the customer login link at <localhost:8888> and/or other web pages designated by Us. “Services” exclude Non-KUEBIX Applications.

**“SFDC”** means salesforce.com

**“Schedule of Work”** (“SOW”) means a detailed schedule of services to be performed by Kuebix for You in accordance with agreed upon terms and price.

**“User Guide”** means the online user guide for the Services, accessible via our User software.

**“Users”** means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

**“We”, “Us”, or “Our”** means the applicable Kuebix entity described in Section 12, General Provisions.

**“You” or “Your”** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

**“Your Data”** means all electronic data or information submitted by You to the Purchased Services.

## 2. FREE TRIAL

**2.1** We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered or are registering to use the applicable Service or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**2.2** NOTWITHSTANDING SECTION 8 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

**2.3** Please review the online training material during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

### **3. SERVICES**

**3.1 Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement and the applicable Sales Order Forms and SOW’s during each subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**3.2 User Subscriptions.** Unless otherwise specified in the applicable Sales Order Form or SOW, (i) Purchased Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, unless otherwise agreed upon in a separate Agreement and (iii) the added User subscriptions shall terminate on the same date as the pre-existing User subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Purchased Services.

**3.3 Our Responsibilities.** Provider shall provide Hosting Services as described below. Provider currently contracts with Salesforce.com for use of its Force.com platform, (Hosting Platform) but retains sole and exclusive right to utilize any other similar platform as it may see fit from time to time.

We shall: (i) provide basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours’ notice via the Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Eastern time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays and denial of service attacks. (c) any actions or inactions caused by you or your employees, agents or third party contractors, or any other entity under contract to provide services to you. (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

**3.4 Our Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your

Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with the “Confidentiality: Compelled Disclosure” section below or as expressly permitted in writing by You, or (c) access Your Data except to provide the Purchased Services and prevent or address service or technical problems, or at Your request in connection with customer support matters. You acknowledge and agree that Your Data will be hosted and stored by SFDC. As Providers choice of Hosting Services, SFDC uses a multilayered approach to protect information. They constantly monitor and improve application systems and processes to meet the growing demands and challenges of security. A Salesforce.com “Security Overview” may be found on the SalesForce.com website.

**3.5 Your Responsibilities.** You shall (i) be responsible for Users’ compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the recommended practices as described in the training material and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

#### 4. NON-KUEBIX PROVIDERS

**4.1 Services Provided by SFDC.** This Agreement is between You and Us. You acknowledge that the Services are hosted for Us by SFDC. We do not warrant that the hosting services will be uninterrupted, error-free, or completely secure. You understand and agree that we utilize an outsourced hosting environment and cannot directly control operations of that environment. By agreeing to these terms, You confirm that You accept and agree to abide by the SFDC Platform Terms of Use that may be found on the Salesforce.com website. Notwithstanding any other provision of this Agreement, You acknowledge and agree that We shall not be responsible or liable for the acts or omissions of SFDC.

**4.2 Non-Kuebix applications and Your Data.** If You install or enable Non-Kuebix Applications for use with Services, You acknowledge that We may allow providers of those Non-Kuebix Applications to access Your Data as required for the interoperation and support of such Non-Kuebix Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-Kuebix Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Non-KUEBIX Applications for use with the Services.

**4.3 Integration with Non-Kuebix Applications.** The Services may contain features designed to interoperate with Non-Kuebix Applications. To use such features, You may be required to obtain access to such Non-Kuebix Applications from their providers. If the provider of any such Non-Kuebix Application ceases to make the Non-Kuebix Application available for

interoperation with the corresponding Services features on reasonable terms, We may cease providing such Services features without entitling You to any refund, credit, or other compensation.

## 5. FEES AND PAYMENT FOR PURCHASED SERVICES

**5.1 User Fees.** You shall pay all fees specified in all Sales Order Forms and SOW's hereunder. Except as otherwise specified herein or in a Sales Order Form or SOW, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Sales Order Form or SOW. User subscription fees are based on monthly periods, unless stipulated in a separate Agreement; therefore, fees for User subscriptions added anytime within a period will be charged a prorated amount based on the time remaining within the billing period.

**5.2 Data Fees.** User Data is stored for a minimum of 2 years. Users requiring data storage longer than 2 years may request such on a Sales Order Form or SOW and will be billed in accordance with rates then in effect.

**5.3 Invoicing and Payment.** All Fees specified on a relevant Sales Order Form or SOW as well as credit card processing fees shall be collected via a credit card in advance or in accordance with a relevant Sales Order Form or SOW. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**5.4 Overdue Charges.** If any amounts invoiced hereunder are not received by Us by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals, Sales Order Forms and SOW's on payment terms shorter than those specified in the "Invoicing and Payment" section above.

**5.5 Suspension of Service.** If any charge owing by You is 30 days or more overdue, We may, without limiting Our other rights and remedies, suspend Services until such amounts are paid in full, provided We have given You 10 or more days' prior notice that Your account is overdue in accordance with the "Notices" section below.

**5.5 Payment Disputes.** We shall not exercise Our rights under the "Overdue Charges" or "Suspension of Service" sections above if You are disputing the applicable charges reasonably and in good faith and cooperating diligently to resolve the dispute.

**5.6 Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which

You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## 6. PROPRIETARY RIGHTS

**6.1 Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest, including all know-how, trade secrets, copyrights, and patentable inventions relating thereto, including materials, notes, designs, technical data, ideas, research, reports, documentation and other information related to the Services, and all modifications and improvements thereto, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**6.2 Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in a Sales Order Form or SOW, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for its own internal business purposes, (iv) decompile or reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**6.3 Your Applications and Code.** You, a third party acting on Your behalf, or a User may not modify, update, or change program code.

**6.4 Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in, or to Your Data, including any intellectual property rights therein.

Provider will not publicly disclose Client data collected by, or stored in databases used with Software, in a form or manner associated with Client's name or other unique identifying information. Provider shall have the right, however, to use such data for its own business purposes, so long as any disclosure of such data is not uniquely identified with Client. By way of example, and not limitation, Provider may use data collected by Software to identify client needs, develop or market new services for Client and analyze trends.

**6.5 Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## 7. CONFIDENTIALITY

**7.1 Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the

circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Sales Order Forms and SOW's, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2 Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Sales Order Form or SOW content to any third party other than its Affiliates and accountants without the other party's prior written consent.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **8. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**8.1 Our Warranties.** We warrant that (i) we have validly entered into this Agreement and have the legal power to do so, (ii) the Purchased Services shall perform materially in accordance with the User Guide, (iii) subject to the "Integration with Non-Kuebix Applications" section above, the functionality of the Purchased Services will not be materially decreased during a subscription term, and (iv) the Purchased Services will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in the "Termination for Cause" and "Refund or Payment upon Termination" sections below.

**8.2 Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.

**8.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

#### **8.4 Disclaimer of Actions Caused by and/or Under the Control of Third Parties**

Provider DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM OUR NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CLIENT'S OR CLIENT'S AND/OR Provider'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH Provider WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, Provider CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, Provider DISCLAIMS LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS, or any other circumstances beyond Provider's reasonable control, EXCEPT WHEN Provider FAILS TO USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS. Any such event may be referred to herein as a "force Majeure event."

**8.5 Beta Product.** From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers. You may accept or decline any such trial in Your sole discretion. Any Beta Product will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Beta Products are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Beta Products are not considered "Services" hereunder and are provided "AS IS" with no express or implied warranty. We may discontinue Beta Product at any time in Our sole discretion and may never make them generally available.

## **9. MUTUAL INDEMNIFICATION**

**9.1 Indemnification by Us.** We shall defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of the Purchased Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against You**"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You, (b) gives Us sole control of the defense and settlement of the Claim Against You and (c) provide to Us all reasonable assistance, at Our expense. In the event



of a Claim Against You, or if We reasonably believe the Purchased Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Purchased Services so that they no longer infringe or misappropriate, without breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of the Purchased Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination

**9.2 Indemnification by You.** You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a “**Claim Against Us**”), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, and for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability), and (c) provide to You all reasonable assistance, at Your expense.

**9.3 Exclusive Remedy.** This “Mutual Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this section.

## 10. LIMITATION OF LIABILITY

**10.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY’S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY. THE FOREGOING LIMIT SHALL NOT APPLY TO YOUR PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT FOR PURCHASED SERVICES” SECTION ABOVE.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 11. TERM AND TERMINATION

**11.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been

terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

**11.2 Term of User Subscriptions.** User subscriptions for Purchased Services commence on the start date specified in the applicable Sales Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Sales Order Form or SOW, all User subscriptions shall automatically renew for additional periods on a monthly basis, unless either party gives the other notice of non-renewal before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term shall be the same as that during the immediately prior term for 12 consecutive months. Written notice of a pricing increase will be provided at least 30 days before the anniversary date, in which case the pricing increase shall be effective upon renewal and thereafter and remain in effect for an additional 12 consecutive months. Any such pricing increase shall not exceed 7% of the pricing for the relevant Purchased Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Sales Order Form as promotional or one-time.**

**11.3 Termination for Cause.** A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4 Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Sales Order Forms or SOW's after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**11.5 Return of Your Data.** Upon request by You, made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data, unless legally prohibited.

**11.6 Surviving Provisions.** The sections titled "Fees and Payment for Purchased Services," "Proprietary Rights," "Confidentiality," "Warranties and Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Return of Your Data," "Surviving Provisions," ("Who You Are Contracting With, Notices, Governing Law and Arbitration," and "General Provisions" shall survive any termination or expiration of this Agreement.

## **12.GENERAL PROVISIONS**

**12.1 Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given when mailed by Certified or Registered United States Mail, Return Receipt Requested, postage pre-paid, or when actually delivered by courier, facsimile transmission or e-mail at the address specified below:

Company:

Kuebix, LLC

5 Mill & Main, Suite 400.

Maynard, Ma. 01754

Attention: Dave Lemont, CEO

**12.2 Choice of Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except for conflicts of law principles thereof.

**12.3 Jurisdiction.** The parties agree that all disputes arising out of or relating to this Agreement shall be brought in a federal or state court of competent jurisdiction in the Commonwealth of Massachusetts and the parties hereby agree to submit to the personal jurisdiction of such courts.