

**THIS SUBSCRIPTION SERVICES AGREEMENT** (the “**Agreement**”) is made and entered into by and between NorthQuad, LLC dba SaaS Proforma (“SaaS Proforma”) and the end user of the Subscription Services (defined below) (“Client”) as is effective as of the date it is accepted by Client. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1. Certain Definitions**

- 1.1. “**Affiliate**” means any entity that directly or indirectly, Controls, is Controlled by, or is under common Control with the subject entity.
- 1.2. “**Control**” or “**Controlled**”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest in the applicable entity.
- 1.3. “**Client Acceptance User**”, means the on-line user accepting this agreement on behalf of the Client through the SaaS Proforma provisioning screens
- 1.4. “**Client Data**” means all electronic information provided by Client to SaaS Proforma or its representatives for use in connection with this Agreement.
- 1.5. “**Documentation**” means SaaS Proforma’s online help materials, user documentation and training materials normally made available by SaaS Proforma in connection with a specific Product.
- 1.6. “**Order**” means SaaS Proforma’ on-line order and payment form for ordering certain Products
- 1.7. “**Product(s)**” means, collectively, Software, Software Support, Services, and/or Subscription Services.
- 1.8. “**Services**” means the professional services that may be furnished by SaaS Proforma to Client, but excludes Subscription Services.
- 1.9. “**Software**” means the specific application software products or modules furnished by SaaS Proforma to Client as part of Subscription Services, as set forth in an Order.
- 1.10. “**Software Update**” means a patch, workaround, improvement, correction, modification or derivative to the Software that is made generally available by SaaS Proforma as part of Subscription Services.
- 1.11. “**Software Support**” means the support services SaaS Proforma provides for Client related to the Software furnished as part of the Subscription Services
- 1.12. “**Subscription Services**” means software delivered on a software as a service (SaaS) basis and application management or similar services performed on subscription basis as set forth in an Order.
- 1.13. “**Territory**” means The United States of America, Canada, United Kingdom of Great Britain and Northern Ireland, and Australia.

## **2. Subscription Services**

- 2.1. **Grant.** Whereas, the Client Acceptance User represents and warrants they are duly authorized to execute this agreement and bind the Client to the terms and conditions thereof, subject to the terms and conditions herein and any limitations set forth in an Order, SaaS Proforma grants Client a personal, non-transferable, non-perpetual, terminable and non-exclusive right to access and use the Subscription Services and the applicable Documentation as described in the Order throughout the Territory.
- 2.2. **Fees.** Fees for the Subscription Services are delineated in an Order.
- 2.3. **Internal Use.** The rights granted in Section 2.1 are granted solely to Client to use internally. Client shall not: (a) make the Subscription Services available to anyone other than its authorized users, or (b) sell, resell, rent or lease the Subscription Services. Client shall use all reasonable efforts to prevent unauthorized access to or use of the Subscription Services, and shall notify SaaS Proforma promptly of any such unauthorized access or use.
- 2.4. **Exclusions.** SaaS Proforma exercises no control over, and accepts no responsibility for, the content of the information passing through the Internet. Client assumes responsibility for its use of the Subscription Services and the Internet. SaaS Proforma is not responsible for the content of any data transferred either to or from Client or stored by Client or via the Subscription Services by SaaS Proforma.
- 2.5. **Subscription Services Warranties.**
  - 2.5.1. SaaS Proforma warrants that during the Subscription Services term set forth in the applicable Order, the Subscription Services will substantially conform to the Documentation under normal use.
  - 2.5.2. SaaS Proforma’s entire liability for the breach of any warranty made in Section 2.5.1 is to use commercially reasonable efforts to resolve any error in the Subscription Services in a timely manner; provided, however, that SaaS Proforma is not responsible to correct, cure or otherwise remedy any error in the Subscription Services resulting from: (a) misuse, damage or unlicensed use of the Subscription Services by Client or a third party.

## **3. Software Support**

SaaS Proforma’s delivery of Software Support services are subject to the additional terms, conditions and fees contained in the “Software Support” Addendum A.

## **4. Payments**

- 4.1. **Pricing; Payment Terms.** All payments shall be paid monthly or annually per the Order, by credit card, via a third party, automated billing service.
- 4.2. **Taxes.** All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes (“**Taxes**”). Client shall be responsible for all Taxes however designated or levied, against the sale, licensing, delivery, or use of the Products (other than Taxes based upon SaaS Proforma’s net income).

## 5. Confidentiality

- 5.1. **Confidential Information.** As used herein, “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”) in connection with this Agreement. Confidential Information includes, without limitation, the Software and Documentation, copies or abstracts made thereof as well as any modules, samples, prototypes or parts thereto and the details of the employees of the parties or their respective Affiliates and Client Data. Confidential Information does not include any information that: (i) is already known to the Receiving Party or received by the Receiving Party from a third party, free of any obligation to keep it confidential; (ii) becomes publicly known through no wrongful act of the Receiving Party; (iii) is independently developed by the Receiving Party without the use of the Disclosing Party’s Confidential Information; or (iv) is approved for release by written authorization of the Disclosing Party.
- 5.2. **Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement without the Disclosing Party’s prior written permission; provided, however, that SaaS Proforma may use the Client Data in an anonymous, aggregate manner during the term of this Agreement and after termination hereof.
- 5.3. **Protection.** The Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own, but no less than reasonable care.
- 5.4. **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. Any such disclosure will be to the minimum extent legally required.
- 5.5. **Return.** Receiving Party will return all originals, copies and summaries of the Confidential Information upon termination or expiration of this Agreement or upon Disclosing Party’s request, or in the alternative, destroy the same and certify in writing to Disclosing Party that all such Confidential Information has been destroyed. Notwithstanding the foregoing, the Receiving Party may retain electronic copies of the Confidential Information solely for its archival records (including backup systems) that it keeps in the ordinary course of its business to the extent not readily accessible.
- 5.6. **Duration.** The obligations with respect to Confidential Information will continue until such time it ceases to be considered confidential.
- 5.7. **Marketing.** Notwithstanding anything to the contrary in this Section 5 or any other provision of this Agreement, SaaS Proforma may include Client’s name and logo in SaaS Proforma’s published Client list.

## 6. Proprietary Rights; Client Data; Usage Restrictions

- 6.1. **Ownership.** SaaS Proforma retains sole and exclusive ownership in and to the Software and Documentation (except for the Third-Party Software and related documentation) developed, created or furnished by SaaS Proforma hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, trade secrets, documentation or techniques that may be developed by SaaS Proforma under this Agreement. All rights not expressly granted in this Agreement are reserved by SaaS Proforma and its Clients.
- 6.2. **Trademark and Copyright Notices.** Client shall not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within any Documentation. Client does not and shall not acquire any rights of any kind in or to any trademark, trade name, logo or product designation under which the Software was or is marketed and may not make any use of the same for any purposes.
- 6.3. **Client Data.** Client is and shall be: (i) responsible for it and its users’ compliance with this Agreement, and (ii) solely responsible for the accuracy, quality, integrity and legality of the Client Data and of the means by which Client acquires the Client Data.
- 6.4. **Usage Restrictions.** Client shall use the Software only in accordance with the Documentation and applicable laws and government regulations, and shall not use the Software or Documentation for any purpose that may: (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters, (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to SaaS Proforma under this Agreement, SaaS Proforma reserves the right to remove or disable access to any material that violates the foregoing restrictions. SaaS Proforma shall have no liability to Client in the event that SaaS Proforma takes such action.
- 6.5. **Prohibited Actions.** Except to the extent permitted by law without the possibility of contractual waiver, Client may not reverse engineer, decrypt, extract, disassemble, or decompile any Software, or permit anyone else to do so (a “**Prohibited**

**Action**”). Before Client exercises any legal right to conduct a Prohibited Action it must provide SaaS Proforma with reasonable prior written notice and will not unreasonably refuse to accept any alternative course of action that SaaS Proforma proposes to satisfy Client’s legal rights in lieu of conducting a Prohibited Action.

## **7. Data Privacy and Cybersecurity**

- 7.1.** Client shall comply with all applicable laws, rules, regulations and industry standards related to the protection, processing, use, transfer and disclosure of personal information, as well as requirements to notify consumers of the same.
- 7.2.** If Client has any reason to believe it is in violation of this Section of this Agreement or can no longer comply with its obligations herein, it will immediately notify SaaS Proforma and assist SaaS Proforma with all necessary remediation efforts.
- 7.3.** In addition to any indemnification obligations elsewhere in the Agreement, Client shall indemnify, defend, and hold harmless SaaS Proforma and its affiliates, subsidiaries, successors and assigns (and their officers, directors, employees, sublicensees, and agents) from and against any and all claims, losses, demands, liabilities, damages, settlements, expenses and costs (including attorneys’ fees and costs), arising from, in connection with, or based on allegations of, Client’s failure to comply with any of its obligations set forth in these Data Security provisions of this Agreement. This indemnification obligation is not subject to any limitation of liability elsewhere in the Agreement.

## **8. Additional Express Warranties; Disclaimers**

**General Disclaimer.** SAAS PROFORMA DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CLIENT’S REQUIREMENTS, OR THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES THAT SAAS PROFORMA DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, THAT PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS OR OTHER PROBLEMS INHERENT IN THE USE OF COMMUNICATIONS FACILITIES, AND THAT SAAS PROFORMA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, INCLUDING SECTIONS 2.5 AND 8, NEITHER SAAS PROFORMA, NOR ITS SUBCONTRACTORS OR AGENTS MAKE ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SAAS PROFORMA AND ITS CLIENTS, SUBCONTRACTORS AND AGENTS SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, REASONABLE SKILL AND CARE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **9. Indemnity**

### **By Client**

Client will, at its own expense, defend SaaS Proforma and its Affiliates, and their directors, officers and employees (each, an **“SaaS Proforma Indemnified Party”**) against any claim, demand, suit, proceeding or action (each, a **“Claim”**), and shall indemnify the SaaS Proforma Indemnified Parties against any damages and costs (including but not limited to reasonable attorney fees and costs) finally awarded against them or amounts agreed to in a monetary settlement arising out of or in connection with such Claim to the extent the Claim is made or brought by or on behalf of a third party in connection with: (i) Client supplied intellectual property, (ii) Client Data, or (iii) Client’s breach of Sections 6 (Proprietary Rights; Client Data; Usage Restrictions), 7 (Data Privacy and Cybersecurity).

## **10. Exclusion and Limitation of Liability**

- 10.1. Exclusion of Certain Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, SAAS PROFORMA SHALL NOT BE LIABLE TO CLIENT FOR (i) ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, OR (ii) DAMAGES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUE, OR LOSS OF BUSINESS INFORMATION OR OTHER DATA (IN EACH CASE WHETHER DIRECT OR INDIRECT), AND CLAIMS AGAINST A PARTY BY ANY THIRD PARTY ARISING IN CONNECTION WITH THIS AGREEMENT WHETHER ARISING IN LAW OR IN EQUITY, IN CONTRACT, IN TORT, IN STRICT OR PRODUCT LIABILITY, BREACH OF STATUTORY DUTY, OR IN ANY OTHER FORM OF ACTION, AND WHETHER OR NOT CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSES.
- 10.2. Limitation of Liability.** THE MAXIMUM LIABILITY OF SAAS PROFORMA TO CLIENT FOR DAMAGES UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE SUM OF THE FEES PAID BY CLIENT TO SAAS PROFORMA DURING THE IMMEDIATELY PRECEDING 12-MONTH PERIOD FOR THE AFFECTED PRODUCT(S) GIVING RISE TO THE APPLICABLE CAUSE(S) OF ACTION.
- 10.3. Reliance.** SaaS Proforma and Client have not relied upon and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

## **11. Term; Termination**

- 11.1.** The Term of this Agreement shall be controlled by the term identified in the Order entered into in connection with this Agreement. The Order shall include the first term of the subscription (**“Initial Subscription Services Term”**), and this Agreement and the Order shall automatically renew thereafter for additional periods equal to the initial term (each a **“Subscription Services Renewal Term”**) unless Client cancels SaaS Proforma using the supplied cancellation functionality

found within the Software. For avoidance of doubt, termination shall be effective at the end of the Initial Subscription Services Terms or the then current Subscription Services Renewal Term, as applicable.

- 11.2. SaaS Proforma reserves the right to increase the recurring Subscription Services fees and incremental pricing rates after the initial term of the Subscription Services.
- 11.3. SaaS Proforma reserves the right to suspend Client's access to and/or use of the Subscription Services upon Client's failure to pay amounts when due, after 10 days' notice via email thereof and failure to cure. SaaS Proforma shall not be liable to Client or any third party for any suspension of the Subscription Services pursuant to this Section.
- 11.4. SaaS Proforma has no obligation to maintain Client Data, and will have no liability to Client in respect of the same.
- 11.5. SaaS Proforma may terminate this Agreement (including the Order then in effect) for any reason or no reason upon notice to Client.
- 11.6. **Effects of Termination.** Upon termination of this Agreement, as the case may be, for any reason: (i) all rights and obligations of the parties under this Agreement and/or such Order will automatically terminate except for rights of action accruing prior to termination, (ii) all amounts due thereunder shall be due within 30 days after the date of termination, and (iii) any data held by Client shall be promptly returned to SaaS Proforma.
- 11.7. **Surviving Provisions.** Those provisions that by their nature should survive termination of this Agreement, as the case may be, will survive termination.

## 12. Choice of Law and Jurisdiction

- 12.1. The laws of the state of Indiana shall govern this Agreement, without regards to its rules on the conflicts of laws.
- 12.2. The parties consent to the jurisdiction of the state and federal courts having subject matter jurisdiction located in Hamilton county, Indiana, and consent to and will not challenge venue or personal jurisdiction in or by such courts.
- 12.3. This Agreement is not to be governed by the United Nations Convention on Contracts for the International Sales of Goods.

13. **Assignment.** Client may not assign, license, sublicense or otherwise transfer this Agreement or any rights under this Agreement, whether voluntarily or by operation of law, without SaaS Proforma's prior written consent. Without limiting the scope of the previous sentence any sale or transfer of assets, stock or any interest in Client, or any merger, consolidation restructuring, or other business reorganization, which, by operation of law, transfers this Agreement and such rights, is to be considered a transfer covered by the previous sentence and prohibited hereby. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. SaaS Proforma may assign this Agreement in its sole discretion.

## 14. General

- 14.1. **Headings.** Headings contained in this Agreement are for convenience only and are not part of this Agreement and do not in any way interpret, limit or amplify the scope, extent or intent of this Agreement or any of the provisions hereof.
- 14.2. **Complete Agreement.** This Agreement, including any Order, Addendum or a supplement or an amendment hereto, constitutes the entire Agreement between the parties on the subject hereof and supersedes all other prior or contemporaneous agreements, negotiations, representations and proposals, written or oral. Each party acknowledges that in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement. In the event of a conflict between this Agreement and any Order entered into in connection herewith, this Agreement will control except as expressly provided otherwise in the applicable Order. This Agreement does not operate as an acceptance of any conflicting terms and conditions and shall prevail over any conflicting provision of any purchase order or any other instrument of Client, it being understood that any purchase order issued by Client shall be for Client's convenience only and any terms and conditions therein are of no force or effect hereunder.
- 14.3. **Severability.** If any provision of the Agreement is deemed to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will promptly amend the Agreement or the Agreement will be deemed to be amended to give effect to the stricken provision to the maximum extent possible.
- 14.4. **Modifications and Waiver.** No modification of, or amendment or addition to this Agreement is valid or binding unless set forth in writing signed by a representative of each party; provided that an Order becomes valid and binding against Client once signed and submitted by Client. The waiver or failure of either party to exercise in any respect any right or remedy provided herein shall not be deemed a waiver of any future right or remedy hereunder.
- 14.5. **Electronic Signatures.** The parties consent to electronic signatures as captured by the acceptance of this agreement on the license presentation page of the Software (commonly referred to as a "Click-Through" agreement) for the purpose of executing this Agreement by electronic means, subject to compliance with any applicable laws, rules or regulations. In no event shall the electronic execution expand such assent to include any terms other than those explicitly set forth in this Agreement.
- 14.6. **Force Majeure.** Neither party will be responsible or liable for its failure to timely perform under this Agreement when its failure results from any cause beyond its reasonable control.
- 14.7. **Relationship.** The parties are independent contractors. This Agreement does not create a joint venture or partnership between the parties; and no party is by virtue of this Agreement authorized as an agent, employee or representative of

the other party. No employee of Client will be deemed to be an employee of SaaS Proforma for any purpose whatsoever, and nothing in any aspect of Client's use of the Software and Subscription Services in any way shifts any employee or employment related responsibility from Client to SaaS Proforma. Client alone is responsible for hiring, firing, training, setting hours for and supervising all employees.

- 14.8. Compliance with Laws.** It is Client's responsibility to make sure that Client is in full compliance with all laws, rules, regulations and industry standards, including, but not limited to, employment-related laws and laws applicable to the Software and Subscription Services used in the operation of Client's business, including all data protection and security laws as well as PCI compliance.
- 14.9. Business Contact Information.** Client agrees to allow, and is authorized to allow, SaaS Proforma and its Affiliates and service providers to store and use Client's business contact information, including names, business phone numbers, and business e-mail addresses of Client employees and contractors, anywhere they do business. Such information will be processed and used solely in connection with the parties' business relationship.
- 14.10. Notice.** Notices hereunder shall be sent to the email addresses of both the Client (as captured on the Client information page in the Software during the onboarding process) and SaaS Proforma (support@saasproforma.com), and shall be deemed delivered (i) within 5 days of the email sent date. It is the responsibility of the Client to ensure the email address provided during the onboarding process is up to date and accurate. Any change to the email address provided during the onboarding process must be promptly sent to support@saasproforma.com. Failure to maintain a proper email address for notification purposes will be grounds to terminate the Agreement.
- 14.11. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and taken together will constitute a single instrument.

## SOFTWARE SUPPORT (ADDENDUM A)

### 1. Software Support Services.

A. Service Availability. Payment of the Subscription Fee entitles Client to email and on-line chat-based Support Services. On-line chat support hours will vary and will be provided on a “as available” basis. Email support will be provided with a target response time not to exceed 5 business days. However, no specific response times or resolution times are guaranteed as part of the Support Services.

B. Scope of Support Services. Support Services consist of (1) email and on-line chat support to help resolve material failures of the Software to conform to the applicable Documentation (“Errors”); (2) commercially reasonable efforts to report and test fixes to Errors in Software that affect the efficiency or use of the Software as described in the Documentation; and (3) delivery of all software revisions provided by Third Parties that SaaS Proforma deems necessary with respect to the Covered Software. SaaS Proforma will use its reasonable efforts to render Support Services within a reasonable time.

2. **Releases**. “Major Release” means a release of the Software that includes major feature enhancements. “Minor Release” means a release of the Software that is not a Major Release, normally consisting of relatively minor enhancements or corrections to known Errors. “Release” means either a Major Release or a Minor Release. During the current term and subject to the payment of the applicable Subscription Fees, SaaS Proforma shall deliver Releases of the Software to Client without further charge.