

Check here if Renewal

ORDER FORM

This Order Form (the “**Order Form**”) is by and between SmartForce® Technologies, Inc. (“**SmartForce**”) and the Subscriber identified below (“**Subscriber**”). THIS ORDER FORM IS ENTERED INTO PURSUANT TO AND SHALL BE GOVERNED BY THE THEN-CURRENT VERSION OF THE SMARTFORCE SERVICE SUBSCRIPTION AGREEMENT (THE “**SUBSCRIPTION AGREEMENT**” AND, TOGETHER WITH THIS ORDER FORM, THE “**AGREEMENT**”) LOCATED AT: <https://smartforcetech.com/agreement> WHICH ARE INCORPORATED HEREIN BY REFERENCE. All capitalized terms not defined herein have the meaning given to them in the Subscription Agreement. This Agreement will become effective when this Order Form is executed by authorized representatives of both parties (the “**Effective Date**”). In the event of any conflict between this Order Form and the Subscription Agreement, the terms set forth in this Order Form will prevail, but solely with respect to this Order Form.

SUBSCRIBER INFORMATION:

Name: Prosper Police Department	Principal Contact: Scott Brewer
Full Address: 801 Safety Way Prosper, TX 75078	Title: Assistant Chief of Police
	Phone: 972-569-1033
	Mobile Phone:
P.O. #:	Email: sbrewer@prospertx.gov
Number of Users: Up to 50	Billing Contact & Email: Same

Terms: See Below	Quote Valid through November 28, 2022.
------------------	--

Custom Development, Training, Implementation, and Other Services	
Description of Services	Price
Integrate SmartForce® with ICS RMS System. Pull and display RMS data into a Metric dashboard in SmartForce®. Quote dependent on RMS provider allowing SmartForce® system to pull the required data from a sequel database or other SmartForce® compatible database.	\$40,000.00 Year 1 \$5,000.00 Year 2 and each year after for Maintenance

Payment Terms

Initial Term Fees are due and payable in advance upon execution of the Order Form. Fees for Renewal Terms will be invoiced by SmartForce approximately 30 days before the start of the Renewal Term and are due and payable prior to the start of such Renewal Term. Fees for any Renewal Terms are subject to change.

Agreement

BY SIGNING BELOW, EACH PARTY AGREES TO BE BOUND BY THE TERMS OF THIS ORDER FORM AND THE SUBSCRIPTION AGREEMENT LOCATED AT: <https://smartforcetech.com/agreement> WHICH ARE INCORPORATED HEREIN BY REFERENCE. THE SUBSCRIPTION AGREEMENT CONTAINS (I) DISCLAIMERS OF WARRANTIES WITH RESPECT TO THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM, DOCUMENTATION AND SERVICES; (II) LIMITATIONS ON EACH PARTY'S LIABILITY; (III) INDEMNIFICATION OBLIGATIONS OF EACH PARTY; AND (IV) OTHER MATERIAL TERMS AND CONDITIONS, ALL OF WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. BY SIGNING BELOW, EACH PARTY REPRESENTS IT HAS READ AND AGREES TO BE BOUND BY THE ORDER FORM AND THE SUBSCRIPTION AGREEMENT. THIS AGREEMENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH TOGETHER SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT.

SUBSCRIBER: Prosper Police Department

SMARTFORCE TECHNOLOGIES, INC.

By (Signature): _____

By (Signature): _____

Name (Printed): _____

Name (Printed): _____

Title: _____

Title: _____

Date: _____

Date: _____

SMARTFORCE TECHNOLOGIES, INC. SERVICE SUBSCRIPTION AGREEMENT

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY.

THE SMARTFORCE® SERVICE (AS DEFINED BELOW) IS PROVIDED TO SUBSCRIBER BY SMARTFORCE TECHNOLOGIES, INC. (“**SMARTFORCE**”) SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS SERVICE SUBSCRIPTION AGREEMENT (“**AGREEMENT**”). BY USING THE SMARTFORCE SERVICE, CLICKING ON THE “I ACCEPT” BUTTON, OR BY COMPLETING THE REGISTRATION PROCESS FOR THE SMARTFORCE SERVICE, YOU: (1) AGREE TO THE TERMS OF THIS AGREEMENT, AND (2) REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE SUBSCRIBER, AND TO BIND THAT ENTITY TO THIS AGREEMENT. IF YOU DO NOT FULLY AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO ACCESS OR OTHERWISE USE THE SMARTFORCE SERVICE. THE TERM “**SUBSCRIBER**” MEANS THE ORGANIZATION TO WHICH THE SMARTFORCE SERVICE IS PROVIDED. EACH AND EVERY PERSON USING THE SMARTFORCE SERVICE ON BEHALF OF THE SUBSCRIBER REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO DO SO ON SUBSCRIBER’S BEHALF. IF SUBSCRIBER HAS ENTERED INTO A SIGNED HARDCOPY AGREEMENT REGARDING THE SUBJECT MATTER HEREOF WITH SMARTFORCE, THEN THAT SIGNED HARDCOPY AGREEMENT GOVERNS SUBSCRIBER’S USE OF THE SMARTFORCE SERVICE.

1. DEFINITIONS. As used in this Agreement:

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

1.2 “**SmartForce[®] Service**” means the agency management system delivered by SmartForce to Subscriber using the SmartForce System.

1.3 “**SmartForce System**” means the technology, including software, used by SmartForce to deliver the SmartForce Service to Subscriber.

1.4 “**Authorized User**” means Subscriber’s employees, representatives, consultants, contractors or agents who are authorized to use the SmartForce Service on behalf of Subscriber and have been supplied user identifications and passwords for this purpose.

1.5 “**Documentation**” means the technical materials provided or made available by SmartForce to Subscriber that describe the features, functionality or operation of the SmartForce System.

1.6 “**Error**” means a reproducible failure of the SmartForce Service to substantially conform to the Documentation.

1.7 “**Error Corrections**” means bug fixes or workarounds intended to correct Errors in the SmartForce Service.

1.8 “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.9 “**Order Form**” means an order form, executed by both parties, that sets forth the Services ordered, the applicable term thereof, and the schedule of payments for the provision of the SmartForce Service and/or performance of the Services, and any unique additional terms.

1.10 “**Services**” means any services provided by SmartForce to Subscriber under this Agreement as set forth in an Order Form, including, but not limited to, provision of the SmartForce Service and Professional Services (as defined below).

1.11 “**Subscriber Content**” means any content provided, imported or uploaded to, or otherwise used by Subscriber or on Subscriber’s behalf with the SmartForce Service or developed by or on behalf of Subscriber and used with the SmartForce Service.

2. PROVISION OF SERVICES

2.1 **Orders.** Subscriber may request that SmartForce provide the Services as specified in an Order Form. SmartForce will provide the Services in accordance with the applicable Order Form.

2.2 **License Grant.** Subject to the terms and conditions of this Agreement, SmartForce grants to Subscriber a non-exclusive, non-transferable, non-sublicensable license to, during the Term (as defined below), solely for Subscriber’s internal business purposes and in accordance with the Documentation and the limitations set forth in Section 4.2 and the applicable Order Form, (a) access and use the SmartForce Service; (b) internally use and reproduce the Documentation; and (c) grant Authorized Users the right to access and use the SmartForce Service.

2.3 **Access.** Subject to Subscriber’s payment of the fees set forth in the applicable Order Form (“**Fees**”), and subject to any restriction set forth therein (e.g., a limit on the number of Authorized Users) SmartForce will provide Subscriber with access to the SmartForce Service during Term. SmartForce will provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the SmartForce Service in accordance with the Access Protocols. Subscriber will use commercially reasonable efforts to prevent unauthorized access to, or use of, the SmartForce Service, and notify SmartForce promptly of any such unauthorized use known to Subscriber.

2.4 **Authorized Users.** Subscriber may permit any Authorized Users to access and use the features and functions of the SmartForce Service as contemplated by this Agreement. Each Authorized User will be assigned a unique user identification name and password (“**User ID**”) for access to and use of the SmartForce Service. User IDs cannot be shared or used by more than one Authorized User at a time.

2.5 **Restrictions.** Subscriber will not, and will not permit any Authorized User or other party to: (a) use the SmartForce Service to harvest, collect, gather or assemble information or data regarding other SmartForce subscribers without their consent; (b) access or copy any data or information of other SmartForce subscribers without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the SmartForce Service or the data contained therein; (d) harass or interfere with another SmartForce subscriber’s use and enjoyment of the SmartForce Service; (e) reverse engineer, disassemble or decompile any component of the SmartForce System; (f) interfere in any manner with the operation of the SmartForce Service, or the SmartForce System or the hardware and network used to operate the SmartForce Service; (g) sublicense any of Subscriber’s rights under this Agreement, or otherwise use the SmartForce Service for the benefit of a third party or to operate a service bureau; (h) modify, copy or make derivative works based on any part of the SmartForce Service; (i) access or use the SmartForce Service or Services to build a similar or competitive product or service or attempt to access the SmartForce Service through any unapproved interface; or (k) otherwise use the SmartForce Service in any manner that exceeds the scope of use permitted under Section 2.2 or in a manner inconsistent with applicable law, the

Documentation, or this Agreement. Subscriber acknowledges and agrees that the SmartForce Service will not be used, and are not licensed for use, in connection with any of Subscriber's time-critical or mission-critical functions.

2.6 Availability of Subscriber Content. Subscriber will make available all Subscriber Content necessary or desired for SmartForce to provide the Services or make available the SmartForce Service. Subscriber will obtain all third-party licenses, consents and permissions needed for SmartForce to use the Subscriber Content to provide the Services or make available the SmartForce Service.

2.7 Support. During the Term, support provided to Subscriber shall comprise the following:

- (a) **Help Desk.** Authorized Users may send requests via SmartForce' help desk.
- (b) **Error Corrections.** SmartForce will use commercially reasonable efforts to correct all Errors reported by Subscriber in writing to SmartForce. SmartForce may not issue Error Corrections for all Errors.
- (c) **Improvements.** SmartForce may, in its sole discretion, provide Subscriber with updates, upgrades, enhancements, and any other improvements that SmartForce then generally offers to other subscribers to the SmartForce Service.
- (d) **Security.** SmartForce will use commercially reasonable efforts to maintain the security of the SmartForce Service.

3. OWNERSHIP

3.1 SmartForce Technology. Subscriber acknowledges that SmartForce retains all right, title and interest in and to the SmartForce System, SmartForce Service and Documentation and all software and all SmartForce proprietary information and technology used by SmartForce or provided to Subscriber in connection with the SmartForce Service (the "**SmartForce Technology**"), and that the SmartForce Technology is protected by Intellectual Property Rights owned by or licensed to SmartForce. Other than as expressly set forth in this Agreement, no license or other rights in the SmartForce Technology are granted to Subscriber.

3.2 Feedback. Subscriber hereby grants to SmartForce a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the SmartForce Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, including Authorized Users, relating to the SmartForce Service. SmartForce will not identify Subscriber as the source of any such feedback.

3.3 Subscriber Content. As between Subscriber and SmartForce, Subscriber will at all times remain the exclusive owner of such Subscriber Content. Subscriber hereby grants to SmartForce a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Content as necessary to provide the SmartForce Service to Subscriber and (b) to use aggregated and anonymized Subscriber Content (i) to improve the SmartForce Service and SmartForce's related product and service offerings; (ii) to create new products and services relating to the SmartForce Service (including analytics services such as providing benchmarking); and (iii) to generate and disclose statistics regarding use of the SmartForce Service, provided, however, that no Subscriber-only statistics will be disclosed to third parties without Subscriber's consent. Except as expressly specified in this Agreement, Subscriber's provision of or SmartForce's collection of the Subscriber Content hereunder does not transfer to SmartForce or any third party any rights in or ownership thereof.

3.4 Third Party Software. The SmartForce Service may utilize, contain or otherwise use certain third-party software (collectively, the "**Third Party Software**"). Third Party Software may be subject to additional licensing terms, which SmartForce may deliver or make available from time to time to Subscriber, which are incorporated herein by reference, and which supersede any contradictory terms in this Agreement.

4. PROFESSIONAL SERVICES. Where the parties have agreed to SmartForce's provision of integration, design, development, operational and other professional services ("**Professional Services**"), they will enter into a mutually executed statement of work ("**SOW**") governing the provision of the initially required Professional Services. The SOW will incorporate the terms and conditions of this Agreement. To the extent that a conflict arises between the terms and conditions of the SOW and the terms of this Agreement, the terms and conditions of this Agreement will govern. The SOW will include: (i) a description of the Professional Services; (ii) the schedule for the performance of the Professional Services; (iii) the ownership rights with respect to the work product resulting from the performance of the Professional Services (and if no such provision is provided, all ownership rights are and shall be vested in SmartForce immediately); and (iv) SmartForce's then-current rates for the performance of the Professional Services.

5. FEES AND EXPENSES; PAYMENTS

5.1 Fees. In consideration for the access rights granted to Subscriber and the services performed by SmartForce under this Agreement, Subscriber will pay to SmartForce the Fees. Except as otherwise provided in the applicable Order Form, all fees are invoiced annually in advance. Subscriber shall pay such fees within thirty (30) days of receipt of an invoice. SmartForce shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. SmartForce may increase its fees annually upon written notice to Subscriber at least forty-five (45) days prior to expiration of the then-current term. Subscriber will maintain complete, accurate and up-to-date Subscriber billing and contact information at all times. Interest will accrue on late payments at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

5.2 Taxes. All Fees invoiced under this Agreement are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Subscriber will be responsible

for payment of all such taxes (other than taxes based on SmartForce's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the Fees, the delivery of the Services, or the license of the SmartForce Service to Subscriber. Subscriber will make all payments of Fees to SmartForce free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to SmartForce will be Subscriber's sole responsibility, and Subscriber will provide SmartForce with official receipts issued by the appropriate taxing authority, or such other evidence as the SmartForce may reasonably request, to establish that such taxes have been paid.

5.3 Audit. During the term of this Agreement and for a period of three (3) years thereafter, SmartForce shall have the right to review Subscriber's relevant records and inspect Subscriber's facilities to ensure compliance with this Agreement. SmartForce will give Subscriber at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Subscriber's normal operations. If any such audit should disclose any underpayment of fees, Subscriber will promptly pay SmartForce such underpaid amount, together with interest thereon at the rate specified in this Section. If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Subscriber will also pay SmartForce for SmartForce's expenses associated with such audit.

6. SUBSCRIBER CONTENT AND RESPONSIBILITIES

6.1 Subscriber Warranty. Subscriber represents and warrants that any Subscriber Content hosted by SmartForce as part of the SmartForce Service shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party. SmartForce is not obligated to back up any Subscriber Content; the Subscriber is solely responsible for creating backup copies of any Subscriber Content at Subscriber's sole cost and expense. Subscriber agrees that any use of the SmartForce Service contrary to or in violation of the representations and warranties of Subscriber in this section constitutes unauthorized and improper use of the SmartForce Service.

6.2 Subscriber Responsibility for Data and Security. Subscriber and its Authorized Users shall have access to the Subscriber Content and shall be responsible for all changes to and/or deletions of Subscriber Content and the security of all User IDs and other Access Protocols required in order to access the SmartForce Service. Subscriber shall have the ability to export Subscriber Content out of the SmartForce Service and is encouraged to make its own back-ups of the Subscriber Content. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.

7. WARRANTY AND DISCLAIMER

7.1 Limited Warranty. SmartForce warrants to Subscriber that, when used as permitted by SmartForce and in accordance with the Documentation, the SmartForce Service will operate free from Errors during the Term. Provided that Subscriber notifies SmartForce in writing of any breach of the foregoing warranty during the Term, SmartForce shall, as its sole obligation and Subscriber's sole and exclusive remedy, provide the support set forth Section 2.7 of this Agreement.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM AND DOCUMENTATION ARE PROVIDED AS IS, "AS AVAILABLE," AND WITH ALL FAULTS, AND SMARTFORCE AND ITS AFFILIATES, SUPPLIERS, AND LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, RELATING TO THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM AND DOCUMENTATION WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SMARTFORCE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SMARTFORCE SERVICE AND THE SMARTFORCE SYSTEM SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

8. LIMITATION OF LIABILITY

8.1 Types of Damages. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER SMARTFORCE NOR ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SMARTFORCE SERVICE, THE SMARTFORCE SYSTEM OR THE SERVICES, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SMARTFORCE HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

8.2 Amount of Damages. THE MAXIMUM LIABILITY OF SMARTFORCE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO SMARTFORCE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING

RISE TO SUCH LIABILITY. IN NO EVENT SHALL SMARTFORCE'S SUPPLIERS OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE SMARTFORCE'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SMARTFORCE OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

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

9. CONFIDENTIALITY

9.1 Confidential Information. During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the SmartForce Service, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of SmartForce.

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

9.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by applicable law, including Open Records, Public Information Acts and Freedom of Information laws, or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

10. INDEMNIFICATION

10.1 By SmartForce. SmartForce will defend at its expense any suit brought against Subscriber, and will pay any settlement SmartForce makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the SmartForce Service misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the Effective Date. If any portion of the SmartForce Service becomes, or in SmartForce's opinion is likely to become, the subject of a claim of infringement, SmartForce may, at SmartForce's option: (a) procure for Subscriber the right to continue using the SmartForce System; (b) replace the SmartForce Services with non-infringing software or services which do not materially impair the functionality of the SmartForce Services; (c) modify the SmartForce Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any Fees actually paid by Subscriber to SmartForce for the remainder of the Term then in effect, and upon such termination, Subscriber will immediately cease all use of the SmartForce Services. Notwithstanding the foregoing, SmartForce shall have no obligation under this section or otherwise with respect to any infringement claim based upon (e) any use of the SmartForce Service not in accordance with this Agreement or as specified in the Documentation; (f) any use of the SmartForce Service in combination with other products, equipment, software or data not supplied by SmartForce; or (g) any modification of the SmartForce by any person other than SmartForce or its authorized agents. This Section 10.1 states the sole and exclusive remedy of Subscriber and the entire liability of SmartForce, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

10.2 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit;

(b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

11. TERM AND TERMINATION

11.1 Term. This Agreement commences on the date Subscriber accepts this Agreement and will continue until terminated in accordance with the terms herein (the “**Term**”). In the event Subscriber does not receive annual appropriation of funding from the relevant governmental entity(ies) as necessary to pay the applicable fees hereunder, Subscriber may terminate this Agreement upon thirty (30) days prior written notice; *provided, that*, Subscriber will provide SmartForce with any documentation reasonably requested by SmartForce to evidence the lack of appropriate funding. Any such termination shall become effective on the next anniversary of the Effective Date.

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

11.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the Section 9.2; and (c) for one hundred twenty (120) days following after the effective date of termination, SmartForce will make available the Subscriber Content for export by Subscriber, after which time SmartForce shall discontinue all use of Subscriber Content and destroy all copies of Subscriber Content in its possession. The Sections titled *Definitions, Restrictions, Ownership, Fees and Expenses; Payment, Warranty and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason.

12. MISCELLANEOUS

12.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

12.2 Compliance with Laws. Subscriber shall at all times comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services hereunder, including, but not limited to those relating to open records requests.

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

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

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

12.6 Remedies. Except as provided in Section 10, the parties’ rights and remedies under this Agreement are cumulative. Subscriber acknowledges that the Services and Documentation contain valuable trade secrets and proprietary information of SmartForce, that any actual or threatened breach by Subscriber of its obligations with respect to Intellectual Property Rights of SmartForce will constitute immediate, irreparable harm to SmartForce for which monetary damages would be an inadequate remedy. In such case, SmartForce will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Services, Documentation, or any portions thereof, that Subscriber attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.7 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

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

12.9 Independent Contractors. Subscriber’s relationship to SmartForce is that of an independent contractor, and neither party is an agent or partner of the other. Subscriber will not have and will not represent to any third party that it has, any authority to act on behalf of SmartForce.

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

12.11 Entire Agreement. This Agreement, together with the applicable Order Form, is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. Any preprinted terms included in any purchase order that are different from or are in addition to the terms of this Agreement shall be void and of no force or effect. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and SmartForce. In the event of any conflict between the provisions in this Agreement and any Order Form, the terms of the Order Form will prevail, but only with respect to the Services to be performed under such Order Form (with the most recent prevailing over a previously executed Order Form).