

# sakon

## Sakon's Terms and Conditions for the Verizon Wireless Business Solutions Store

The terms and conditions in this document govern Global Sourcing Group, Inc. d/b/a Sakon ("Sakon") and Customer with respect to the hosted applications and services ("Sakon Application") that Sakon provides to Customer through the Verizon Wireless Business Solutions Store. By accessing, receiving and/or utilizing the Sakon Application, Sakon and Customer accept, adopt and are legally bound by the Agreement.

### A. General Terms and Conditions.

#### 1. Definitions.

- 1.1. "Agreement"** means the terms and conditions outlined in this document along with any other terms and conditions and/or documents provided by Sakon in connection with Customer's purchase of the Sakon Application, including Sakon's Application Services SKU Descriptions.
- 1.2. "Authorized Parties"** means the Customer (defined in Section 1.4) and the Customer's employees.
- 1.3. "Confidential Information"** means any and all confidential and/or proprietary information that is disclosed by Disclosing Party (a party disclosing Confidential Information to the Receiving Party) to Receiving Party (a party that receives confidential information from the Disclosing Party) which relates to Disclosing Party's business (including without limitation, business plans, financial data, customer information and marketing plans) or technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, products, services, know-how, formulas, processes, ideas, and inventions (whether or not patentable)), which is designated confidential or which should be reasonably understood by Receiving Party as the confidential or proprietary information of Disclosing Party. Confidential Information also means any and all trade secrets (including financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing) that the Disclosing Party has taken reasonable measures to keep such information secret and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information. Confidential Information shall not include any information that Receiving Party can document: (i) is publicly available without fault of Receiving Party; (ii) was in Receiving Party's possession prior to receipt thereof from Disclosing Party; (iii) was rightfully received by the Receiving Party from a third party without any confidentiality obligations; (iv) was independently developed by Receiving Party without use of any Confidential Information or (v) is disclosed pursuant to any law, regulation, court order or administrative order.

- 1.4. "**Customer**" means the individual and/or entity that has purchased the Sakon Application through the Verizon Wireless Business Solutions Store.
- 1.5. "**Customer Data**" means the electronic data or information submitted by Customer or on Customer's behalf by a party authorized by Customer.
- 1.6. "**Customer Input**" means suggestions, enhancement requests, recommendations or other feedback relating to the functionality or operation of the Sakon Application provided by Customer or on Customer's behalf by a party authorized by Customer, excluding Customer Data.
- 1.7. "**Documentation**" means Sakon's electronic and hardcopy user guide for the Sakon Application, which may be updated by Sakon from time to time.
- 1.8. "**Employee**" means Customer's employees for which a subscription to the Sakon Application has been purchased through the Verizon Wireless Business Solutions Store.
- 1.9. "**Improvements**" means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Sakon Application and any Documentation, as developed by Sakon and made generally available for Production use without a separate charge to Customers.
- 1.10. "**Intellectual Property Rights**" means any and all common law and statutory intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
- 1.11. "**Law**" means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective party.
- 1.12. "**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.
- 1.13. "**Production**" means the Customer's use the Sakon Application or Sakon's written verification of the availability of the Sakon Application for Customer's use.
- 1.14. "**Sakon Application**" means Sakon's software-as-a-service ("SaaS") applications, managed mobility applications, managed services and/or any other service provided by Sakon to Customer.
- 1.15. "**Go-Live Date**" means the first date the Sakon Application is performed in Production.
- 1.16. "**CSD**" means "Customer Specific Document" which is a document containing specific contact information, business rules, procedural documentation and other information that are specific to the Order Form and Addendums.
- 1.17. "**Customer Point of Contact(s)**" means the primary point of contact for Sakon related to the performance of the services included in the Work Order and Addendums.
- 1.18. "**SFTP**" means SSH File Transfer Protocol or Secure Shell File Transfer Protocol.

## **2. Use of the Application.**

**2.1. Provision of the Sakon Application to Customer.** Sakon will: (i) make the Application available during the Term in accordance with this Agreement; (ii) not use Customer Data except to: (a) provide the Sakon Application to Customer; (b) prevent service or technical problems; or (c) address service or technical problems; and (iii) not disclose Customer Data to anyone other than Customer.

**2.2. Customer Obligations.** For the Term of this Agreement only, Authorized Parties may access, receive or utilize the Sakon Application solely for the internal business purposes of Customer in accordance with this Agreement and any Documentation provided by Sakon, and not for the benefit of any third parties. Customer is responsible for Authorized Party access to and use of the Sakon Application. Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; (b) prevent unauthorized access to, or use of, the Sakon Application; and (c) notify Sakon promptly of any such unauthorized access or use. Customer shall not use the Sakon Application (i) in violation of applicable Laws; (ii) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights through or within the Sakon Application; (iii) send or store Malicious Code through or within the Sakon Application; (iv) interfere with or disrupt performance of the Sakon Application or the data contained therein; or (v) attempt to gain access to the Sakon Application or its related systems or networks in a manner not set forth in this Agreement or any Documentation provided by Sakon. Customer shall designate a maximum number of named contacts to request and receive support services from Sakon. Named Support Contacts must be trained on the Sakon product(s) for which they initiate support requests. The Sakon Application is provided in the English language.

## **3. Ownership of Intellectual Property.**

**3.1. Ownership and Reservation of Rights to Sakon Intellectual Property.** Sakon and any applicable licensor of Sakon own all rights, title and interest in and to the Sakon Application, Sakon Confidential Information, Sakon Documentation, Improvements and any and all Sakon Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Sakon reserves all rights, title and interest in and to the Sakon Application, Sakon's Confidential Information, Sakon's Documentation, Improvements and any and all Sakon Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**3.2. License Grant.** Sakon hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right to use the Sakon Application and Documentation solely for the internal business purposes of Customer and solely during the Term, subject to this Agreement.

**3.3. License Restrictions.** Customer shall not (i) modify, copy or create any derivative works based on the Sakon Application, Sakon Documentation, Sakon Confidential Information, Improvements and/or Sakon Intellectual Property; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise

make the Sakon Application, Sakon Documentation, Sakon Confidential Information, Improvements and/or Sakon Intellectual Property available to any third party, other than to Authorized Parties as authorized through this Agreement; (iii) reverse engineer or decompile any portion of the Sakon Application, Sakon Documentation, Sakon Confidential Information, Improvements and/or Sakon Intellectual Property, including but not limited to, any software utilized by Sakon in the provision of the Sakon Application; (iv) access the Sakon Application, Sakon Documentation, Sakon Confidential Information, Improvements and/or Sakon Intellectual Property in order to develop, make, use, sell or offer for sale any product or service; or (v) copy any features, functions, integrations, interfaces or graphics of the Sakon Application, Sakon Documentation, Sakon Confidential Information, Improvements and/or Sakon Intellectual Property.

**3.4. Customer Input.** Sakon shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Sakon Application any Customer Input. Sakon shall have no obligation to make Customer Input an Improvement. Customer shall have no obligation to provide Customer Input.

**3.5. Aggregated Data Use.** Sakon owns the aggregated and statistical data derived from the operation of the Sakon Application, including, without limitation, the number of records in the Sakon Application, the number and types of transactions, configurations, and reports processed in the Sakon Application and the performance results for the Sakon Application (the "Aggregated Data"). Nothing herein shall be construed as prohibiting Sakon from utilizing the Aggregated Data for purposes of operating Sakon's business, provided that Sakon's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Sakon Application. In no event does the Aggregated Data include any personally identifiable information.

#### **4. Confidentiality.**

**4.1. Restricted Use of Confidential Information and Confidentiality Obligations.** Confidential Information of Disclosing Party shall be used by Receiving Party solely for the purpose of performing the Party's obligations under this Agreement and shall not be used for any other purpose ("Purpose"). Receiving Party shall hold Disclosing Party's Confidential Information in confidence and shall not use or disclose Disclosing Party's Confidential Information without the prior written consent of Disclosing Party, which consent may be withheld at Disclosing Party's sole discretion. Receiving Party shall take commercially reasonable measures to protect the Confidential Information of Disclosing Party from falling into the public domain or the possession of persons other than those persons authorized to have any such Confidential Information, such measures being no less stringent than the highest degree of care that Receiving Party utilizes to protect its own information of a similar nature, but in no event less than a reasonable degree of care. Any employee of the Receiving Party given access to Confidential Information of the Disclosing Party must have a legitimate "need to know," must have been advised of the obligations of confidentiality under the Agreement and must be bound in writing to the obligations of confidentiality set forth in the Agreement.

**4.2. Required Disclosure.** Nothing in the Agreement shall prohibit Receiving Party from disclosing Confidential Information of Disclosing Party in accordance with a judicial or governmental order, judicial or governmental proceeding or judicial or governmental subpoena ("Required Disclosure"); provided that Receiving Party shall:

- a. give Disclosing Party prompt notice of such Required Disclosure prior to disclosure;
- b. cooperate with Disclosing Party in the event that it elects to contest such disclosure or seek a protective order with respect thereto; and/or
- c. only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

**4.3. Securities Compliance.** Receiving Party acknowledges that it may from time to time be in possession of material non-public information of Disclosing Party and agrees that it will comply with the restrictions imposed by the United States securities laws regarding the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities and on the communication of such information to any other person when it is reasonably foreseeable that such other person is likely to purchase or sell such securities in reliance upon such information.

**4.4. General Confidentiality Provisions.**

- a. All Confidential Information of Disclosing Party is and shall remain the property of Disclosing Party. Nothing contained in the Agreement shall be construed as granting or conferring any rights by license or otherwise, either express, implied or by estoppel, to any Confidential Information of Disclosing Party, or under any patent, copyright, trademark or trade secret of Disclosing Party. Receiving Party shall not copy, alter, modify, reverse engineer, or attempt to derive the composition or underlying information, structure or ideas of any Confidential Information and shall not remove, overprint, deface or change any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership from any originals or copies of Confidential Information it receives from the Disclosing Party.
- b. ALL CONFIDENTIAL INFORMATION FURNISHED UNDER THE AGREEMENT IS PROVIDED BY DISCLOSING PARTY "AS IS, WITH ALL FAULTS." DISCLOSING PARTY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE, NONINFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR ANY RIGHT OF PRIVACY, ANY RIGHTS OF THIRD PERSONS OR OTHER ATTRIBUTES OF ITS CONFIDENTIAL INFORMATION.
- c. The Parties' obligations under Sections 1.3 and 4 shall survive any termination or expiration of the Agreement for a period of five (5) years from the date of termination, except for common law, state law or federally protected trade secrets

(collectively, “trade secrets”) disclosed pursuant to the Agreement, wherein the obligations under Sections 1.3 and 4 shall survive in perpetuity with respect to such trade secrets until such time the information no longer qualifies for trade secret protection.

- d. Immediately upon written request by Disclosing Party at any time or upon the expiration or termination of the Agreement, Receiving Party shall immediately cease all use of and return to Disclosing Party all copies or extracts of Disclosing Party's Confidential Information, in any medium, or certify, in writing by an authorized officer or representative of Receiving Party, the destruction of the same to Disclosing Party.
- e. Nothing in the Agreement shall be construed to require Disclosing Party to disclose any Confidential Information to Receiving Party or to negotiate or enter into any business transaction with Receiving Party.

**4.5. Remedies.** If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies, to immediate injunctive relief to enjoin such acts, it being acknowledged and agreed by the parties that any other available remedies are inadequate, it also being acknowledged and agreed by the parties that the posting of a bond is not necessary.

## **5. Security of Customer Data.**

**5.1. Protection and Security.** During the term, Sakon shall maintain a formal security program materially in accordance with industry standards that is designed to: (i) ensure the security and integrity of Customer Data; (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to Customer Data. Sakon designs its Sakon Application to allow Customer to achieve differentiated configurations, enforce user access controls and manage data categories that may be populated and/or made accessible on a country-by-country basis. Customer understands that its use of the Sakon Application and compliance with any terms hereunder does not constitute compliance with any Law. Customer understands that it has an independent duty to comply with any and all Laws applicable to it.

**5.2. Unauthorized Disclosure.** If either party believes that there has been a disclosure of Customer Data to anyone other than an Authorized Party or Sakon, such party must promptly notify the other party. Additionally, each party will reasonably assist the other party in remediating or mitigating any potential damage, including any notification which should be sent to individuals impacted or potentially impacted, or the provision of credit reporting services to such individuals. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it.

**Data Protection Addendum.** Sakon's Data Protection Addendum (“DPA”) (located at this Internet link [Data Processing Addendum](#)) is adopted by, incorporated into, and forms part of this Agreement. The term “Customer” in the DPA refers to and means the

Customer of this Agreement. The DPA sets forth Sakon's data processing policies and procedures, including under the European Union's GDPR regulations and the California Consumer Protection Act.

## **6. Warranties & Disclaimers.**

**6.1. Warranties.** Each party warrants that it has the authority to enter into the Agreement and, in connection with its performance of the Agreement, shall comply with all Laws applicable to it related to data privacy, international communications and the transmission of technical or personal data. Sakon warrants that during the Term (i) the Sakon Application shall perform materially in accordance with the Documentation; and (ii) the functionality of the Sakon Application will not be materially decreased during the Term.

**6.2. Warranty Remedies.** As Customer's exclusive remedy and Sakon's sole liability for breach of the warranty set forth in Section 6.1, Sakon shall (a) correct the non-conforming aspects of the Sakon Application at no additional charge to Customer or (b) refund amounts paid that are attributable to the defective aspects of the Sakon Application from the date Sakon received such notice, but only in the event Sakon is unable to correct such deficiencies after good-faith efforts. To receive warranty remedies, Customer must promptly report deficiencies in writing to Sakon, but no later than thirty (30) days of the first date the deficiency is identified by Customer.

**6.3. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SAKON MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SAKON APPLICATION AND/OR DOCUMENTATION. SAKON DOES NOT WARRANT THAT THE SAKON APPLICATION WILL BE ERROR FREE OR UNINTERRUPTED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THE SAKON APPLICATION.

## **7. Mutual Indemnification.**

**7.1. Indemnification by Sakon.** Sakon shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Sakon Application as contemplated hereunder infringes a copyright, a U.S. patent issued as of the Go Live Date, or a trademark of a third party; provided, however, that Customer: (a) promptly gives written notice of the Claim to Sakon; (b) gives Sakon sole control of the defense and settlement of the Claim (provided that Sakon may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Sakon, at Sakon's cost, all reasonable assistance. Sakon shall not be required to indemnify Customer in the event of: (a) modification of the Sakon Application by Authorized Parties in conflict with their obligations or as a result of any prohibited activity as set forth herein; (b) use of the Sakon

Application in a manner inconsistent with the Documentation; (c) use of the Sakon Application in combination with any other product or service not provided by Sakon; or (d) use of the Sakon Application in a manner not otherwise contemplated by this Agreement. If Customer is enjoined from using the Sakon Application or Sakon reasonably believes it will be enjoined, Sakon shall have the right, at its sole option, to obtain for Customer the right to continue use of the Sakon Application or to replace or modify the Sakon Application so that it is no longer infringing. If neither of the foregoing options is reasonably available to Sakon, and the parties are unable to agree upon any other solution, then use of the Sakon Application shall be terminated and Sakon's sole liability shall be to refund any prepaid fees for the Application that were to be provided after the effective date of termination as well as any fees attributable to the enjoined portions of the Sakon Application for the period of time Customer was enjoined from use of the Sakon Application.

**7.2. Indemnification by Customer.** Customer shall defend, indemnify and hold Sakon harmless from any Claims made or brought by a third party alleging that the Customer Data infringes the rights of, or has caused harm to, a third party or violates any Law; provided, however, that Sakon: (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases Sakon of all liability); and (c) provides to Customer, all reasonable assistance, at Customer's cost for any requested assistance which does not fall within the scope of what is included in the Sakon Application fee.

## **8. Limitation of Liability.**

**8.1. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AND/OR CUSTOMER'S PAYMENT OBLIGATIONS AND AS SET FORTH IN SECTION 8.3 BELOW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER IN CONSIDERATION FOR SAKON'S APPLICATION DELIVERY DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SAKON APPLICATION FROM WHICH THE CLAIM AROSE (OR, FOR A CLAIM ARISING BEFORE THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID FOR THE FIRST TWELVE MONTH PERIOD).

**8.2. Exclusion of Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR APPLICATIONS, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SAKON APPLICATION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SAKON APPLICATION, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED



OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**8.3. SPECIAL LIMITATION FOR UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA.** SAKON'S AGGREGATE LIABILITY FOR ANY UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA (INCLUDING THE COST TO DEFEND THIRD PARTY CLAIMS CAUSED BY SUCH BREACH) SHALL NOT EXCEED THE SUBSCRIPTION FEES ACTUALLY PAID BY CUSTOMER IN CONSIDERATION FOR SAKON'S APPLICATION DELIVERY DURING THE IMMEDIATELY PRECEDING EIGHTEEN (18) MONTH PERIOD FOR THE SAKON APPLICATION FROM WHICH THE CLAIM AROSE (OR, FOR A CLAIM ARISING BEFORE COMPLETION OF THE FIRST EIGHTEEN MONTHS OF THE APPLICABLE ORDER FORM, THE AMOUNT PAID FOR THE FIRST EIGHTEEN MONTH PERIOD).

## **9. Term.**

**9.1. Term.** The Term of this Agreement shall commence on the date that Customer approves Verizon's purchase authorization of Sakon's SKUs and expires two (2) years from such date. Customer may provide written notice of non-renewal up to ninety (90) days prior to the expiration date. In the event Customer does not provide notice of non-renewal, the Agreement will automatically renew for successive one (1) year terms.

## **10. General Provisions.**

**10.1. Relationship of the Parties.** This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.

**10.2. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**10.3. Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems, computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**10.4. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of

the terms of this Agreement and all past due fees are paid in full, except that Customer shall have no right to assign this Agreement to a direct competitor of Sakon. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.5. Governing Law.** This Agreement shall be governed exclusively by the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws rules. For any and all disputes, the Parties hereby submit to the exclusive jurisdiction of, and venue in, the appropriate state and/or federal court within the Commonwealth of Massachusetts.

**10.6. Export.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Sakon Application. Without limiting the generality of the foregoing, Customer shall not make the Sakon Application available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**10.7. Dispute Resolution.** Prior to the initiation of any legal proceeding other than one described in subsection (d) below, the parties shall first attempt to resolve their dispute informally, as follows:

- a. Within five (5) business days following the written request of a party, designated individual(s) from Sakon and Customer shall meet to resolve such dispute.
- b. The representatives referred to in subsection (a) above shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of formal legal proceedings. The specified format for the discussions will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position.
- c. If the representatives referred to in subsection (a) above are unable to resolve the dispute within thirty (30) business days after the dispute is escalated to them, then either Party may escalate the dispute to the Vice President of Sakon and the Vice President of Customer, for their review and resolution.
- d. The provisions of this Section 10.7 shall not be construed to prevent a party from instituting, and a party is authorized to institute, judicial or other proceedings either to (i) seek injunctive relief or (ii) avoid the expiration of any applicable legal or contractual limitations period.
- e. Each of the parties agrees to continue performing its obligations under this Agreement and all related agreements while any dispute is being resolved except to

the extent that the issue in dispute precludes performance (a dispute over payment shall not be deemed to preclude performance).

**10.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.

**10.9. Insurance.** At its sole expense, Sakon will procure and maintain in effect the following policies of insurance covering claims and liabilities arising from the Agreement: (i) all insurance coverages required by applicable Law, including workers' compensation with statutory minimum limits, (ii) employer's liability insurance with no less than a \$1,000,000 limit; (iii) commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and aggregate, providing coverage for bodily injury, personal injury, or death of any persons and injury to or destruction of property, including loss of use resulting therefrom; (iv) professional liability or errors and omissions insurance covering failure of the Sakon Application to conform to Specifications with limits of at least \$1,000,000, which provides coverage on an occurrence basis; (v) automobile (or other motor vehicle) liability insurance with not less than a \$1,000,000 limit covering the use of any auto (or other motor vehicle) in the rendering of Sakon Application to be provided under the Agreement; (vi) if the Agreement involve hosting or processing of any Personal Information, cyber liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of not less than \$2,500,000, covering privacy, media, information theft, damage to or destruction of electronic information, intentional and unintentional release of private information, alteration of electronic information, extortion and network security which provides coverage on an occurrence basis or, if on a claims-made basis, then Sakon will maintain continuous coverage for two (2) years after the termination or expiration of the Agreement; (vii) crime Insurance, including blanket coverage for Employee Dishonesty including Computer Fraud, for loss or damage arising out of or in connection with dishonest acts committed by employees of Sakon or Sakon subcontractors acting alone or in collusion with others, including the property and funds of Customer in Sakon's possession, care, custody, or control, with a limit of no less than one million dollars (\$1,000,000) (third party coverage shall also be included under this policy); and (viii) excess liability insurance with not less than a \$5,000,000 limit for the commercial general liability policy required in subsection (iii) above.

**10.10. Miscellaneous.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no other terms or conditions shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and

void. Sakon may use Customer's name and logo in lists of Customers, on marketing materials and on its website.

## **11. Amendments of the Agreement.**

**11.1.** The Parties are permitted to amend the scope of the Agreement through execution of a mutually agreeable Addendum. The process for initiating an adjustment and executing an Addendum is outlined below:

- a. A party may request an adjustment by submitting a written request to the other Party. The request shall include a description of the proposed adjustment and its relation to the Sakon Application.
- b. Upon mutual agreement, the Parties may execute an Addendum to the Agreement. An Addendum shall not be legally binding on the Parties unless and until the Addendum is signed by authorized persons on behalf of both Parties.