

### USER-BASED SUBSCRIPTION AGREEMENT

This Software Subscription Agreement (the "Agreement") is between Passageways, Inc., with offices at 8 North 3rd Street, Suite 101, Lafayette, Indiana 47901 ("Passageways") and the person or entity ("Subscriber") named in that certain purchase agreement ("Subscriber's Purchase Agreement") entered into by and between Passageways and Subscriber concurrently with this Agreement.

#### **1. SOFTWARE DELIVERY AND GRANT OF SUBSCRIPTION**

- (a) Passageways shall give access to Subscriber one copy of the Products ("Products" means the applicable Portal Platform and Modules set forth in Subscriber's Purchase Agreement and Subscription in accordance with this Agreement), either electronically via the Internet or physically on physical media. A subscription access is granted for the products by Passageways, not sold. Passageways transfers only subscription rights to use and access, not the title.
- (b) Subject to Subscriber's continued compliance with the terms and conditions of this Agreement, Passageways grants Subscriber a limited, non-exclusive, non-assignable (except as set forth in Section 6) right (without the right to sub-license) to (i) access and use the Products solely for the benefit of individuals designated as Authorized Users ("Authorized User" means any identifiable, individual person who is permitted to access any of the Products in accordance with this Agreement) up to the maximum number specified on Subscriber's Purchase Agreement, and (ii) enable and authorize such Authorized Users to access via the Internet and use the lawfully installed Products during the Term of this Agreement in accordance with the Documentation. ("Documentation" means, collectively, the operation instructions, release notes, user manuals, and help files in written or electronic form, provided by Passageways to Subscriber and that are intended for use in connection with the Portal Platform and Modules).
- (c) Subscriber shall be responsible for any unauthorized use of the Products that Subscriber or any of its employees or agents have caused or knowingly tolerated. Subscriber may obtain a Subscription from Passageways to support additional Authorized Users beyond the maximum number of Authorized Users specified in Subscriber's Purchase Agreement at Passageways' then-current price for Subscriptions to the Portal Platform and Modules. ("Modules", sometimes also referred to as "Add-Ons" or "Apps", means any software module (including any Updates, Bug Fixes, modifications or new releases of such software module that Passageways provides to Subscriber from time to time pursuant to Subscription Services Terms and Conditions), created by Passageways and provided to Subscriber; or provided to Subscriber by Passageways for an additional fee as set forth in Subscriber's Purchase Agreement. Each Module plugs into and adds certain functionality to the Portal Platform. The added functionality may include the ability to interface with third party software programs and websites. Modules are not considered part of the Portal Platform. Modules may only be used in conjunction with the Portal Platform).
- (d) Passageways and/or its third party licensors reserve title, ownership, and all rights to the Products and Documentation, except for the limited user rights expressly granted herein.

#### **2. COPY AND USE RESTRICTIONS**

- (a) Subscriber may create a copy of the Products reasonably necessary for backup, archival, provided that Subscriber shall store such additional copies separately from any actively used software. Subscriber may copy Documentation for internal use provided that Subscriber shall treat Documentation as Passageways' Confidential Information in accordance with the terms of Section 11.
- (b) Subscriber may not, nor may Subscriber cause or allow any third party under its reasonable control to: (i) decompile, disassemble, reverse engineer, modify, or translate the Products or otherwise attempt to derive source code except to the extent expressly permitted by applicable law; (ii) remove any product identification or proprietary rights notices; (iii) lease, lend, or rent the Products, or use the Products on behalf of third parties, e.g., for timesharing or service bureau purposes; (iv) externally publish any performance or benchmark tests or analysis relating to the Products; (v) use the Products in any way that would infringe any third party intellectual property right or breach the terms of any agreement between Subscriber and any third party; (vi) use, install or access any product or product version not expressly licensed as set forth in Subscriber's Purchase Agreement; or (vii) otherwise use or copy the Products except as expressly provided herein. No rights with respect to source code are granted herein.
- (c) Subscriber is solely responsible for complying with applicable law and/or the terms and conditions of licenses relating to all third party content, websites, databases, database software, and other software, including but not limited to, Microsoft SQL Server, Microsoft Windows, and any other software that may be required to operate, or that is enabled by or interfaces with, the Products. If Subscriber is not compliant with any applicable law or such licenses, as a result of its use of the Products or otherwise, the burden is solely upon Subscriber to obtain all licenses that are necessary to become and remain compliant and to pay for any software or other costs as necessary to satisfy this obligation.

#### **3. PAYMENT**

- (a) Subscriber shall pay Passageways the fees specified in Subscriber's Purchase Agreement for the use of the Products granted herein. The subscription fees are due and payable upon the terms set forth in Subscriber's Purchase Agreement or, if not specified, then on the Effective Date. ("Effective Date" means the date Passageways generates an email message to the subscriber that includes the information to allow the subscriber to install purchased Passageways software. Late payments bear interest at the rate of one percent (1.5%) per month, or, if lower, the maximum rate allowed by law. Subscriber shall indemnify Passageways for any costs incurred (including reasonable attorney fees) in the collection of Subscriber's past-due accounts.
- (b) Subscriber is responsible for payment of all applicable value added, sales, use, and other taxes and all applicable export and import fees, custom duties, and similar charges (other than taxes based on Passageways' net income) arising from the payment of subscription fees or the delivery or subscription to the Products. If any withholding taxes, deductions or charges apply, Subscriber shall be responsible for all payments to ensure that Passageways receives exactly the invoiced amounts without any reductions. If Passageways becomes aware of any new or applicable taxes, subscriber agrees to cover such costs within 30 days of Passageways communication regarding such charges.

#### 4. VERIFICATION

Upon Passageways' request, Subscriber will furnish Passageways with a signed statement confirming whether the Products are being used by Subscriber in accordance with this Agreement, specifically listing the total number of Authorized Users of the Products. Passageways may, upon fifteen (15) days' prior notice to Subscriber, but not more than annually, audit Subscriber's use of the Products (including access to premises, computer equipment, installation and maintenance records and, if appropriate, server access logs). Such audits shall be at Passageways' expense, provided that, in the event of non-compliance with a material term of this Agreement or an overuse of more than five percent (5%) by Subscriber with this Agreement, Subscriber shall reimburse Passageways for the reasonable costs of such audit (and the next subsequent audit), as well as pay any amounts due under this Agreement, together with interest set forth in Section 3(a), if applicable.

#### 5. SERVICES

Subscriber's purchase of product subscriptions and maintenance services from Passageways shall be set forth in Subscriber's Purchase Agreement, and the Subscription, Maintenance and Technical Support Service Terms and Conditions set forth in Exhibit A of this document shall apply. Subscriber's purchase of consulting services from Passageways shall be set forth on Subscriber's Purchase Agreement.

#### 6. LIMITATIONS ON TRANSFER OF RIGHTS

Subscriber may not transfer, assign, or delegate its rights or duties under this Agreement unless Passageways grants its prior written consent; provided, however, that Subscriber may assign its rights in whole (but not in part) (i) to any entity that acquires substantially all of Subscriber's stock or assets, or (ii) to the surviving corporation of any merger, consolidation or reorganization to which Subscriber is a party. No such assignment shall be effective unless (i) Subscriber gives prior written notice to Passageways of the assignment in writing, and (ii) the assignee agrees in writing to abide by the terms of this Agreement. Any assignment by Subscriber in violation of the foregoing shall be void.

#### 7. TERM AND TERMINATION

(a) This Agreement and the subscription for the Portal Platform and Modules ("Subscription") granted hereby shall be of annual duration unless earlier terminated as set forth in this Section 7 (the "Term"). This Agreement and the Subscription granted hereby shall be terminated automatically in the event of a breach by Subscriber of Section 2(a) or Section 2(b).

(b) Either party may terminate this Agreement and Subscription by written notice if the other party fails to perform or observe any of its obligations under this Agreement and such failure is not, or cannot reasonably be cured within forty-five (45) days after written notice thereof from the terminating party.

(c) Upon termination of this Agreement, all of Subscriber's right to use the Products shall immediately cease and Subscriber shall promptly return to Passageways all copies of the Products in its possession or control. Subscriber shall deliver a certificate signed by an officer attesting to the de-installation and return of all copies of the Products.

(d) Any obligations to pay fees incurred prior to termination, and the provisions of Sections 2, 4, 7, 8, 9, 10, 11, and 13 shall survive termination of the Agreement and Subscription for any reason. Termination is not an exclusive remedy and all other remedies will be available whether or not the Agreement and/or Subscription is terminated.

#### 8. INDEMNIFICATION OF THIRD PARTY CLAIMS

(a) Passageways shall defend on Subscriber's behalf, indemnify Subscriber for direct costs incurred in the defense of, and pay on Subscriber's behalf any settlements or damages awarded to a third party as a result of any claim by such third party that the Products infringe any United States patent issued as of the Effective Date, trade secret or copyright of that third party, provided that: (i) Passageways is promptly notified of the claim; (ii) Passageways receives reasonable cooperation from Subscriber in connection with the defense of the claim; and (iii) Passageways has the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the claim. Passageways will not be responsible for any admission or settlement it does not approve in writing. The foregoing obligation of Passageways does not apply with respect to the Products or portions or components thereof: (i) used outside the scope of the Documentation or Term of this Agreement or in violation of any provision thereof; (ii) not supplied by Passageways; (iii) made in whole or in part in accordance with Subscriber's requests or specifications; (iv) which are modifications made by Subscriber, if the alleged infringement relates to such modification; (v) combined with other products (hardware or software), processes or materials where the alleged infringement relates to such combination; or (vi) where Subscriber continues the allegedly infringing activity after being notified thereof and is provided modifications that would have avoided the alleged infringement.

(b) Should any portion of the Products, or the operation thereof become, or in Passageways' opinion be likely to become, the subject of a claim of infringement, Passageways may, at its option, either (i) procure for Subscriber the right to continue use of the affected Products; (ii) provide a modification to the affected Products so that its use becomes non-infringing; (iii) replace the affected Products with a version of affected Products which is substantially similar in functionality and performance; or (iv) refund the residual value of the Subscription fees paid by Subscriber for the affected Products, depreciated over a one (1) year period from the Effective Date.

(c) This Section 8 finally and exclusively states all of Subscriber's rights against Passageways in case of an infringement of any third party rights. Passageways shall have no additional liabilities with regard to the infringement of any third party right.

(d) Subscriber agrees to indemnify and defend Passageways from any and all claims, lawsuits, and damages, including attorney fees, that Passageways may suffer as a result of the failure of Subscriber to abide by the terms of this Agreement.

#### 9. LIMITED WARRANTY AND DISCLAIMER

(a) Passageways warrants that, when delivered and for a period of ninety (90) days thereafter, the Products will substantially conform to Passageways' then-current Documentation.

(b) The preceding warranty will not apply if: (i) the Products are not used in accordance with the Documentation; (ii) the Products, or any part thereof, have been modified without the prior written consent of Passageways; or (iii) a defect in the Products has been caused by any of Subscriber's malfunctioning equipment.

(c) OTHER THAN THE WARRANTY SET FORTH IN SECTION 9(a) ABOVE, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND. NO DEALER, AGENT OR EMPLOYEE OF PASSAGEWAYS IS AUTHORIZED TO MAKE ANY MODIFICATIONS OR ADDITIONS TO THE LIMITED WARRANTY SET FORTH IN THIS SECTION 9. PASSAGEWAYS

FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PASSAGEWAYS DOES NOT WARRANT THAT THE PRODUCTS WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION EXCEPT AS SET FORTH IN SECTIONS 8 AND 9 OF THIS AGREEMENT. SUBSCRIBER ACKNOWLEDGES THAT THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS REMAINS WITH SUBSCRIBER. To the extent that a particular jurisdiction does not allow for the exclusion of implied warranties, any implied warranties under this Agreement are limited to ninety (90) days without affecting any other limitation contained in this Agreement.

#### **10. LIMITATION OF REMEDIES AND DAMAGES**

REGARDLESS OF THE BASIS OF RECOVERY CLAIMED, WHETHER UNDER ANY CONTRACT (INCLUDING CONTRACTUAL INDEMNIFICATION OBLIGATIONS HEREUNDER), WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF CONTRIBUTION OR ANY OTHER THEORY OF LIABILITY, PASSAGEWAYS' LIABILITY UNDER THIS AGREEMENT OR RELATED TO THE PRODUCTS FOR ALL CLAIMS IN THE AGGREGATE SHALL BE LIMITED AS FOLLOWS, EVEN IF PASSAGEWAYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE: PASSAGEWAYS SHALL NOT BE LIABLE FOR LOSS OF USE OF, LOSS OF, OR DAMAGE TO SYSTEMS, PROGRAMS OR DATA; COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY; OR ANY RELIANCE, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS PROFITS OR BUSINESS INTERRUPTION, AND IN NO EVENT WILL PASSAGEWAYS' LIABILITY EXCEED THE AMOUNT PAID OR PAYABLE BY SUBSCRIBER TO PASSAGEWAYS AS FEES UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS PRECEDING THE POINT IN TIME WHEN SUBSCRIBER HAS INCURRED DAMAGES. Subscriber acknowledges that Passageways relies on the foregoing limitation of liability in its overall economic assessment of granting the subscriptions herein and that it constitutes a material inducement for Passageways to provide the Products at the negotiated prices set forth in Subscriber's Purchase Agreement.

#### **11. CONFIDENTIALITY**

- (a) Each party will have access to information that is confidential to the other party ("Confidential Information"). Except as provided in Section 11(b) below, all information obtained from the other party is to be treated as Confidential Information.
- (b) A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure as evidenced by written records and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information as evidenced by written records. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid court order, provided that if a party in possession of the other party's Confidential Information is required by a governmental body or court of law to disclose such Confidential Information, such party agrees to give the owner of the Confidential Information reasonable advance notice so that the owner may contest the disclosure or seek a protective order.
- (c) The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. Subscriber shall not disclose the results of any performance tests of the Products to any third party. The parties agree to hold each other's Confidential Information in confidence during the Term of this Agreement and for five (5) years thereafter.
- (d) Passageways acknowledges that it may receive nonpublic personal information about Subscriber and Subscriber's members and customers during the course of this agreement. Passageways warrants that Passageways, its officers, employees and agents will (a) hold in strictest confidence all information in any way related to Subscriber and Subscriber's members and customers, including, but not limited to names, addresses, telephone numbers, account numbers and all other nonpublic personal information regarding any member or customer or their relationship with Subscriber; (b) not use such information for any purpose other than providing the services set forth in this agreement; (c) not provide any information about Subscriber or Subscriber's members or customers to any third-party without Subscriber's prior written consent, except as permitted by applicable federal and state law and regulations, as amended from time to time. Passageways will use commercially reasonable means to implement appropriate administrative, technical and physical safeguards to (a) insure the confidentiality of the above described information, (b) protect against threats or hazards to the security or integrity of the above described information and (c) protect against unauthorized access to or use of the above described information. It is the express intent of the parties that these warranties of confidentiality be construed broadly and comprehensively. All warranties set forth in this paragraph shall survive termination of this agreement for any reason.
- (e) Each party shall at all times comply with all applicable provisions of the Gramm-Leach-Bliley Act (also known as the Financial Services Modernization Act) and all applicable rules and regulations of NCUA and/or FDIC for insuring the privacy.

#### **12. INJUNCTIVE RELIEF**

In the event of a material breach of this Agreement or any intellectual property rights, both parties agree that money damages would not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, and without waiving the right to arbitration, either party will be entitled to seek an injunction or other equitable relief against such material breach or any infringement of intellectual property rights.

#### **13. GOVERNING LAW; ARBITRATION**

- (a) This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.
- (b) Except as provided in Section 12 of this Agreement, and except for any claim of non-payment, any dispute or claim arising under or with respect to this Agreement will be resolved by arbitration in Tippecanoe County, Indiana; provided that the party wishing to submit the matter to arbitration must give the other party at least twenty (20) days written notice of its intent to so submit the matter; and provided further that the arbitrator(s) selected shall be knowledgeable in the computer software field. The rules and regulations to be followed shall be those of the American Arbitration Association, or its successor, in effect on the date of delivery of the demand for arbitration. Arbitration of the issues as set forth in this Section, including the determination of the amount of damages suffered by either party thereto by reason of acts or omissions of the other, shall not be deemed binding on the parties.

(c) Notwithstanding the provisions for arbitration contained in this Agreement, either party will be entitled, without posting bond or other security, to injunctive and other equitable relief in the courts as provided in Section 12 of this Agreement.

(d) Any injunctive or other equitable action, and any legal action following arbitration, shall be heard in the Circuit or Superior Courts of Tippecanoe County, Indiana, or the U.S. District Court for the Northern District of Indiana. Subscriber hereby expressly submits and consents in advance to such jurisdiction, and waives any claim that Tippecanoe County, Indiana or the Northern District of Indiana is an inconvenient forum or an improper forum based on lack of venue.

#### **14. GENERAL**

a) Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.

b) All notices delivered under the Agreement shall be in writing and deemed given upon receipt when delivered personally or upon confirmation of receipt following delivery of (i) overnight courier service, or (ii) registered or certified mail, return receipt requested, postage prepaid, in each case addressed to the Legal Department at the address indicated below the signature block on this Agreement, or at such other address of which one party is notified by the other in writing.

c) The failure of a party to enforce or exercise any term of this Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or exercise it. The waiver by a party of one breach or default under this Agreement will not constitute the waiver of any subsequent breach or default. Any provision of this Agreement, or portion thereof, that is held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations or, if it cannot be amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Agreement will continue in full force and effect.

d) The parties will at all times be independent contractors and will so represent themselves to all third parties. Neither party has granted to the other, the right to bind it in any manner whatsoever and neither party shall hold itself out as entitled to do the same. Nothing herein will be deemed to empower either party to be the agent / legal representative of the other or to constitute the parties as partners, co-owners, or joint venturers.

e) Subject to Section 6, the provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.

f) This Agreement, including the Exhibits and Subscriber's Purchase Agreement, represents the entire agreement between the parties, and expressly supersedes and cancels any prior or contemporaneous oral or written agreements on the subjects herein. Each party acknowledges that it is not entering into the Agreement on the basis of any representations not expressly contained herein. This Agreement may only be supplemented or modified by an amendment in writing executed by authorized representatives of the parties and no additional or conflicting terms tendered by Subscriber in a purchase order or other document shall have any effect. This Agreement may be signed in counterparts.

g) Except for Subscriber's payment obligations, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without the negligence of the parties.

(h) Subscriber agrees to act as a reference for other prospects (between 1 and 3 per month). Subscriber also permits Passageways to post (a) an abstract of Subscriber's deployment including a quote from a Subscriber business sponsor on the Passageways website; (b) Subscriber's logo on the Passageways website and selected Passageways collateral; and (c) a screen shot of Subscriber's portal on the Passageways website, in Passageways' internally circulated sales material, and Passageways' externally circulated marketing material. Subscriber agrees to approve a press release promoting the selection and deployment of Passageways' Products within three (3) months of the onset of deployment of the Products.

(i) Passageways and Subscriber each represent and warrant to the other as follows:

(i) Each has been duly organized, is validly existing and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder;

(ii) This Agreement has been duly authorized, executed and delivered and constitutes the valid, legal and binding obligation of each party; and

(iii) The execution and delivery of this Agreement and the performance of the Agreement will not violate, conflict with, result in a breach of, constitute a default under or be prohibited by, or require any additional approval under, its respective charter, certificate of incorporation, bylaws or any instrument or agreement to which it is a party or by which it is bound

**EXHIBIT A****SUBSCRIPTION SERVICES TERMS AND CONDITIONS**

These Subscription Services Terms and Conditions are Exhibit A to and incorporated into the User-Based Software Subscription Agreement (the "Agreement") between Passageways, Inc., ("Passageways") and the Subscriber set forth in such Agreement. Capitalized terms not specifically defined below have the meaning set forth in the Agreement. Unless unambiguously contrary thereto, these Subscription Services Terms and Conditions shall not alter or supersede any term of the Agreement.

**1. PASSAGEWAYS SERVICES**

**(a) Maintenance Services.** In consideration for Subscriber's payment of fees pursuant to Section 4 below, Passageways shall provide the maintenance services described in this Section 1 ("Maintenance Services"):

(i) **Product Updates.** Passageways shall make available to Subscriber each "Minor" and "Maintenance" functional release of the Products (and any applicable updated Documentation) that Passageways makes generally available without additional charge to its subscribers and that is intended to replace a prior Product version release ("Updates"). Passageways shall make available to Subscriber one (1) machine-readable copy of each Update. Updates are designated as follows: (i) a "Major" functional release is indicated by a change in the first digit of a version number (e.g. from 4.0 to 5.0); (ii) a "Minor" functional release is indicated by a change in the second digit (e.g. from 4.0 to 4.1); or (iii) a "Maintenance" release is indicated by a change in the third digit of a version number (e.g. from 5.0.1 to 5.0.2). Maintenance releases shall be provided as necessary in response to a Subscriber inquiry. Subscriber shall be solely responsible for the installation and testing of any Updates. Passageways reserves the right to impose additional charges for Major functional releases, not more often than once every 2 years, of the Products that provide substantial additional features or perform additional functions not provided or performed by the Products originally Subscribed to Subscriber.

(ii) **Bug Fixes.** Passageways shall exercise commercially reasonable efforts to correct any reproducible malfunction in the Products reported to Passageways by Subscriber that prevents the Products from performing in accordance with the operating specifications described in the applicable Documentation (a "Bug"). Subscriber shall be responsible for the installation and testing of any Bug fixes.

**(b) Technical Support Services.** In addition to the Maintenance Services provided hereunder, Subscriber may request, and Passageways will provide technical support services for Subscriber's use of the Products as set forth in Subscriber's Purchase Agreement ("Subscription, Maintenance and Technical Support Services").

**2. CONDITIONS OF SERVICE**

**(a) Subscriber Assistance.** Subscriber agrees to provide Passageways reasonable access to all necessary personnel to answer questions or resolve problems reported by Subscriber regarding the Products. Subscriber agrees to promptly implement all Updates provided by Passageways under this Agreement.

**(b) Retirement of Releases.** Passageways shall provide Maintenance and Technical Support Services for Product versions from the date the version becomes generally available until such version is retired. Passageways shall retire prior commercial releases of the Products (i.e., discontinue Maintenance and Technical Support Services) as follows: (i) one month after the commercial release of the subsequent maintenance release; (ii) no sooner than two (2) months after the commercial release of a new minor functional release; (iii) no sooner than six (6) months after the commercial release of a new major functional release. Notwithstanding the foregoing, Passageways shall provide telephone support, during normal business hours, with respect to questions regarding the "how-to" use of a retired release of the Products for six (6) months following its retirement.

**(c) Use of Updates.** Subscriber's use of any Updates provided by Passageways as part of the Maintenance and Technical Support Services shall be governed by all subscription limitations and restrictions, and all other terms and conditions of the Agreement. Passageways may, at its discretion, change the services included in Support Services at any time, provided, however that such changes shall not become effective until the commencement of any renewal term.

**3. TERM AND TERMINATION**

**(a) Term.** Passageways shall provide Support Services for a term (12) twelve months from the Effective Date of the Agreement as set forth in Subscriber's Purchase Agreement. Such term shall be automatically renewed at the end of the initial twelve (12) month term and again at the end of each term thereafter for an additional one (1) year renewal term unless Subscriber gives written notice at least thirty (30) days before any such renewal date of its intent not to renew the subscription, Maintenance and Technical Support Services.

**(b) Termination.** Subscriber may terminate Subscription Services at the end of any term by giving written notice, sent to [support@passageways.com](mailto:support@passageways.com) and to the designated Customer Success Manager, at least thirty (30) days prior to the end of such term. Either party may terminate Subscription Services if the other party breaches any material term or condition of the Maintenance Service Terms and Conditions and such breach is not remedied within thirty (30) days after receiving written notice thereof. Notwithstanding the foregoing, Passageways may immediately, by written notice to Subscriber, suspend or terminate Subscription Services if Subscriber fails to make any payment pursuant to Section 4 below. Subscription Services shall terminate automatically upon any termination of the Agreement.

**4. FEES AND PAYMENT**

**(a) Fees.** The fee for the initial (12) twelve months of Subscription Services for any Products subscribed shall be specified in the applicable Product Schedule as set forth in Subscriber's Purchase Agreement. The applicable fee for any renewal term shall be as per terms agreed on Subscriber's Purchase Agreement. For Products subscribed after Subscriber's initial order, the term of Subscription Services for such Products shall be truncated, and the fee for Subscription, Maintenance and Technical Support Services for such Products shall be prorated, as applicable, so that the coverage periods for all Products subscribed to Subscriber and covered by Subscription Services coincide. Subscription Services must be ordered, if at all, for each and every Product and Authorized User Subscribed from Passageways.

**(b) Payment.** Subscription Services Fees shall be billed on an annual basis, payable in advance and due within thirty (30) days of the date of invoice.

**5. EXCLUSIONS**

PASSAGEWAYS SHALL HAVE NO OBLIGATION TO MAINTAIN OR SUPPORT:

(a) Products not proprietary to or certified by Passageways;

(b) Products modified other than as specifically directed or approved in writing by Passageways;

(c) Use of the Products other than in strict accordance with the Documentation or Products installed on any computer hardware or used in

combination with any software, except as specified in the Documentation;

(d) Retired Products;

(e) Products that relate to, interface with, or rely upon a third party application or product not supplied by Passageways that is discontinued or no longer supported by such third party provider.

(f) Introduction of data into any database used by the Products by any means other than the proper use of the Products; or

(g) Incidents arising as a result of Subscriber's negligence, or misuse of the Products.

#### **6. LIMITATION OF LIABILITY**

In addition to all other limitations of liability contained in the Agreement, Passageways' aggregate liability for damages arising from any cause of action whatsoever relating to Passageways' obligations to provide Subscription Services shall be limited to the amount paid by Subscriber for such services for the applicable year.

#### **7. SERVICE CONTRACT; REMEDY**

THESE SUBSCRIPTION SERVICES TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. IN CASE OF NON-CONFORMING SERVICES WHICH ARE NOT PROMPTLY REMEDIED BY PASSAGEWAYS FOLLOWING RECEIPT OF SUBSCRIBER'S WRITTEN NOTICE, SUBSCRIBER SHALL AS ITS SOLE REMEDY BE ENTITLED TO CANCEL SUBSCRIPTION SERVICES PROVIDED AND RECEIVE A PRO RATA REFUND OF ANY PREPAID FEES.

## Terms of Use of Passageways Hosted Portal Services (Software as a Service)

**IMPORTANT – READ CAREFULLY: YOUR USE OF PASSAGeways PRODUCTS AND SERVICES ARE CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS.**

### INTRODUCTION

**IMPORTANT – READ CAREFULLY: BY CLICKING THE "I AGREE" BUTTON, SIGNING BELOW, OR BY UTILIZING THE PASSAGeways PRODUCTS OR SERVICES ("SERVICES") YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.** This is a legal agreement ("Agreement," and also referred to as the "Terms of Use") between You and Passageways, Inc., doing business as "Passageways," for use of the Services which You selected or initiated, which may include Passageways services, portal applications and web hosting, optional fee based professional services and other services available from time to time (collectively, the "Services"). "You" refers to either (a) the individual or entity that registered and/or provided Passageways his or her credit card or other payment mechanism for the Services, or (b) if the Services are being purchased on behalf of an entity by an individual authorized to purchase the Services on behalf of such entity, the "You" or, alternatively, "Subscribing Organization" refers to such entity. If You do not agree with the terms of this Agreement, click the "CANCEL" button and do not use the Services. Any software associated with the Services is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

### 1. DESCRIPTION OF SERVICES; STATEMENT OF INTENDED USE

The Services include an portal suite of applications which may include, but is not limited to Passageways modules and applications in addition to certain Web features. Together, these Services are referred to herein as a "Hosted Portal." By registering, the individual or the organization identified as the Subscribing Organization in the Hosted Portal registration process will be assigned a unique URL, and its representatives who have completed a member registration form will be "Members." The Services, all information, products and services contained or described in the Services or any Linked Sites, and the URL may be accessed and used solely by the Subscribing Organization to which such URL is assigned and its Members, solely for purposes of establishing and maintaining a communications portal for internal use. Passageways may at any time terminate the Services or any feature of the Services, or the Subscribing Organization's or it's Members' access to the Services as provided in Sections 4 and 5 hereof. All changes to the Services will be subject to these Terms.

### 2. REGISTRATION; BILLING INFORMATION; HOSTED PORTAL ADMINISTRATOR

To establish a Passageways Hosted Portal, the Subscribing Organization must complete the Hosted Portal registration process. To become a Member, an individual must be specifically identified to the Subscribing Organization, obtain its specific permission to access the same, and complete the Member registration form. The Subscribing Organization and its Members must provide accurate and complete information upon Hosted Portal registration (the "Registration Information"), as well as accurate and complete billing contact information on the billing form ("Billing Information"), and promptly update the Registration and Billing Information so that it is always accurate and complete. The person who completes the Hosted Portal registration is the initial "Hosted Portal Administrator" for the Hosted Portal, and exercises certain options to initially determine the level of privacy and security for the Hosted Portal. For example, s/he will determine who can be a Member of the Hosted Portal and the level of privileges that Members will possess. Each Hosted Portal Administrator may designate other Members as additional and/or successor Hosted Portal Administrators, and is responsible for confirming that such person(s) accept such responsibility. Upon becoming a Hosted Portal Administrator, each person will be deemed to agree to the obligations of a Hosted Portal Administrator hereunder. In addition, any person designated as the Billing Contact in the Hosted Portal billing record will be deemed to assume the rights and obligations of a Hosted Portal Administrator. All notices from Passageways to the Subscribing Organization will be given to the current Hosted Portal Administrator(s) at the e-mail address(es) appearing on the Hosted Portal, and/or to the Billing Contact e-mail address, as appropriate. In addition, all notices and information sent by Passageways to Members will be sent to their individual addresses. In its sole discretion, exercised in a reasonable manner, Passageways will determine the timing, nature, and content of all communications with Hosted Portal Administrators, Billing Contacts and Members.

### 3. REGISTRATION CODE; PASSWORD; SECURITY

Upon registration, the Subscribing Organization will select a Hosted Portal Name and Members will each select a password, and the Subscribing Organization will be assigned a registration code. Passageways will use reasonable efforts to assign to the Subscribing Organization the Hosted Portal Name that it selects. However, the Subscribing Organization and its Members may not select or use a Hosted Portal Name, and Passageways reserves the right to reject or terminate use of a Hosted Portal Name if it has been previously assigned to another Subscribing Organization or if Passageways, in its sole discretion, determines (a) the Hosted Portal Name is offensive or its use violates applicable law, (b) that multiple Hosted Portals have been registered by a Subscribing Organization or its Members to avoid purchasing incremental storage space, or simply to reserve Hosted Portal names without the intent to use them, (c) the Subscribing Organization or its Members has selected or is using a Hosted Portal Name of another party with the intent to impersonate that party, (d) the Hosted Portal Name contains, may interfere or be confused with, violate, exploit, or capitalize on, the name, goodwill, trade name, trademark, registered trademark, service mark, or proprietary or other rights of any party, (e) the Subscribing Organization or Members or others acting on its behalf have reserved more than ten Hosted Portal Names or Hosted Portals, (f) the Subscribing Organization, its Members or Administrators, have created multiple "free trial" Hosted Portals for the purpose of avoiding subscription fees. Or (g) Passageways desires to use or hold the Hosted Portal Name for its own use or any other purpose it determines in its sole discretion. If Passageways rejects or terminates use of a Hosted Portal Name because of a violation or threatened violation of this Section 3, it may elect, at its sole discretion and without prior notice: to select an alternate Hosted Portal Name, to allow the Subscribing Organization to promptly select another acceptable Hosted Portal Name, and/or to Terminate as provided in Section 4 hereof. The Subscribing Organization and its Members are entirely responsible for maintaining the confidentiality of the registration code (if applicable), the passwords, the Hosted Portal and the information stored on the Hosted Portal (collectively, the "Hosted Portal Information"), and of all information that they transmit through the Services, for selecting the Members and their privileges, for any and all usage and activities that occur in connection with the registration code (if applicable), passwords, Hosted Portal Name, Hosted Portal Information and Hosted Portal, and for all Hosted Portal content. The sharing of user login names and/or passwords by more than one individual to avoid the payment of member fees constitutes a violation of these Terms of Use.

The Subscribing Organization will notify Passageways immediately of any known or suspected unauthorized use, activities or disclosure of the Hosted Portal or any information, or any other breach of security. Passageways will not be liable for any failure by the Subscribing Organization or its Members to comply with this Section 3 or any other provision of these Terms. In the event that a dispute arises over the rightful control of any Hosted Portal, Passageways will have no obligation to any party to continue to grant access to the Hosted Portal except under an order from a court of competent jurisdiction.

### 4. TERM AND TERMINATION

Passageways shall provide Subscription and Support Services for a term (12) twelve months from the Effective Date of the Agreement as set forth in Subscriber's Purchase Agreement. Such term shall be automatically renewed at the end of the initial twelve (12) month term and again at the end of each term thereafter for an additional one (1) year renewal term unless Subscriber gives written notice at least thirty (30) days before any such renewal date of its intent not to renew the Subscription, Maintenance and Technical Support Services.

Passageways, in its sole discretion, may terminate, cancel, suspend, limit, discontinue, and/or deactivate (temporarily or permanently) all or any part of the Services, registration code, any password, Hosted Portal Name, registration, any part or all of the Hosted Portal, and/or the Subscribing Organization's and/or its Members' access to and use of any part or all of their personally identifiable information (collectively, "Personal Information"), Registration Information, Hosted Portal Information, the Services and/or the Hosted Portal, and/or their rights under

these Terms (all of the foregoing rights and actions to "Terminate" or a "Termination"), at any time, including without limitation if (a) Passageways believes that the Subscribing Organization or a Member has violated or is threatening to violate these Terms or other policy of Passageways, its Third Party Providers or applicable law, has misused or is threatening to misuse the Services, or has conducted or is threatening to conduct any fraudulent, abusive, or illegal activity, (b) Passageways believes that the Subscribing Organization or any of its Members has accessed or is attempting to access any part of the Services or Content, or the Hosted Portal, or Registration Hosted Portal or Personal Information of any other Subscribing Organization or Member, (c) the Subscribing Organization assigns its rights to the Hosted Portal or the Hosted Portal Name, (d) Passageways discontinues the Services or any part thereof for any reason, (e) the subscribing Organization or a Member makes excessive use of bandwidth, or transmits excessive numbers of notices or other transmissions inconsistent with the number of members registered and using the Service in the sole discretion of Passageways. Passageways reserves the right to investigate the validity of any complaint presented to it which alleges that any Hosted Portal has been used to conduct fraudulent, abusive or illegal activity, or has been used in any way which violates these Terms. Such investigations may include logging on to the Hosted Portal and/or reviewing any data or information contained therein. Passageways will not, however, provide any such information to any third party unless required by law or court order.

A Termination described in Section 4(a), (b), (c), or (d) may be made with or without notice and will be effective immediately. In the event of Termination, Passageways may disable from its servers all of the Subscribing Organization's and its Members' Hosted Portal Information, Registration Information and Personal Information and/or all backup copies thereof, without further notice and without any liability of Passageways to the Subscribing Organization, its Members or any third party. Notwithstanding anything in these Terms to the contrary, if Passageways reasonably believes that the Subscribing Organization or any of its Members has violated or is threatening to violate applicable law or the provisions of Section 4(b) or has conducted or is threatening to conduct any fraudulent, abusive, or illegal activity, Passageways may, without any notice, refer the Subscribing Organization and/or its Members to appropriate law enforcement agencies, and/or immediately remove and/or permanently delete the Hosted Portal Information, Registration Information and/or Personal Information as otherwise provided herein. If a Subscribing Organization or its Members are the subject of a Termination described in this Section 4, they may not re-register for or continue to use the Services in any manner or for any reason. If the Subscribing Organization wishes to terminate its Hosted Portal and use of the Services, it must notify Passageways by sending an email to: [sales@passageways.com](mailto:sales@passageways.com). For information on this procedure, see our Privacy Statement at <http://www.passageways.com/privacy>. The provisions of Sections 6, 10, 13, 14, 15 and 16 will survive any Termination under Section 4 or 5 and any discontinuance.

## 5. ACCESS TO SERVICES; SUPPORT;; RIGHTS

To use the Services, the Subscribing Organization and its Members must obtain and pay any fees for access to the World Wide Web and provide all equipment necessary to make such connection, including a computer and modem or other access device. The Subscribing Organization and its Members may access the Services and the Hosted Portal only by means of the interface provided by Passageways. Although the Services and Hosted Portal are generally accessible worldwide, access may not be available to all persons or in all locations. Passageways reserves the right to limit access to the Hosted Portal or the Services by any Subscribing Organization, Member, or person, or from any location.

## 6. FEES

All fees are payable in US dollars unless invoiced or charged by Passageways in another currency, in which case the fees must be paid in the currency invoiced. All transmission fees, currency translation fees, wire and bank fees chargeable by or deducted from remittances by any bank, including the transmitting, intermediary or recipient bank are the responsibility of the remitting party (Subscribing Organization). Merchant fees charged by Credit Card Companies and by PayPal assessed to Passageways, will be absorbed by Passageways and are expressly not the responsibility of the remitting party (Subscribing Organization). The remitting party (Subscribing Organization) is responsible for payment of all applicable value added, sales, use, and other taxes and all applicable export and import fees, custom duties, and similar charges (other than taxes based on Passageways' net income) arising from the payment of fees for the Services and Hosted Portal. If any withholding taxes, deductions or charges apply, the remitting party (Subscribing Organization) shall be responsible for all payments to ensure that Passageways receives exactly the invoiced amounts without any reductions.

During completion of the Hosted Portal subscription, one person is designated as the responsible contact for purposes of billing and payment of fees (the "Billing Contact"). The Billing Contact is not personally liable for the Hosted Portal fees, nor are individual Hosted Portal members. The obligation to pay fees rests with the Subscribing Organization. The Billing Contact may, however elect to furnish a personal credit card for the purpose of paying Hosted Portal fees in which case the furnishing of such information is considered his/her authorization for Passageways to use the card for any and all payments related to the Hosted Portal. The Billing Contact may be changed by any Hosted Portal Administrator directly through the Hosted Portal, and when any change is made all Hosted Portal Administrators are notified by e-mail. The Services are provided on a subscription basis. Such subscription charges entitle the Subscribing Organization and its Members to use the Services without any banner advertising or sponsorship advertising within the product. Passageways may, in its sole discretion, discontinue service until such time as the payments are brought current.

It is the responsibility of the Hosted Portal Administrator(s) to monitor and update their Hosted Portal membership. Passageways will not be responsible for deleting Hosted Portal member records, nor will it do so if requested. Deletion of member records must be done by a Hosted Portal Administrator. Subscription fees are billable to the person designated by the Subscribing Organization as indicated in the Hosted Portal billing contact information record, which may be accessed and updated only by a Hosted Portal Administrator through the "Administrative tools". It is the Subscribing Organization's responsibility to ensure that the billing contact information is complete and accurate at all times. Only a Hosted Portal Administrator or the designated billing contact person may cancel a Hosted Portal subscription. Cancellation may be made at any time by any Hosted Portal Administrator or Billing Contact person through an e-mail instruction from either a Hosted Portal Administrator e-mail account or a Billing Contact person's e-mail account as contained on the Hosted Portal. Cancellation requests must be addressed to [sales@passageways.com](mailto:sales@passageways.com) and a copy marked to your designated Customer Success Manager. Any cancellation will take effect after the cancellation request is received by Passageways, for billing purposes, after the last day of annual renewal cycle provided that the request is received by 5 PM EST at least thirty (30) days prior to the end of the annual renewal date. Cancellation of annual subscriptions will take effect on the last day of the annual subscription period. Upon receipt of a valid cancellation request, Passageways may deactivate the Hosted Portal at any time. Unless and until a cancellation request is received by Passageways, You agree that Passageways may automatically invoice or charge the credit card on file for the full amount of each succeeding year's subscription. You also hereby authorizes Passageways to charge any and all other amounts due under any to the credit card on file. This includes both one time and periodic fees as they become due. In the event Passageways is unable to collect from this credit card any sums due, You agree to pay such sums, together with any costs incurred by Passageways in collecting such sums, including reasonable attorneys' fees, and interest at the lower of 1.5% per month or the highest rate permitted by law. In addition, You authorize Passageways to, from time to time and at its discretion, undertake steps to determine whether the credit card information provided is current and accurate. Those steps may include, but are not limited to, the use of third party service providers to, among other things, automatically update credit card numbers and expiration dates, addresses, and other applicable information. Passageways reserves the right to, without notice or prior approval, use the updated information for all current and future transactions.

Passageways reserves the right to increase the fees it charges for access to the Hosted Portal, provided, however, that Passageways will provide no less than thirty (30) days advance notice to existing Subscribers of its intention to do so. Fees for other services, including but not limited to extra disk storage, and SSL security are also charged in accordance with the prices in effect at the time of purchase, or renewal.

## 7. CONFIDENTIALITY

a. Each party may have access to information that is confidential to the other party ("Confidential Information"). Except as provided in Section 7(b) below, and subject to Section 9 below, all information obtained from the other party is to be treated as Confidential Information.

b. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure as evidenced by written records and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information as evidenced by written records. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or

valid court order, provided that if a party in possession of the other party's Confidential Information is required by a governmental body or court of law to disclose such Confidential Information, such party agrees to give the owner of the Confidential Information reasonable advance notice so that the owner may contest the disclosure or seek a protective order.

c. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. Subscribing Organization shall not disclose the results of any performance tests of the Products to any third party. The parties agree to hold each other's Confidential Information in confidence during the Term of this Agreement and for five (5) years thereafter.

## **8. STORAGE AND FILE DOWNLOAD/BANDWIDTH LIMITATIONS**

Storage space for the Subscribing Organization is currently provided in accordance with the Passageways price list in effect from time to time, and it may be impossible to store some data or information at the Hosted Portal due to space constraints. The Subscribing Organization agrees that Passageways is not responsible or liable for any insufficient storage capacity or the deletion or failure to store data or information. Passageways reserves the right to limit the file download and/or bandwidth capacity of any or all Hosted Portals, in its sole discretion, if it deems such limitation to be in the best interests of the operating performance across all Hosted Portals.

## **9. PRIVACY**

Subject to the terms of the Privacy Statement referenced below, Passageways acknowledges that it may receive nonpublic personal information about the Subscribing Organization and its Members and customers during the course of this agreement. Passageways warrants that Passageways, its officers, employees and agents will (a) hold in strictest confidence all information in any way related to the Subscribing Organization and its Members and customers, including, but not limited to names, addresses, telephone numbers, account numbers and all other nonpublic personal information regarding any Member or customer or their relationship with the Subscribing Organization; (b) not use such information for any purpose other than providing the services set forth in this agreement; (c) not provide any information about the Subscribing Organization or its Members or customers to any third-party without Subscribing Organization's prior written consent, except as permitted by applicable federal and state law and regulations, as amended from time to time. Passageways will use commercially reasonable means to implement appropriate administrative, technical and physical safeguards to (a) insure the confidentiality of the above described information, (b) protect against threats or hazards to the security or integrity of the above described information and (c) protect against unauthorized access to or use of the above described information. All warranties set forth in this paragraph shall survive termination of this agreement for any reason. Passageways respects the privacy of its Subscribing Organizations and Members. Please read our Privacy Statement at <http://www.passageways.com/privacy.php>, which forms part of these Terms.

## **10. SUBSCRIBING ORGANIZATION'S AND MEMBERS' RESPONSIBILITIES; MATURE AUDIENCE HOSTED PORTAL DESIGNATION**

All Hosted Portal Information, Registration Information, Personal Information and other information stored, publicly posted or privately transmitted through the Services by the Subscribing Organization or its Members, the confidentiality and privacy of all of the same and of the Hosted Portal, and all uses of the Services and the Hosted Portal by the Subscribing Organization and its Members are their sole responsibility. Without limitation, the Subscribing Organization and its Hosted Portal Administrator(s) are responsible for monitoring the contents, use of and access to the Hosted Portal and all such Information, and use of and access thereto by Members who are minors. Without limitation, the Subscribing Organization agrees that it and its Members will use the Services and the Hosted Portal only in accordance with these Terms, and will not use them to:

- a. upload, store, post, link to, email or otherwise transmit, distribute, publish or disseminate any Hosted Portal Information, Content or other information (i) that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, objectionable or libelous, or promotes such activity; (ii) that (or the transmission, distribution, publication or dissemination of which) infringes any patent, trademark, trade secret, copyright, or other rights or proprietary rights of any party, violates any contractual or fiduciary relationships (such as inside, proprietary or confidential information); (iii) that is harmful to minors; or (iv) that contains software viruses, trojan horses, worms, time bombs, cancelbots or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protect" devices, any other harmful or disruptive program, or any warez, cracks, hacks, associated utilities or other piracy related information;
- b. provide inaccurate, incomplete, outdated or misleading Registration Information or e-mail addresses, create a false identity or manipulate identifiers to mislead or to disguise the origin of any information stored on the Hosted Portal or transmitted through the Services, or impersonate or otherwise misrepresent any affiliation with any person or entity;
- c. modify, use, download, publish, upload, post, transmit, transfer, sell, reproduce, create new or derivative works from, license, distribute, perform, display, broadcast, exploit or otherwise copy any portion of the Services, Hosted Portal Name, or any Content, or any products or other services (including software) obtained there from, or permit access to the same by any unauthorized person or entity;
- d. interfere with or disrupt any links or click-through URLs provided through the Services, or servers or networks connected to the Services, or violate the regulations, policies or procedures of such servers or networks, or interfere with another Subscribing Organization's or Member's use and enjoyment of the Services;
- e. attempt to gain unauthorized access to the Services, Content, other Hosted Portals, Registration Information, Hosted Portal Information or Personal Information, or other computer systems, servers or networks connected to the Services; or
- f. violate (intentionally or unintentionally) any applicable local, state, national or international law or regulation, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any securities exchange of any jurisdiction, laws regarding the transmission through the Services of technical data or software exported from the United States and/or the country(ies) in which the Subscribing Organizations and/or its Members reside, and laws and regulations regarding online conduct and acceptable content of the Subscribing Organization's and its Members' transmissions, Hosted Portal and Hosted Portal Information.

The Hosted Portal Administrator may elect to designate a Hosted Portal as a mature audience Hosted Portal. This designation is purely voluntary on the part of the Subscribing Organization. This designation indicates that some or the entire Hosted Portal content may not be appropriate for Members under the age of 18. This designation does not, under any circumstances, give the Subscribing Organization or its Members the right to post content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, objectionable or libelous, or promotes such activity, as determined in Passageways' sole discretion. Posting of such material as listed in this Paragraph 10 is a violation of these Terms of Use and will be dealt with in accordance with Paragraph 4 herein. If the Subscribing Organization designates its Hosted Portal as a mature audience Hosted Portal, Passageways reserves the right to visit the Hosted Portal either in response to a complaint, or, at its sole discretion, without having received a complaint regarding the Hosted Portal. If Passageways discovers a violation of these Terms of Use, the Hosted Portal may be terminated in accordance with Paragraph 4 herein. Passageways does not monitor information transmitted through the Services, Hosted Portal Information or use thereof except to the limited extent permitted in these Terms or the Privacy Statement <http://www.passageways.com/privacy>, but Passageways has the right (but not the obligation) to delete, move or edit and to require the Subscribing Organization to delete, move or edit any Registration, Hosted Portal or Personal Information that violates the same. Passageways reserves the right to examine the information or customer data contained within any Hosted Portal, however, for the sole purpose of determining if a violation of these Terms of Use has occurred. The Subscribing Organization must evaluate and bear all risks associated with use of any Hosted Portal Information and any other information or products obtained from the Services, including any reliance on the accuracy, completeness or usefulness thereof.

## **11. BACKUP**

Passageways regularly backs up Hosted Portal Information stored on the Hosted Portal, and stores the same for a limited time. Subject to the limitations set forth in Sections 4 and 5 hereof, upon the Subscribing Organization's request and payment of the then-current fee, we will make reasonable efforts to restore Hosted Portal Information. Passageways will have no

liability for any failure to back up or restore such Hosted Portal Information, or for interruptions, delay or suspension of access to or unavailability of Hosted Portal, Registration or Personal Information, or any loss of such Information, data or transmissions.

## 12. WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY

**WARRANTY DISCLAIMER.** YOU UNDERSTAND AND AGREE THAT THE SERVICES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." YOU FURTHER ACKNOWLEDGE AND AGREE THAT THE FUNCTIONALITY AND PERFORMANCE OF THE HOSTED PORTAL IS SUBJECT TO CONDITIONS AND CIRCUMSTANCES BEYOND THE CONTROL OF PASSAGeways. PASSAGeways EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. PASSAGeways MAKES NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE HOSTED PORTAL, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBING ORGANIZATION OR MEMBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICES AND THE HOSTED PORTAL ARE AT THE SUBSCRIBING ORGANIZATION'S AND/OR MEMBER'S SOLE RISK. THE SUBSCRIBING ORGANIZATION AND ITS MEMBERS WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE SUBSCRIBING ORGANIZATION, THE MEMBER, THE HOSTED PORTAL, AND ANY LINKED SITES RESULTING FROM THE USE OF SUCH SERVICES OR WEBSITE. Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not apply to either the Subscribing Organization or the Member. In that event, such warranties are limited to the minimum warranty scope and period allowed by applicable law.

**Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PASSAGeways, ITS SUBSIDIARIES, OFFICERS, EMPLOYEES, SPONSORS, PARTNERS, SUPPLIERS OR AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE HOSTED PORTAL, OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), CONTRACT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF CONTRIBUTION OR ANY OTHER LEGAL THEORY, EVEN IF PASSAGeways HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, PASSAGeways' MAXIMUM CUMULATIVE LIABILITY AND THE SUBSCRIBING ORGANIZATION'S AND ITS MEMBERS' EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE SUBSCRIBING ORGANIZATION FOR THE SUBSCRIPTION SERVICES (EXCLUDING ANY PER USE OR PROFESSIONAL SERVICE FEES) IN THE PREVIOUS THREE MONTHS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation may not apply to either the Subscribing Organization or its Members; however, Subscribing Organization and its Members acknowledge that Passageways relies on the foregoing limitation of liability in its overall economic assessment of granting the rights granted herein and that it constitutes a material inducement for Passageways to provide the Hosted Portal at the negotiated prices paid by the Subscribing Organization.

## 13. INDEMNITY

The Subscribing Organization and its Members agree, to the extent allowed under federal law, to indemnify and hold Passageways, or its subsidiaries, affiliates, officers, employees, sponsors and partners harmless from any claim, loss, cost, expense, demand, or damage, including reasonable attorneys' fees, arising directly or indirectly out of (a) the Subscribing Organization's or its Members' use of or connection to the Services, this Website, the Hosted Portal, or the Materials, (b) Hosted Portal Information or other information transmitted or stored by the Subscribing Organization or its Members through or on the Hosted Portal or the Services, (c) activities in connection therewith, or (d) the Subscribing Organization's or its Members' breach of this Agreement or violation of the rights of any other party.

## 14. PROPRIETARY RIGHTS

The Services, this Website, and all Content, and all trademarks, including but not limited to all material distributed or presented to the Subscribing Organization or its Members through the Services by Passageways or its Third Party Providers or on the Linked Sites, and all rights and intellectual property rights therein, are the sole property of Passageways, or its Third Party Providers, and are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Any comments, suggestions or ideas or other information submitted to Passageways through this Website, in writing, by e-mail or otherwise to Passageways will be the property of Passageways and Passageways will have all rights therein without any obligation to compensate the Subscribing Organization or its Members. All Hosted Portal Information will remain the sole property of the Subscribing Organization, its Members or any party with rights therein. Any rights not expressly granted herein are reserved.

All materials published by Passageways and its Third Party Providers, including but not limited to text, graphics, names, logos, service marks and trademarks, and information contained on any Linked Sites (collectively, the "Content") are the property of or controlled by Passageways or the party credited as the provider of the Content.

The Subscribing Organization and its Members will respect all proprietary rights of Passageways and its Third Party Providers in and to the Content, Hosted Portal Name, Services, and Hosted Portal, any products or other services obtained there from.

## 15. MISCELLANEOUS

**a. Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and Passageways may assign its rights and delegate its obligations in whole or in part to an affiliate, provided that either party may terminate this agreement upon ten days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.

**b. Arbitration.** Except for any claim of non-payment, any dispute or claim arising under or with respect to this Agreement will be resolved by arbitration in Tippecanoe County, Indiana; provided that the party wishing to submit the matter to arbitration must give the other party at least twenty days written notice of its intent to so submit the matter; and provided further that the arbitrator(s) selected shall be knowledgeable in the computer software field. The rules and regulations to be followed shall be those of the American Arbitration Association, or its successor, in effect on the date of delivery of the demand for arbitration. Arbitration of the issues as set forth in this Section, including the determination of the amount of damages suffered by either party thereto by reason of acts or omissions of the other, shall not be deemed binding on the parties.

**c. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the United States and the State of Indiana. Any claim of non-payment, any injunctive or other equitable action, and any legal action following arbitration shall be heard in, and the parties hereby submit to the jurisdiction of, and waive any venue objections against, the Circuit or Superior Courts of Tippecanoe County, Indiana, or the United States District Court for the Northern District of Indiana.

**d. Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Passageways shall not be bound by terms additional to or different from those in this Agreement that appear in Your acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both You and Passageways.

**e. Force Majeure.** Except for Your obligation to pay for the Services rendered, neither party will be responsible for failure of performance due to causes beyond its control. Such causes

include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**f. Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

**g. Use of the Services.** You may use the Services only for sessions in which You are an active participant, and as permitted under the terms and conditions of this Agreement or other written agreements between You and Passageways. You may not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly generate income from the Services. You will not modify, make derivative works of, disassemble, decompile or reverse engineer the Hosted Portal, Services or any component thereof.

**h. U.S. Export Law.** You acknowledge that the Services are subject to U.S. export control laws and regulations. You represent that you are not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. You will not use, export or allow a third party to use or export the Services in any manner that would violate applicable law, including but not limited to applicable export control laws and regulations.

## **16. REPRESENTATIONS OF SUBSCRIBING ORGANIZATION**

By registering and accepting these Terms, the initial Hosted Portal Administrator on behalf of the Subscribing Organization and all its Members, and each Member on its individual behalf, hereby represents and warrants to Passageways that: a. s/he is the duly authorized Hosted Portal Administrator or Member of the Subscribing Organization and has the authority and legal capacity to register and accept these Terms on behalf of the Subscribing Organization and to bind the Subscribing Organization thereto, and/or to register and accept the same on his/her own behalf and to be bound thereby; b. all Members are at least 18 years of age, or are at least thirteen (13) years of age and have parental permission to establish a Hosted Portal and/or use and access the Services; c. (i) the Subscribing Organization and its Members are eligible to establish a Hosted Portal and to become Members, (ii) the Subscribing Organization and its Members accept and agree to be bound by these Terms, and the Subscribing Organization will take all steps necessary to ensure that its Members so accept and are bound by the same, without limitation or qualification, and (iii) the Subscribing Organization and Members will regularly review these Terms, and in the event of any change, the Subscribing Organization's or Member's failure to promptly discontinue use of the Services and Hosted Portal as provided in Section 4 hereof will be deemed to indicate the agreement of the Subscribing Organization, on its own behalf and on behalf of its Members, and of its Members to accept and be bound by such changes.

## **17. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to Passageways, Inc., 8 N 3rd St., Lafayette, IN 47901; 765.535.1880; email: sales@passageways.com.

## **18. COPYRIGHT AND TRADEMARK INFORMATION**

All trademarks, service marks and logos used in this Website are the property of their respective owners. All contents of this Website are the property of Passageways, Inc., Copyright © 2017 Passageways, Inc. All Rights Reserved.

**CONSULTING AGREEMENT**

This Consulting Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Passageways, Inc., ("Passageways") located at 8 North 3rd Street, Suite 101, Lafayette, Indiana and located \_\_\_\_\_ at \_\_\_\_\_ ("Subscriber").

In consideration of the mutual commitments stated below, the parties agree as follows:

**1. CONSULTING SERVICES AND CONSULTING FEES**

(a) Passageways will perform the agreed services and Subscriber will pay the agreed fees and expenses, ("Consulting Fees" for the "Consulting Services") as further set forth in Exhibit 1.0 to this Agreement. Passageways will provide invoices to Subscriber for Consulting Fees when due. Subscriber will pay invoiced amounts within thirty days of receipt. Any late payment will bear interest at 1.5% per month.

**2. PROPRIETARY RIGHTS AND LICENSE**

(a) "Product" is any object or source code created by Passageways in connection with the Consulting Services. The Product shall be subject to the Passageways OnSemble User Based Subscription Agreement, if any, executed between Passageways and Subscriber. In the absence of a separate subscription agreement between Passageways and Subscriber, the Product shall be deemed licensed to Subscriber according to the following terms and conditions: Subject to Subscriber's performance of its payment and other obligations to Passageways, Passageways grants Subscriber a nonexclusive permanent license to install, use and modify the Product in Subscriber's business. Subscriber may not sublicense, rent, loan, or convey the Product to any third party unless a written consent is secured from Passageways. Subscriber acknowledges that the Product incorporates Passageways' trade secrets and is copyrighted to Passageways. Subscriber will not remove any copyright notice or other notice placed by Passageways on the Product.

**3. DELIVERY AND ACCEPTANCE; FUTURE COMPATIBILITY**

(a) All delivered projects come with 30 days of warranty. If, within 30 days of the last item delivery, Subscriber does not provide Passageways with a written notification of non-conformance of any item to the project requirement specifications; all delivered items will be considered conformant.

(b) Passageways cannot guarantee that the Product will be compatible with future versions of the Passageways Portal Framework. If Subscriber has agreed to pay the annual Compatibility Assurance Charges on a continuous basis, Passageways will provide the necessary Consulting Services to correct any compatibility issues at no additional charge to Subscriber. If Subscriber has not paid the annual Compatibility Assurance Charges on a continuous basis, then Subscriber agrees that any Consulting Services provided by Passageways to correct compatibility issues with future versions of the Passageways OnSemble platform will be subject to additional Consulting Fees at Passageways' then current rates.

**4. WARRANTY; LIMITATION OF REMEDY**

(a) Passageways warrants that it has the legal right to perform the Consulting Services and provide access to the Product to Subscriber. Passageways warrants that the Consulting Services and Products will not infringe any patents, copyrights, trade secrets, or other proprietary rights of any third party. Passageways' entire liability and Subscriber's exclusive remedy with respect to the failure of any Consulting Service or Product to comply with said warranty is, at Passageways' option, for Passageways either to refund the Consulting Fees paid for the Consulting Service or to provide a substitute Product and/or Consulting Services. **PASSAGeways MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS OR CONSULTING SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

(b) Passageways shall have no liability to Subscriber for incidental, special, consequential or punitive damages, including but not limited to loss of profits or other economic loss, regardless whether Passageways knows or should have known of the possibility of such damages in advance.

**5. CONFIDENTIALITY**

(a) Each party will hold as confidential all designated nonpublic information about the other's activities and operations and will not reveal such information to anyone else or use it for any purpose outside this Agreement.

**6. TERMINATION**

(a) Either party shall have the right to terminate this Agreement upon the occurrence of a violation by the other party of its obligations under this Agreement (hereafter, an "Event of Default"). A termination on account of an uncured Event of Default will become effective upon delivery by the terminating party to the defaulting party of a written notice of the Event of Default and, failure by the non-terminating party to cure the duly noticed Event of Default within thirty calendar days. Upon termination due to an Event of Default by Subscriber, all obligations of Passageways of every kind under this Agreement shall be deemed discharged, and Subscriber shall uninstall and return all copies of the Product to Passageways, and shall pay the Consulting Fees to Passageways.

**7. NON-SOLICITATION OF EMPLOYEES**

(a) Neither party to this Agreement shall employ or solicit for employment, directly or indirectly, any personnel of the other party for a period of two (2) years after completion of the Consulting Services without the express written consent from the other party.

**8. REFERENCES**

(a) Subscriber agrees to act as a reference for other potential Subscribers of Passageways (between one and two per month). Subscriber also

permits Passageways to post

- (i) an abstract of Subscriber's deployment including a quote from a Subscriber business sponsor on the Passageways website;
- (ii) Subscriber's logo on the Passageways website and selected Passageways collateral; and Version 1.1
- (iii) a screen shot of Subscriber's portal on the Passageways website, in Passageways' internally circulated sales material, and Passageways' externally circulated marketing material. Subscriber agrees to approve a press release promoting the selection and deployment of Passageways' services within three months of the onset of deployment of the Professional Services.

#### **9. GENERAL PROVISIONS**

- (a)** Nothing in this Agreement creates a partnership or joint venture or makes either party the agent of the other. The parties are independent contractors.
- (b)** Nothing in this Agreement is intended to provide any benefit to any third party. The terms of this Consulting Agreement are specific to Subscriber, and accordingly, this Agreement may not be assigned without the consent of Passageways.
- (c)** Delay or failure in performing an obligation in this Agreement (other than an obligation to pay money) is not a breach or default to the extent that the delay or failure is due to a cause beyond the reasonable control of the affected party.
- (d)** The failure by either Party to exercise any right under this Agreement on one occasion will not waive its right to exercise the same right on another occasion.
- (e)** Any modification of this Agreement must be in a writing which specifically refers to this Agreement and must be signed by an authorized representative of both parties.
- (f)** This Agreement is governed by the substantive laws of the State of Indiana without reference to its choice of law principles. Courts of competent jurisdiction in Tippecanoe County, Indiana shall be the sole and exclusive venue for any litigation of any claim or dispute relating to this Agreement. The prevailing party in any litigated dispute under this Agreement shall be entitled to reimbursement of its reasonable attorney fees and costs.
- (g)** If any provision of this Agreement is ruled to be invalid, such ruling will not affect any other provision which can be given effect without the invalid provision.