

FRIENDS OF SWITCHPOINT INC LICENSE AGREEMENT

This software as a service (Services) license agreement (the “Agreement”) is made as of _____, 2023, (“Effective Date”) between _____ with principal offices at _____ (“Customer”) and Friends of Switchpoint Inc a Utah Corporation with its principal office at 948 N. 1300 W. St. George, UT 84770 (“Vendor”).

WHEREAS, Vendor is in the business of supplying software as a service (SaaS);

WHEREAS, Customer is a company that desires the use of Vendor’s services;

WHEREAS, Vendor and Customer desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Vendor will provide to Customer the Services for a fee after the first year which is free of charge.

WHEREAS, Vendor and Customer agree to charge a fee in accordance with paragraph 6 (License Fee, Term, and Payment) of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

1 PROVISION OF SERVICES

In consideration of the fees paid by Customer under this Agreement, Vendor agrees to provide Customer license to the Services.

2 INSTALLATION SCHEDULE

Vendor will have five business days from the Agreement date and payment made to initiate the onboarding process.

3 LICENSE GRANTS

Subject to the terms and conditions of this Agreement, Vendor grants to Customer during the Term of this Agreement the nontransferable, nonexclusive worldwide right to permit the Customer to (a) use the Services, including the Base Components thereof, (b) display and print Customer Data, and (c) use the SaaS Materials solely in connection with the Service, all solely for Customer’s own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For purpose of this license grant, “Customer” shall include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer’s direction and for whom Customer is fully responsible hereunder. Customer acknowledges and agrees that the license granted, for the items listed in this agreement, is not a concurrent user license and that the rights granted to Customer in this agreement are subject to all of the following agreements and restrictions:

- (i) The maximum number of Users that Customer authorizes to access the Service shall not exceed the number of licenses Customer has been granted;
- (ii) Licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who are no longer permitted to access the Service;
- (iii) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the SaaS Materials available to any third party other than an authorized User;
- (iv) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Vendor Software and or SaaS Materials that are provided as a part thereof, or access the Service or SaaS Materials in order to build a similar or competitive product or service;
- (v) Customer shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device;
- (vi) except as expressly stated herein, no part of the Service or SaaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means;
- (vii) Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service;
- (viii) Customer acknowledges and agrees that Vendor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the SaaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Users relating to the Service or the SaaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof;
- (ix) Unauthorized use, resale or commercial exploitation of any part of the Service or SaaS Materials in any way is expressly prohibited;
- (x) Customer does not acquire any rights in the Service or SaaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Customer are reserved by Vendor and Third-Party Vendors; and,
- (xi) This Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Vendor Software, Third Party Products, or SaaS Materials to Customer.

4 AUTHORIZATION FROM CUSTOMER

Subject to the terms and conditions of this Agreement, Customer grants to Vendor and its Third Party Vendors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer Data solely to the extent necessary

to provide the Service and SaaS Materials to Customer, and (b) any trademarks that Customer provides Vendor for the purpose of including them in Customer's user interface of the Service ("Customer Trademarks").

Customer acknowledges and agrees that Customer Data and information regarding Customer and Customer's Users that is provided to Vendor and its Third-Party Vendors in connection with this Agreement may be (a) processed by Vendor and its Third-Party Vendors to the extent necessary to provide the Service and (b) transferred outside of the country or any other jurisdiction where Customer and Customer's Users are located. In addition, Customer acknowledges and agrees that it is Customer's obligation to inform Customer's Users and customers of the processing of Customer Data and information regarding Customer and Customer's Users pursuant to this Agreement and to ensure that such Users and customers have given any necessary consent to such processing as required by all applicable data protection legislation. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and information regarding Customer and Customer's Users. Customer agrees that the authorization to the Customer Data shall survive termination of this Agreement solely for the purpose of storing backup Customer Data in accordance with the terms of this Agreement.

By providing Customer with the Services, Vendor does not acquire any right, title and/or interest in the content material (including but not limited to text, Customer-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Customer makes available for use by Users by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of Vendor, Customer is solely responsible for all Content.

5 PROPRIETARY RIGHTS

Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Vendor, nothing in the Service, the SaaS Materials, or the Agreement shall be construed to confer any license to any of Vendor's (or its third-party manufacturer's, author's, developer's, vendor's, and service provider's ("Third-Party Vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Vendor Software listed in this agreement and other Vendor service marks, logos and product service names are marks of Vendor (the "Vendor Marks"). Customer agrees not to display or use the Vendor marks, or the marks of any Third-Party Vendor, in any manner without the owner's express prior written permission. Vendor reserves the right to subcontract any or all services provided hereunder to third parties.

6 LICENSE FEE, TERM AND PAYMENT

The initial term ("Initial Term") of this Agreement will commence on the Effective Date and will terminate on the anniversary of the Effective Date. Each 12-month period after the

Effective Date will be defined as a “Service Year” (e.g., months 1-12 will constitute Service Year 1 and months 13-24 will constitute Service Year 2, etc.).

Upon execution of this agreement, the yearly license fee is due and payable. Individual User accounts, associated fees, payment schedule, and criteria for external accounts will be provided in an Appendix A.

Following the expiration of the Initial Term, the Agreement shall automatically continue on a month-to-month basis, until such time as either party provides thirty (30) days’ written notice to the other party of its intent to cancel the Agreement. Additionally, the Initial Term may be renewed (a “Renewal Term”) upon mutual agreement of the parties in writing. For the Initial Term Customer shall pay fees as detailed in the Payment Schedule set forth below. Invoices shall be payable within thirty (30) days after receipt thereof. In addition to any remedies Vendor may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use the Service. In the event Vendor incurs any costs (including reasonable attorney’s fees) from efforts collecting overdue fees from Customer, Customer agrees to pay such costs. Customer further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Customer’s access to, use, or receipt of the Service.

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|---|
| <u>Organization User Fees</u> \$19.99 Per Month Per User |
| <u>Organization Fee – Yearly License Fee</u> 1 – 50 Employees 1 TB data storage \$10,000 51 – 100 Employees 3 TB data storage \$25,000 101 – 500 Employees 5 TB data storage \$50,000 501 – 1000 Employees 10 TB data storage \$75,000 Over 1,000 Employees 15 TB data storage \$150,000 |
| Each terabyte of storage above included quota will be billed at \$50 per TB per month |

These fees are non-refundable.

7 TERMS OF SERVICE

7.1 Service Extensions or Updates

Customer further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by Customer pursuant to an amendment accepted by Vendor referencing this Agreement will be subject to this Agreement.

7.2 Customer Must Have Internet Access

In order to use the Service, Customer must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. Customer must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web.

7.3 Email and Notices

Customer agrees to provide Vendor with Customer's e-mail address (es), and to accept emails (or other Electronic Communications) from Vendor at the e-mail address Customer specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of Customer is not required with respect to e-mail communications pertaining to the Customer's routine use of the Service, including without limitation communications relating to the support, maintenance, or the updating of the Service. Customer further agrees the Vendor may provide any and all required notices including legal notices to Customer through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

7.4 Passwords, Access, and Notification

Customer may designate up to the number of Users that corresponds to the number of permitted as agreed upon in Appendix A. Customer will provide and assign unique password and usernames to each authorized User for each license purchased. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and or usernames with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and usernames. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Vendor will act as though any Electronic Communications it receives under Customer's passwords, Username, and/or account number will have been sent by Customer. Customer agrees to notify Vendor if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, usernames, and/or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the Customer for further User licenses.

7.5 Customer's Responsibilities

Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will ensure that any use of the Service by Customer's Users is in accordance with the terms of this Agreement. Customer agrees to notify Vendor within 12 hours of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data. Customer acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. Customer agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Customer must comply with the list as it exists in fact. Customer certifies that neither Customer nor any Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to

export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

Customer is solely responsible for obtaining all licenses and permissions necessary related to the Content, including without limitation licenses for any third-party software included in the Content.

Customer shall not resell the Services directly or indirectly to third parties.

7.6 Transmission of Data

Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to Vendor's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by Vendor. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that Vendor is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted, or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Vendor.

7.7 Vendor's Support

Vendor will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing Customer with user guides and on-line help, and product support. Product Support pertains to support designed to remedy errors in Vendor Software that cause it to deviate from the specifications as described in the SaaS Materials.

7.8 Confidential Information

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Customer's Confidential Information shall include, but not be limited to, Customer Data. 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 without any obligation of confidentiality 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 established by written records.

The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, Customer acknowledges and agrees that Vendor may disclose Customer's Confidential Information to its Third-party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent Vendor has any access to Content in the course of providing the Services, Vendor's entire obligation to keep Content confidential is stated in this Section below. Vendor shall not intentionally access Customer's Content or (ii) disclose Customer's Content to any third party, except to the extent: (a) Customer makes its Content publicly available, (b) as necessary for Vendor to provide, or obtain third-party supplier support for, the Services or to provide information requested by Customer, or (c) as specifically authorized by Customer in writing. Vendor's obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard Vendor security policies and standards applicable to the Services as practiced at the service locations from which Vendor is providing the Services to Customer.

The obligations in this Section shall not apply to the recipient of Confidential Information and/or Vendor with respect to Content to the extent disclosure of Confidential Information or Content is required to comply with laws or respond to requests by a regulatory or judicial body and/or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, and/or Vendor with respect to Content, reserves the right to charge the other party on a time-and-materials basis for recipient's/Vendor's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

7.8 Vendor Responsibilities

Vendor shall provide the services as stated in this agreement. Vendor agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its operation of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data.

Vendor agrees to notify customer of any changes to this agreement and give customer 30 days to either accept new agreement or discontinue this service. Vendor shall comply with the rules and regulations concerning the privacy and security of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other provisions in Section 19. Vendor will disclose any data breaches to the Customer immediately and will act in compliance with local laws regarding disclosures of such breaches.

8 SUSPENSION/TERMINATION

8.1 *Suspension for Delinquent Account*

Vendor reserves the right to suspend Customer's access and/or use of the Service for any account for which any payment is due but remains unpaid after thirty day's written notice of such delinquency. Customer agrees that Vendor shall not be liable to Customer, or to any third party, for any suspension of the Service resulting from Customer's non-payment of the fees as described in this Section.

8.2 *Suspension for Ongoing Harm*

Customer agrees that Vendor may, with reasonably contemporaneous telephonic or electronic mail notice to Customer, suspend Customer's access to the Service if Vendor reasonably concludes that Customer's use of the Service is causing immediate and ongoing harm to Vendor or others. Vendor will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that Vendor will not be liable to Customer or to any third party for any suspension of the Service under such circumstances as described in this Section.

8.3 *In the Event of a Breach*

- (i) Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service.
- (ii) Customer may cancel this Agreement, to be effective at the end of the then current Term, by providing Vendor with at least thirty (30) days' prior written notice

8.4 *Handling of Customer Data In the Event of Termination*

Customer acknowledges and agrees that following termination of this Agreement, Customer shall return all SaaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Vendor and Vendor may immediately deactivate Customer's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, Vendor shall remove or overwrite all applicable Content from Vendor's systems following the effective date of termination or cancellation, in accordance with Vendor's standard procedures. Customer shall provide Vendor with reasonable and prompt access to Customer's premises to allow Vendor to retrieve any hardware and software and /or, in accordance with Vendor's instructions, return to Vendor all hardware and software that Vendor has provided to Customer in connection with the Services (other than hardware and software that Customer has purchased from Vendor). In the event that Customer fails to either return the hardware or software, or allow Vendor to retrieve it, within thirty (30) days of the effective date of

termination or cancellation, Vendor may charge Customer the then-current fair market value of the hardware and software, and Customer shall be responsible for any costs/damages arising from any breach of Vendor's third-party license agreement. Prior to any such deletion or destruction, however, Vendor shall either (i) grant Customer reasonable access to the Service for the sole purpose of Customer retrieving Customer Data or (ii) transfer all Customer Data to other media for delivery to Customer. Customer agrees that Vendor shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Vendor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Vendor from maintaining one copy of Customer Data if required by law.

8.5 Handling of Application In the Event of Termination

Customer data, Customer license keys used in hosting and Customer application documentation updated during the hosting period by application support will be returned to the Customer as defined in the Disentanglement section of this Agreement.

9 MODIFICATION/DISCONTINUATION/MAINTENANCE

9.1 Modification to or Discontinuation of the Service

Vendor reserves the right at any time, and from time to time, to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the Customer on which the Customer materially relies. Notwithstanding the foregoing, except for coordinated down time, or as otherwise provided in this Agreement, Vendor shall use commercially reasonable efforts to notify Customer prior to any such modification; further, Vendor shall consider the Customer's validation needs and requirements in connection with any modification of the Service and, except as otherwise noted in Section 9.3, shall validate the Service as modified to the same extent provided in the Schedules. Customer acknowledges that Vendor reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that Vendor will not be liable to Customer or any third party for any modification or discontinuance of the Service as described in this Section 9.

9.2 Modification to Third Party Software and Support Cost

In the event that Vendor incur any increased cost from Third party software licenses or annual support fees during the term of this agreement, Vendor reserves the right to pass these costs onto the Customer.

9.3 Maintenance

In order to perform maintenance, including infrastructure and application upgrades, there will be scheduled down time. Vendor shall coordinate with the Customer (1) week in advance to ensure such scheduled maintenance does not conflict with its critical operations. Upon the receipt of such notice, the parties shall work together to find a mutually convenient time to perform such maintenance. Vendor further reserves the right on approximately a quarterly basis to issue new releases in which Vendor adds functionality to the Service. Customer shall be apprised of software upgrades and or patch releases to the Service. In addition, Vendor shall perform IQ validation with respect thereto, and provide Customer with copies of any applicable

validation reports. In the event of a patch release, a full IQ validation may not be undertaken. It shall be the Customer's responsibility to perform any required UAT/PQ validation.

In the event that Vendor, in its sole discretion, determines that any unscheduled maintenance is necessary, Vendor will use commercially reasonable efforts to notify Customer as soon as it becomes aware of such need.

10 WARRANTIES

10.1 *Warranty of Functionality*

Vendor warrants to Customer during the Term of this Agreement that the Service will comply with the material functionality described in the SaaS Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. Customer's sole and exclusive remedy for Vendor's breach of this warranty shall be that Vendor shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the SaaS Materials within a reasonable period of time. However, Vendor shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, Vendor shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Vendor's Product Support Center. Vendor does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

10.2 *Data Maintenance and Backup Warranty*

Vendor warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain backup procedures. In the event of a breach of this provision, Vendor will use commercially reasonable efforts to correct Customer Data or restore Customer Data within three (3) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer).

10.3 *Non-Infringement Warranty*

Vendor warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

11 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, VENDOR DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER

HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VENDOR OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VENDOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

12 LIMITATIONS OF LIABILITY

12.1 *No Consequential Damages*

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICE, THE USE OF THE SERVICE OR THE INABILITY TO USE SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 *DIRECT DAMAGE LIMITATIONS*

12.2.1 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF VENDOR OR ANY THIRD PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP.

12.2.2 EXCEPT FOR A FAILURE OF VENDOR TO COMPLY WITH ITS OBLIGATIONS WITH RESPECT TO BACKUP SERVICES, AND SUBJECT TO SECTION 12.2.1 ABOVE, VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

12.3 EXCLUSIONS

THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 12.1 AND 12.2 SHALL NOT APPLY WITH RESPECT TO: (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (II) BREACHES BY CUSTOMER OF LICENSE TERMS APPLICABLE TO VENDOR PROVIDED SOFTWARE AND THIRD PARTY PRODUCTS AS SET FORTH IN SECTION 2 ABOVE, (III) CUSTOMER'S UNAUTHORIZED USE OF VENDOR'S OR THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS; (IV) DAMAGES INCURRED AS A RESULT OF A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 7.8 THAT RESULT IN THE DISCLOSURE OF CONFIDENTIAL INFORMATION OF THE OTHER PARTY, OR (V) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 13 (WHICH ARE SUBJECT TO THE LIMITS, IF ANY CONTAINED THEREIN). DAMAGES AS LIMITED BY THIS SECTION 12 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

13 INDEMNIFICATION

13.1 *Personal Injury and Property Damage*

Each party (the “**Indemnifying Party**”) agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an “**Indemnified Party**”), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, “**Losses**”) arising from or in connection with any such third party claim for: (i) The death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

13.2 *Infringement*

Vendor will indemnify, defend and hold harmless Customer for Losses Customer incurs as a direct result of any unaffiliated third-party claim based on any claim that the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from:

- (i) Customer's modification of the Service or combination by Customer the Services with other products or services if the Service would not have been infringing but for such combination or modification;
- (ii) Customer's use of the Service in a manner not authorized herein or for which it was not designed;
- (iii) Customer's failure to use an updated non-infringing version of the applicable intellectual property to the extent Customer was notified that the update cured an infringement;
- (iv) Changes to the Service made by Vendor at the direction of the Customer; or
- (v) Customer Data.

If any item for which Vendor has an indemnification obligation under this Section becomes, or in Vendor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Vendor will, in addition to indemnifying Customer as provided in this Section, promptly take the following actions, at no additional charge to Customer, in the listed order of priority: (a) secure the right to continue using the item or (b) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by Vendor using commercially reasonable efforts, and only in such event, Vendor will remove the item from the Service and the applicable Service fee will be equitably adjusted to reflect such removal. This Section 13.2 states Customer's sole and exclusive remedy for Vendor's infringement or misappropriation of intellectual property of a third party.

13.3 Customer's Indemnity

Customer shall defend and indemnify Vendor and its Third-Party Vendors against any and all Losses incurred by Vendor and its Third-Party Vendors arising out of or in connection with a claim by a third party: (i) alleging that the Customer Data or the Customer Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Customer's breach of Sections 7.5 and 7.8.

Customer will indemnify, defend and hold harmless Vendor, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys' fees Vendor incurs from any unaffiliated third-party claim arising from Customer's Content or Customer's or any end user's use of the Services.

13.4 Indemnification Procedures

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to: (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

14 NOTICES

Except as otherwise provided in Section 7.4 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email whose receipt is acknowledged by an officer of the receiving Party. Notices shall be forwarded to the contacts and addresses provided on the signature page herein. Notices shall be considered to

have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

15 SURVIVAL

The following provisions shall survive any termination of this Agreement: Sections 5, 7.8, 11, 12, 13, 14, 15, 20 and 21.

16 NO ASSIGNMENT

Customer may not assign this Agreement without the prior written approval of Vendor. Any purported assignment in violation of this section shall be void.

17 FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

18 SECURITY AND SECURITY POLICIES

Vendor will provide the security services set forth in the Schedules (the "Security Services"). Except to the extent caused by Vendor's failure to provide Security Services, Vendor is not responsible for (i) unauthorized access to Customer's Content, or (ii) damages arising out of unauthorized access.

Customer acknowledges that some of the Services may be performed by Vendor or its third-party suppliers outside the country(ies) where the Services are obtained, and information pertaining to Customer's use of the Services may be incorporated into Vendor's global database(s) to assist Vendor in providing the Services. Customer shall be solely responsible for obtaining any required consents to such off-shore support from Customer's employees and other end users of the Services.

Vendor will provide the Services at the Service Levels set forth in the Schedules, if any, subject to all requirements and exceptions provided in the Schedules for each Service Level. CREDITS ASSOCIATED WITH THE FAILURE TO MEET A PARTICULAR CRITICAL SERVICE LEVEL, IF ANY, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR VENDOR'S FAILURE TO MEET THAT PARTICULAR CRITICAL SERVICE LEVEL.

20 GENERAL PROVISIONS

Any controversy or claim arising out of this Agreement or any alleged breach of this Agreement shall be resolved by means of binding arbitration before a single arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be a practicing attorney or retired judge with at least fifteen

years total working experience as such. The arbitration shall be held in Orlando, FL. No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation.

- International - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties as of the Effective Date.

Vendor

Friends of Switchpoint Inc

By:_____

By:_____