

MASTER SERVICES AGREEMENT

THIS AGREEMENT GOVERNS YOUR USE OF AND ACCESS TO TOUCHPOINT

By accepting this Agreement, either by accessing TouchPoint or using a TouchPoint Service or by authorizing other users to access TouchPoint or use a TouchPoint Service, you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of an organization, you are agreeing to this Agreement for that organization and representing to TouchPoint that you have the authority to bind the organization to this Agreement, in which case the terms "Client," "User" or a related capitalized term herein shall refer to such organization. If you do not have authority, or if you do not agree with this Agreement, you must not accept this Agreement and may not use any of the Services.

The parties agree as follows:

1 Definitions. As used in this Agreement:

- 1.1 "**Client**" means the customer entering into this Agreement with TouchPoint.
- 1.2 "**Highly-Sensitive Personal Information**" means an (i) individual's government-issued identification number (including social security number, driver's license number or state-issued identified number); (ii) personal financial account number, credit report information, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account, passwords, PINs, answers to security questions; or (iii) biometric or health data.

TouchPoint will never request Highly Sensitive Personal information from Client. Client should never provide TouchPoint with Highly Sensitive information.

- 1.3 "**Personal Information**" means information provided to TouchPoint by or at the direction of Client, or to which access was provided to TouchPoint by or at the direction of Client, during TouchPoint's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual. Client's business contact information is not by itself deemed to be Personal Information.

If Client data contains names of persons under the age of eighteen (18), TouchPoint shall not be responsible for, and shall have no liability in connection with, Client's use of such names.

TouchPoint shall use commercially reasonable degree of care to protect Personal Information provided by Client in providing services to Client. Parties agree to notify the other in writing of any actual or suspected misuse, misappropriation, or unauthorized disclosure of Personal Information.

If TouchPoint is required to disclose any data pursuant to legal process, TouchPoint shall notify Client before disclosing the data to allow Client to seek an appropriate remedy to protect the confidentiality of the data.

- 1.4 "**Client Data**" means any data, information or material provided or submitted electronically by Client to TouchPoint.
- 1.5 "**License Administrator**" means a person that has been designated, in writing, by an authorized representative of Client who is approved to submit

Order Forms for purchasing products and services and can perform other license administration functions on behalf of Client.

- 1.6 "**License Term**" means the term during which TouchPoint will provide the Services to Client, as specified in an Order Form.
- 1.7 "**Order Form**" means collectively the contract and any Statement of Work (SOW) documents representing the purchase of the Services (and any subsequent purchases agreed to between the parties in writing from time to time) that are made as part of this Agreement that specify, among other things, the software and services ordered, the license term, the right to purchase additional or custom services and the applicable fees.
- 1.8 "**Service**" means the services identified in the applicable Order Form or SOW, including associated documentation made available to Client online.
- 1.9 "**Software**" means any of TouchPoint's suite of applications including, without limitation, TouchPoint Church Management System, TouchPoint Mobile application, TouchPoint Bridge+.
- 1.10 "**Support**" means operational advice, direction and/or assistance with the Software and usage of the Service.
- 1.11 "**User(s)**" mean employees, representatives, consultants, contractors, volunteers, or agents of Client who are authorized by Client to use the Service and have been supplied logins and passwords by Client (or by TouchPoint at Client's written request).

2 Service.

- 2.1 **Service.** TouchPoint shall make the Software and Service available to Client on the terms set forth in this Agreement and the Order Form.
- 2.2 **Users.** During the license term, user logins cannot be used by more than one user but may be reassigned to new users replacing former users.

3 Responsibilities & Guidelines.

- 3.1 **TouchPoint Responsibilities.** TouchPoint shall: (a) in addition to its confidentiality obligations under Section 6.2 and 6.3, not use, edit or disclose the Client Data; (b) use commercially reasonable efforts to maintain the security and integrity of the Service; (c) ensure that the Service performs in substantial accordance with the TouchPoint support documentation; (d) work diligently to resolve any errors or issues with the Service that are reported in writing to TouchPoint's support team; and (e) use commercially reasonable efforts to make the Service



available 24/7 (24 hours a day, 7 days a week), except for (i) planned down time, which shall be any period for which TouchPoint gives 4 hours or more notice that the Service will be unavailable or (ii) down time caused by circumstances beyond TouchPoint's reasonable control, including without limitation, acts of God, acts of government, war, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, telecommunications network or electrical failures, delays involving hardware or software not within TouchPoint's possession or control or Client network intrusions or denial of service attacks.

3.2 **Client Responsibilities.** Client is responsible for all user activities that occur under Client's user accounts. Client shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify TouchPoint promptly of any such unauthorized use of which it becomes aware; and (c) comply with all applicable local, state, federal, and foreign laws in using the Service.

3.3 **Deliverables and Approvals by Client.** The prompt delivery and response of both parties is of utmost importance in the process of initiating, creating, and implementing Software and Services. In the regular course of serving Client, TouchPoint will require various items from Client including but not limited to: data, content, images, feedback, and approvals. For TouchPoint to serve the Client efficiently, it is vital that requested information be returned to TouchPoint within the timeframes agreed upon. Failure to deliver items back to TouchPoint in the agreed upon timelines may result in change order fees or delayed completion dates.

If an item has been approved by Client, and Client subsequently changes requirements for that item, TouchPoint will initiate a change order detailing the additional fees equal to the contracted hourly rate multiplied by the number of approximate hours necessary to complete the change requested by Client.

TouchPoint shall not incur any obligations or provide any Software or Services relating to Client under this Agreement unless it has received Client approval. Such items include, but are not limited to, change orders submitted after project approval, delivery dates not on targeted schedule, and/or work requested by Client that differs from the contracted and budgeted amount.

3.4 **Service Guidelines.** Client shall use the Service solely for its usual business purposes and shall not use the Service to: (a) send spam or any other form of unsolicited messages, other than marketing and promotional messages to Client's supporters and distribution channel members and prospective supporters and distribution channel members; (b) harvest, collect, gather or assemble information or data regarding other users of the Service without their consent; (c) transmit through or post on the Service unlawful, libelous, tortuous, infringing, defamatory, threatening, vulgar, or obscene material or material that may be harmful to minors;

(d) knowingly transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (e) knowingly interfere with or disrupt the integrity or performance of the Service or the data contained therein; (f) attempt to gain unauthorized access to the Service, computer systems or networks related to the Service; or (g) harass or interfere with other authorized user's use of the Service.

3.5 **Support Guidelines.** TouchPoint will provide Software and Services support via TouchPoint's Support portal during the term of this Agreement. Should a logged case necessitate it, TouchPoint can initiate other contact methods to resolve a case. TouchPoint's Support team will assist Client's designated Support administrators with questions that arise from accessing and using the Software or Services including questions about functionality and features unique to TouchPoint Services. All requests for support must be made in writing. Support services do not cover correcting actions by a Client or Client's representative that create errors in Client's TouchPoint configuration, Client data or Client's mobile application. TouchPoint will evaluate each request and if the request requires corrective action by TouchPoint and falls within the definition and guidelines of Support, TouchPoint will work on the request to conclusion. If the request falls outside the definition and guidelines of Support, TouchPoint will provide recommendations and pricing for TouchPoint to perform the corrective action(s) as requested by Client.

3.6 **Support Hours.** Support business hours are Monday through Friday between 8 a.m. and 5 p.m. CDT/CST. After hours and holidays support is only provided for issues that impact critical business operations and are classified by TouchPoint as a critical operations issue.

3.7 **Contacting Support.** Up to four individuals are defined by Client as the TouchPoint Support admin contacts. These individuals are required to attend training on the TouchPoint system and are the subject matter experts at their church on the TouchPoint system. The designated Support contacts are consulted by other staff and volunteers of the church regarding questions and the church's use of the TouchPoint system. Only the designated Support contacts who have been properly trained on the system can initiate support requests and communicate with the TouchPoint Support team. TouchPoint will refer requests submitted by someone that is not a designated Support contact back to a designated Support contact to answer the request or escalate request to TouchPoint Support.

Support requests are initiated through either the TouchPoint application's "Contact Support" feature in the Help tools or by sending a detailed email to support@touchpointsoftware.com.

3.8 **Third-Party Providers.** During use of the Service, Client may correspond with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors offering their goods and/or services which are separate and apart from any Services provided by TouchPoint. Any such activity, agreement, and any terms, conditions, warranties, or

representations associated with such activity, is solely between Client and the applicable third-party and is unaffiliated with TouchPoint. TouchPoint and its licensors shall have no liability, obligation, or responsibility for any such correspondence, goods, services, purchases, or promotion between Client and any unaffiliated third-party. Nothing herein shall be construed to limit TouchPoint's ability to enter into any agreement with any third party.

3.9 **Marks; Press Releases.** Except as otherwise defined in this Agreement, neither TouchPoint nor Client shall use the other party's name or trademarks except with the prior written authorization of the other party, and each party agrees to immediately cease any use of the other party's name or trademarks if the other party objects to such use; provided, however, that Client agrees the Software and Services will be branded with the TouchPoint logo and an identifying mark such as "Powered by TouchPoint". Neither party shall issue a press release referring to the other party without the other party's written consent. Notwithstanding the foregoing, TouchPoint may identify Client as a customer in its marketing materials, including the TouchPoint website.

3.10 **Continued Performance.** Each party agrees that it shall, unless otherwise directed by the other party, continue performing its obligations under this Agreement while any dispute is being resolved unless and until this Agreement is terminated in accordance with its terms. Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties, in no event nor for any reason shall TouchPoint disable the Services or any portion thereof, unless (a) authority to do so is granted by Client in writing or conferred by a court or arbitrator of competent authority or this Agreement has been terminated in accordance with its terms, or (b) as provided in Section 4.4.

4 **Billing, Plan Modifications, Travel, and Payment.**

4.1 **Fees.** In consideration for the Services, Client shall pay the fees specified in the Order Form and in any signed and approved additional Order Forms, Statement of Works or Change Orders that are executed by Client and TouchPoint. Fees may include annual hosting and support, implementation services, data conversion services, custom development, mobile application development and training services.

4.2 **Travel Expenses.** Travel expenses that are required for training or any other consultation is the responsibility of the Client and is billed at actual expenses. TouchPoint strives to keep travel expenses as low as reasonably possible. Client can help keep costs low by working with TouchPoint to book meetings as far in advance as possible and resist organization or volunteer requests to change meeting dates and/or times requiring canceled airfare or last-minute airfare purchases. TouchPoint negotiates many airline, hotel and rental car contracts that typically allow the purchase of these services at discounted rates compared to what is generally available. Since TouchPoint bills for the actual travel expense incurred, the savings are passed on to our clients.

All fees are quoted and payable in United States dollars. Fees are non-refundable.

4.3 **Billing and Contact Information.** Client shall ensure that TouchPoint has complete, accurate and up-to-date Client billing and contact information. It is the responsibility of the Client to notify TouchPoint, in writing, at billing@touchpointsoftware.com of any changes to the billing contact name, address, telephone or email. Failure to do so may result in late fees as a result of invoice not being received by billing authority at the church prior to the invoice due date.

4.4 **Invoicing & Payment.** All invoices are due and payable within 30 days of the invoice date. Invoices are sent via email to the billing contact designated by Client.

Accepted payment method is check or wire/ACH.

TouchPoint invoices Client at commencement of services. Annual Services are automatically renewed unless Client sends written notification to discontinue services to billing@touchpointsoftware.com at least 30 days prior to contract renewal date. If client elects to discontinue services in the middle of contract term, no fees are refunded.

4.5 **Overdue Payments.** In addition to all obligations under Section 10: Term and Termination, any payment not received from Client within thirty (30) days from the due date will accrue a late fee of ten percent (10%) of the outstanding balance. Client shall reimburse TouchPoint for costs and fees, penalties associated with collecting any unpaid or overdue fees, or for any payment that is rejected by any bank for insufficient funds or is otherwise uncollectible by TouchPoint, including all of TouchPoint's costs and expenses incurred in collection efforts, including attorney's fees incurred.

4.6 **Suspension of Service.** If Client's account is ninety (90) days overdue, in addition to any of its other rights or remedies, TouchPoint reserves the right to suspend all services until the outstanding balance is paid in full.

5 **Proprietary Rights.**

5.1 **Reservation of Rights.** Client acknowledges that in providing the Service, TouchPoint utilizes (a) the TouchPoint name, the TouchPoint logo, the touchpointsoftware.com domain name, the product names associated with the Service and other trademarks, (b) certain audio and visual information, documents, software and other works of authorship; and (c) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively "**TouchPoint Technology**"), and that the TouchPoint Technology may be covered by intellectual property rights owned or licensed by TouchPoint ("**TouchPoint IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in the TouchPoint IP Rights are granted to the Client and all such rights are hereby expressly

reserved.

- 5.2 **License Grants.** TouchPoint grants Client and its users a worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Service for the purpose for which it is made available to Client and otherwise in accordance with the terms of this Agreement. Client grants to TouchPoint a non-exclusive, non-transferable, non-sublicensable right to use, copy, store, modify and display the Client Data solely to the extent necessary to provide the Service.
- 5.3 **Restrictions.** Client shall not (a) modify, copy or make derivative works based on the Service, Software, TouchPoint Technology or TouchPoint IP Rights, or any portion thereof; (b) disassemble, reverse engineer, or decompile the Service, the Software, TouchPoint Technology or TouchPoint IP Rights; (c) create Internet "links" to or from the Service, or "frame" or "mirror" any of TouchPoint's content which forms part of the Service (other than on Clients' own internal intranets); (d) re-license, rent, lease, timeshare, or act as a service bureau or provide subscription services for the TouchPoint Services or Software; (e) use the TouchPoint Services or Software to provide third-party training except for training agents and contractors that TouchPoint has authorized in writing; and (f) remove or modify any program or service markings or any notice of TouchPoint's proprietary rights.
- 5.4 **Client Data.** All data submitted by Client to the TouchPoint Service, whether posted by Client or by third parties, remains the sole property of Client. Client's data shall be considered Confidential Information (as defined in Section 6.1), subject to the terms of this Agreement. Notwithstanding any other provision in this Agreement, TouchPoint may provide certain user registration and statistical information such as usage or user traffic patterns in aggregate form to third parties, provided that such information does not include Client or personally identifying information. TouchPoint may access Client's user accounts, including without limitation Client data, solely to respond to service requests or solve technical issues affecting the Service. Please refer to our data security policy for further details.
<http://docs.touchpointsoftware.com/Administration/DataSecurity.html>
- 5.5 **Suggestions, Ideas and Feedback.** Suggestions and enhancement requests can be submitted at any time and will be reviewed by TouchPoint to determine applicability across the Client base and fit with overall product strategy. TouchPoint makes no commitment to implement enhancement requests submitted by Client. In most cases, custom development created for a specific Client will be made available to all TouchPoint Clients. TouchPoint shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party, whether verbally or in writing, relating to the operation of the Service to the extent it does not constitute Confidential Information of Client, and any resulting work product or derivative works shall be the exclusive property of TouchPoint.

6 Confidentiality.

- 6.1 **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all information of a party ("**Disclosing Party**") or by other persons disclosing under authorization of the Disclosing Party disclosed in oral, written, visual, physical, graphic, or machine-readable form to the other party ("**Receiving Party**") which the Disclosing Party treats as confidential. Confidential Information shall include without limitation the terms and conditions of this Agreement, Client Data, the TouchPoint Technology or TouchPoint IP Rights, the Service, business and marketing plans, the identity of its clients, suppliers, employees and support personnel, know-how, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Client Data shall be deemed Confidential Information regardless of its written designation. Confidential Information shall not include any information that: (a) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received, without any confidentiality obligation, from a third party who obtained such information without any third party's breach of any obligation owed to the Disclosing Party.
- 6.2 **Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.
- 6.3 **Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event, shall either party exercise less than reasonable care in protecting such Confidential Information.
- 6.4 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.
- 6.5 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the requirements of posting a bond, if being specifically acknowledged by the parties that any other available remedies may be inadequate.

7 Warranties & Disclaimers.

- 7.1 **Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. TouchPoint represents and warrants that it (a) will provide the Service in a manner consistent with



general industry standards and in accordance with all applicable laws (including, without limitation all United States data protection laws and directives), (b) owns, licenses and has all rights and interest necessary to grant this license to Client (c) the licensed Service does not violate or infringe any valid patent, trademark, trade secret, copyright, intellectual property right or similar proprietary right which is not owned or licensed by TouchPoint, (d) that the Service will perform substantially under normal use and circumstances, (e) documentation related to the Services, including manuals and training materials, are accurate and correct in all material respects, and (f) the Services contains no viruses, trap doors, trojan horses, node locks, time bombs or other harmful code or destructive elements.

7.2 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SCOPE OF WORK PROVIDED AND THE SERVICES RENDERED BY TOUCHPOINT UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "WHERE IS" BASIS, WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING SUCH SCOPE OF WORK OR SERVICES' ACCURACY, PERFORMANCE, OR ANY OTHER MATTER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, TOUCHPOINT HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TOUCHPOINT DOES NOT WARRANT THAT THE SERVICES AND CLIENT DATA STORED USING SUCH SERVICES ARE NOT SUSCEPTIBLE TO INTRUSION, ATTACK, OR COMPUTER VIRUS INFECTION.

8 Indemnification.

8.1 Indemnification by TouchPoint. Subject to this Agreement, TouchPoint shall defend, indemnify and hold Client, Client's affiliates and End Users (collectively, "Indemnitees") harmless against any loss, liability, expense, cost or damage (including without limitation reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against any Indemnitee by a third party resulting in a determination by a court or arbitrator of competent jurisdiction (a) that the Service or the Indemnitee's use of the Service infringes the intellectual property rights or misappropriates any patent, trademark, copyright, trade secret, or any other proprietary right of a third party; (b) arising from breach of this Agreement by TouchPoint; or (c) arising from any intentional or willful conduct or negligence of TouchPoint; provided that Client (i) promptly gives written notice of the Claim to TouchPoint, except that any failure to provide this notice promptly only relieves TouchPoint of its responsibility pursuant to Section 8.2 to the extent its defense is materially prejudiced by the delay; (ii) gives TouchPoint sole control of the defense and settlement of the Claim (provided that TouchPoint may not settle or defend a claim unless it unconditionally releases Indemnitees of all liability); and (iii) provides to TouchPoint at TouchPoint's cost, all reasonable assistance. TouchPoint shall have no obligations to Client under this Section 8.1 to the extent such Claims arise from Client's or its user's breach of this

Agreement (such breach as determined by a court or arbitrator of competent jurisdiction) or from the combination of the Service with any of Client's products, services, hardware, or business processes.

8.2 Indemnification by Client. Subject to this Agreement, Client shall defend, indemnify and hold TouchPoint harmless against any loss, liability, expense, cost or damage (including without limitation reasonable attorneys' fees) incurred in connection with Claims made or brought against TouchPoint by a third party resulting in a determination by a court or arbitrator of competent jurisdiction (a) that the Client Data, or the use thereof by Client or by TouchPoint at Client's direction, has caused harm to a third party or infringes the intellectual property rights of a third party, (b) arising from breach of this Agreement by Client, or (c) arising from any intentional or willful conduct or negligence of Client; provided, that TouchPoint (i) promptly gives written notice of the Claim to Client, except that any failure to provide this notice promptly only relieves Client of its responsibility pursuant to this Section 8.2 to the extent its defense is materially prejudiced by the delay; (ii) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle or defend any Claim unless it unconditionally releases TouchPoint of all liability); and (iii) provides to Client, at Client's cost, all reasonable assistance. Client shall have no obligations to TouchPoint under this Section 8.2 to the extent such Claims arise from TouchPoint's breach of this Agreement (such breach as determined by a court or arbitrator of competent authority) or Client's use of Client Data as authorized and contemplated by this Agreement.

9 Limitation of Liability.

9.1 Limitation of Liability. IN NO EVENT SHALL TOUCHPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$10,000 OR THE AMOUNTS ACTUALLY PAID BY OR DUE FROM CLIENT FOR THE SERVICE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL TOUCHPOINT HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9.3 Limitation of Action. Except for actions of non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than one (1) year after the cause of action has accrued, regardless of when such cause of action was discovered.

10 Term and Termination.

10.1 Term. This Agreement shall be in effect as of the



Effective Date and continues for the term specified in the relevant Order Form. The Agreement will automatically renew unless either Party indicates its intent to terminate the Agreement with thirty (30) days advance written notice prior to the end of the term. No fees are refunded if Client elects to terminate earlier than contract term.

- 10.2 **Termination.** A Party may terminate this Agreement for cause: (a) upon thirty (30) days written notice to the other party of a material breach, provided such breach remains uncured at the expiration of such notice period; or (b) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Notwithstanding the foregoing, if at any time Client fails to comply with the Acceptable Use Policies (as determined by TouchPoint in its sole discretion); TouchPoint may immediately (i) suspend the Service and/or (ii) terminate this Agreement, in each case without regard to any notice or cure period.
- 10.3 **Outstanding Fees.** Termination shall not relieve Client of the obligation to pay any fees accrued or payable to TouchPoint prior to the effective date of termination.
- 10.4 **Return of Client Data.** Client data is available for export out of the TouchPoint system and Client has access to export their data. It is the responsibility of the Client to export any data that is needed from Touchpoint upon exit. If Client needs assistance from TouchPoint to perform data exports, TouchPoint will provide a quote to Client for these optional services. TouchPoint shall have no obligation to maintain or provide any Client data after Client terminates use of TouchPoint.

11 General Provisions.

- 11.1 **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, or employment relationship between the parties. Notwithstanding anything herein to the contrary, TouchPoint shall only be obligated to provide the Software and the Service pursuant to the terms of this Agreement. In no event shall TouchPoint provide or serve as fundraising counsel to Client. Further, TouchPoint will not solicit funds, collect funds, or have any fiduciary responsibility for Client's fundraising activity, if any.
- 11.2 **No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns and are not to be construed as conferring any rights on any other persons.
- 11.3 **Notices.** All notices under this Agreement shall be in writing and shall be sent via certified mail or email with confirmation delivery. Mail shall be sent to the mailing address in the Order form. Email shall be sent for TouchPoint to contracts@touchpointsoftware.com. Email shall be sent for Client to the email address specified in the Order form. Notice shall be deemed to have been given upon (a) personal delivery; (b) the fifth business day after mailing by certified mail; or (c) 48

hours after sending by email (confirmed delivery).

- 11.4 **Covenant.** Client expressly agrees that it will not use or configure the Service to store any of the following information in the database: social security numbers, driver's license numbers, passport numbers, financial account numbers, financial account passwords, financial account PIN numbers, credit card numbers, biometric information, or any other highly sensitive personal information.
- 11.5 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 11.6 **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision shall be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.
- 11.7 **Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of Texas, without regard to its conflict of laws provisions.
- 11.8 **Venue.** The federal courts of the United States in the Northern District of Texas and the state courts of the State of Texas located in Dallas County, Texas shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum on convenience or otherwise.
- 11.9 **Arbitration.** Any dispute arising out of or relating to this Agreement other than a dispute requiring urgent relief or concerning TouchPoint IP Rights shall be resolved solely by final and binding arbitration as follows: Unless the parties otherwise agree in writing, the arbitration shall be conducted in the city of Dallas, Texas before a single arbitrator. The arbitrator shall have relevant knowledge and/or experience in Internet-based online services and shall be jointly selected and mutually approved by the parties or, if the parties are unable to agree, shall be appointed by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the AAA's rules of commercial arbitration. The parties initially shall share equally the fees and expenses of the arbitration. However, the prevailing party (if applicable and as determined by the arbitrator) shall be entitled to recover from the non-prevailing party all such fees and expenses (including without limitation reasonable attorneys' fees). Any arbitration decision so rendered shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction.



- 11.10 **Export Control Laws.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.
- 11.11 **Entire Agreement and Construction.** This Agreement, the Exhibits, the Order Forms, and any Statement of Works constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. In the event of any conflict between the provisions in this Master Services Agreement and any exhibit, Order Form, or Statement of Work, the terms of this Agreement shall prevail to the extent of any inconsistency (unless such inconsistency is expressly stated to be governed by such Exhibit, Order Form or Statement of Work).