

GENERAL TERMS AND CONDITIONS OF SERVICE

THESE GENERAL TERMS AND CONDITIONS OF SERVICE (“GT&C”) ARE A BINDING AGREEMENT BETWEEN PROFITBRICKS, INC. (“PROFITBRICKS”) AND YOU (“CUSTOMER”). THIS AGREEMENT INCORPORATES BY REFERENCE THE FOLLOWING, ANY OR ALL OF WHICH MAY BE MODIFIED BY PROFITBRICKS FROM TIME TO TIME, ALONG WITH SUCH OTHER POLICIES AS MAY BE INTRODUCED BY PROFITBRICKS FROM TIME TO TIME:

- (1) THE PRIVACY POLICY (“PRIVACY POLICY”),
- (2) THE ACCEPTABLE USE POLICY (“AUP”),
- (3) THE TRADEMARK GUIDELINES, AS THEY MAY BE MODIFIED BY PROFITBRICKS OR ITS AFFILIATES FROM TIME TO TIME,
- (4) THE COPYRIGHT POLICY,
- (5) THE MICROSOFT VOLUME LICENSING END-USER LICENSE TERMS

BY REGISTERING OR USING PROFITBRICKS SERVICES OR ACCEPTING ANY MODIFICATION TO THIS AGREEMENT IN ACCORDANCE WITH SECTION 2 BELOW, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE LEGAL ENTITY TO THIS AGREEMENT, IN WHICH CASE “YOU” SHALL MEAN SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST SELECT THE “DECLINE” BUTTON AND YOU MAY NOT USE THE SERVICES.

1. THE SERVICES

The services covered by this Agreement include both free services that ProfitBricks, its parent, and affiliates (referred to together herein as “we” or “us”) make available for no fee (the “Free Services”), and services that we make available for a fee (the “Paid Services”). The Free Services and the Paid Services are referred to collectively in this Agreement as the “Services.” Each Free Service and Paid Service is referred to individually as a “Service.” ProfitBricks may change or discontinue any or all of the Services or change or remove features or functionality of any or all of the Services at any time or from time to time. ProfitBricks will strive to provide no less than three business days’ notice of any such changes, but in urgent situations there may be less or no advance notice. If the Service you are subscribing to are the DevOps Central Datacenter Services, you acknowledge that the purpose of offering you such service is to allow developers early access to newest versions of development tools and the IaaS service and that the Service Level Guarantees set forth in Section 7 do not apply to DevOps Central Datacenter Services.

1.1. Free Services. The Free Services include the Data Center Designer and the API that we make available to you free of charge on the ProfitBricks-branded Web sites accessible at www.ProfitBricks.com (collectively, the “ProfitBricks Web site”), except those web services for which we specifically provide a separate customer agreement.

1.2. Paid Services. The Paid Services include all web and hosting services and any related support services that we make available to you for a fee on the ProfitBricks Web site, except those web services for which we specifically provide a separate customer agreement.

If you use ProfitBricks Paid Services, you may incur fees for transactions that you submit for payment as set forth in Section 8 below. We may, in our sole discretion, (a) begin charging fees for a Free Service, in which case such Service will thereafter be deemed a Paid Service, or (b) cease charging fees for a Paid Service, in which case such Service will thereafter be deemed a Free Service.

2. MODIFICATIONS TO THIS AGREEMENT

2.1 Modification by Us. You agree that we may modify this Agreement or any policy or other terms referenced in this Agreement (collectively, “Additional Policies”) at any time by posting a revised version of the Agreement or such Additional Policy on the ProfitBricks Web site. The revised terms shall be effective as follows:

- if the revised terms are for (a) any Services which we are adding at the time of the revision, (b) the Privacy Policy, (c) the AUP, (d) any other general terms and conditions, policies, or guidelines applicable to our services, web sites or other properties, or (e) any Free Service, then the revised terms shall be effective upon posting (unless we expressly state otherwise at the time of posting); and
- if the revised terms are otherwise for any then-existing Paid Services, then the revised terms shall be effective upon the earlier to occur of (a) fifteen (15) days after posting and (b) if we provide a mechanism for your immediate acceptance of the revised terms, such as a click-through confirmation or acceptance button, your acceptance.

By continuing to use or receive the Services after the effective date of any revisions to this Agreement or any Additional Policies, you agree to be bound by the revised Agreement or any revised Additional Policies. It is your responsibility to check the ProfitBricks Web site regularly for changes to this Agreement or the Additional Policies, as applicable.

2.2 No Oral Modification or Quasi-Contract Claims. ProfitBricks employees are not authorized to modify the terms of this agreement, either verbally or in writing. If a ProfitBricks employee offers to do so, or to undertake any modifications to your website or Your Content, that employee is not acting as an agent for ProfitBricks or speaking on our behalf. You may not rely on or act in reliance on any such statement or communication from a ProfitBricks employee.

3. TERM, TERMINATION, AND SUSPENSION

3.1. Term. The term of this Agreement (“Term”) will commence, and you may begin using the Services, once you agree to the terms and conditions of this Agreement by clicking the “Accept” button below and complete the registration process for your account. The Agreement will remain in effect until terminated by you or us in accordance with this Section 3.

3.2. Termination by You for Convenience. You may terminate this Agreement for any reason or no reason at all, at your convenience, by either (a) providing us written notice of termination in accordance with Section 15 or by (b) closing your account for any Service for which we provide an account closing mechanism. Termination will be effective at the end of the calendar month following your termination.

3.3. Termination or Suspension by Us Other Than for Cause.

We may suspend your right and license to use any or all Paid Services, or terminate this Agreement in its entirety (and, accordingly, cease providing all Services to you), for any reason or for no reason, at our discretion at any time by providing you thirty (30) days' advance notice in accordance with the notice provisions set forth in Section 15 below.

3.4. Termination or Suspension by Us for Cause. We may suspend your right and license to use any individual Service or any set of Services, or terminate this Agreement in its entirety (and, accordingly, your right to use all Services), for cause effective as set forth below:

3.4.1. Immediately, with or without notice, in ProfitBricks sole discretion, if: (a) you attempt a denial of service attack on any of the Services; (b) you seek to hack or break any security mechanism on any of the Services or we otherwise believe, in our sole discretion, that your use of the Services poses a security or service risk to us, to any user of services offered by us, to any third-party sellers on any of our Web sites, or to any of our or their respective customers or may subject us or any third party to liability, damages or danger; (c) you otherwise use the Services in a way that disrupts or threatens the Services; (d) if you are in default of any payment obligation with respect to any of the Services or if any payment mechanism you have provided to us is invalid or charges are refused for such payment mechanism; (e) we determine, in our sole discretion, there is an unusual spike or increase in your use of the Services; (f) we determine, in our sole discretion, there is evidence of fraud with respect to your account; (g) you use any of the ProfitBricks Content (as defined in Section 6.1) or Marks (as defined in Section 6.2) other than as expressly permitted herein; (h) we receive notice or we otherwise determine, in our sole discretion, that you may be using ProfitBricks Services for any illegal purpose or in a way that violates the law or violates, infringes, or misappropriates the rights of any third party; (i) we determine, in our sole discretion, that our provision of any of the Services to you is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; (j) if you are in violation of the AUP; (k) we determine, in our sole discretion, that you are in violation of any of your representations or warranties as set forth in Section 11 of these GT&C; or (l) if you breach any other provision of this Agreement, as determined by us in our sole discretion.

3.4.2. Subject to applicable law, your right and license to use the Services shall terminate automatically, without notice to you, upon your liquidation, commencement of dissolution proceedings, disposal of your assets, failure to continue your business, assignment for the benefit of creditors, or if you become the subject of a voluntary or involuntary bankruptcy or similar proceeding.

3.5. Effect of Suspension or Termination.

3.5.1. Suspension. Upon our suspension of your use of any Services, in whole or in part, for any reason, (a) fees will continue to accrue for any Services that are still in use by you, notwithstanding the suspension; (b) you remain liable for all fees, charges, and any other obligations you have incurred through the date of suspension with respect to the Services; and (c) all of your rights with respect to the applicable Services shall be terminated during the period of the suspension.

3.5.2. Termination. Upon termination of this Agreement for any reason: (a) you remain liable for all fees, charges, and any other obligations you have incurred through the date of termination with respect to the Services; (b) all of your rights under this Agreement shall immediately terminate; and (c) you shall immediately return, or if instructed by us, destroy all ProfitBricks Confidential Information (as defined in Section 9 below) then in your possession.

3.6. Survival. In the event this Agreement is terminated for any reason, Sections 3.5, 3.6, 3.7, 3.8, 4.2, 6 (with respect to restrictions), 8 (with respect to payments that are accrued but unpaid at the time of termination), and 9 through 16 will survive any such termination.

3.7. Data Preservation in the Event of Suspension or Termination.

3.7.1. In the Event of Suspension Other Than for Cause. In the event of a suspension by us of your access to any Service for any reason other than a for cause suspension under Section 3.4.1, during the period of suspension, (a) we will not take any action to intentionally erase any of your data stored on the Services and (b) applicable Service data storage and other charges will continue to accrue.

3.7.2. In the Event of Termination Other Than for Cause. In the event of any termination by us of any Service or any set of Services, or termination of this Agreement in its entirety, other than a for cause termination under Section 3.4.1, (a) we will not take any action to intentionally erase any of your data stored on the Services for a period of thirty (30) days after the effective date of termination; and (b) your post-termination retrieval of data stored on the Services will be conditioned on your payment of Service data storage charges for the period following termination, payment in full of any other amounts due us, and your compliance with terms and conditions we may establish with respect to such data retrieval.

3.7.3. In the Event of Other Suspension or Termination. Except as provided in Sections 3.7.1 and 3.7.2 above, we shall have no obligation to continue to store your data during any period of suspension or termination or to permit you to retrieve the same.

3.8. Post-Termination Assistance. Following the suspension or termination of your right to use the Services by us or by you for any reason other than a for cause termination (i.e., a termination under Section 3.2 or under Section 3.3), you shall be entitled to take advantage of any post termination assistance we may generally make available with respect to the Services, such as data retrieval arrangements we may elect to make available. We may also endeavor to provide you

unique post-suspension or post-termination assistance, but we shall be under no obligation to do so. Your right to take advantage of any such assistance, whether generally made available with respect to the Services or made available uniquely to you, shall be conditioned upon your acceptance of and compliance with any fees and terms we specify for such assistance.

3.9 Deletion of Data. Notwithstanding the foregoing, after suspension or termination of your right to use the Services, and the expiration of any time periods set forth in Sections 3.7.1 or 3.7.2, you will no longer have access to your account, and your data, including but not limited to e-mails, log files, databases, or other data files associated with your account, will be deleted. Without limitation to Section 11.5, and notwithstanding the provisions of Sections 3.7.1 and 3.7.2, ProfitBricks accepts no liability for deleted data or content, and does not warrant or represent that you will be able to access, download, or recover such data or content after termination for any reason.

4. AUTHORIZATION AND LICENSE TO USE THE SERVICES

Subject to your acceptance of and compliance with this Agreement and with the payment requirements for the Services that are set forth on the applicable Service detail page on the ProfitBricks Web site (as such payment terms may be updated from time to time), we hereby grant you a limited, non-exclusive, non-transferable, non-sublicensable right and license, in and under our intellectual property rights, to access and use the Services, solely in accordance with the terms and conditions of this Agreement.

4.1. Permitted Uses Generally.

4.1.1. You may write or develop software, Web sites, or other online services or technology that you store in, or that interface with, the Services (collectively “Applications”). Applications include machine images containing software applications, libraries, data, and associated configuration settings. You acknowledge that we may change, discontinue, or republish application programming interfaces (APIs) (as defined in Section 6.1 below) for any Service or feature of a Service from time to time, and that it is your responsibility to ensure that calls you make to any Service are compatible with then-current APIs for the Service. You further acknowledge that we may change or remove features or functionality of the Services at any time.

4.1.2. You may enable access and use of Your Content by your end users in accordance with the terms of this Agreement. “Your Content” means any Application, data, or other content that you may (a) provide to us pursuant to this Agreement, (b) make available to any end users in conjunction with the Services, or (c) develop or use in connection with the Services. You are responsible for all terms and conditions, privacy policies, and other legal documents and requirements applicable to Your Content.

4.1.3. You may make network calls or requests to the Services at any time that the Services are available, provided that, unless otherwise set forth in the Service Terms applicable to any Service, you (or if you build and release an Application, each installed copy of your Application) may not exceed the limitations and specifications (if any) set forth in the Service Terms for any particular Service.

4.2. Restricted Uses Generally.

4.2.1. You may not interfere or attempt to interfere in any manner with the functionality or proper working of the Services.

4.2.2. You may not compile or use the ProfitBricks services or any other information obtained through the Services for the purpose of spamming, unsolicited contacting of sellers or customers, or other impermissible advertising, marketing, or other activities, including, without limitation, any activities that violate ProfitBricks's anti-spamming policies and regulations.

4.2.3. You may not remove, obscure, or alter any notice of any Mark, or other intellectual property or proprietary right designation appearing on or contained within the Services.

4.2.4. Subject to the terms and conditions of this Agreement, you may generally publicize your use of the Services; however, you may not issue any press release with respect to the Services or this Agreement without our prior written consent.

4.3. Accounts and Passwords. Unless otherwise stated in the applicable Service Terms, you may only create one account per e-mail address. When you complete the account creation process, you will be issued unique account identifiers (“Account Identifiers”). Account Identifiers (a) identify your account and (b) allow you to make requests to ProfitBricks.

The Account Identifier is immutable and will always uniquely identify your ProfitBricks account. Your Account Identifier is for your personal use only, and you may not sell, transfer, or sublicense your password to any other party. You are responsible for maintaining the secrecy and security of your password. You are fully responsible for all activities that occur under your Account Identifiers, regardless of whether such activities are undertaken by you or a third party. Therefore, you should contact us immediately if you believe a third party may be using your password, or if your password is otherwise lost or stolen. You are responsible for maintaining up-to-date and accurate information (including contact information) for your ProfitBricks account. We are not responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss, or failure to store any of Your Content or other data which you submit or use in connection with your account or the Services.

5. ACCEPTABLE USE POLICY AND SERVICE TERMS

You may only use the Services in accordance with the AUP and the applicable Service Terms.

6. LICENSE TO USE THE PROFITBRICKS WORKS

6.1. ProfitBricks Works. We may make available to you, for your installation, copying, and/or use in connection with the Services, from time to time, a variety of software, data, and other content and printed and electronic documentation (all such materials except those specifically made available by us under separate license terms, the “ProfitBricks Works”). Subject to your acceptance of this Agreement, ongoing compliance with its terms and conditions with respect to the subject Service, and payment if and as required for your right to use the subject Service, we hereby grant

to you, without the right to sublicense, a limited, non-exclusive, nontransferable license during the Term, under our intellectual property or proprietary rights in the ProfitBricks Works, only to install, copy, and use the ProfitBricks Works solely in connection with and as necessary for your use of such Services and solely to the extent in compliance with all the terms and conditions of this Agreement. The ProfitBricks Works may include, without limitation:

- Proprietary application programming interfaces (“APIs”);
- Developer tools for use in connection with the APIs;
- Articles and documentation for use in connection with the use and implementation of the APIs (collectively, “Documentation”);
- Specifications describing the operational and functional capabilities, use limitations, technical and engineering requirements, and testing and performance
- criteria relevant to the proper use of a Service and its related APIs and other technology;
- Textual materials made available as part of the Service (“Text Materials”); and
- Other forms of digital content, data, text, images, logos, user interface designs and other creative designs, audio and video (with the Text Materials, collectively, “ProfitBricks Content”).

Sample source code that we may make available from time to time for use in connection with the Services (“Sample Source Code”) and libraries that we may make available from time to time for use in connection with the Services (“Libraries”) will be made available to you under separate license that accompanies each Sample Source Code or Library. Accordingly, the term “ProfitBricks Works,” as used herein, specifically excludes any Sample Source Code or Libraries made available to you under separate license.

6.2. Prohibited Conduct. Except as may be expressly authorized under this Agreement:

- You may not, and may not attempt to, modify, alter, tamper with, repair, or otherwise create derivative works of any software included in or accessed via the ProfitBricks Works.
- You may not, and may not attempt to, reverse-engineer, disassemble, or decompile the ProfitBricks Works or the Services or apply any other process or procedure to derive the source code of any software included in or accessed via the ProfitBricks Works.
- You may not otherwise create derivative works of any the ProfitBricks Works, including but not limited to the ProfitBricks Content.

6.3. Use of Marks. Your use of any trademarks, service marks, service or trade names, logos, and other designations of ProfitBricks and its affiliates or licensors (“Marks”) shall strictly comply with the Trademark Guidelines and the following provisions. You may use the Marks in conjunction with the display of the ProfitBricks Content and for the purpose of indicating that your Application was created using the Services. You must immediately discontinue use of any Mark as specified by us at any time in writing. We may modify any Marks provided to you at any time, and upon notice, you will use only the modified Marks and not the old Marks. Other than as specified in this Agreement, you may not use any trademark, service mark, trade name, or other business identifier of ProfitBricks or its affiliates unless you obtain ProfitBricks' or its affiliates' prior written consent. In addition, you agree not to misrepresent or embellish the relationship

between us and you, for example, by implying that we support, sponsor, endorse, or contribute money to you or your business endeavors.

6.4. Nonexclusive Rights. The rights granted by ProfitBricks in this Agreement with respect to the ProfitBricks Works, the Marks and the Services are nonexclusive, and ProfitBricks reserves the right to: (a) itself act as a developer of products or services related to any of the products that you may develop in connection with your use of the Services; and (b) appoint third parties as developers or systems integrators who may offer products or services which compete with ProfitBricks or your Application.

7. SERVICE LEVEL AGREEMENT; SECURITY

Unless otherwise provided, we will provide the Services in accordance with the Service Level Guarantees set forth below. The credits described herein are your sole remedy for our failure to meet the criteria set out herein. YOU ACKNOWLEDGE AND UNDERSTAND THAT A DIFFERENT SERVICE LEVEL IS OFFERED IN CONNECTION WITH DEVOPS CENTRAL DATACENTER SERVICES, SEE SECTION 7.10 THERETO. ACCORDINGLY, SECTIONS 7.1 THROUGH 7.8 DO NOT APPLY TO SUCH SERVICES.

7.1 Network Guarantee. With the exception of downtime due to maintenance, or service suspensions set out in this GT&C, ProfitBricks guarantees 99.95% uptime for internal network performance (“Network Guarantee”). The Network Guarantee only covers the network interfaces between the hypervisor and ProfitBricks network and other servers of the customer on the same VLAN. This Network Guarantee does not cover network connections to the Customer’s physical location or Internet access points. If ProfitBricks fails to meet the Network Guarantee, Customer will receive the credit set out in section 7.7.

7.2 Hardware Guarantee. With the exception of downtime due to maintenance, or service suspensions set out in this GT&C, ProfitBricks guarantees that hardware and hypervisor layers will be available to Customers at 99.95% per month (“Hardware Guarantee”). For the purposes of the Hardware Guarantee, “hardware” means that hardware running Customer’s virtual data centers. Customer virtual servers, including access to operating systems and any other software on the Customer server, are not covered by this Hardware Guarantee. If this Hardware Guarantee applies, ProfitBricks will, within 4 hours, replace faulty hardware and reboot the server with the same IP address, VLAN, and network configurations to enable Customer-managed virtual servers to be installed and configured back to the pre-failure state. If ProfitBricks fails to meet the Hardware Guarantee, Customer will receive the credit set out in section 7.7.

7.3 Storage Guarantee. ProfitBricks guarantees that the hardware on which Customer’s data is stored will be available 99.95% of the time, and further that no data loss will occur to physical or network conditions including hardware and software in ProfitBricks control and, in the case of software, authorship (“Storage Guarantee”). In the event of hardware, network or hypervisor failure, ProfitBricks shall, within 4 hours, create conditions to enable Customers to recreate network configurations to attach Customer-managed virtual servers with existing storage and data. Under no circumstances will ProfitBricks be responsible for the restoration of any data or any data

loss in the ProfitBricks storage services. If ProfitBricks fails to meet the ProfitBricks Storage Guarantee, Customer will receive the credit set out in section 7.7.

7.4 Physical On-Site Security Guarantee ProfitBricks guarantees that the infrastructure providing the services is located in a physically secure environment protected from outside malicious activity 24 hours a day, 365 days per year (“Security Guarantee”). “Physically secure environment” means that all physical access to the ProfitBricks data center requires a valid US driver’s license, passport and 12-hours’ notice. The Security Guarantee also includes 24/7 presence of an on-site security officer and data-center operations personnel at the facility, security cameras, and monitoring devices. If ProfitBricks fails to meet the Security Guarantee, Customer will receive the credit set out in section 7.7.

7.5 Data Center Infrastructure Guarantee. ProfitBricks guarantees that data center HVAC and electric power will be available 100% of the time, with the exception of downtime due to maintenance or service suspensions set out in this GT&C (“Infrastructure Guarantee”). The Infrastructure Guarantee applies when ProfitBricks hardware is not functioning because of a heat shutdown or applicable loss of electric power. “Electric power” includes UPSs, PDUs, and cabling. “Electric power” does not include power supplies in virtual server hosts. If ProfitBricks fails to meet the Infrastructure Guarantee, Customer will receive the credit set out in section 7.7.

7.6 API Guarantee. ProfitBricks will provide Customers with eighteen months prior notice of its intent to discontinue, remove features, or otherwise limit the functionality of particular API calls (“API Guarantee”). This notice will be posted on <http://blog-us.profitbricks.com>. If ProfitBricks fails to meet the API Guarantee, Customer will receive the credit set out in section 7.7.

7.7 Credits. Should Customer qualify for a particular guarantee set out in this SLA, ProfitBricks will provide the following credits:

- For an event covered by the Network Guarantee, ProfitBricks shall credit Customer’s account with five percent of Customer’s monthly fee for each thirty minutes of downtime. Customer’s credit can equal, but may not exceed, one hundred percent of Customer’s monthly fee for the server affected.
- For an event covered by the Hardware Guarantee, ProfitBricks shall credit Customer’s account with five percent of Customer’s monthly fee for each full hour of downtime. Customer’s credit can equal, but may not exceed, one hundred percent of Customer’s monthly fee for the server affected.
- For an event covered by the Storage Guarantee, ProfitBricks shall credit Customer’s account with five percent of Customer’s monthly fee for each full hour that ProfitBricks is unable to create conditions to enable Customers to create network conditions to attach virtual servers with existing storage and data.

- For an event covered by the Security Guarantee, ProfitBricks shall credit Customer's account with five percent of Customer's monthly fee for each full hour that an element of the Security Guarantee is not available. Customer's credit can equal, but may not exceed, one hundred percent of Customer's monthly fee for the server affected.
- For an event covered by the Infrastructure Guarantee, ProfitBricks shall credit Customer's account with five percent of Customer's monthly fee for each thirty minutes of infrastructure downtime. Customer's credit can equal, but may not exceed, one hundred percent of Customer's monthly fee for the server affected.
- For ProfitBricks' failure to provide eighteen months prior notice of its intent to discontinue, remove features, or otherwise limit the functionality of an API, ProfitBricks shall credit Customer's account with five percent of Customer's monthly fee for each month ProfitBricks failed to provide notice. Customer's credit can equal, but may not exceed, one hundred percent of Customer's monthly fee for the server affected.

To receive an SLA credit, Customer must request the credit within five days after the date of the event leading to the applicability of the particular guarantee. Customers must request credit by sending a request to our billing department through our helpdesk. The message must have the dates and times applicable to the events leading to the applicability of the guarantee and any other Customer identification requested by ProfitBricks. Credits will be applied to your account within sixty days of your credit request. Credits under our guarantee are your sole and exclusive remedy for issues covered by this SLA. The statistics generated by our internal monitoring services are the final determination of the applicability of a guarantee. Credits are prospective only, and will not be paid in cash or retroactively, nor can they be aggregated or equal more than one hundred percent of a customer's total monthly fee. Credits will not be applied to accounts in default.

7.8 Limitations and Exemptions

The following items or situations are exempt from the guarantees set out in this section:

- Acts or omissions of you or your users;
- Software running within your virtual servers;
- Scheduled maintenance which we have announced at least 24 hours in advance;
- Factors outside our control, including but not limited to any force majeure events, failures, acts or omissions of our upstream providers or failures of the internet;
- Actions of third parties, including but not limited to security compromises, denial of service attacks and viruses provided ProfitBricks makes reasonable efforts to keep its software and systems up to date;
- Violations of our Acceptable Use Policy;

- Any product currently in Beta as set out in our GT&C; or
- Law enforcement activity.

7.9 Security

We strive to keep Your Content secure but cannot guarantee that we will be successful at doing so, given the nature of the Internet. Accordingly, without limitation to Section 4.3 above and Section 11.5 below, you acknowledge that you bear sole responsibility for adequate security, protection, and backup of Your Content, Applications, passwords, and user names. We strongly encourage you, where available and appropriate, to (a) use encryption technology to protect Your Content from unauthorized access, (b) routinely archive Your Content, and (c) keep your Applications or any software that you use or run with our Services current with the latest security patches or updates. Without limitation to Section 11.5, and notwithstanding the provisions of Section 3.7, we will have no liability to you for any unauthorized access or use, corruption, deletion, destruction, or loss of any of Your Content or Applications.

7.10 DevOps Central Datacenter Services

DEVOPS CENTRAL DATACENTER SERVICES ARE OFFERED AT DISCOUNTED RATES AND ARE DESIGNED FOR TESTING PURPOSE AND PREVIEW OF NEW FEATURES. THIS SERVICE IS, EXPLICITLY, NOT RECOMMENDED FOR USE IN PRODUCTION SERVICES. THIS IS WHY CERTAIN LIMITATION APPLY TO THE DEVOPS CENTRAL DATACENTER SERVICE. PROFITBRICKS WILL USE COMMERCIALY REASONABLE EFFORTS TO MAKE ITS DEVOPS CENTRAL DATACENTER SERVICES AVAILABLE IN LINE WITH INDUSTRY STANDARDS FOR SIMILAR SERVICE OFFERINGS, EXCEPT IF DOING SO (A) WOULD POSE A SECURITY OR INTELLECTUAL PROPERTY ISSUE, (B) IS ECONOMICALLY OR TECHNICALLY BURDENSOME, OR (C) WOULD CONTRAVENE THE LAW OR REQUESTS OF GOVERNMENTAL ENTITIES. PROFITBRICKS WILL NOT PROVIDE ANY CREDIT OR COMPENSATION TO YOU SHOULD THE SERVICE BE UNAVAILABLE OR RESTRICTED FROM TIME TO TIME. PROFITBRICKS WILL NOT PROVIDE ANY CREDIT TO YOU IN THE EVENT PROFITBRICKS DISCONTINUES, REMOVES FEATURES, OR OTHERWISE LIMITS THE FUNCTIONALITY OF ANY OF THE SERVICES (INCLUDING THE SERVICE OFFERING AS A WHOLE) OR CHANGES OR REMOVES FEATURES OR FUNCTIONALITY OF THE SERVICE FROM TIME TO TIME.

8. FEES

8.1. Service Fees. In consideration of your use of any of the Paid Services, you agree to pay applicable fees for Paid Services in the amounts set forth on the respective Service detail pages on the ProfitBricks Web site (including any minimum subscription fees) via the credit card or other payment mechanism provided by you upon registration (the "Payment Account"). Fees for any new Service or new Service feature will be effective upon posting by us on the ProfitBricks Web site for the applicable Service.

We may increase or add new fees for any existing Service or Service feature, or implement a fee for any previously Free Service or Free Service feature, by giving you 30 days' advance notice. Such notice will be posted on the ProfitBricks Web site on the Service detail page for the affected Service. You agree that you are responsible for checking the ProfitBricks Web site each month to confirm whether there are any new fees and their effective date(s). All fees payable by you are exclusive of applicable taxes and duties, including, without limitation, VAT and applicable sales tax. You will provide such information to us as reasonably required to determine whether we are obligated to collect VAT from you, including without limitation your VAT identification number.

8.2. Payment. ProfitBricks will charge the monthly fee and any additional fees to the Payment Account unless specifically provided otherwise, and you agree that ProfitBricks may automatically debit your Payment Account, without further authorization from you, for any renewal term, additional services, or any other fees or expenses applicable to your use of the Services, and any such payment shall be subject to our general accounts receivable policies from time to time in effect. We may add, delete, or modify the methods by which customers can make payments for the Services at any time without prior notice, in our sole discretion, Payments processed by third-party payment processors are subject to those processor's terms and conditions of service, and ProfitBricks makes no representations or warranties with respect to those services. All amounts payable by you under this Agreement will be made without setoff or counterclaim and without deduction or withholding. If any deduction or withholding is required by applicable law, you shall notify us and shall pay such additional amounts to us as necessary to ensure that the net amount that we receive, after such deduction and withholding, equals the amount we would have received if no such deduction or withholding had been required. Additionally, you shall provide us with documentation that the withholding and deducted amounts have been paid to the relevant taxing authority. All Fees must be paid in United States Dollars.

8.3. Special Pricing Programs. From time to time, we may offer free or discounted pricing for other usage of certain Services (each a "Special Pricing Program"). After a Special Pricing Program ends, normal charges will apply. You must comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount of usage) we impose in connection with the Special Pricing Program as described on the Service specific detail pages on the ProfitBricks Web site. You may not sign up for multiple ProfitBricks accounts in order to receive additional benefits under a Special Pricing Program. We may immediately terminate any account that we determine, in our sole discretion, is established or used to avoid the terms, restrictions, or limitations applicable to a Special Pricing Program. Any data stored as part of a Special Pricing Program must be actively used.

8.4. Refunds. Fees are not refundable unless provided otherwise by applicable local law. ProfitBricks may, in its sole discretion, refund other amounts as it deems necessary or advisable.

8.5. Late Payment and Collections. ProfitBricks may charge interest on all overdue amounts at an interest rate which is the lesser of 2% per month (24% per annum) or the maximum interest rate permitted by applicable law. In the event any invoice requires collection efforts you agree to pay all costs of collection, including reasonable attorney's fees and costs.

9. CONFIDENTIALITY

9.1. Use and Disclosure. You shall not disclose ProfitBricks Confidential Information during the Term or at any time during the three (3)-year period following the end of the Term. As used in this Agreement, “ProfitBricks Confidential Information” means all nonpublic information disclosed by us, our business partners, or our or their respective agents or contractors that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. ProfitBricks Confidential Information includes, without limitation, (a) nonpublic information relating to our or our business partners' technology, customers, business plans, promotional and marketing activities, finances, and other business affairs (including, but not limited to, any information about or involving one of our so-called beta tests or a beta test product that you obtain as a result of your participation in such beta test), (b) third-party information that we are obligated to keep confidential, and (c) the nature, content, and existence of any discussions or negotiations between you and us. Confidential Information does not include any information described in Section 9.2 or any information that you are required to disclose by law.

9.2. Excluded Information. Notwithstanding any other provision in this Agreement, you shall not have any confidentiality obligation to us under Section 9.1 above, with respect to any information provided or made available by us hereunder, and we shall not have any confidentiality or non-use obligation to you hereunder with respect to any information, software application, data, or content provided or made available by you hereunder that: (a) is or becomes publicly available without breach of this Agreement; (b) can be shown by documentation to have been known to the receiving party at the time of its receipt from the disclosing party; (c) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (d) can be shown by documentation to have been independently developed by the receiving party.

9.3. Conflict with Separate Nondisclosure Agreement. If you and we are parties to a separate nondisclosure agreement (“Stand-Alone NDA”) and there is a conflict between the terms of the Stand-Alone NDA and the terms of this Section 9, the terms of the Stand-Alone NDA shall control.

10. INTELLECTUAL PROPERTY

10.1. Our Services and the ProfitBricks Works. Other than the limited use and access rights and licenses expressly set forth in this Agreement, we reserve all right, title, and interest (including all intellectual property and proprietary rights) in and to: (a) the ProfitBricks Web site, (b) the Services; (c) the ProfitBricks Works; (d) the Marks; and (e) any other technology and software that we provide or use to provide the Services and the ProfitBricks Works. You do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the ProfitBricks Web Site, the Services, the ProfitBricks Works, the Marks, or other technology and software (including third-party technology and software), except for the limited use and access rights described in this Agreement.

10.2. Your Applications, Data, and Content. Other than the rights and interests expressly set forth in this Agreement, and excluding ProfitBricks Works and works derived from ProfitBricks Works, you reserve all right, title, and interest (including all intellectual property and proprietary

rights) in and to Your Content. We will not disclose Your Content, except: (a) if you expressly authorize us to do in connection with your use of the Services; (b) as necessary to provide the Services to you; or (c) as ProfitBricks deems necessary, in its sole discretion, to comply with the Agreement or the request of a governmental or regulatory body, subpoenas, court orders, or other legal authority.

10.3. Feedback. In the event you elect, in connection with any of the Services, to communicate to us suggestions for improvements to the Services, the ProfitBricks Works, or the Marks (collectively, “Feedback”), we shall own all right, title, and interest in and to the same, even if you have designated the Feedback as confidential, and we shall be entitled to use the Feedback without restriction. You hereby irrevocably assign all right, title, and interest in and to the Feedback to us and agree to provide us such assistance as we may require documenting, perfect, and maintaining our rights to the Feedback.

10.4. Non-Assertion. During and after the term of the Agreement, with respect to any of the Services that you elect to use, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our customers, end users, vendors, business partners (including third-party sellers on Web sites operated by or on behalf of us), licensors, sub-licensees, or transferees, any patent infringement or other intellectual property infringement claim with respect to such Services.

Without limitation to Section 12, you agree to indemnify and hold harmless ProfitBricks for any costs or expenses resulting from your failure to comply with this Section 10.4, including reasonable attorney's fees and costs

11. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS; LIMITATIONS OF LIABILITY

11.1. Use of the Services. You represent and warrant that you will not use the Services, ProfitBricks Works, and/or your Application and Your Content: (a) in a manner that infringes, violates, or misappropriates any rights of us or any third party; (b) to engage in spamming or other impermissible advertising, marketing, or other activities, including, without limitation, any activities that violate anti-spamming regulations, including, without limitation, the CAN SPAM Act of 2003; (c) in any manner that constitutes or facilitates the illegal export of any controlled or otherwise restricted items, including, without limitation, software, algorithms, or other data that are subject to export; (d) in a way that is otherwise illegal or promotes illegal activities, including, without limitation, in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; and/or (e) or in any manner in violation of ProfitBricks’s AUP.

11.2. Applications and Content. You represent and warrant: (a) that you are solely responsible for the development, operation, and maintenance of Your Content, including without limitation, the accuracy, security, appropriateness and completeness of Your Content and all product-related materials and descriptions; (b) that you have the necessary rights and licenses, consents, permissions, waivers, and releases to use and display Your Content; (c) that Your Content (i) does

not violate, misappropriate, or infringe, any rights of us or any third party, (ii) does not constitute defamation, invasion of privacy, or publicity, or otherwise violate any rights of any third party, or (iii) is not designed for use in any illegal activity or to promote illegal activities, including, without limitation, use in a manner that might be libelous or defamatory or otherwise malicious, illegal, or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (d) that Your Content does not contain any unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code (collectively “Harmful Components”); (e) that Your Content and use of the Services is and will at all times be in compliance with relevant local, state, federal and international law; and (f) to the extent to which you use any of the Marks, that you will conduct your business in a professional manner and in a way that reflects favorably on the goodwill and reputation of ProfitBricks.

11.3. Public Software and Feedback. You represent and warrant that you will not use, and will not authorize any third party to use, any Public Software in connection with the Services in any manner that requires, pursuant to the license applicable to such Public Software, that any ProfitBricks Works or Services be (a) disclosed or distributed in source code form, (b) made available free of charge to recipients, or (c) modifiable without restriction by recipients. With respect to any Feedback, you represent and warrant that such Feedback, in whole or in part, contributed by or through you, (a) contains no third-party software or any software that may be considered Public Software and (b) does not violate, misappropriate, or infringe any intellectual property rights of any third party. “Public Software” means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation, or other material that is distributed as free software, open source software, or similar licensing or distribution models, including, but not limited to software, documentation, or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) GNU's General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License, (b) The Artistic License (e.g., PERL), (c) the Mozilla Public License, (d) the Netscape Public License, (e) the Sun Community Source License (SCSL), (f) the Sun Industry Standards License (SISL), (g) the BSD License, and (h) the Apache License.

11.4. Authorization and Account Information. You represent and warrant that: (a) the information you provide in connection with your registration for the Services is accurate and complete; (b) if you are registering for the Services as an individual, you are at least 18 years of age and have the legal capacity to enter into this Agreement; and (c) if you are registering for the Services as an entity or organization, (i) you are duly authorized to do business in the country or countries where you operate, (ii) the individual clicking “Accept” on this Agreement and completing the registration for the Services meets the requirements of subsection (b) above and is an authorized representative of your entity, and (iii) your employees, officers, representatives, and other agents accessing the Services are duly authorized to access the Services and to legally bind you to this Agreement and all transactions conducted under your account. Notwithstanding the foregoing, ProfitBricks reserves the right to refuse service or additions to existing services to any customer or potential customer, for any reason or no reason whatsoever.

11.5. Disclaimers. YOU UNDERSTAND AND ACKNOWLEDGE THAT THE SERVICES ARE BEING PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR AS OTHERWISE AGREED TO IT, PROFITBRICKS SHALL NOT COMPENSATE YOU OR GIVE YOU ANY CREDITS FOR ANY PROBLEMS YOU MAY ENCOUNTER. THE SERVICES MAY BE TERMINATED AT ANY TIME PURSUANT TO SECTION 1. WITHOUT LIMITING THE FOREGOING, PROFITBRICKS WORKS, THE MARKS, THE SERVICES, AND ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS, AND OTHER DATA OR INFORMATION PROVIDED BY US OR OUR LICENSORS IN CONNECTION THEREWITH (COLLECTIVELY THE “SERVICE OFFERINGS”) ARE PROVIDED “AS IS.” WE AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SERVICE OFFERINGS. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, WE AND OUR LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WE AND OUR LICENSORS DO NOT WARRANT THAT THE SERVICE OFFERINGS WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT THE DATA YOU STORE WITHIN THE SERVICE OFFERINGS WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WE AND OUR LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS, INCLUDING THOSE THAT AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION, OR SETTLEMENT OF ANY PAYMENT SERVICES. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM US OR FROM ANY THIRD PARTY OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

11.6. Your Applications are Your Responsibility. In addition to the foregoing, we specifically disclaim all liability, and you shall be solely responsible for the development, operation, and maintenance of your Application (including any Bundled Application) and for all materials that appear on or within your Application and you agree that you shall, without limitation, be solely responsible for:

11.6.1. the technical operation of your Application and all related equipment;

11.6.2. the accuracy and appropriateness of any materials posted on or within your Application (including, among other things, any product-related materials);

11.6.3. ensuring that any materials posted on your site or within your Application are not illegal and do not promote illegal activities, including without limitation any activities that might be libelous or defamatory or otherwise malicious, illegal, or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age;

11.6.4. ensuring that your Application accurately and adequately discloses, either through a privacy policy or otherwise, how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers;

11.6.5. any of your users' or customers' claims relating to your Application or any Services utilized in connection with your Application; and

11.6.6. your election to utilize sample code and libraries that may be made available on the ProfitBricks Web site, many of which may be provided by third parties and many of which we have not tested or screened in any way.

11.7. Links. The ProfitBricks Web site and/or the Services may contain links to Web sites that are not under our control (“Third-Party Sites”). We are not responsible for the contents or functionality of any Third-Party Sites or any Web site that can be accessed via links on any Third-Party Site. We provide these links to you as a convenience and the inclusion of any such links does not constitute or imply our endorsement or validation of any Third-Party Site.

11.8. Limitations of Liability. NEITHER WE NOR ANY OF OUR AFFILIATED COMPANIES OR LICENSORS SHALL BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICES; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR CONTENT. IN ANY CASE, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO US HEREUNDER FOR THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

12. INDEMNIFICATION

12.1. General. You agree to indemnify, defend, and hold us, our affiliates, and licensors, each of our and their business partners (including third-party sellers on Web sites operated by or on behalf of us) and each of our and their respective employees, officers, directors, and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs, and expenses (including reasonable attorney's fees), arising out of or in connection with any claim arising out of: (a) your use of the Services and/or ProfitBricks Works in a manner not authorized by this Agreement, and/or in violation of the applicable restrictions, Additional Policies, and/or applicable law; (b) Your Content, or the combination of either with other

applications, content, or processes, including but not limited to any claim involving infringement or misappropriation of third-party rights, and/or the use, development, design, manufacture, production, advertising, promotion, and/or marketing of Your Content; (c) your violation of any term or condition of this Agreement or any applicable Additional Policies, including without limitation, your representations and warranties and your agreement to the jurisdiction, venue, and choice of law provisions herein; or (d) you or your employees' or personnel's negligence or willful misconduct.

12.2. Notification. We agree to promptly notify you of any claim subject to indemnification, provided that our failure to promptly notify you shall not affect your obligations hereunder except to the extent that our failure to promptly notify you delays or prejudices your ability to defend the claim. At our option, you will have the right to defend against any such claim with counsel of your own choosing (subject to our written consent) and to settle such claim as you deem appropriate, provided that you shall not enter into any settlement without our prior written consent and provided that we may, at any time, elect to take over control of the defense and settlement of the claim.

13. U.S. GOVERNMENT LICENSE RIGHTS; IMPORT AND EXPORT COMPLIANCE

13.1. U.S. Government License Rights. All Services provided to the U.S. Government are provided under the commercial license rights and restrictions generally applicable under this Agreement.

13.2. Import and Export Compliance and Restrictions. You shall, in connection with your use of the Services or the ProfitBricks Works, comply with all applicable import, export, and re-export control and regulations of any country, including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, Council Regulation (EC) No 428/2009 on the control of exports of dual-use items and technology, and country-specific economic sanctions programs or embargoes adopted against countries or individuals under any applicable national or international legislation, including any measures implemented by the U.S. Office of Foreign Assets Control.

14. DISPUTES

14.1. THE EXCLUSIVE VENUE FOR ANY DISPUTE RELATING IN ANY WAY TO THIS AGREEMENT, YOUR USE OF THE PROFITBRICKS SERVICES, YOUR VISIT TO THE PROFITBRICKS WEB SITE, OR TO PRODUCTS OR SERVICES SOLD OR DISTRIBUTED BY PROFITBRICKS OR ITS AFFILIATES SHALL BE THE STATE OR FEDERAL COURTS IN SAN ANTONIO, TEXAS. YOU CONSENT AND WAIVE ANY CHALLENGE TO PERSONAL JURISDICTION OR VENUE IN SUCH COURTS. You further agree that ProfitBricks shall be entitled to collect its attorneys' fees, costs and other expenses in the event that ProfitBricks acts to enforce this forum selection clause, regardless of whether ProfitBricks prevails in the underlying action.

14.2. No Trial by Jury. In addition to the foregoing, YOU HEREBY AGREE THAT AS A PART OF THE CONSIDERATION FOR THIS AGREEMENT, YOU WAIVE THE RIGHT TO A TRIAL BY JURY FOR ANY DISPUTE ARISING BETWEEN YOU AND PROFITBRICKS THAT IS IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, and that such waiver shall be enforceable up to and including the day that trial is to start, and even if the arbitration provisions of this paragraph are waived.

14.3. No Class Action. Neither you nor ProfitBricks may be a representative of other potential claimants or a class of potential claimants in any dispute concerning or relating to this Agreement, nor may two or more individuals' disputes be consolidated or otherwise determined in one proceeding. YOU AND PROFITBRICKS ACKNOWLEDGE THAT THIS SECTION 14.3 WAIVES ANY RIGHT TO PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY CLASS ACTION.

14.4 Injunctive Relief. Notwithstanding anything to the contrary, we may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of ProfitBricks' or any third party's intellectual property and/or proprietary rights.

You further acknowledge that our rights in the ProfitBricks Works are of a special, unique, extraordinary character, giving them peculiar value, the loss of which cannot be readily estimated and may not be adequately compensated for in monetary damages.

14.5 Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one year after such claim or cause of action arose or be forever barred.

14.6. Governing Law. By using the Services, you agree that the laws of the State of Texas, without regard to principles of conflicts of law, will govern this Agreement and any dispute of any sort that might arise between you and us. The parties expressly exclude application of the United Nations Convention for the International Sale of Goods to this Agreement.

15. NOTICES

15.1. To You. Except as otherwise set forth herein, notices made by us to you under this Agreement that affect our customers generally (e.g., notices of updated fees, etc.) will be posted on the ProfitBricks Web site. Notices made by us under this Agreement for you or your account specifically (e.g., notices of breach and/or suspension) will be provided to you via the e-mail address provided to us in your registration for the Services or in any updated e-mail address you provide to us in accordance with standard account information update procedures we may provide from time to time. It is your responsibility to keep your e-mail address current and you will be deemed to have received any e-mail sent to any such email address, upon our sending of the e-mail, whether or not you actually receive the e-mail.

15.2. To Us. For notices made by you to us under this Agreement and for questions regarding this Agreement or the Services, you may contact ProfitBricks at legal@profitbricks.com or by mail as follows:

ProfitBricks, Inc.
Attn: LEGAL / GENERAL
15900 La Cantera Parkway
Suite 19210
San Antonio, TX 78256

15.3. Language. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16. MISCELLANEOUS PROVISIONS

16.1. Third-Party Activities. If you authorize, assist, encourage, or facilitate another person or entity to take any action related to the subject matter of this Agreement, you shall be deemed to have taken the action yourself.

16.2. Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language. If such construction is not possible, the provision will be severed from this Agreement, and the rest of the Agreement shall remain in full force and effect.

16.3. Waivers. The failure by us to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision nor in any way affect our right to enforce such provision thereafter. All waivers by us must be in writing and signed by an authorized officer of ProfitBricks to be effective.

16.4. Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

16.5. Limitations on Assignment. This Agreement and the rights pertaining hereto may not be assigned, resold, or otherwise transferred in whole or in part by you. ProfitBricks may assign, subcontract or license any or all of its rights and/or obligations hereunder.

16.6. Not for the Benefit of Third Parties. These terms and conditions do not create any legal rights enforceable by or for the benefit of any third party

16.7. Entire Agreement. This Agreement incorporates by reference all policies and guidelines posted on the ProfitBricks Web site and constitutes the entire agreement between you and us regarding the subject matter hereof and supersedes any and all prior or contemporaneous representation, understanding, agreement, or communication between you and us, whether written or oral, regarding such subject matter.

16.8. No Endorsement. You understand and acknowledge that we are not certifying or endorsing, and have no obligation to certify or endorse, any of your Applications or Your Content.

16.9. Relationship. Nothing in this Agreement is intended to or does create any type of joint venture, creditor-debtor, escrow, partnership, or any employer/employee or fiduciary or franchise relationship between you and us (or any of our affiliates).

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