



Customer Terms of Service

These Terms of Service (this "**Agreement**") is a contract between you, the organization on whose behalf you are authorized to enter this Agreement ("**you**" or "**your**" or "**Customer**"), and Walla Software, Inc. ("**Walla**"), which covers your use of the Services. Customer and Walla may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

This Agreement is effective (the "**Effective Date**") upon the earlier occurrence of either (a) the date you click "I Agree" or otherwise communicate your acceptance of this Agreement; or (b) the date you first access the Services.

We may revise and update this Agreement from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Services thereafter. We will notify you either via the email address we have in our records or within the Services when this Agreement has been updated.

Your continued use of the Services following the posting of the revised Agreement means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

This Agreement incorporates by reference the Privacy Policy, the Service Level Agreement, and the Copyright Dispute Policy.

1. Definitions.

(a) "**Aggregated Statistics**" means the data and information related to your use of the Services that is used by Walla in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(b) "**Authorized User**" means employees, consultants, contractors, and agents of Customer (i) who are authorized, or otherwise allowed, by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

(c) **"Customer Data"** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(d) **"Documentation"** means Walla's user manuals, handbooks, and guides relating to the Services provided by Walla to Customer either electronically or in hard copy form.

(e) **"Order Form"** means the online form or other documentation, which details the Services purchased, Term, Fees, and other related costs under this Agreement.

(f) **"PCI DSS"** means Payment Card Industry Data Security Standard and as further explained at <https://www.pcisecuritystandards.org/> (as may be updated from time to time).

(g) **"Services"** means the business management software-as-a-service offering provided by Walla.

(h) **"Service Level Agreement"** means the Service Level Agreement located at [insert address] or such other URL as specified by Walla), as may be updated by Walla from time to time.

(i) **"Third-Party Products"** means any third-party products provided with or incorporated into the Services.

(j) **"Walla IP"** means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Walla IP includes the Aggregated Statistics and any information, data, or other content derived from Walla's monitoring of your access to or use of the Services, but does not include Customer Data.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on your payment of Fees and compliance with all other terms and conditions of this Agreement, Walla hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(i)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to your internal business purposes. Walla

shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services.

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, Walla hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(i)) license to use the Documentation during the Term solely for your internal business purposes in connection with its use of the Services.

(c) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, convey, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. Walla reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Walla IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, Walla may temporarily suspend your and/or any Authorized User's access to any portion or all of the Services if: (i) Walla reasonably determines that (A) there is a threat or attack on any of the Walla IP; (B) your or any Authorized User's use of the Walla IP disrupts or poses a security risk to the Walla IP or to any other customer or vendor of Walla; (C) Customer, or any Authorized User, is using the Walla IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Walla's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (F) any vendor of Walla has suspended or terminated Walla's access to or use of any third-party services or products required to enable Customer to access the Services; or (G) in

accordance with Section 5(a)(iii) (any such suspension described in subclause (F) or (G), is a “**Service Suspension**”). Walla shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event; giving rise to the Service Suspension is cured. Walla will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Walla may monitor your use of the Services and collect, compile, report, and otherwise use Aggregated Statistics. As between Walla and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Walla. Customer acknowledges that Walla may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Walla may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or your Confidential Information.

(g) Privacy Policy. Walla’s current Privacy Policy explains how information submitted to the Services is utilized and protected.

3. Customer Responsibilities.

(a) General. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions. Customer is solely responsible for resolving any actual or potential dispute involving Customer Data and agrees Walla has no obligation to resolve, facilitate, or otherwise assist in such a dispute.

(b) Third-Party Products. Walla may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and, if applicable, the flow-through provisions will be identified in either the Services,

the Order Form, or the Third-Party Product. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not utilize such Third-Party Products.

4. Security, Service Levels, and Support.

(a) Security. During the Term, Walla will maintain industry standard security measures to protect Customer Data from unauthorized access.

(b) Service Levels. Subject to the terms and conditions of this Agreement, Walla shall make the Services available in accordance with the service levels set out in the Service Level Agreement.

(c) Support. The access rights granted hereunder entitle Customer to the support services described at [insert hyperlink for customer support information].

5. Fees and Payment.

(a) Fees. Customer shall pay Walla the fees ("**Fees**") as set forth in the Order Form without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in the Order Form. If Customer fails to make any payment when due, without limiting Walla's other rights and remedies: (i) Walla may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Walla for all reasonable costs incurred by Walla in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for five (5) days or more, Walla may suspend Customer and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full. All payment obligations under these Agreements are billed in advance and are non-cancelable and all Fees paid are non-refundable.

(b) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Walla's income.

6. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential

information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) Walla IP. Walla owns all right, title, and interest, including all intellectual property rights, in and to the Walla IP and, with respect to Third-Party Products, the applicable third-party own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b) Customer Data. You own all right, title, and interest, including all intellectual property rights, in and to the Customer Data. For the sole purpose of providing and improving the Services, Customer hereby grants to Walla a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary. Additionally, Customer hereby grants Walla a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to

reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Walla by mail, email, telephone, or otherwise, suggesting or recommending changes to the Walla IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Walla is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Walla, and on behalf of its Authorized Users, employees, contractors and/or agents, all right, title, and interest in, and Walla is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Walla is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimers.

(a) Walla warrants that the Services will conform in all material respects to the service levels set forth in the Service Level Agreement when accessed and used in accordance with the Documentation. Walla does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in the Service Level Agreement. The remedies set forth in the Service Level Agreement are your sole remedies and Walla's sole liability under the limited warranty set forth in this Section 8(a). THE FOREGOING WARRANTY DOES NOT APPLY, AND WALLA STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE WALLA IP IS PROVIDED "AS IS" AND WALLA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WALLA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), WALLA MAKES NO WARRANTY OF ANY KIND THAT THE WALLA IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

(c) Walla may, in its sole discretion, offer certain Services at no cost, as a trial, and/or in beta status. Notwithstanding anything to the contrary herein, all such Services are provided “as-is” with no warranties whatsoever (including, but not limited to, the Service Level Agreement) and Walla may discontinue such offerings with or without notice at anytime.

9. Indemnification.

(a) Walla Indemnification.

(i) Walla shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, provided that Customer promptly notifies Walla in writing of the claim, cooperates with Walla, and allows Walla sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit Walla, at Walla's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Walla determines that neither alternative is reasonably available, Walla may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This **Section 9(a)** will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Walla or authorized by Walla in writing; (B) modifications to the Services not made by Walla; (C) Customer Data; or (D) Third-Party Products.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Walla's option, defend Walla from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Your or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Walla or authorized by Walla in writing; or (iv) modifications to

the Services not made by Walla, provided that Customer may not settle any Third-Party Claim against Walla unless Walla consents to such settlement, and further provided that Walla will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH YOUR SOLE REMEDIES AND WALLA'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL WALLA'S LIABILITY UNDER THIS SECTION 9 EXCEED \$100.00.

10. Limitations of Liability. IN NO EVENT WILL WALLA BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER WALLA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL WALLA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED TWO (2) TIMES THE TOTAL AMOUNTS PAID TO WALLA UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$100.00, WHICHEVER IS LESS.

11. Term and Termination.

(a) Term. Unless otherwise provided for in the applicable Order Form, the initial term of this Agreement is thirty (30) days (the "**Initial Term**") starting from the Effective Date. Unless otherwise provided for in the applicable Order Form, the Initial Term shall automatically renew for successive thirty (30) day periods (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). Either Party may terminate this Agreement for any reason, or for no reason, by giving the other Party no less than thirty (30) days advance written notice before the end of the relevant Term.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Walla may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than five (5) days after Walla's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

(ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Walla IP and, without limiting Your obligations under Section 6, Customer shall delete, destroy, or return all copies of the Walla IP and certify in writing to the Walla that the Walla IP has been deleted or destroyed. No expiration or termination will affect Your obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire

agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the applicable Order Form; (ii) second, this Agreement; and (iii) third, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemics, epidemics, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Class Arbitration Waiver. Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including the breach, termination or validity thereof, shall be finally resolved by arbitration. The tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The Parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

(g) Arbitration Agreement. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES. The number of arbitrators shall be one. The place of arbitration shall be San Diego, CA. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(h) Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California.

(i) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Walla. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(j) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.

(k) US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(l) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(m) Attorneys' Fees. In the event that Walla is required to engage legal counsel to negotiate, settle, or defend any threatened, or actual legal suit, action, or proceeding, including mediation or arbitration, against or on behalf of the Customer related to the obligations contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement), arising out of or relating to this Agreement, the Walla shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by Walla in negotiating, settling, or conducting the suit, action, or proceeding, including actual attorneys' fees and expenses and court costs.

(n) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

(o) Electronic Signatures. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. “**Electronic Signature**” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.