

## MASTER TERMS OF SERVICE

Last Modified: March 22, 2021

### PLEASE READ THESE TERMS OF SERVICE CAREFULLY.

This is a contract between you (the Customer) and us (Bushel). It describes the services we will provide to you, how we will work together, as well as other aspects of our business relationship. Bushel cannot provide our products and services to you unless you agree to these Terms of Service. By using the Subscription Services, you are agreeing to these terms.

Please note that we update these Bushel Terms of Service as we describe in the ‘Amendment’ section below. The current version of the Bushel Terms of Service is available at <https://bushelpowered.com/policies/>. Archived versions of the Bushel Terms of Service terms are available at <https://bushelpowered.com/policies/>.

The same applies to policies, such as the Terms of Use and Privacy Policy, and other documents referenced in these Terms and Conditions. The current versions of these policies and documents are available at <https://bushelpowered.com/policies/>. Archived versions of the Bushel Terms of Service terms are available at <https://bushelpowered.com/policies/>.

If you have an active subscription to our services, we will let you know when we update these terms, policies or documents in an email or in-app notification. We will use the email address that you give us for providing legal notices in the Order Form. If you would like to receive an email notification when we update the Bushel Terms of Service, complete the form found at <https://bushelpowered.com/policies/>.

If you have any questions, please contact your Bushel representative.

These Bushel Terms of Service are between the entity you represent and is listed in the Order Form ("you" or "your"), and Bushel Inc. ("Bushel", "we", "us", or "our"). These Terms of Services also may refer to Bushel and you as a “Party” or jointly as “Parties”. They are effective on the date we provide you with confirmation of your Subscription Services or the date on which your Subscription Services are renewed, as applicable.

1. **Definition.** For the purpose of our relationship, you and Bushel agree to define some key terms in this Section and throughout these Terms of Service. Those key terms are capitalized.
  - a. “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control of a party to these Terms of Service. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
  - b. “Confidential Information” includes the non-public information of a Party that due to the circumstances of disclosure or the nature of the information, should reasonably be considered confidential as further defined below. Confidential Information includes Sensitive Information.

- c. "Customer Data" means all non-public data provided by you to Bushel to enable the provision of the Subscription Services, including any data related to or originating from any individual or entity utilizing the Subscription Services or Software.
  - d. "End User" means any person you permit to access Customer Data hosted in the Subscription Services or otherwise use the Subscription Services.
  - e. "Non-Bushel Service" means any product or service not provided by Bushel.
  - f. "Order Form" means a document executed by you and Bushel that specifies the details of the Subscription Services, Software and Professional Services.
  - g. "Overages" means any consumption style Subscription Services, Software or Service where maximum allowances have been exceeded, as defined in the Offer Details.
  - h. "Previews" means preview, beta, or other pre-release version or feature of the Subscription Services or Software offered by Bushel to obtain customer feedback.
  - i. "Privacy Policy" means the Bushel Privacy Policy located at <https://bushelpowered.com/policies/>.
  - j. "Professional Services" means the general consulting, implementation, training or other services to be provided by Bushel to you pursuant to a Statement of Work or an Order Form.
  - k. "Sensitive Information" means (a) credit or debit card numbers; personal financial account numbers or wire instructions; Social Security numbers or local equivalents; passport numbers; driver's license numbers or similar identifiers; passwords or log-in credentials; racial or ethnic origin; physical or mental health condition or information; or other employment or health information, including any information subject to the Health Insurance Portability and Accountability Act, the Payment Card Industry Data Security Standards, and other regulations, laws or industry standards designed to protect similar information; and (b) any information defined under European Data Protection Laws as sensitive personal data (including special categories of personal data enumerated in in European Union Regulation 2016/679, Article 9(1) or any successor legislation.
  - l. "Software" means Bushel software we provide for installation on your device as part of your Subscription or to use with the Subscription Services to enable certain functionality.
  - m. "Statement of Work" means a separate document or Order Form between Bushel and you that details the Professional Services to be delivered by Bushel.
  - n. "Subscription Services" means any of the Bushel services to which you subscribe under these Terms of Service and an Order Form which may contain additional detail on the main features and functions of a specific Subscription Services.
  - o. "Support Services" means the services provided by Bushel to support you and End Users as further defined below.
  - p. "Term" means the duration of a Subscription (e.g., monthly or 12 months).
  - q. "Terms of Service" means these Master Terms of Service, the Order Form and all policies, materials and documents referred or linked to this document.
  - r. "Terms of Use" means the Bushel terms of use located at <https://bushelpowered.com/policies/>.
2. **Order Form.** The description of the Subscription Services, fees, term and other business terms are agreed between you and Bushel in one or more Order Forms which are made part of these Terms of Service. An Order Form may also contain a Statement of Work under which Bushel may provide specific services, including Professional Services to you. Over time, you and Bushel may

execute multiple Order Forms which each may be subject to different terms and conditions. In an Order Form, we also may agree to special provisions which change or amend these Terms of Service. An Order Form supersedes all other discussions we may have had about business terms, including proposals or offers made by us.

### 3. **Subscription Services.**

- a. **Access and Right to Use.** During the Subscription Term, we will provide you access to use the Subscription Services as described in these Terms of Service and the applicable Order Form. You will have the non-exclusive, worldwide, limited right to access and use the Subscription Services and Professional Services during the applicable subscription period set forth in the Order Form. We grant you the right to install and use the Software included with your Subscription Services. You may use the Subscription Services and Software only for your internal business purposes. You may allow your End Users to use the Subscription Services and Software. You may only use the Subscription Services for the entity specifically listed in an Order Form. You may not use the Subscription Services for any other entity, including your Affiliates. We reserve all other rights.
- b. **Type of Subscription Services.** The Order Form defines the type of subscription you have to the Subscription Services, including any limitation.
- c. **Modifications.** We modify the Subscription Services from time to time, including by adding, changing or deleting features and functions. We will not make changes to the Subscription Services that materially reduce the functionality provided to you during the Subscription Term without giving you advance notice. We may also change the hosting provider for the Subscription Services from time to time. You give us the express right to do so.
- d. **Additional Services.** You may order additional Subscription Services through additional Order Forms. These Terms of Service will apply to all additional Order Forms, subject to all amendments to the Terms of Service.
- e. **Special Provisions for Certain Subscription Services.** Some of our Subscription Services require you to agree to special terms which may be in addition to or which may replace provisions in these Terms of Service. We will notify you of such terms in advance of you purchasing a subscription to those Subscription Services.
- f. **Software License.** With respect to any Software that is distributed or provided to you for use on your premises or devices, Bushel hereby grants you a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Subscription Services, except that with respect to mobile software distributed or provided to your End Users, you are permitted to sub-license certain rights to your End Users pursuant to these Terms of Service.
- g. **Acceptable Use.** You may use the Subscription Services for your internal business uses only and in accordance with these Terms of Service, Bushel's Terms of Use and any applicable laws or regulations. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Subscription Services, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any access or billing mechanism that relates to your use of the Subscription Services. You may not rent, lease, lend, resell, transfer, or host the Subscription Services, or any portion thereof, to or for third parties, including your Affiliates, or use it on their behalf, except as expressly permitted in these Terms of Service. You may not access or use the Subscription Services to build or support, directly

or indirectly, products or services competitive to Bushel. Although Bushel has no obligation to monitor your use of the Subscription Services, Bushel may do so and may prohibit any use of the Subscription Services it believes may be (or alleged to be) in violation of the foregoing.

- h. **Sensitive Information.** YOU ACKNOWLEDGE THAT NOT ALL PARTS OF THE SUBSCRIPTION SERVICES MAY HAVE BEEN DESIGNED TO PROCESS OR MANAGE “SENSITIVE INFORMATION.” ACCORDINGLY, YOU AGREE NOT TO USE THE SUBSCRIPTION SERVICES TO USE, COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. BUSHEL WILL NOT HAVE, AND SPECIFICALLY DISCLAIMS, ANY LIABILITY THAT MAY RESULT FROM YOUR USE OF THE SUBSCRIPTION SERVICES TO COLLECT, PROCESS OR MANAGE SENSITIVE INFORMATION. THIS DOES NOT APPLY TO THE DESIGNATED AREAS OF THE SUBSCRIPTION SERVICES IN WHICH BUSHEL SPECIFICALLY REQUIRES THE ENTRY OF SENSITIVE INFORMATION. YOU SHOULD ENTER SENSITIVE INFORMATION ONLY IN AREAS WHERE THE SUBSCRIPTION SERVICES ASK FOR AND NEED SENSITIVE INFORMATION. ENTERING SENSITIVE INFORMATION ANYWHERE ELSE IN THE SUBSCRIPTION SERVICES IS NOT ADVISED AND CANNOT BE PROTECTED BY BUSHEL AS SUCH.
- i. **HIPAA.** You agree that: (i) Bushel is not acting on your behalf as a Business Associate or subcontractor; (ii) the Subscription Services may not be used to store, maintain, process or transmit protected health information (“PHI”) and (iii) the Subscription Services will not be used in any manner that would require Bushel or the Subscription Services to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented (“HIPAA”). The terms “Business Associate,” “subcontractor,” “protected health information” or “PHI” have the meanings described in HIPAA.
- j. **End Users.** You control access by End Users, and you are responsible for their use of the Subscription Services in accordance with these Terms of Service. For example, you will ensure End Users comply with the Terms of Use and any limitation regarding Subscription Services or Non-Bushel Services. You are solely responsible for all administrative and security aspects related to the Subscription Services. Bushel is not responsible for any user access or credentials. If you provide us user credentials for further processing, you are solely responsible for the accuracy and confidentiality of those credentials.
- k. **Responsibility for Your Accounts.** You are solely responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Subscription Services. You must promptly notify us about any possible misuse of your accounts or authentication credentials or any security incident related to the Subscription Services.
- l. **Software, Equipment and Transmission of Data.** You understand that the technical processing and transmission of your electronic communications is fundamentally necessary to access and use the Subscription Services. You are responsible for securing all equipment, software, applications, DSL, cable or another high speed Internet connection and up-to-date software, including “browser” software, in order to access and utilize the most current version of the Subscription Services. You expressly allow Bushel to intercept and store your electronic communications and/or Customer Data as needed to provide the Subscription Services. You acknowledge and understand that your electronic communications will involve transmission over the Internet, and over

various networks, only part of which may be owned and/or operated by Bushel. You further acknowledge and understand that your electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Without limiting Bushel's obligations under the Security or Confidentiality Sections of this Agreement, Bushel is not responsible for any electronic communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Bushel, including, but not limited to, the Internet and your local network.

- m. **Preview Releases.** We may provide Previews to you at our sole discretion. Previews are provided "as-is," "with all faults," and "as-available," and are excluded from all limited warranties provided in these Terms of Service. Previews may not be covered by customer support. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into general availability.
  - n. **Policies.** You agree to our policies related to the Subscription Services, including our Privacy Policy and our Terms of Use. You also agree to abide by all similar terms and policies required by the providers of Non-Bushel Services. Violation of the terms in this section may result in suspension of the Subscription Services. We will suspend the Subscription Services only to the extent reasonably necessary. Unless we believe an immediate suspension is required, we will provide reasonable notice before suspending a Subscription Service.
  - o. **Non-Bushel Service.** The Subscription Services and Software may include the access to and use of services, interfaces and services offered by third parties, known or unknown to Bushel, including messaging and hosting, and single sign on services. The Non-Bushel Services are not under our control. They are provided to you only as a convenience, and the availability of any Non-Bushel Services does not mean we endorse, support or warrant the Non-Bushel Service. This access and use is provided by Bushel "as is" with no warranty and liability of any kind. You agree to comply with all requirements imposed by the third parties or in an Order Form related to your access and use.
4. **Third-Party Systems Data and Access.** As part of providing Subscription Services and our overall engagement with you, Bushel may be required to access third party systems and applications which you have licensed (the "Third Party Systems"). You give us permission to such access and confirm that you have the right to grant us access to the Third-Party Systems, including the data included in those Third-Party Systems, solely for the purposes of providing services to you. If the licensor of a Third-Party System brings a claim against us related to such access and use, you agree to resolve such claim, obtain access for us and hold us harmless.
5. **User Contact.** We will notify you if we need to contact your End Users, including your customers who are End Users and individuals or businesses which access your data through our services.
6. **Professional Services.** You may purchase Professional Services from us. The terms and conditions for those Professional Services will be agreed between you and Bushel in an Order Form or Statement of Work. Fees for these Professional Services are in addition to your Subscription Fee. All Professional Services are performed remotely, unless you and we otherwise agree. For Professional Services performed on-site, you will reimburse us our reasonable costs for all expenses incurred in connection with the Professional Services.

## 7. Confidentiality, Proprietary Rights and Customer Data

- a. **Confidentiality.** Each party to these Terms of Service (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose non-public business, technical or financial information relating to the Disclosing Party’s business (the “Confidential Information” of the Disclosing Party). Bushel’s Confidential Information includes non-public information regarding features, functionality and performance of the Subscription Services. It also includes the terms and conditions of the Order Form. Your Confidential Information includes Customer Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Subscription Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three (3) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party or (e) is required to be disclosed by law. At any time, upon written request by the Disclosing Party, the Receiving Party will promptly destroy all of the Disclosing Party’s Confidential Information, and any copies or extracts thereof, including any notes or analyses which are derived from or contain any Confidential Information. We both agree that this will not require the destruction, transfer, deletion, or modification of any backup media made pursuant to automated backup or archival processes in the ordinary course of business, nor prohibit either of us from keeping an archival copy of Confidential Information for regulatory, legal and compliance purposes in accordance with its document retention policies designed to achieve compliance with applicable law and regulation until such backup storage media is disposed of or overwritten in the ordinary course.
- b. **Proprietary Rights.** You own all right, title and interest in and to the Customer Data. Bushel owns and retains all right, title and interest in and to (a) the Subscription Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with any services or support provided by Bushel to you, and (c) all intellectual property rights related to any of the foregoing. You agree not to create derivative works based on the Subscription Services, or any other services provided by Bushel, in whole or in part, by any means, except as expressly authorized in writing by us. You may not use any of our trademarks without our prior written permission. You grant Bushel a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Subscription Services or Software (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by you or any End Users related to the operation or functionality of the Subscription Services or Software. The provisions of this section are subject to any rights we may give one another in these Terms of Service.
- c. **Customer Data Access.** You own all Customer Data and you are solely responsible for the content of all Customer Data. You have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Subscription Services to you without violating the rights of any third party or otherwise



obligating Bushel to you or to any third party. Bushel does not have and will not assume any obligations with respect to Customer Data or to your use of the Subscription Services other than as expressly set forth in these Terms of Service or as required by applicable law. You will provide Bushel all necessary access to the Customer Data to provide the Subscription Services. We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you or any individual or entity utilizing the Subscription Services or Software direct or otherwise permit. You agree to Bushel's Privacy Policy which contains further information and terms concerning data use and protection.

- d. **Customer Data Use.** Notwithstanding your right in the Customer Data, you hereby grant to Bushel a non-exclusive, world-wide, royalty-free, fully paid up, transferable, perpetual and irrevocable license, to
  - i. upon request of an individual or entity utilizing the Subscription Services or Software, provide such individual's or entity's data to third-parties designated by such individual or entity;
  - ii. collect, store, and analyze data and other information relating to the provision, use and performance of various aspects of the Subscription Services and related systems and technologies to you (including, without limitation, Customer Data and data derived therefrom); and
  - iii. during and after the term hereof use such information and data to make multiple backups and to improve and enhance the Subscription Services and for other development, diagnostic and corrective purposes in connection with the Subscription Services and other Bushel offerings, whether offered currently or in the future.
  - iv. Any use of your Customer Data by Bushel must be in accordance with applicable laws and regulations.
- e. **Anonymized Data Use.** YOU ALSO PERMIT US TO USE AND DISCLOSE ALL DATA AND OTHER INFORMATION RELATING TO THE PROVISION, USE AND PERFORMANCE OF VARIOUS ASPECTS OF THE SUBSCRIPTION SERVICES AND RELATED SYSTEMS AND TECHNOLOGIES (INCLUDING, WITHOUT LIMITATION, "CUSTOMER DATA" AND DATA DERIVED THEREFROM) IN CONNECTION WITH ANY LEGAL BUSINESS PURPOSE DURING AND AFTER THE TERM OF THESE TERMS OF SERVICE PROVIDED THAT BUSHEL AGGREGATES, DE-PERSONALIZES AND ANONYMIZES THE DATA AND MAKES NO DIRECT REFERENCE TO YOU, YOUR END USERS OR CUSTOMERS AND PROVIDED BUSHEL COMPLIES WITH ALL APPLICABLE LAWS AND REGULATIONS. BUSHEL DOES NOT HAVE THE RIGHT TO USE ANY IDENTIFYING DATA FOR SUCH PURPOSES WITHOUT YOUR EXPRESS CONSENT.

8. **Support.** Subject to the terms of these Terms of Service, Bushel will use commercially reasonable efforts to provide you the Subscription Services in accordance with the Service Level Terms attached hereto as Exhibit A (the "Support"). As part of the registration process, you will identify an administrative username and password for your Bushel platform account. Bushel reserves the right to refuse registration of or cancel passwords it deems inappropriate.

9. **Publicity.** You grant us the right to add your name and company logo to our customer list and website. Bushel may reference you by name and/or logo, on our website and in verbal or written communications, including marketing materials. By engaging Bushel, you grant us

permission to take such actions, unless otherwise requested by you in writing. We grant you the right to use our name and company logo on your website and in verbal and written communications. We both agree that we will not disparage one another, our businesses, products or services.

#### 10. Pricing and Payment.

- a. **Timing.** We will invoice you for the amounts you owe us for the Subscription Services, any Professional Services, agreed travel and other fees. All fees for Subscription Services are due and payable annually in advance throughout the Subscription Term and are non-refundable unless otherwise specified in the Order Form. All payments for Professional Services, travel or other fees are payable upon invoice from Bushel. We will deduct any credits.
- b. **Renewal Fees.** Bushel reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the initial or subsequent renewal terms of your subscription, upon thirty (30) days prior notice to you (which may be sent by email).
- c. **Payment.** You will pay Bushel the applicable fees described in the Order Form for the Subscription Services and Professional Services within thirty (30) days of the date of our invoice. If your use of the Subscription Services exceeds the number of End Users, transactions or other metric set forth on the Order Form or otherwise requires the payment of additional fees, Bushell will bill you for such usage and you agree to pay the additional fees in the manner provided herein. If you believe that Bushel has billed you incorrectly, you must contact Bushel no later than thirty (30) days after the date of the first invoice in which the error or problem appeared, in order to receive an adjustment or credit. If you do not pay the fees, we may prevent you from accessing the Subscription Services and included Customer Data. We may charge you up to 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of the Subscription Services.
- d. **Payment Information.** You will keep your contact information, billing information and credit card information (where applicable) up to date. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as specifically provided for in these Terms of Service.
- e. **Taxes.** Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. You must pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under these Terms of Service and which we are permitted to collect from you under applicable law. We will be responsible for all taxes based on our net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority; provided, however, that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You must ensure that any taxes withheld are minimized to the extent possible under applicable law.

#### 11. Term, Termination, and Suspension.



- a. **Term and Renewal.** Your initial Subscription Term will be specified in your Order Form, and, unless otherwise specified in your Order Form, your subscription will automatically renew for the shorter of the initial Subscription Term, or one year. Unless otherwise specified in your Order Form, to prevent renewal of a Subscription, you or we must give written notice of non-renewal and this written notice must be received no less than ninety (90) days in advance of the end of the Subscription Term. If renewal pricing is not included in your Order Form or separately agreed, then our standard pricing on the date of renewal will apply.
- b. **Early Cancellation.** You may choose to cancel your subscription early at your convenience provided that we will not provide any refunds of prepaid fees or unused Subscription Fees, and you will promptly pay all unpaid fees due through the end of the Subscription Term.
- c. **Termination for Cause.** Either of us may terminate these Terms of Service for cause, as to any or all Subscription Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, cessation of business, liquidation or assignment for the benefit of creditors. We may also terminate these Terms of Service for cause on thirty (30) days' notice if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers. These Terms of Service may not otherwise be terminated prior to the end of the Subscription Term.
- d. **Suspension for Prohibited Acts.** We may suspend any End User's access to any or all Subscription Services without notice for: (i) use of the Subscription Services in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of these Terms of Service, or (ii) repeated instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity. We may, without notice, review and quarantine any Customer Data that we determine in good faith violate these terms, provided that we have no duty to prescreen, control, monitor or edit your Customer Data.
- e. **Suspension for Non-Payment.** We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the Subscription Services ten (10) days after such notice. We will not suspend the Subscription Services while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If a Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Services.
- f. **Suspension for Present Harm.** If your use of the Subscription Services is creating a security vulnerability for the Subscription Services or is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the Subscription Services. We will try to limit the suspension to the affected portion of the Subscription Services and promptly resolve the issues causing the suspension of the Subscription Services. Nothing in this clause limits our right to terminate for cause as outlined above, if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers.
- g. **Effect of Termination or Expiration.** Upon termination or expiration of these Terms of Service, you will stop all use of the Subscription Services. We will provide you the opportunity to retrieve Customer Data after termination or expiration as specified in the

'Retrieval of Customer Data' section below. If you terminate these Terms of Service for cause, we will promptly refund any prepaid but unused fees covering use of the Subscription Services after termination. If we terminate these Terms of Service for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

- h. **Retrieval of Customer Data.** If you make a written request within thirty (30) days after termination or expiration of your subscription and have paid all outstanding fees, we will provide you with temporary access to the Subscription Services to retrieve, or we will provide you with copies of, all Customer Data then in our possession or control. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data. We will delete all Customer Data in our systems or otherwise in our control unless we are legally prohibited and subject to our rights in the "Anonymized Data Use" section above.

## 12. Indemnification.

- a. **By Bushel.** We will indemnify, defend and hold you and your Affiliates harmless, at our expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against you (and your officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with you or your Affiliates to the extent that such Action is based upon or arises out of a claim that a Subscription Service infringes on a third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- b. **By You.** You will indemnify, defend and hold us and our Affiliates harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us or our Affiliates to the extent that such Action is based upon or arises out of a claim that (1) any of your actions using a Subscription Service infringes on a third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from your violation of these Terms of Service; (3) is related to our access and use under 'Third-Party Systems Data and Access' section above; or (4) is related to your access to or use of Non-Bushel Services or other third party product or services.
- c. **Limitations.** Our obligations above will not apply to a claim or award based on: (i) any Customer Data, Non-Bushel Services, modifications you make to the Subscription Services, or services or materials you provide or make available as part of using the Subscription Services; (ii) your combination of the Subscription Services with, or damages based upon the value of, Customer Data or a Non-Bushel Service, data, or business process; (iii) your use of a Bushel trademark without our express written consent; (iv) your use of the Subscription Services after we notify you to stop due to a third-party claim; or (v) your redistribution of the Subscription Services to, or use for the benefit of, any third party.
- d. **Remedies.** If we reasonably believe that a claim against us may bar your use of the Subscription Services, we will seek, at our sole discretion, to: either (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Subscription Services. If these options are not commercially reasonable, we may terminate your rights to use the Subscription Services and then refund any advance payments for the unused Subscription Term.

- e. **Obligations.** Each party must notify the other promptly of a claim under this Section. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. Our respective rights to defense and payment of judgments (or settlement the other consents to) under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each of us waives such common law or statutory rights.

### 13. Limited Warranties and Remedies.

- a. **General Limited Warranty.** Bushel agrees to use commercially reasonable efforts consistent with prevailing industry standards to maintain the Subscription Services in a manner that minimizes errors and interruptions in the Subscription Services and perform the Professional Services in a professional and workmanlike manner. Subscription Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Bushel or by third-party providers, or because of other causes beyond Bushel's reasonable control. Bushel agrees to use reasonable efforts to provide you advance notice of any scheduled service disruption.
- b. **Subscription Services.** Unless we agree otherwise in an Order Form, a Subscription Service is automatically covered under the service level warranty in Exhibit A during the Term. If we do not achieve and maintain the service level for the Subscription Services, we will give you Service Level Credit for the portion of your prepaid monthly fee for the time that we did not meet the Service Level as further detailed in Exhibit A. Such credit is your only remedy.
- c. **Software.** We warrant that the Software will perform substantially as described in the applicable published documentation during the Term. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the fees paid for the Software pro-rated for the time the Software did not substantially perform as warranted, or (2) repair or replace the Software.
- d. **Limited Warranty Exclusions.** This limited warranty is subject to the following limitations and those in the section 'Disclaimers and Limitations of Liability':
  - i. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
  - ii. this limited warranty does not cover problems caused by accident, abuse or use of the Subscription Services in a manner inconsistent with these Terms of Service or our published documentation or guidance, or resulting from events beyond our reasonable control, including any third-party products and services;
  - iii. this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and
  - iv. this limited warranty does not apply to Previews.
- e. **No Warranty.** Bushel makes no warranty and has no liability of any kind related to Non-Bushel Services, third-party products or to services not provided by Bushel.

### 14. Disclaimers and Limitations of Liability

- a. **Disclaimer of Warranties.** OTHER THAN EXPRESSLY PROVIDED IN THESE TERMS OF SERVICE AND WITHOUT LIMITING OUR OBLIGATIONS TO PROTECT CUSTOMER DATA UNDER THESE TERMS OF SERVICE, BUSHEL MAKES NO REPRESENTATIONS OR

WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICES, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICES, FINANCIAL OR SIMILAR TRANSACTIONS CONDUCTED USING THE SUBSCRIPTION SERVICES, SOFTWARE, OR OTHER SERVICES PROVIDED BY BUSHEL FOR ANY PURPOSE. WE DO NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL MEET YOUR BUSINESS NEEDS AND REQUIREMENTS OR THAT THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. WE DO NOT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SUBSCRIPTION SERVICES OR SOFTWARE. OTHER THAN EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, THE SUBSCRIPTION SERVICES, SOFTWARE AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBSCRIPTION SERVICES, THE SOFTWARE OR PROFESSIONAL SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY EXCEPT TO THE EXTENT APPLICABLE LAW DOES NOT PERMIT THEM.

- b. **No Indirect Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.
  - c. **Limitation of Liability.** IF, NOTWITHSTANDING THE OTHER TERMS OF THESE TERMS OF SERVICE, EITHER PARTY OR ITS AFFILIATES IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY AND ITS AFFILIATES WILL BE LIMITED TO A SUM EQUAL TO THE TOTAL AMOUNTS PAID OR PAYABLE FOR THE SUBSCRIPTION SERVICES IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM. THESE LIMITATIONS OF LIABILITY DO NOT APPLY TO
    - i. OUR LIABILITY FOR DEATH OR PERSONAL INJURY;
    - ii. EITHER PARTY'S LIABILITY FOR FRAUD, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT;
    - iii. YOUR LIABILITY FOR PAYMENT OF FEES;
    - iv. EITHER PARTY'S LIABILITY ARISING FROM OUR RESPECTIVE OBLIGATIONS UNDER THE INDEMNIFICATION SECTION; AND
    - v. OUR OBLIGATIONS TO PROTECT CUSTOMER DATA.
  - d. **Third Party Products.** WE AND OUR AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE OR ACCESS THROUGH THE SUBSCRIPTION SERVICES. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THESE TERMS OF SERVICE.
  - e. **Agreement to Liability Limit.** YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION OR PROFESSIONAL SERVICES TO YOU.
15. **US Government Rights.** The Subscription Services is a "commercial item" as that term is defined at FAR 2.101. If you or an End User is a US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Bushel provides the Subscription Services, including any related software, technology, technical data, and/or professional services in accordance with the

following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Bushel to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

#### 16. General Provisions

- a. **Independent Contractors.** The Parties hereto expressly acknowledge and agree that neither Party is an agent or employee of the other Party and that neither Party has the authority to bind or obligate the other Party in any manner. Neither Party has the authority to act for or on behalf of the other Party except as expressly granted herein. Each Party agrees to act as an independent contractor in relation to the other Party.
- b. **Disputes.** The Parties agree to use their best efforts to amicably settle any dispute, claim, question, or disagreement arising from or relating to these Terms of Service or the breach thereof. The Parties agree to first consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such a solution within a period of thirty (30) calendar days, then, upon written notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; except that a Party may bring legal action in an appropriate court to enjoin infringement or other misuse of intellectual property rights. The arbitration will take place in Fargo, North Dakota. Judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. If for any reason a claim proceeds in court rather than arbitration, the Parties hereby waive any right to a jury trial.
- c. **Actions Permitted.** Except for actions for nonpayment or breach of a Party's proprietary rights, no action, regardless of form, arising out of or relating to these Terms of Service may be brought by either party more than one (1) year after the cause of action has accrued.
- d. **Governing Law.** These Terms of Service and matters connected with the performance thereof shall be construed, interpreted, applied and governed by the laws of the State of North Dakota, USA, without reference to its conflict of laws principles.
- e. **Notices.** All notices, requests, demands, and other communications under these Terms of Service must be in writing and delivered by personal delivery, electronic mail,

facsimile transmission, express or first class mail to the addresses above or as provided by the Parties to each other from time to time. Notice will be deemed given as of the date of actual receipt.

- a. **Headings.** The headings contained in these Terms of Service are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of these Terms of Service.
- b. **Force Majeure.** Except for the obligation to make payments, neither Party shall be liable for delays or breaches in its performance under these Terms of Service due to causes beyond its reasonable control, such as acts of vendors, acts of god, acts or omissions of civil or military authority, government priorities, fire, earthquakes, strikes or other labor problems, floods, epidemics, quarantine restrictions, riots, war, acts of terror, computer or telecommunications failures, network intrusions or denial of service attacks and delays of transportation.
- c. **Compliance with Laws.** We will comply with all U.S. state and federal laws (where applicable) in our provision of the Subscription Services, the Professional Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Subscription Services and Professional Service.
- d. **Export.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Subscription Services. Such export laws govern use of the Subscription Services (including technical data) and any deliverables provided under these Terms and Conditions. You and Bushel each agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, software programs and/or materials resulting from the Subscription Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws. You acknowledge that the Subscription Services are designed with capabilities for you and End Users to access the Subscription Services without regard to geographic location and to transfer or otherwise move Customer Data between the Subscription Services and other locations. You are solely responsible for the authorization and management of End User accounts across geographic locations, as well as export control and geographic transfer of Customer Data.
- e. **Invalidity of Provisions.** If any covenant or part thereof, or other provision of these Terms of Service is invalid, illegal or incapable of being enforced, by reason of law or public policy, all other conditions and provisions of these Terms of Service shall, nevertheless, remain in full force and effect, and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein. If moreover, any provision of these Terms of Service shall for any reason be held to be excessively broad as to time, geographical scope, activity or subject, it shall be deemed amended to the extent necessary for such provision to be held valid and enforceable.
- f. **Waiver.** No waiver of any right hereunder by either Party shall operate as a waiver of any other rights, or of the same right with respect to any subsequent occasion for its exercise, or of any right to damages. No waiver of either Party of any breach of these Terms of Service shall be held to constitute a waiver of any other breach or of a continuation of the same breach.



- g. **Remedies.** All remedies provided by these Terms of Service are in addition to all other remedies provided by law.
- h. **Amendment.** We may update and change any part or all of these Terms of Service, including the fees and charges associated with the use of the Subscription Service (but, your fees and charges will not change during the Subscription Term except as we explain in the 'Fees and Payments' section above.) If we update or change these Terms of Service, the updated Terms of Service will be posted at <https://bushelpowered.com/policies/> and we will let you know via email or in-app notification. The updated Terms of Service will become effective and binding on the 5th business day after it is posted. When we change these Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. If you would like to receive an email notification when we update the Terms of Service, complete the form found at <https://bushelpowered.com/policies/>. We encourage you to review these Terms of Service periodically. If you do not agree with a modification to the Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Terms of Service prior to modification for the remainder of your current term. Upon renewal, the then-current Terms of Service published by us on our website will apply. The same applies to all other policies or documents referenced in these Terms of Service, including policies and documents we may add.
- i. **No Waiver.** No waiver of any right hereunder by either Party shall operate as a waiver of any other rights, or of the same right with respect to any subsequent occasion for its exercise, or of any right to damages. No waiver of either Party of any breach of this Agreement shall be held to constitute a waiver of any other breach or of a continuation of the same breach. All remedies provided by this Agreement are in addition to all other remedies provided by law. Any additions or modifications to this Agreement must be made in writing and must be signed by authorized representatives of both parties.
- j. **Entire Agreement.** These Terms of Service and Order Form(s), together with any attachments, exhibits, documents, policies or schedules incorporated therein by reference, constitutes the entire agreement between us for the Subscription Services and Professional Services and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Services or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Services.
- k. **Precedence.** In the event of a conflict between the terms of these Terms of Service and an Order Form, the terms of the Order Form shall control, but only as to that Order Form.
- l. **Assignment.** You will not assign or transfer these Terms of Service without our prior written consent, except that you may assign these Terms of Service to a successor by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, provided such successor is not a competitor of ours. We may assign these Terms of Service without your prior written consent to any Affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

- m. **No Third-Party Beneficiaries.** Nothing in these Terms of Service, express or implied, is intended to or shall confer upon any third-party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of these Terms of Service.
- n. **Contract for Services.** These Terms of Service is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to these Terms of Service. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern these Terms of Service or the rights and obligations of the parties under these Terms of Service.
- o. **Survival.** Any right or obligation of the parties in these Terms of Service which, by its express terms or nature and context is intended to survive termination or expiration of these Terms of Service, will survive any such termination or expiration.
- p. **Authority.** Each party represents and warrants to the other that it has full power and authority to enter into these Terms of Service and that it is binding upon such party and enforceable in accordance with its terms. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into these Terms of Service on that entity's behalf. If you specify an entity, or you use an email address provided by an entity with which you are affiliated (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of these Terms of Service.

**EXHIBIT A**  
**SERVICE LEVEL TERMS AND SUPPORT**

Service Level Terms

For the purposes of this Exhibit A, the following definitions apply:

"Priority 1" means a critical full outage/severe issue that constitutes a catastrophic problem that causes complete inability to use the Subscription Services, excluding Preview Releases, across a significant portion of the production environment (e.g. crash or hang), resulting in production downtime and where there is no workaround or solution to the problem.

"Excluded" means the following: (i) unavailability caused by circumstances beyond our reasonable control, including, without limitation, act of God, acts of government, emergencies, natural disasters, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or any other force majeure event or factors; (ii) any problems resulting from your combining or merging the Subscription Services with any hardware or software not supplied by us or not identified by us in writing as compatible with the Subscription Services; (iii) interruptions or delays in providing the service resulting from telecommunications or Internet service provider failures outside of our datacenter as measured by our third party website availability monitoring provider; and (iv) any interruption or unavailability resulting from the misuse, improper use, alteration, or damage of the Subscription Services.

"Service Uptime" means  $(\text{total hours in calendar month} - \text{unscheduled maintenance which causes unavailability} - \text{Priority 1 issue durations} - \text{scheduled maintenance} - \text{Excluded}) / (\text{Total hours in calendar month} - \text{scheduled maintenance} - \text{holiday and weekends} - \text{Excluded}) \times 100\%$ .

We will use commercially reasonable efforts to meet a Service Uptime of 99.90% for our Subscription Services in a given calendar month. All availability calculations will be based on our system records.

For each period of downtime lasting longer than two hours, Bushel will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime, but no more than one such credit can accrue per day.

- Downtime shall begin to accrue as soon as Customer (with notice to Bushel) recognizes that downtime is taking place, and continues until the availability of the Services is restored.
- Downtime resulting from outages of third party connections or utilities or other reasons beyond Bushel's control will also be excluded from any such calculation.
- If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance.
- The downtime credit shall be the Customer's sole and exclusive remedy, and Bushel's entire liability, in connection with Service availability.
- To receive the downtime credit, Customer must notify Bushel in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit.
- Downtime credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event.
- Bushel will only apply a credit to the month in which the incident occurred.

Bushel's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Bushel to provide adequate service levels under these Terms of Service.

### Support

During the Term, Bushel will provide technical support to you via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm central standard time, with the exclusion of Federal Holidays ("Support Hours").

Contact the Bushel team at 701-369-0633 option 3

You may initiate a helpdesk ticket filling out a ticket request at: <https://support.Bushelpowered.com>  
Bushel will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.