

KARIOS

Terms of Service

These Terms & Conditions (“T&Cs”) shall apply to all offers, SOFs, orders, legal relationships and any other arrangement or agreement between Nexxora, Inc d/b/a Karios (“Karios”) and any customer (“Customer”) that enters into an agreement for services with Karios and is not governed by any master services or framework agreement entered into between the Parties.

Karios’ Services will be subject to this Agreement:

1. Use of Software

- 1.1. General. Effective upon Customer’s payment of the applicable Software Subscription Fees, Karios hereby grants to Customer, for the duration of the applicable Subscription Term, a non-exclusive, non-transferable license to access and use the Software and related Documentation through the Software Subscription Services, subject to the terms and conditions of this Agreement. Karios reserves all rights in and to the Software and Documentation not expressly granted to the Customer in this Agreement.
- 1.2. License Quantities. The use of the Software is limited to the quantities specified in each applicable Order Form. Karios may monitor the number of Software licenses purchased by the Customer, and if the actual number of Software licenses exceeds the number specified in the applicable Order Form, Customer shall (a) immediately cease such excess usage; or (b) purchase additional Software licenses to cover the excess usage. Fees for excess Software licenses shall be based on Karios’ then-current price list.
- 1.3. Internal Use Limitation. Customer may solely access and use the Software via the Software Subscription Services through its Users and only for Customer’s own internal business purposes. Customer shall not permit any third party to access or use the Software in any way whatsoever, and Customer shall not, and shall not permit any User to, offer or use the Software for the benefit of any affiliated or unaffiliated third parties, including in any computer service business, service bureau arrangement, outsourcing or subscription service, time sharing or other participation arrangement.
- 1.4. Not for Resale. Software identified as “Not For Resale,” and may not be sold or otherwise transferred for value, or used for any purpose.
- 1.5. Software Subscription Services Hosting. Customer shall provide, at Customer’s own expense, all necessary hardware, software applications and internet connectivity, as referenced in the Documentation or an Order Form, necessary to access, download, install, and use the Software.
- 1.6. Ownership of Software. Customer acknowledges that Karios is and will remain the sole and exclusive owner of all Intellectual Property Rights in and to the Software. Customer shall have no right, title or interest therein or thereto, other than the limited license expressly set forth in this Agreement.
- 1.7. Permitted Copies. Customer may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Customer’s possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this Agreement. Customer may not otherwise copy the Software without Karios’ prior written consent.
- 1.8. Customer Data. Customer shall be solely responsible for each User that accesses the Software, and for all data created by use of or access to the Software or stored in the Software (the “Customer Data”). Customer shall defend, indemnify and hold Karios and its Affiliates harmless from any claim, action, suit, damage, judgment or cost, including attorney’s fees, based upon or arising out of the custody, possession, storage, transmission or management of Customer Data in accordance with the terms of this Agreement, including without limitation claims predicated on any law or regulation concerning protection of personal data or rights in data collections.
- 1.9. Ownership of Customer Data. Nothing in this Agreement shall be construed as granting Karios any right, title or interest in or to any Customer Data or other content or information input into or processed using the Software, other than the limited license expressly set forth in this Agreement.

- 1.10. Ownership of Other Materials. Karios shall be the exclusive owner of all right, title and interest, including all Intellectual Property Rights, in and to (a) the Software; (b) any and all translations, adaptations, developments, enhancements, improvements, Updates, Versions, customizations or other modifications or derivations of or to the Software, whether or not developed by or for the Customer; and (c) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer relating to the Software.
- 1.11. No Modification or Reverse Engineering. Except as permitted by law, Customer shall not, and shall not allow any User, Service Provider or any third party to, (a) modify, port, adapt or translate or create any derivative works from or based on the Software, in whole or in part; (b) reverse engineer, decompile, disassemble or otherwise attempt to reduce the object code to or discover the source code of the Software; or (c) combine or merge the Software with, or incorporate it into, any other software.

2. Order, Fees, and Payment

- 2.1. Ordering. Customer may order Software Subscription Services for the Software and/or Services by submitting one or more signed Order Forms and/or SOWs to Karios, subject to Karios' acceptance thereof. No Orders are binding on Karios until accepted by Karios. Orders for Software are deemed to be accepted upon Karios' delivery of the Software included in such Order. Orders issued to Karios do not have to be signed to be valid and enforceable.
- 2.2. Provisioning. Upon Karios' acceptance of a signed Order Form for Software Subscription Services, Customer will be provisioned pre-configured Software Subscription Services. Any customized configurations of Software Subscription Services may be ordered via a separately executed SOW.
- 2.3. Fees. Customer shall pay Karios (i) the fees set forth in each Order Form for the Subscription Term and each renewal period for the Software Subscription Services; and (ii) the fees set forth in each SOW or Order Form for Services.
- 2.4. Payment. All fees and expenses are quoted and invoiced in the currency specified in the applicable Order Form. All invoiced amounts are due and payable by Customer within thirty (30) days after the invoice date.
- 2.5. Failure of payment. Customer acknowledges that continued access to the Software Subscription Services is contingent upon timely payment and that failure may downgrade or discontinue Customer's access to the Software Subscription Services. Customer acknowledges that Karios is not responsible for any damages caused by any reduction in access to the Software, and is not responsible for restoration of access to services until full payment is made to Karios.
- 2.6. Disputes. Customer shall pay the undisputed part of the invoice. If Customer has a reasonable and bona fide dispute in respect of the whole or any part of an invoice then Customer shall promptly notify Karios of the nature of such dispute in writing within fourteen (14) days of the invoice date, with Customer providing all relevant details (including detailed reasons and any supporting evidence) of the disputed amount. If Customer does not notify Karios within 14 days, Customer will be deemed to have approved the full amount of the invoice. On resolution of any dispute, Customer shall make the appropriate payment (if any) within five (5) business days of such resolution.
- 2.7. Taxes Fees and other charges described in the applicable Order Form and/or SOW do not include federal, state or local sales, foreign withholding, use, property, excise, service, value added or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to Karios prior to the execution of the applicable Order Form. If Karios is required to collect or pay Taxes on Software Subscription Fees or other fees, Customer shall reimburse Karios for all such amounts. Customer hereby agrees to indemnify Karios for any such Taxes and related costs, interest and penalties paid or payable by Karios.

3. Support

- 3.1. Karios Support Obligations. Throughout the applicable Subscription Term and as part of the Software Subscription Services, provided that Customer is not then in default of its obligations under this Agreement (including payment obligations) and subject to the exclusions set forth in Section 3.2 Karios will provide or cause to be provided the following support services: (a) an internet-based portal, available in the English languages, which allows Customer to report Software errors; and, (b) Updates to the Software as made available by Karios to its Customers for no additional charge from time to time (Karios reserves the right to charge separately for any new applications, new databases, functionality or Versions that are not generally released to Karios' Customers without separate charge. Any new or additional features, functions or Versions may be offered separately and may be subject to additional

license fees, support charges or other fees and costs).

- 3.2. Exclusions. Support will not include: (a) resolution of problems resulting from Customer's failure to access and use the Software in accordance with the Documentation; (b) the provision of any Support if Customer is in default with respect to payment of any applicable fees; or (c) any implementation, onsite installation, training and other Services (such Services being available through separate mutually agreeable SOWs with additional charges).

4. Consulting Services

- 4.1. General. Karios offers consulting services relating to the Software, including installation and implementation services, configuration or customization of templates or reports and training. Karios will provide any such Services following Customer's signature and Karios' acceptance of a SOW describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with and subject to the terms and conditions of this Agreement.
- 4.2. Services Performance. In performing Services, Karios may assign Karios personnel, authorized agents or qualified third-party contractors who are proficient in the provision of Services relating to the Software ("Consultants"). Karios will be responsible for the observance by such Consultants of Karios' obligations hereunder, including the confidentiality obligations in Section 6 herein. Customer agrees to provide the information, facilities, personnel and equipment, including if applicable suitably configured computers, reasonably identified by Karios as essential to the performance of any Services. Customer may require Karios' personnel in performing any Services to observe at all times the safety and security policies of Customer. Prior to being provided with Services to be performed at Customer's premises, Customer shall advise Karios of any hazards to the health and safety of Karios' personnel on the Customer's premises and provide Karios' personnel with appropriate written information regarding applicable safety and security procedures.
- 4.3. Services Pricing. Unless otherwise provided in the applicable SOW, all Services shall be provided on a time and expense/materials basis at the rates set forth in the applicable SOW. Karios reserves the right to impose a higher rate for Services performed upon the request or with the approval of Customer in excess of a forty (40) hour week or during weekend or holiday periods. Estimates are provided for Customer's information only and are not guaranteed. Customer shall pay or reimburse Karios for all reasonable travel and other out-of-pocket expenses incurred in connection with Karios' performance of Services hereunder.

5. Term, Termination, and Suspension of Services

- 5.1. Term. This Agreement is effective as of the Effective Date, and will remain in force while any Order Form or SOW hereunder remains in effect. If no Order Form or SOW is in effect hereunder, either party may terminate this Agreement upon thirty (30) days' written notice to the other.
- 5.2. Subscription Term. The term for the Software Subscription Services ("Subscription Term") shall be, unless otherwise specified in an applicable Order Form, one (1) year and shall begin on the subscription commencement date set forth in the applicable Order Form. At the completion of the initial Subscription Term, the Subscription Term shall renew automatically for successive twelve (12) month renewal periods, unless either party gives written notice to the other party of its intent not to renew at least thirty (30) days prior to the end of the then current Subscription Term. The term for any other Services shall be as stated in an applicable SOW.
- 5.3. Termination. Either party may terminate this Agreement in its entirety, or in part with respect to an Order Form and/or Statement of Work for Services, at any time upon thirty (30) days prior written notice, if the other party materially fails to comply with any of the terms and conditions of this Agreement or the applicable Order Form or Statement of Work, and such failure is not cured by the end of such thirty (30) day period. Karios may terminate this Agreement immediately if Customer materially fails to comply with Sections 1, 2, or 6 of this Agreement.
- 5.4. Termination for Insolvency. Karios may terminate this Agreement and all Licenses granted hereunder in its entirety effective immediately upon written notice to Customer if Customer: (a) terminates or suspends business operations; (b) becomes insolvent, admits in writing the inability to pay debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.
- 5.5. Effects of Termination. Upon termination of this Agreement, all Licensed rights to the Software granted to Customer under this Agreement will immediately cease to exist Upon any termination of this Agreement or the Subscription

Term, Customer shall immediately cease accessing and using the Software through the Software Subscription Services.

- 5.6. Suspension of Subscriptions. Notwithstanding any other provision of this Agreement, Karios may immediately and indefinitely suspend Customer's access to and use of the Software for any of the following reasons (i) Customer is determined by Karios, in Karios' sole judgment exercised in good faith, to have or attempted to have damaged, harmed or misused the Software or the web site or systems of Karios or its Affiliates; (ii) to comply with any law, regulation, court order, or other governmental request; or (iii) to otherwise protect Karios from potential legal liability. Karios will not be responsible for any damages incurred by Customer as a result of suspension of access or use of the Software.
- 5.7. Survival. Sections 1.8, 2.7, 6, 7, 8, 9, and 10 shall survive any such termination of this Agreement.

6. Confidential Information

- 6.1. Nature and Scope. As used herein, "Confidential Information" means any non-public, confidential information either marked as such or, in the relevant circumstances, should be understood to be confidential information and includes all internal policies, procedures or third party audit or attestation reports, whether furnished or made available before or after the date of this Agreement, and regardless of its form, format, media or mode of disclosure (written, visual, electronic or other). Customer's Confidential Information also includes (i) Customer Data; and (ii) financial and audit working papers and related documentation. Karios Confidential Information includes (i) the terms of this Agreement; and (ii) the Software.
- 6.2. Obligations. Each party will keep all Confidential Information of the other party strictly confidential. Each party agrees to use the same care to protect the Confidential Information of the other as it employs with similar information of its own (but in no event less than reasonable care). Neither party will disclose any Confidential Information of the other party, except that each party may disclose Confidential Information of the other to its employees, contractors or agents who have a need to know such information, provided that, prior to such disclosure, each such employee, contractor or agent is bound by obligations to comply with the restrictions on use and disclosure of Confidential Information set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement. In addition, Customer shall be responsible for its Service Providers' and Users' full compliance with the confidentiality obligations hereunder. These confidentiality obligations shall survive for the longer of (i) a period of five (5) years after termination of this Agreement; or (ii) the longest period permitted by law.
- 6.3. Exceptions. Confidential Information shall not include information which is independently developed by the party without the benefit of the other's disclosure or is already known by the party at the time of disclosure; approved for release by the other's written authorization or is rightfully received by the party from a third party without any obligation of confidentiality; public knowledge without the wrongful act or breach of this Agreement by either party; or disclosed pursuant to the requirements of a governmental agency or court order.

7. Limited Warranties and Disclaimers

- 7.1. Software. Karios warrants to Customer that, for a period of ninety (90) days from the commencement of the initial Subscription Term, the Software will perform substantially in accordance with the Documentation in effect at the time of delivery to Customer. Karios' entire liability and the Customer's sole and exclusive remedy for breach of this Section 7.1 will be limited to either, at Karios' option, replacement of the Software at no charge to Customer or refund of the Software Subscription Fees paid by Customer and termination of this Agreement. The warranties in this Section 7.1 shall not apply if, and during the period that, any access to Software is provided to Customer for evaluation or trial use.
- 7.2. Services. Karios warrants to Customer that all Services provided under this Agreement will be performed by competent personnel with appropriate experience in providing such Services.
- 7.3. Warranty Limitations. The preceding Karios warranties do not apply to and, to the fullest extent permitted by law, Karios shall have no responsibility for breaches of warranty to the extent arising from: (i) Customer operator errors; (ii) Customer hardware or operating system failures; (iii) the modification of the Software by any person other than Karios (except as directed or authorized by Karios); (iv) the combination of the Software with products or services not provided by Karios (except as directed or authorized by Karios); (v) use of any portion of the Software in a manner not permitted or contemplated by this Agreement or the Documentation; or (vi) use of an earlier Version

of some or all of the Software other than the current Version or use of Software without all Updates installed if so directed by Customer.

7.4. Disclaimers.

- (a) Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED ABOVE IN THIS SECTION 7, THE SOFTWARE, SERVICES, AND DELIVERABLES PROVIDED HEREUNDER ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. KARIOS AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIER EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OR UNDER STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF PERFORMANCE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, KARIOS AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE, SERVICES OR OTHER DELIVERABLES WILL SATISFY CLIENT’S REQUIREMENTS OR THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED. CLIENT ACCEPTS NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY KARIOS, ANY OF ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS OR THEIR RESPECTIVE EMPLOYEES, OFFICERS OR DIRECTORS WILL INCREASE THE SCOPE OR OTHERWISE ALTER THE TERMS OF ANY WARRANTY EXPRESSLY STATED IN THIS AGREEMENT OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.
- (b) Warranty Term. TO THE EXTENT THAT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS CANNOT BE FULLY DISCLAIMED AND EXCLUDED UNDER APPLICABLE LAW AS CONTEMPLATED BY SECTION 7.4(a), THEN ANY DIFFERENT OR ADDITIONAL LEGALLY REQUIRED WARRANTIES, REPRESENTATIONS OR CONDITIONS, SHALL BE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SOFTWARE DELIVERY OR SERVICES PERFORMANCE, AS APPLICABLE.
- 7.5. Discontinuation. Karios reserves the right to discontinue or modify the Software, Support or any component, feature, Version, service or content therein and related thereto, upon providing Customer with twelve (12) months prior written notification. In the event that the Software is discontinued during the Subscription Term, then Karios will, in its discretion, provide Customer with either: (i) a pro-rata refund of pre-paid but unused Fees for the discontinued Software and related Support, or (ii) access to a product or service having substantially similar functionality for the remainder of the then-current Subscription Term.
- 7.6. Data Transfer. Karios may provide certain services, software, and products that assist with the transfer of data from a Customer’s system to Karios products (“Data Transfer Services”). These Data Transfer Services are provided as-is and are used by the Customer at its own risk. Customer is solely responsible for the use, possession, and transfer of their data, and Karios will not be held liable for any damages that result from the Data Transfer Services. Karios does not actively monitor any information or material transferred through the Data Transfer Services and cannot warrant the integrity of the content of such data.

8. **Limitations of Liability**

- 8.1. Damages Exclusion. WITHOUT LIMITING KARIOS’ INDEMNIFICATION OBLIGATIONS HEREUNDER AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER KARIOS NOR ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OF SALES, PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR ANY EXEMPLARY, PUNITIVE OR SPECIAL LOSS OR DAMAGE, EVEN IF ADVISED OF THE POSSIBILITY OF THEIR OCCURRENCE, RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SOFTWARE, OR ANY SERVICES RENDERED HEREUNDER, OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION (WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, STATUTE OR OTHERWISE).
- 8.2. Limitations of Liability. Except for any express indemnification obligations hereunder, the entire and collective liability of Karios and its Affiliates, distributors, agents, subcontractors and suppliers, arising out of or related to this Agreement, the Software, and Services, and any other cause whatsoever, including without limitation on account of

performance or nonperformance of obligations under this Agreement, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed the total fees paid to Karios in the twelve-month period preceding the date such claim or cause of action first arose (or if such claim or cause of action first arose after expiration of all Order Forms and SOWs, then in the last twelve-month period occurring prior to such expiration or termination). The allocations of liability in this Section 8 represent the agreed, bargained-for understanding of the parties and Karios' compensation hereunder reflects such allocations. The limitation of liability and types of damages stated in this Agreement are intended by the parties to apply regardless of the form of lawsuit or claim a party may bring, whether in tort, contract or otherwise, and regardless of whether any limited remedy provided for in this Agreement fails of its essential purpose. The limitations of liability under this Section 8 will be applied to the maximum extent permitted by applicable law.

- 8.3. Limitations Period. Any claim or cause of action arising under or otherwise relating to this Agreement, any Order Form, Statement of Work, or the Software, Services or other subject matter hereof or thereof, whether based in contract, tort (including negligence) or otherwise, must be commenced within one (1) year from the date such claim or cause of action first arose.

9. Indemnification

9.1. Infringement Indemnity.

- (a) General. Karios agrees to (i) defend Customer against or, at Karios' option, settle any unaffiliated third party claim or action brought against Customer asserting that Customer's access or use of all or part of the Software through the Software Subscription Services in conformity with this Agreement infringes such third party's copyrights, registered trademarks, or patents; and (ii) indemnify Customer against actual damages and reasonable costs and expenses assessed against or recovered from Customer as a result of any such claim or action.
- (b) Exclusions. Section 9.1(a) does not cover claims or actions to the extent based upon or arising out of: (i) access to or use of the Software in combination with other non-Karios-provided products or programs with which the Software are not authorized or intended to be used; (ii) modification or alteration of the Software by Customer or for Customer by any person other than Karios or its authorized agent; (iii) access or use of the Software in breach of this Agreement or in a manner not consistent with or contemplated by the Documentation; or (iv) use of a superseded or altered Version of some or all of the Software if infringement would have been avoided or mitigated by the use of a subsequent Version of (or with any applicable Updates to) the Software (if Customer has instructed Karios not to install any such Version or Update).
- (c) Karios Cure. If any of the Software becomes, or in Karios' opinion, is likely to become, the subject of a third party claim of infringement or violation of such third party's intellectual property rights, Karios may, at its option: (i) procure for Customer the right to continue using the affected Software; (ii) replace the same with substantially equivalent, non-infringing materials; or (iii) modify the affected Software so that they become non-infringing without materially changing their functionality. If, in Karios' opinion, none of the foregoing alternatives are feasible or commercially reasonable, Karios may terminate Customer's rights to access and use the affected Software and refund to Customer the unamortized portion of the allocable Software Subscription Fees paid by Customer with respect thereto.
- (d) Exclusive Remedy. To the maximum extent permitted by applicable law, the provisions of this Section 9 state the sole, exclusive and entire liability of Karios and its affiliates, distributors, agents, subcontractors and suppliers, and Customer's sole remedy, with respect to any actual or claimed infringement or other violation of any third party's intellectual property rights.
- (e) Indemnification Procedures. The indemnity in this Section 9 is contingent upon: (i) Customer promptly notifying the Karios in writing of any claim which may give rise to a claim for indemnification; Karios being allowed to control the defense and settlement of such claim; and (iii) Customer cooperating with all reasonable requests of Karios (at Karios' expense) in defending or settling a claim. Customer shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing. Karios may settle any such claim, provided that no settlement of any claim admitting liability of, or imposing duties or restrictions upon, Customer, other than for payment of monetary amounts for which Karios agrees to be responsible or for termination of Customer's use of the Software in accordance with Section 9.1, may be effected without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed. The indemnities in this Section 9 shall not apply if, and during the period that, any access to or use of the Software is provided to Customer for evaluation or trial use.

10. Compliance

- 10.1. Compliance with Laws. Each party shall comply with all laws applicable to the actions contemplated by this Agreement.
- 10.2. Export Controls. Customer acknowledges that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Customer acknowledges that the Software may be subject to export controls under United States laws and regulations, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and may be subject to other applicable laws and regulations in other jurisdictions relating to export, re-export, import, transfer or other disposition of software and other technology (collectively, "Export Control Laws"). From and after access and use of the Software through the Software Subscription Services, Customer shall comply with any and all applicable Export Control Laws applicable to the Software.
- 10.3. Governmental Prohibitions. Customer represents that (1) Customer is not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) Customer will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

11. Miscellaneous

- 11.1. Amendment; Waiver. This Agreement may only be modified or amended by a writing expressly identified as an amendment and signed by both parties.
- 11.2. Assignment. Customer may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of Karios, except that, after reasonable prior notice thereof to Karios, Customer may assign or transfer its rights and obligations under this Agreement to an Affiliate of Customer or to a successor to its business to which this Agreement relates. However, any such assignment or transfer of rights hereunder shall not release Customer of its obligations under this Agreement without Karios' prior written consent.
- 11.3. Entire Agreement. This Agreement, including its schedules and any exhibits, together with all Order Forms and SOWs, (i) collectively constitute the entire agreement between the parties, and (ii) supersede all prior agreements, understandings, proposals and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, requisition, work order, request for proposal or other document or record prepared, issued or provided by or on behalf of Customer (including without limitation terms or certifications required by any Customer vendor management system) relating to the subject matter of, or otherwise in connection with, this Agreement is for administrative convenience only and will have no effect in supplementing, varying or superseding any provisions of this Agreement, regardless of any acknowledgement thereof by Karios.
- 11.4. Force Majeure. Except for payment obligations, neither party will be liable to the other for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, fire, flood, earthquake or other natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, laws or regulations, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or internet services, vandals, hackers, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.
- 11.5. Governing Law. This Agreement will be governed by, and construed and interpreted according to, the substantive laws of the Commonwealth of Virginia, without giving effect to any law, provision or rule of such state or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the Commonwealth of Virginia. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts (if permitted by law and a party elects to file an action in federal court)

located in Fairfax County, Virginia. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

- 11.6. Government Use. In the event that Customer is an agency of the United States Government or that a license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Customer acknowledges that the Software and Documentation, respectively, provided to Customer hereunder constitute commercial computer software and commercial computer software documentation developed at private expense and are subject to the terms and restrictions of this Agreement pursuant to FAR 27.405-3 and DFARS 227.7202. The contractor/manufacturer is Karios, with an address set forth on the applicable Order Form.
- 11.7. Independent Contractor. Each party's relationship to the other is that of an independent contractor. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create a partnership, joint venture or employment or agency relationship between the parties or between Customer and any Karios employee, agent or contractor. Neither party has any authority to bind, incur liability for or otherwise act on behalf of the other party, and neither party will represent or imply that it has any such authority.
- 11.8. Insurance. During any period in which it is performing Services for Customer on Customer's premises, Karios will maintain (a) workers' compensation with such coverage amounts at least equal to that legally required in jurisdictions in which such Services are being performed, and (b) general liability insurance in commercially reasonable amounts covering liability for bodily injury, death and property damage. Upon written request, Karios shall promptly provide written confirmation of such insurance coverage.
- 11.9. No Third-Party Beneficiary. No third party is intended to be or shall be a third-party beneficiary of any provision under this Agreement. Karios and Customer shall be the only parties entitled to enforce the rights set out in this Agreement.
- 11.10. Notices. All notices under this Agreement shall be in writing and shall be deemed to have been received upon personal delivery, by commercial overnight courier service, or five (5) business days after mailing by certified or registered mail to the address for such party as listed in this Agreement, or the last applicable Order Form or SOW.
- 11.11. Precedence. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any Order Form, SOW, schedule, exhibit or other attachment, the order of precedence shall be as follows: first, the body of this Agreement; then, any applicable schedules or exhibits to this Agreement; then, any Order Form or SOW; then any addenda or other attachments to any Order Form. In the event of conflict between this Agreement and any Order Form or SOW, the body of this Agreement shall govern and control, except to the extent such Order Form or SOW makes clear that this Agreement is being amended by such Order Form or SOW.
- 11.12. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. The remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.
- 11.13. Affiliates. Karios' Affiliates may enter into Order Forms and SOWs with Customer hereunder. Each such Order Form and SOW shall reference, and be subject to the terms and conditions of, this Agreement, provided further, that if an Order Form or SOW is executed by an Affiliate, (i) such Affiliate shall take the place of Karios, as applicable, for purposes of this Agreement, but solely with respect to such Order Form or SOW, (ii) such Affiliate will be solely liable with respect to such Order Form or SOW and this Agreement (as it relates to such Order Form or SOW). In the event of any conflict between the terms of this Agreement and the terms of any Order Form or SOW, the terms of the Agreement shall prevail unless the parties specify in the applicable Order Form or SOW that a particular provision of the Order Form or SOW is to supersede a particular provision of this Agreement.

12. Definitions

- 12.1. “Affiliate” means with respect to any party, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through ownership of voting securities or otherwise.
- 12.2. “Agreement” means these Terms of Service.
- 12.3. “Core” means an individual processing unit within a CPU.
- 12.4. “Customer Data” is defined in Section 1.8.
- 12.5. “Software Subscription Fees” means the applicable fees set forth in an Order Form to be paid by Customer for the Software Subscription Services for the applicable Subscription Term.
- 12.6. “Software Subscription Services” means Karios’ service to provide continued access to the Software.
- 12.7. “Documentation” means the standard operating manuals, user instructions and technical specifications for the Software and supplied by Karios to Customer, as may be updated by Karios from time to time.
- 12.8. “Effective Date” means the date indicated in the preamble to this Agreement.
- 12.9. “Software” means the Karios software comprised of the applicable modules specified in an Order Form, including any Updates thereto and new Versions thereof made available by Karios hereunder.
- 12.10. “Intellectual Property Rights” means all copyright, patent, trade secret, trademark and other intellectual property and proprietary and moral rights related thereto.
- 12.11. “Node” means a single server or physical machine within an HCI cluster which typically includes one or more Sockets, memory, storage, and network interfaces, and is integrated to provide compute, storage, and networking capabilities.
- 12.12. “Order Form” means Karios’ then current order form for the Software Subscription Services pursuant to the terms of this Agreement and which has been completed and signed by Customer and Karios.
- 12.13. “Service Provider” means a third-party service provider or consultant, including any third-party providing Customer with outsourcing, data center management.
- 12.14. “Services” means the services, other than Software Subscription Services, provided by Karios under this Agreement, as requested by Customer, accepted by Karios and described in one or more Order Forms and/or SOWs.
- 12.15. “Socket” means a physical slot on a motherboard or server where a CPU (processor) is installed.
- 12.16. “SOW” means a statement of work for Services which includes a reference to this Agreement and is entered into pursuant to the terms of this Agreement and which has been completed and signed by Customer and Karios.
- 12.17. “Subscription Term” is defined in Section 5.1.
- 12.18. “Update” means any updates, enhancements, improvements, corrections, service packs or other modifications of or to the Software that are generally released by Karios.
- 12.19. “User” means each individual named employee of Customer or its authorized agents, subcontractors, or third party service providers who access or use the Software by or through Customer, regardless of whether such individual is actively accessing or using the Software at any given time.
- 12.20. “Version” means any new version or upgrade of the software that contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any) and which is designated by a numeric change to left of the decimal (e.g., Version 8.0 and 9.0).